

# DESTITUTE PERSONS AMENDMENT BILL

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## EXPLANATORY NOTE

THIS Bill makes three amendments to the Destitute Persons Act 1910.

*Clause 2:* Section 14 of the principal Act provides that an affiliation order may be applied for and made whether the illegitimate child is born or resident in New Zealand or elsewhere, and whether the father or mother is resident in New Zealand or elsewhere, and whether the mother or child is dead. Doubts have arisen (owing to decisions of the United Kingdom Courts on similar legislation) as to the power of the Court to make an affiliation order where a child is born overseas and the mother is not legally domiciled in New Zealand. This clause substitutes a new section 14, which provides that an application for an affiliation order may be made to the Court, and an order made by the Court, if either the father or the mother resides or is domiciled in New Zealand when the application is made, whether or not the mother was domiciled in New Zealand when the child was born. In other respects, the new section 14 repeats, in a redrafted form, the provisions of the existing section.

*Clause 3:* Section 73 of the principal Act authorizes a Magistrate to deal with any complaint, without requiring service of the proceedings on the defendant, where the defendant is out of New Zealand or his address is unknown or he cannot be found. This clause substitutes a new section 73. The effect of the new section is as follows:

- (a) In any case under Part I or Part II of the principal Act (which deal with the maintenance of destitute persons by near relatives, and with affiliation orders), if the defendant is out of New Zealand but his whereabouts are known, the Magistrate may order that notice of the proceedings be served on the defendant; but if the defendant cannot be found, whether he is believed to be in New Zealand or elsewhere, the Magistrate may order steps to be taken to bring the proceedings to the notice of the defendant, whether by advertisement or by service on some other person or in any other manner. Where the Magistrate is satisfied that any such order has been complied with, he may deal with the complaint as if the defendant had been served in the ordinary way:
- (b) In relation to all other cases under the Act, the existing provisions are re-enacted.

*Clause 4* provides that an agreement in writing between husband and wife providing for the payment of maintenance by one party to the other, or for the maintenance of a child, may be registered in the office of a Magistrate's Court, whether or not the agreement also relates to separation or custody. The effect of registration is that the provisions of the agreement relating to maintenance will have the effect of a maintenance order made on the date of registration, and will be enforceable accordingly.

*Hon. Mr Marshall*

## DESTITUTE PERSONS AMENDMENT

### ANALYSIS

Title.	3. Proceedings where defendant is absent from New Zealand or cannot be found.
1. Short Title.	4. Registration and enforcement of maintenance agreements between husband and wife.
2. Affiliation order may be made notwithstanding domicile of parties.	

### 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:

1. This Act may be cited as the Destitute Persons Amendment Act 1955, and shall be read together with and deemed part of the Destitute Persons Act 1910 (hereinafter referred to as the principal Act). Short Title.  
See Reprint of Statutes, Vol. II, p. 896

2. The principal Act is hereby amended by repealing section fourteen, and substituting the following section:  
"14. (1) Any complaint or order may be made under this Part of this Act if, when the complaint is made, the father or the mother resides or is domiciled in New Zealand.

(2) Subject to the provisions of subsection *one* of this section, any complaint or order may be made under this Part of this Act notwithstanding that—

“(a) The child resides or was born outside New Zealand:

“(b) The mother was domiciled outside New Zealand when the child was born:

“(c) The mother or the child is dead, or the child was born dead.” 5

Proceedings where defendant is absent from New Zealand or cannot be found.

3. The principal Act is hereby amended by repealing section seventy-three, and substituting the following section:

“73. (1) Where any complaint is made under this Act, 10 not being a complaint under Part I or Part II of this Act, and it is proved to the satisfaction of a Magistrate that the defendant is absent from New Zealand or cannot be found, the Magistrate may, if he thinks fit, hear and determine the complaint in the same manner as if the 15 defendant had been served with a summons.

“(2) Where any complaint is made under Part I or Part II of this Act, and it is proved to the satisfaction of a Magistrate that the defendant is absent from New Zealand and that his whereabouts are known, the Magistrate may order that notice of the proceedings be served 20 on the defendant.

“(3) Where any complaint is made under Part I or Part II of this Act, and it is proved to the satisfaction of a Magistrate that the defendant cannot be found, the 25 Magistrate, whether the defendant is believed to be in New Zealand or elsewhere, may order any steps to be taken to bring the proceedings to the notice of the defendant, and may from time to time amend any such order. Any order under this subsection may direct that 30 notice of the proceedings be given by advertisement in any newspaper, or by the service of a notice on any solicitor or agent of the defendant or on any other person, or in any manner whatsoever.

“(4) Where a Magistrate is satisfied that any order 35 made under subsection *two* or subsection *three* of this section has been complied with and that a reasonable time has elapsed since the steps directed by the order were taken, he may, if he thinks fit, hear and determine the complaint in the same manner as if the defendant had 40 been served with a summons.

“(5) The provisions of this section shall apply whether a summons or warrant has been issued on the complaint or not.”

4. The principal Act is hereby further amended by inserting, after section forty-seven A, as inserted by section twelve of the Destitute Persons Amendment Act 1951, the following section:

Registration and enforcement of maintenance agreements between husband and wife.

1951, No. 68

5 “47B. (1) Where any agreement between a husband and his wife has been entered into in writing, whether before or after the commencement of this section, and the agreement provides for the periodical payment by either party of sums of money towards the maintenance of the other party or of any child to whom Part III or Part IV of this Act is applicable, either party may register the agreement or a copy thereof in the prescribed manner in the office of a Magistrate’s Court.

15 “(2) Where any agreement or copy thereof is registered under subsection *one* of this section, the provisions of the agreement relating to maintenance shall, while it continues in force, have the same force and effect as if the agreement were a maintenance order made under this Act on the date of the registration, and the provisions of 20 this Act relating to maintenance orders shall apply accordingly, with the necessary modifications.

25 “(3) Where any Magistrate is satisfied that any registered agreement was not in force on the date of the registration of the agreement or copy under this section, he may make an order cancelling the registration.

“(4) The provisions of this section shall apply to any such agreement as aforesaid whether or not the agreement provides for the separation of the parties or the custody of any child.”