

MARRIED PERSONS (SUMMARY RELIEF).

13^d Elizabeth II., No. LXXXVII.

No. 87 of 1964.

AN ACT to amend the Married Persons (Summary Relief) Act, 1960.

[Assented to 14th December, 1964.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Married Persons (Summary Relief) Act Amendment Act, 1964*.

(2) In this Act the Married Persons (Summary Relief) Act, 1960, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Married Persons (Summary Relief) Act, 1960-1964.

2. Section five of the principal Act is amended— S.5 amended.

- (a) by substituting for the word, “eighteen”, in line one of paragraph (a), and, again, in line two of paragraph (b), of the interpretation, “dependant”, the word, “sixteen”, in each case; and
- (b) by inserting, immediately after the word, “clerk”, where secondly appearing in line three of the interpretation, “the court”, the words, “and an assistant clerk”.

3. Section six of the principal Act is amended— S.6 amended.

- (a) by inserting, immediately after the word, “court”, in line one of subsection (1), the words, “of summary jurisdiction”; and
- (b) by repealing subsection (4) and re-enacting it with amendments, as follows—

(4) The court may sit in any building, or part of a building, ordinarily used as a court-room, but its sittings shall not be interspersed with those held under any other jurisdiction; and the court may, as the occasion requires, from time to time adjourn to some other building or part of a building, that is not ordinarily used as a court-room. .

4. Section nine of the principal Act is amended— S.9 amended.

- (a) as to paragraph (e), by—
 - (i) substituting for the word, “where”, in line one, the word, “has”;
 - (ii) deleting the words, “the defendant” in line three; and

(iii) deleting the word, "has", in each case, where appearing in line one of subparagraphs (i), (ii) and (iii); and

(b) as to paragraph (f), by—

(i) substituting for the word, "where", in line one, the word, "has";

(ii) by deleting the words, "the defendant", in line one; and

(iii) by deleting the passage, ", in proper case," in the ultimate line.

S. 10
amended.

5. Section ten of the principal Act is amended—

(a) by deleting the word, "shall", in line one of paragraph (b) of subsection (1);

(b) by substituting for the words, "in a case", in line four of paragraph (d) of subsection (1), the passage, "or by all of them,";

(c) by substituting for the words, "to any person to whom the legal custody of the child is committed by the order", in lines five and six of paragraph (e) of subsection (1), the passage, "to any officer of the court or to any person having the custody of the child,";

(d) by substituting for the words, "In and for" in line one of subsection (2), the passage, "In, and for the purposes of,";

(e) by deleting the passage, ", in proper case," in line two of subsection (6); and

(f) by adding, after subsection (6), the following subsection—

(7) The court shall not make an order containing a provision for maintenance in respect of any child of the family who has attained the age of sixteen years, unless it is satisfied that the child is a dependant; and, where the court makes such an order, it shall specify, in the

order, the date, or the happening of any event, on which the provision ceases to have effect. .

6. Section eleven of the principal Act is ^{S. 11} amended—

- (a) by substituting for the words, "On hearing a complaint", in line one, the words, "Where a complaint is"; and
- (b) by inserting, immediately after the word, "ten", in line five, the words, "or twelve".

7. Section twelve of the principal Act is ^{S. 12} amended—

- (a) by substituting for subsection (2), the following subsection—

(2) An interim order may include a provision for the maintenance of either party to a marriage, a provision for the maintenance of, and access to, a child of the family and a provision requiring any party to the complaint to enter into a recognisance, as provided by section eleven of this Act, to keep the peace, while the order is in operation. ;

- (b) as to paragraph (c) of subsection (4),—

- (i) by inserting, immediately after the word, "order", in line two of subparagraph (i), the words, "or in any order extending the operation of that order";
- (ii) by substituting for the words, "the first", in line four of subparagraph (ii), the passage, ", the latest"; and
- (iii) by substituting for subparagraph (iii) the following subparagraph—
 - (iii) the day on which a final order is made or on which the complaint is dismissed or withdrawn. ;

and

- (c) by adding after subsection (6), the following subsection—

(7) The court, in making an interim order, may direct that the order operate from a day not earlier than one month prior to the making of the order or the day on which the application was made under this section or under section nine of this Act, whichever day is the later.

S. 13
amended.

8. Section thirteen of the principal Act is amended—

- (a) by deleting the word, “interim”, in every case, where occurring in line four of subsection (1), in line four of subsection (2) and in line one of subsection (3);
- (b) by inserting, immediately after the word, “provision”, in line seven of subsection (2), the words, “or the operation of any warrant issued to enforce the provision”;
- (c) by substituting for the passage, commencing with the word, “or”, in line four of subsection (3) and ending with the word, “varied”, being the last word in the subsection, the passage, “by that order shall, again, be of effect”; and
- (d) by substituting for subsection (4), the following subsection—

(4) On making an order under this section, the court may direct that the order operate for such period, specified in the order, as the court thinks fit. .

S. 14
amended.

9. Section fourteen of the principal Act is amended by substituting for subsection (3) the following subsection—

(3) Where an order made under this section includes the variation of a provision for maintenance, the court may direct that the

variation operate from such day and for such period, specified in the order, as it thinks fit. .

10. Section fifteen of the principal Act is ^{S. 15} amended—
amended—

- (a) by inserting, immediately after the word, “order”, in line three of subsection (1), the passage, “or any provision of an order;”;
 - (b) by inserting, immediately after the word, “of” in line two of subparagraph (i) of paragraph (a) of subsection (1), the passage, “, or of any provision of,”;
 - (c) by inserting, immediately after the word, “order”, in line three of paragraph (b) of subsection (1), the words, “or a provision of the order”;
 - (d) as to subsection (3),—
 - (i) by deleting the word, “maintenance”, in line three; and
 - (ii) inserting, immediately after the word, “from”, in line four, the words, “a day not earlier than”;
- and
- (e) by adding, after subsection (5), the following subsection—

(6) Where an order containing a provision for maintenance, or a provision for maintenance in an order, is discharged under this section, the provision for maintenance may, notwithstanding the discharge, be enforced so far as it relates to any period prior to the discharge. .

11. The principal Act is amended by adding, ^{S. 15A} after section fifteen, the following section—
added.

15A (1) Subject to the provisions of ^{Cessation of} subsection (2) of this section, a provision in an ^{orders.} order for the maintenance of a child of the

family ceases to have effect, unless the order contains an express provision to the contrary, when the child attains the age of sixteen years and, in any case, ceases to have effect when the child marries, dies or is adopted or the person against whom the order is made dies.

(2) Where, upon the application of any person having the custody of a child of the family, it appears to the court that, in the case of such a child who has not attained the age of sixteen years, the child will be a dependant after he attains that age or, in the case of such a child who has attained that age, the child is, or will be, a dependant and that a provision in an order for the maintenance of that child should continue to be of effect or should be revived, as the case may require, with or without variation, the court may,—

(a) where the child has not attained the age of sixteen years, order that the provision for maintenance continue to be of effect, for such amount, and until such date, or until the happening of such event, as may be specified in the order; or

(b) where the child has attained the age of sixteen years, order that the provision for maintenance be revived, on and from such date, and for such amount, and until such date, or until the happening of such event, as may be specified in the order;

and may, so long as the child continues to be a dependant, from time to time, by subsequent order made under this section, extend the period specified in any previous order so made, for such period during that dependancy as may be specified in the subsequent order.

(3) Notwithstanding the cessation, pursuant to this section, of a provision for the maintenance of a child of the family, the provision may be enforced so far as it relates to any period prior to the cessation.

12. Section seventeen of the principal Act is amended by substituting for the passage, "sixteen, or twenty-three", in lines two and three, the passage, "fifteen A, sixteen, twenty-three or twenty-four".

S. 17
amended.

13. Section nineteen of the principal Act is amended—

S. 19
amended.

- (a) by substituting for the passage, "or commit the child to the care of the Child Welfare Department, until the child attains the age of eighteen", in lines six, seven and eight of paragraph (b) of subsection (1), the passage, "including the Director of the Child Welfare Department, until the child attains the age of sixteen";
- (b) by inserting, immediately after the word, "may", in line five of subsection (2), the passage, ", for the purposes of this section,"; and
- (c) by adding, immediately after the word, "committed", being the last word in subsection (3), the passage, "; and a welfare officer acting pursuant to an order made under this subsection shall, for the purposes of this section, be deemed to be an officer of the court".

14. Section twenty-two of the principal Act is amended—

S. 22
amended.

- (a) by deleting the passage, "subsection (1) of", in line two of subsection (2);
- (b) by deleting the words, "having jurisdiction within the district where the defaulting party is residing", in lines seven and eight of subsection (3); and
- (c) by inserting, immediately after the word, "may", in line eleven of subsection (3), the passage, ", subject to the rules,".

S. 23
amended.

15. Section twenty-three of the principal Act is amended by adding, after subsection (2), the following subsection—

(2a) Where an order contains a provision for maintenance and the person against whom the order was made makes default in the payment of any amount under that provision, the person for whose maintenance that provision was made or, where the provision was made for the maintenance of a child of the family, the person having the custody or care of the child, may, by leave of the court and in the manner prescribed by the rules, require the person making default to show cause why he should not be committed for contempt of court; and the court may, if he fails to show cause, and notwithstanding that the amount in respect of which he was in default has since been paid, commit that person, accordingly. .

S. 24
repealed and
re-enacted.

16. Section twenty-four of the principal Act is repealed and re-enacted with amendments as follows—

Recall,
annulment
and
suspension
of warrants.

24. (1) Where a warrant has been issued to enforce any provision contained in an order for the payment of money, the person at whose instance the warrant was issued or the person against whom it was issued may apply to the court for an order, and the court may upon any such application, on cause being shown, make an order—

- (a) recalling the warrant, if unexecuted;
- (b) amending or annulling the warrant, whether executed or not;
- (c) suspending the operation of any order made under subsection (2) of section twenty-six of this Act, in respect of the warrant; or
- (d) discharging the person taken into custody under the warrant.

(2) The court may, of its own motion, recall any warrant issued out of the court and unexecuted. .

S. 25
amended.

17. Section twenty-five of the principal Act is amended by inserting, immediately after the word, "may", in line four of subsection (1), the passage, " , if he has not previously made any such application in respect of that warrant,".

18. Section twenty-six of the principal Act is amended by adding, after subsection (3), the following subsection—

S. 26
amended.

(4) Where a court exercising the powers conferred by subsection (2) of this section suspends the operation of a warrant, subject to the compliance, by the person taken into custody, with any direction or condition given or imposed by that court, if the clerk certifies to the court out of which the warrant was issued that the person has failed, or ceased, to comply with any such direction or condition, the court may, without further process, by indorsement of the warrant direct that it be put into operation and it shall, thereupon, be put into operation. .

19. Section forty of the principal Act is repealed and re-enacted with amendments, as follows—

S. 40
repealed and
re-enacted.

40. (1) In any proceedings under this Act, the court may receive as evidence of the facts therein set out any document being—

Certain
documents
admissible
as evidence.

- (a) an original certificate or record of a birth, death or marriage; or
- (b) a copy or photographic representation of an original certificate or record or of an entry in an official register of a birth, death or marriage, being a true copy or representation certified as such, by a person having the custody

of the certificate or record, or of the register containing the entry, of which it purports to be a true copy or photographic representation.

(2) In any proceeding relating to payments made, or required to be made, under an order, any books of account kept by, and in the custody of, the clerk or other officer of the court shall be received in evidence and when so received are *prima facie* evidence as to whether or not payments required to be made have, in fact, been made. .

S. 42
amended.

20. Section forty-two of the principal Act is amended—

- (a) by inserting, immediately after the section number, “42.”, the subsection designation, “(1)”; and
- (b) by adding the following subsection—

(2) Where a witness is called pursuant to this section, the court may, in its discretion, order the whole or part of the fees and expenses payable to the witness to be borne by any one or more of the parties to the proceedings. .

S. 45
amended.

21. Section forty-five of the principal Act is amended—

- (a) by deleting the passage, commencing with the word, “or”, in line five, and ending with, “abode,”, in line seven of subsection (1);
- (b) by substituting for the word, “court” in line one, and, again, in line four, of subsection (2), the word, “clerk”, in each case; and
- (c) by substituting for the word, “plaintiff”, in line five of subsection (4), the word, “complainant”.

22. Section forty-eight of the principal Act is amended by substituting for the words, "or sixteen", in line three, the passage, ", fifteen A, sixteen or twenty-six". S. 48
amended.

23. Section forty-nine of the principal Act is amended by substituting for the word, "fourteen", in the ultimate line, the passage, "thirteen, fourteen, fifteen, fifteen A". S. 49
amended.

24. Section fifty of the principal Act is amended by inserting, immediately after the word, "Act", in line two of paragraph (a), the words, "or under the rules". S. 50
amended.

25. Section fifty-one of the principal Act is amended— S. 51
amended.

(a) by inserting, immediately after the word, "court", in line two of subsection (1), the words, "and a person as assistant clerk of the court"; and

(b) by substituting for the passage, "section fifty-three of the Justices Act, 1902." at the end of subsection (3), the passage, "the Justices Act, 1902, and the Evidence Act, 1906."

26. Section fifty-three of the principal Act is amended, as to subsection (1),— S. 53
amended.

(a) by deleting the word, "and", at the end of paragraph (d);

(b) by substituting for the passage, "accounts.", at the end of paragraph (e), the passage, "accounts;"; and

(c) by adding, after paragraph (e) the following paragraphs—

(f) the establishment and operation of a central registry of the court;

- (g) the forms of, and the manner of keeping, books of account;
- (h) manner of the application and of the appropriation of moneys paid to the court pursuant to an order or to any direction given, or condition imposed, by a court under the provisions of subsection (2) of section twenty-six of this Act or under the provisions of any other Act; and
- (i) all such other matters and things for which rules are contemplated or required by this Act, and such other matters and things as are, in his opinion, necessary or expedient for giving full effect to the provisions of, and for the due administration of, this Act. .

S. 54
amended.

27. Section fifty-four of the principal Act is amended by adding, after subsection (2), the following subsection—

(3) Notwithstanding the provisions of subsection (1) of this section, if the clerk is satisfied that a person, by whom, or on whose behalf, a proceeding is to be taken, is without means, the clerk may—

- (a) indorse the process with the words, “*in forma pauperis*” and the prescribed fees shall, thereupon, in the case of a complaint, be payable upon the order of the court, only; and in the case of a warrant, upon recovery from the person liable to make payment thereunder; and
- (b) where the proceeding is an application under section thirteen, fourteen, fifteen, twenty-three, or twenty-four of this Act, waive payment of the prescribed fees. .