



ANALYSIS

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1991, No. 144

An Act to amend the Family Proceedings Act 1980

[18 December 1991]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Family Proceedings Amendment Act 1991, and shall be read together with and deemed part of the Family Proceedings Act 1980 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1992.

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing paragraph (c) and paragraph (e) of the definition of the term “maintenance agreement”.

(2) Section 2 of the principal Act is hereby further amended by omitting from the definition of the term “maintenance agreement” the words “or paragraph (c) or paragraph (d) or paragraph (e)”, and substituting the words “or paragraph (d)”.

(3) Section 2 of the principal Act is hereby further amended by repealing subparagraph (i) of paragraph (a) of the definition of the term “maintenance order”.

(4) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “registered maintenance agreement”.

3. Maintenance officers—The principal Act is hereby amended by repealing sections 6 and 7.

4. Mediation conference—Section 13 (1)(a) of the principal Act is hereby amended by omitting the words “(including a maintenance order in respect of a child)”.

5. Power of Chairman of mediation conference to make consent orders—Section 15 (1) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) The maintenance of the husband or wife; or”.

6. Time limit on applications for paternity orders—Section 49 (2) of the principal Act is hereby amended by adding the following paragraph:

“(c) Where, at any time before the 1st day of July 1992, the respondent has been named as a liable parent for the purposes of sections 271 to 271z of the Social Security Act 1964, and the bringing of an application for a paternity order is subsequently necessary as a consequence of the enactment of the Child Support Act 1991.”

7. Substitution of Part VI heading—The principal Act is hereby amended by repealing the heading to Part VI, and substituting the following heading:

“MAINTENANCE OF SPOUSES”.

8. Interpretation in Part VI—Section 60 (1) of the principal Act is hereby amended by repealing paragraph (c).

9. Application of principles—(1) Section 61 of the principal Act is hereby amended by omitting the words “section 79, section 82, or section 90”, and substituting the words “section 79 or section 82”.

(2) Section 61 of the principal Act is hereby further amended by omitting the words “and in sections 72 and 73”.

10. Maintenance of children—(1) The principal Act is hereby amended—

(a) By repealing sections 72 to 77; and

(b) By repealing the heading above section 72.

(2) Section 3 of the Family Proceedings Amendment Act (No. 2) 1985 is hereby consequentially repealed.

11. Related orders—(1) Section 78 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) On or at any time after making a paternity order in respect of a child that has already been born, a Family Court may, if the child is dead, order the respondent to pay such sum as the Court specifies, in such manner as the Court specifies, in respect of the funeral expenses of the child.”

(2) Section 78 (6) of the principal Act is hereby amended by omitting the words “any of paragraphs (a), (b), (d), (e), and (f) of section 73 (1) of this Act”, and substituting the words “any of paragraphs (a), (d), (e), or (i) of section 7 (1) of the Child Support Act 1991”.

12. Application for maintenance order in favour of unmarried parent—Section 79 of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) The natural father of the child is a person who is a parent from whom the payment of child support may be sought in respect of the child under section 6 of the Child Support Act 1991; and”.

13. Interim maintenance—Section 82 of the principal Act is hereby amended by omitting the words “and any of the respondent’s children”.

14. Registration of maintenance agreements—(1) The principal Act is hereby amended—

(a) By repealing sections 83 to 90; and

(b) By repealing the heading above section 83.

(2) Section 2 of the Family Proceedings Amendment Act 1989 is hereby consequentially repealed.

15. Person to whom money payable under maintenance order—Section 93 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) The money payable under a maintenance order shall, unless a direction of the Court otherwise requires, be payable to the Commissioner of Inland Revenue in accordance with the Child Support Act 1991.”

16. Copy of order to be sent to Commissioner of Inland Revenue—The principal Act is hereby amended by inserting, after section 93, the following section:

“93A. Where a Court makes a maintenance order under this Act, the Registrar shall, within 28 days after the day on which the order is made, send a certified or sealed copy of the order to the Commissioner of Inland Revenue.”

17. Discharge, variation, and suspension of maintenance orders—The principal Act is hereby amended by repealing section 99, and substituting the following section:

“99. (1) Where a Family Court or a District Court is satisfied that it ought to do so having regard to the principles of maintenance set out in sections 62 to 66 and in section 81 of this Act, the Court may from time to time, in respect of any maintenance order, make any of the following orders:

“(a) An order discharging the maintenance order:

“(b) An order varying or suspending the maintenance order:

“(c) An order temporarily suspending the maintenance order, as to the whole or any part of the money ordered to be paid:

“(d) An order discharging the maintenance order, and substituting in its place a new maintenance order, whether of the same kind or not:

“(e) An order extending the term for which the maintenance order was made.

“(2) Where a maintenance order is discharged or any such order otherwise ceases to have effect, all arrears due under the order at the time when it was discharged or otherwise ceased to have effect shall, unless and to the extent that they are remitted by a Court, be recoverable by the party to whom they are owing as if the order were still in force.

“(3) An order under this section varying a maintenance order by increasing the amount payable under it may, if the Court thinks fit, take effect from a date that is earlier than the date of the order of variation, but is not earlier than the date on which the grounds for the variation arose.

“(4) A Court may from time to time—

“(a) Remit the whole or part of any arrears due under a maintenance order; or

“(b) Suspend, on such terms and conditions (if any) as it specifies, the payment of the whole or part of any such arrears—

whether or not the order has ceased to be in force.

“(5) A Court may—

“(a) From time to time vary or extend an order made by it under this Act for the giving of security for the payment of maintenance, whether as to the term of the order or the nature of any security, or by increasing or diminishing the amount of any security, or otherwise; or

“(b) Discharge an order made by it under this Act for the giving of such security.

“(6) A Court may exercise the powers given by this section notwithstanding that the order that is varied, extended, suspended, or discharged was made by consent of the parties.”

18. Restriction on payment of maintenance in advance—Section 100 of the principal Act is hereby amended by repealing subsection (5).

19. New Part VII substituted—The principal Act is hereby amended by repealing Part VII, and substituting the following Part:

“PART VII

“ENFORCEMENT OF MAINTENANCE ORDERS FROM 1 JULY 1992

“101. **Orders enforceable under Child Support Act 1991**—The provisions of the Child Support Act 1991 shall

apply to the manner in which orders made under Part VI and Part VIII of this Act may be enforced on and after the 1st day of July 1992.”

20. Effect of registration or confirmation of order made in Commonwealth or designated country—Section 141 of the principal Act is hereby amended by repealing subsection (2).

21. New sections substituted—The principal Act is hereby amended by repealing sections 145 and 146, and substituting the following sections:

“145. Applications for maintenance by applicants residing in Convention countries—Where the Secretary for Justice receives from the responsible authority in a Convention country—

“(a) An application by a person who claims to be entitled to recover maintenance from a person who is for the time being residing in New Zealand; or

“(b) An application for the variation, suspension, or discharge of an order made under this section—

the Secretary for Justice shall cause the application, together with all relevant accompanying documents, to be sent to the Registrar of the District Court in New Zealand that is nearest to the place in New Zealand at which the respondent resides or is last known to have resided.

“145A. Treatment of applications for maintenance by applicants residing in Convention countries—Where a Registrar of a District Court receives from the Secretary for Justice an application under this section, the Registrar shall (subject to section 145j of this Act),—

“(a) In the case of an application in respect of the maintenance of any person other than a child of the respondent, or an application made pursuant to any of sections 78 to 81 of this Act, deal with the application in all respects as if it were an application for a maintenance order made to the Court under Part VI of this Act, and that Part shall apply accordingly:

“(b) In the case of an application in respect of the maintenance of any child of the respondent, deal with the application in accordance with sections 145B to 145i of this Act.

“Maintenance of Children in Respect of Applications from Persons in Convention Countries

“145B. **Interpretation**—In this Part of this Act, a reference to a parent of a child includes a reference—

“(a) To a natural or adoptive parent of the child; and

“(b) In the case of a child of the marriage, to a party to the marriage who is not a natural or adoptive parent of the child; and

“(c) For the purposes of an application under section 145E (b) of this Act, to a step-parent of the child even though the child to whom the application relates is not a child of the marriage.

“145C. **Maintenance of children**—(1) Each parent of a child is liable to maintain the child—

“(a) Until the child attains the age of 16 years; and

“(b) Where it appears to the Court to be in the best interests of a child who has attained or will shortly attain the age of 16 years, until the child attains the age of 18 years or such earlier age as the Court directs; and

“(c) Where it appears to the Court that the child is or will be engaged, after attaining the age of 16 years, in a course of full-time education or training and it is expedient that the child should continue to be maintained, until the child attains the age of 20 years or such earlier age as the Court directs.

“(2) In determining the amount that is payable by a parent for the maintenance of a child, the Court shall have regard to all relevant circumstances affecting the welfare of the child, including—

“(a) The reasonable needs of the child; and

“(b) The manner in which the child is being educated or trained, and the expectations of each parent as to the child’s education or training.

“(3) In determining the amount that is payable by a parent for the maintenance of a child, the Court shall also have regard to the following circumstances:

“(a) The means, including the potential earning capacity, of each parent:

“(b) The reasonable needs of each parent:

“(c) The fact that either parent is supporting any other person:

“(d) The contribution (whether in the form of oversight, services, money payments, or otherwise) of either

parent in respect of the care of that or any other child of the marriage:

“(e) The financial and other responsibilities of each parent:

“(f) Where the person against whom the order is sought is not a natural or adoptive parent of the child—

“(i) The extent (if at all) to which that person has assumed responsibility for the maintenance of the child, the basis on which that person has assumed that responsibility, and the length of time during which that person has discharged that responsibility; and

“(ii) Whether that person assumed or discharged any responsibility for the maintenance of the child knowing that that person was not a natural parent of the child; and

“(iii) The liability of any other person to maintain the child:

“(g) Any property and income of the child:

“(h) Where the child has attained the age of 16 years, any earning capacity of the child.

“145D. **Limitations on liability as father**—(1) No person who is not married to the mother of a child, and has never been married to the mother, or whose marriage to the mother has been dissolved before the conception of the child, shall be liable as a father to maintain the child unless—

“(a) A Court has declared him to be the father of the child; or

“(b) A Court has appointed him to be a guardian of the child, or has declared him to be a guardian of the child, by reason of being a parent of the child; or

“(c) A Court has, before or at the time of making a maintenance order against him, made a paternity order against him; or

“(d) His name has at any time been entered pursuant to the Births and Deaths Registration Act 1951 in the Register of Births as the father of the child; or

“(e) He has been declared to be the father of the child by an order made in a country outside New Zealand (being an order to which this section applies pursuant to subsection (2) of this section); or

“(f) He has, in any proceedings before the Court, or in writing signed by him, acknowledged that he is the father of the child.

“(2) The Governor-General may from time to time, by Order in Council, declare that this section applies to orders made by a

specific Court or public authority in a specified country outside New Zealand.

“(3) For the purposes of this section, the Cook Islands, Niue, and Tokelau shall be deemed to be countries outside New Zealand.

“145E. **Applications for maintenance orders in respect of children**—An application for a maintenance order in respect of a child may be made only—

“(a) By a parent against another parent; or

“(b) By a person who has lawful care of the child against a parent or parents of the child.

“145F. **Power of Court to make maintenance orders in respect of children**—Every application under section 145A (b) of this Act shall be heard and determined in a Family Court.

“145G. **Maintenance orders in respect of children**—
(1) On hearing an application under section 145A (b) of this Act, a Family Court may, subject to subsections (2) and (9) of this section, make any one or more of the following orders:

“(a) An order directing the respondent to pay such periodical sum towards the future maintenance of the child as the Court thinks fit:

“(b) An order directing the respondent to pay such lump sum towards the future maintenance of the child as the Court thinks fit:

“(c) An order directing the respondent to pay such lump sum towards the past maintenance of the child as the Court thinks fit.

“(2) The Court shall not make an order under this section pursuant to an application made by a person to whom section 145E (b) of this Act applies against a step-parent of a child, unless the Court is satisfied that—

“(a) Either—

“(i) No natural or adoptive parent of the child is alive; or

“(ii) No natural or adoptive parent can be found who is capable of providing proper maintenance for the child; and

“(b) The child has at some time lived with the step-parent as a member of the step-parent’s family.

“(3) An order made under subsection (1) (b) or subsection (1) (c) of this section for the payment of a lump sum may provide that the sum shall be payable—

“(a) At a future date specified in the order; or

“(b) By instalments specified in the order; or

“(c) On such terms and conditions as the Court thinks fit.

“(4) Where an application is made under section 145E of this Act against more than one parent of a child, an order under this section may be made against the parents in respect of whom the application is made or any one or more of them.

“(5) No order made under this section for the future maintenance of a child who is under the age of 16 years at the date when the order is made shall have effect after the child attains the age of 16 years, unless the Court so directs.

“(6) No order made under this section for the future maintenance of a child who is over the age of 16 years but under the age of 18 years at the date when the order is made shall have effect after the child attains the age of 18 years, unless the Court so directs.

“(7) On the application of any person who is entitled to apply under section 145E of this Act for a maintenance order in respect of a child, the Court may extend a maintenance order in respect of that child where the child has not attained the age of 16 years or 18 years, as the case may require, at the date on which the application is heard, but may otherwise make a fresh order.

“(8) Whether or not the Court makes a maintenance order under this section for the future maintenance of a child who has attained the age of 16 years or 18 years, the Court may order the respondent to pay, in respect of the past maintenance of the child during the period commencing on the date on which the child attained that age and ending on the date of the making of the order, or such earlier date as is appropriate in the circumstances, such sum at such time or times and in such manner as the Court thinks fit.

“(9) No order shall be made under this section in respect of a child who is married.

“(10) No order made under this section and no extension of an order shall have effect in respect of a child after the child marries.

“145H. **Contributions by other parent**—(1) Where an application is made under section 145E (a) of this Act against a parent of a child—

“(a) That parent may join another person as a respondent in the proceedings; or

“(b) The Court may in any case direct that another parent be joined as a respondent in the proceedings.

“(2) Where, pursuant to an application made under section 145E (a) of this Act, the Court has made a maintenance order

against a parent of a child, and another parent was not a respondent in those proceedings—

- “(a) The parent against whom the order was made may apply to the Court for an order requiring another parent to make a monetary contribution towards the maintenance of the child; and
- “(b) On hearing the application, the Court may order another parent to make such monetary contribution towards the maintenance of the child as the Court thinks fit.

“145i. **Interim maintenance**—(1) Where an application for a maintenance order or for the variation, extension, suspension, or discharge of a maintenance order has been filed, any District Court Judge may make an order directing the respondent to pay such periodical sum as the District Court Judge thinks reasonable towards the future maintenance of any of the respondent’s children until the final determination of the proceedings or until the order sooner ceases to be in force.

“(2) No order made under this section shall continue in force for more than 6 months after the date on which it is made.

“(3) An order made under this section may be varied, suspended, discharged, or enforced in the same manner as if it were a final order of a Family Court.

“Procedure on Applications from Persons in Convention Countries

“145j. **Procedures relating to applications from persons in Convention countries**—(1) After fixing a date and time of hearing in respect of the application, the Registrar shall cause to be served on the respondent—

- “(a) A copy of the application and of each relevant accompanying document together with any accompanying notice that may be required; and
- “(b) A summons to the respondent to attend the hearing on the date and at the time so fixed.

“(2) Where the respondent’s address is unknown or where a summons has been issued but cannot be served because the respondent cannot be found, a District Court Judge may issue a warrant to arrest the respondent and bring the respondent before the Court.

“(3) The Registrar shall inform the Secretary for Justice of the decision of the Court on an application made under section 145A of this Act, and the Secretary for Justice shall transmit the information to the responsible authority in the Convention country.

“146. Provisions where service not affected—(1) Where the Registrar of a District Court is unable to comply with the requirements as to service in section 145j (1) of this Act, the Registrar shall—

“(a) Send the documents received under section 145A of this Act to the Registrar of any other District Court which the Registrar has reason to believe is nearest to the place in New Zealand at which the respondent then resides; or

“(b) Send the documents received under section 145A of this Act back to the Secretary for Justice together with a statement that the present whereabouts of the respondent are unknown.

“(2) Where a Registrar receives documents under subsection (1) (a) of this section, the provisions of subsection (1) of this section and of sections 145A and 145j of this Act shall have effect accordingly.

“(3) Where the Secretary for Justice receives the documents and statement referred to in subsection (1) (b) of this section, the Secretary shall transmit the documents to the responsible authority in the Convention country with a statement that the present whereabouts of the respondent are unknown.”

22. Provisional orders for confirmation overseas—

Section 147 of the principal Act is hereby amended by repealing subsection (4).

23. Appointment of barrister or solicitor to assist Court or represent children—The principal Act is hereby amended by repealing section 162, and substituting the following section:

“162. (1) In any proceedings under this Act (not being criminal proceedings) a Court may, if the Court is satisfied that it is necessary or desirable to do so, appoint a barrister or solicitor—

“(a) To assist the Court; or

“(b) To represent any child who is the subject of or who is otherwise a party to the proceedings.

“(2) A barrister or solicitor appointed under this section may call any person as a witness in the proceedings, and may cross-examine witnesses called by any party to the proceedings or by the Court.

“(3) The fees and expenses of any barrister or solicitor appointed under this section shall, in accordance with regulations made under this Act, be paid out of the Crown

Bank Account from money appropriated by Parliament for the purpose.

“(4) The bill of costs rendered by a barrister or solicitor appointed under this section shall be given to the Registrar of the Court in which the proceedings were heard and the Registrar may tax the bill of costs.

“(5) If the barrister or solicitor is dissatisfied with the decision of the Registrar as to the amount of the bill of costs, that person may within 14 days after the date of the decision apply to a Family Court Judge to review the decision; and the Judge may thereupon make such order varying or confirming the decision as the Judge considers fair and reasonable.

“(6) Notwithstanding subsection (3) of this section, the Court may, if it thinks proper, order any party to the proceedings to refund to the Crown such amount as the Court specifies in respect of any fees and expenses paid under that subsection, and the amount ordered to be refunded shall be a debt due to the Crown by that party and shall then be enforceable in the same manner as a judgment given by the District Court in any civil proceedings.”

24. Proof of certain matters—Section 166 of the principal Act is hereby amended by repealing subsection (3).

25. Dispositions may be restrained—Section 183 (1) of the principal Act is hereby amended by inserting, after the words “Part VI of this Act”, the words “or under the Child Support Act 1991”.

26. Dispositions may be set aside—Section 184 (1) of the principal Act is hereby amended by inserting, after the words “Part VI of this Act”, the words “or under the Child Support Act 1991”.

27. Regulations—Section 187 of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Prescribing fees and expenses for the purposes of this Act.”