

SAMOA

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2010, No. 14

AN ACT to amend the Maintenance and Affiliation Act 1967. *[16th August 2010]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Maintenance and Affiliation Amendment Act 2010.

(2) This Act commences on the date of assent by the Head of State.

2. Principal Act - In this Act, "Principal Act" means the Maintenance and Affiliation Act 1967.

3. Interpretation - Section 2 of the Principal Act is amended by omitting the definition of "Adequate maintenance".

4. Insertion of new section - After section 12 of the Principal Act, the following section is inserted:

"12A. Powers of the Court to make custody order-(1) The Court may make such orders as it considers appropriate in relation to the custody of a child.

(2) An order under subsection (1) may be made notwithstanding that a maintenance order has not been made in relation to the child who is the subject of the order.

(3) A Registrar may make such interim orders as he or she considers appropriate in relation to the custody of a child.

(4) An interim order under subsection (3) may only be for a period of no longer than seven (7) days."

5. Amount and manner of payment of maintenance - Section 18 of the Principal Act is amended by inserting after subsection (1) the following subsections:

"(1A) In considering under subsection (1) the sum that is reasonable for the purposes of the maintenance of a person, the Court must take into account the following matters:

- (a) the proper needs of the person having regard to -
 - (i) the age of the person; and

- (ii) any special needs of the person;
and
- (b) the income, earning capacity, property and financial resources of the person to be paid maintenance having regard to -
 - (i) the capacity of the person to earn or derive income, including any assets of, under the control of or held for the benefit of the person that do not produce, but are capable of producing, income; and
 - (ii) disregard the income, earning capacity, property and financial resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them; and
- (c) the income, earning capacity, property and financial resources of the defendant including any assets of, under the control of or held for the benefit of the defendant that do not produce, but are capable of producing, income; and
- (d) the commitments of the defendant that are necessary to enable the defendant to support himself or herself or any other person that the defendant has a duty to maintain; and
- (e) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(1B) A maintenance order may direct how the money payable under that order is to be paid.

(1C) Without limiting the generality of subsection (1B) the Court may direct that money payable under a maintenance order be directed for the benefit of a named child.”

6. Insertion of new section - After section 18 of the Principal Act, the following section is inserted:

“18A. Powers of the Court in respect of a maintenance order-(1) In making a maintenance order under this Act, the Court may in addition to any other power specified in this Act:

- (a) order payment of a lump sum, whether in one (1) amount or by instalments; and
- (b) order payment of a weekly, monthly, yearly or other periodic amount; and
- (c) order that a specified transfer or settlement of property be made by way of maintenance for a person; and
- (d) order that payment of an amount ordered to be paid be wholly or partly secured as the Court specifies; and
- (e) order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order; and
- (f) make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (e)) that the Court considers appropriate.

(2) The making of an order of a kind referred to in subsection (1)(c), or of any other order under this Part, in relation to the maintenance of a child does not prevent the Court from making a subsequent order in relation to the maintenance of the child.”.

7. Payment of future maintenance - Section 19 of the Principal Act is amended by omitting subsection (1).

8. Payment of past maintenance - Section 20 of the Principal Act is amended by omitting from subsection (1) “\$100” and substituting “\$1000 or such higher amount as may be prescribed”.

9. Insertion of new section - After section 30 of the Principal Act, the following section is inserted:

“30A. Alteration of maintenance agreement - Where by mutual consent a maintenance arrangement has been varied by written agreement permitting one (1) party to leave Samoa, such an agreement shall be recognised by the Court as being binding on the parties to that agreement.”.

10. Security for obedience to maintenance order - Section 32 of the Principal Act is amended:

- (a) by omitting from subsection (2) “Every such security shall” and substituting “Subject to subsection (5A), every such security shall”; and
- (b) by omitting from subsection (2) “\$400”, wherever occurring, and substituting “\$1000 or such higher amount as may be prescribed”; and
- (c) by inserting after subsection (5) the following subsection:

“(5A) Where a maintenance order has been made and the Court considers that the defendant intends to live outside Samoa for a period greater than three (3) months, the Court may by order direct the defendant to give security for obedience to the maintenance order of such amount and in such form as the Court thinks appropriate.”.

11. Money payable under order to constitute a debt and may be recovered by action - Section 33 of the Principal Act is amended by adding at the end the following subsection:

“(3) Money payable under a maintenance order that is in arrears and unpaid may be regarded by the Court as a judgment debt for the purposes of section 6 of the Judgment Summonses Act 1965.”.

12. Insertion of new section - After section 46 of the Principal Act, the following section is inserted:

“46A. Requirement for mediation - Before exercising a power under this Act, the Court may require the parties to the proceeding to undergo such mediation as the Court may direct.”.

13. Insertion of new section - After section 56 of the Principal Act, the following section is inserted:

“56A. Provision of financial information-(1) In considering an application for a maintenance order, the Court may direct the defendant or the applicant to provide such further information as the Court considers necessary.

(2) Without limiting the generality of subsection (1), the Court may request the defendant or applicant to provide documentary evidence relating to:

- (a) the income, earning capacity of the defendant or applicant including -
 - (i) bank statements; and
 - (ii) employment records; and
- (b) the property, financial resources and other assets of the defendant or applicant; and
- (c) the commitments of the defendant or applicant that are necessary to enable the defendant or applicant to support himself or herself or any other person that they have a duty to maintain.”.

**The Maintenance and Affiliation Amendment Act 2010
is administered by the Ministry of Justice and
Courts Administration.**

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