

DESTITUTE PERSONS AMENDMENT BILL

EXPLANATORY NOTE

Clause 2 of this Bill cures a defect in the law relating to the making of maintenance orders for children. At present there is no power to order a husband or wife to pay for the maintenance of a child unless there has been a failure to maintain the child; whereas a separation order, maintenance order, or order of guardianship (giving the custody of the children of the marriage) may be made in favour of a husband or wife on other grounds—namely, failure to maintain the applicant, cruelty, habitual drunkenness, or conviction of assault on the applicant or the children. This clause provides that where a Magistrate makes a maintenance order or an order of guardianship in favour of a wife or husband, he may also make an order for the maintenance of any child of the marriage until it reaches the age of sixteen, and, if the defendant is able to pay, an order for the past maintenance of the child up to £50. Section 7 of the Destitute Persons Amendment Act 1951 will apply so that an order under this clause may later be extended by the Court where the child is still receiving education or training between the ages of sixteen and eighteen.

Clause 3 substitutes a new section for section 21 of the principal Act. The existing section provides that a Magistrate must discharge a separation order on application to him and proof that the parties have cohabited at any time since the making of the order. It was therefore held by the Supreme Court in a recent case that a return to cohabitation did not of itself nullify the order, and that a spouse could not, while it remained in force, be guilty of a fresh desertion if he or she resumed cohabitation and then again deserted. The new section provides that a separation order will cease to be in force if the husband and wife resume cohabitation as man and wife; and, without limiting the general effect of that provision, application may be made to a Magistrate for the formal discharge of the order on proof that cohabitation has been resumed. In other words, while under the existing section a separation order remains in force until it is discharged by an order of a Magistrate, under the new section it will be discharged automatically by the resumption of cohabitation. The new section is based on similar legislation passed in the United Kingdom in 1925 to overcome the same difficulty. *Subclause (2)* of this clause preserves the existing right of any party to apply to a Magistrate for the cancellation of an order made before the commencement of the Bill in any case to which the new section does not apply.

Hon. Mr Webb

DESTITUTE PERSONS AMENDMENT

ANALYSIS

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| Title.
1. Short Title and commencement.
2. Order for maintenance of child
in certain cases. | | 3. Separation order to cease to have
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A BILL INTITULED

AN ACT to amend the Destitute Persons Act 1910. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

- 5 **1.** (1) This Act may be cited as the Destitute Persons Amendment Act 1953, and shall be read together with and deemed part of the Destitute Persons Act 1910 (hereinafter referred to as the principal Act). Short Title and commencement.
- 10 (2) This Act shall come into force on the first day of January, nineteen hundred and fifty-four. See Reprint of Statutes, Vol. II, p. 896
- 15 **2.** The principal Act is hereby amended by inserting, after section eighteen, the following section:
- “ 18A. (1) Where under section seventeen or section eighteen of this Act, as extended by section eight of the Domestic Proceedings Act 1939, a Magistrate makes a maintenance order or an order of guardianship in favour of any wife or husband, the Magistrate may, Order for maintenance of child in certain cases. 1939, No. 13

if he thinks fit, having regard to all the circumstances of the case, and whether or not he makes a separation order, make a maintenance order against the defendant directing the defendant to pay towards the future maintenance of any child of the marriage a reasonable sum at such times and in such manner as the Magistrate thinks fit, until the child attains the age of sixteen years. 5

“(2) The Magistrate making an order under this section may also, in his discretion, if he is satisfied that the defendant is of sufficient ability, order the defendant to pay on account of the past maintenance of the child any sum not exceeding fifty pounds, at such time or times and in such manner as the Magistrate thinks fit. 10

“(3) Where a Magistrate makes a maintenance order or an order of guardianship in favour of any wife or husband as aforesaid, and any child of the marriage is dead at the time of the complaint or at the time of the order, the Magistrate may in his discretion, if he is satisfied that the defendant is of sufficient ability, and whether or not he makes a separation order, order the defendant to pay on account of the past maintenance of that child any sum not exceeding fifty pounds, at such time or times and in such manner as the Magistrate thinks fit. 15 20 25

1951, No. 68

“(4) The provisions of section seven of the Destitute Persons Amendment Act 1951 (which relates to the extension by Magistrates of orders for the maintenance of children so as to have effect beyond the age of sixteen) shall apply to maintenance orders made under subsection *one* of this section.” 30

Separation order to cease to have effect on resumption of cohabitation.

3. (1) The principal Act is hereby further amended by repealing section twenty-one, and substituting the following section:

“21. (1) Where a separation order has been made, whether before or after the commencement of this section, and the husband and wife, with the free consent of the wife, resume cohabitation as man and wife, or, in the case of an order in force at the date of the commencement of this section, have so resumed cohabitation before that date and are so cohabiting at that date, the order shall for all purposes cease to have any force or effect on the resumption of such cohabitation or, in the last-mentioned case, at the commencement of this section. 35 40 45

“(2) Without limiting in any way the generality of the provisions of subsection one of this section, the wife or husband, or any constable, may apply to a Magistrate for the discharge of the separation order, and on proof
5 that the order has ceased to have effect as aforesaid the Magistrate shall discharge the order.”

(2) Notwithstanding anything in this section, in any case where, before the date of the commencement of this Act, any person could have applied to a Magistrate
10 under section twenty-one of the principal Act for the discharge of a separation order made before that date, that person may apply for the discharge of that order, and the application shall be dealt with as if this Act had not been passed.