

MARRIED PERSONS (SUMMARY RELIEF).

9° Elizabeth II., No. LXXX.

No. 80 of 1960.

AN ACT to make provision for the Summary Relief of Married Persons and, in relation thereto, the Maintenance of those persons and the Custody and Maintenance of their Children and for other incidental purposes.

[Assented to 12th December, 1960.]

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:—

PART I.—PRELIMINARY.

**Short title
and citation.**

1. This Act may be cited as the *Married Persons (Summary Relief) Act, 1960*.

2. (1) Except as provided by subsection (2) of this section, this Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

(2) Part V. of this Act shall come into operation on a day to be fixed by proclamation, being a day not earlier than twelve months after the commencement of the Matrimonial Causes Act 1959 of the Commonwealth.

3. This Act is divided into Parts, as follows:— Parts.

PART I.—PRELIMINARY, sections 1-5.

PART II.—COURT, sections 6-8.

PART III.—RELIEF, sections 9-21.

PART IV.—ENFORCEMENT OF ORDERS, sections 22-26.

PART V.—ATTACHMENT OF EARNINGS, sections 27-32.

PART VI.—APPEALS, sections 33-34.

PART VII.—EVIDENCE, sections 35-43.

PART VIII.—PROCEDURE AND MISCELLANEOUS, sections 44-54.

4. (1) The Acts mentioned in the Schedule to this Act are repealed. Repeal and
saving.
Schedule.

(2) Notwithstanding the repeal effected by subsection (1) of this section, where at the commencement of this Act—

(a) any order made by virtue of the repealed Acts is still in force, that order continues, subject to this Act, to have effect; and

(b) any original proceeding has been commenced under the repealed Acts (whether part heard or not) that proceeding shall, except for the provisions of section forty-four of this Act, be continued as though commenced under this Act.

(3) Nothing in this Act affects the operation of the Child Welfare Act, 1947.

Interpreta-
tion.

5. (1) In this Act, unless a contrary or other intention appears—

Cf. 8 and 9
Eliz. 2 C. 48
(U.K.) s. 16.

“child,” in relation to one or both parties to a marriage, includes an illegitimate or adopted child of that party or, as the case may be, of both parties, but does not include a child adopted by some other person or persons, and “parent,” in relation to any child, shall be construed accordingly;

Ibid.

“child of the family,” in relation to the parties to a marriage, means—

(a) any child of both parties; and

(b) any other child of either party who has been accepted as one of the family by the other party;

“complaint” includes cross-complaint; “complainant” includes cross-complainant; and “defendant” includes a defendant to a cross-complaint;

Cf. Matrimonial
Causes and
Personal
Status Code.
(W.A.), No.
73 of 1948.

“condonation” means forgiveness of the party at fault by the wronged party, with a full knowledge of the circumstances together with the reinstatement of that party in the matrimonial relationship, but where the party forgiven is subsequently guilty of a marital offence, whether of the same kind as that forgiven or not, or of conduct which falls short of a marital offence but which indicates that the party forgiven has not accepted the forgiveness in the full sense of reinstatement, then that forgiveness does not amount to condonation;

Ibid.

“connivance” means some prior active acquiescence or culpable passive acquiescence in, or toleration of, the marital offence of the other party;

“dependant” means a person—

8 and 9 Eliz.
2, c. 48
(U.K.), s. 16.

- (a) who is under the age of eighteen years; or
- (b) who, having attained the age of eighteen but not of twenty-one years, is either receiving full-time instruction at an educational establishment or undergoing training for a trade, profession or vocation, in such circumstances that he is required to devote the whole of his time to that training for a period of not less than two years; or
- (c) whose earning capacity is impaired through illness or disability of mind or body and who has not attained the age of twenty-one years;

and who is without means, or sufficient means and, to that extent, depends on some other person, for his support;

“habitual drunkard” means a person who, by reason of habitual intemperate drinking of intoxicating liquor— *ibid.*

- (a) is at times dangerous to himself or to others, or incapable of managing himself or his affairs; or
- (b) so conducts himself that it is not reasonable to expect a person of ordinary sensibilities to continue to cohabit with him,

and this interpretation applies with such adaptations as are necessary to a person habitually intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation;

“marital offence” means any of the causes of complaint mentioned in section nine of this Act;

“officer of the court” includes any person appointed, for the time being, for the purpose of receiving any moneys payable under this Act;

“order” means an order made under the provisions of this Act or of any of the repealed Acts; and “final order” is used in this Act in contradistinction to an interim order;

“superior court,” in relation to a matrimonial proceeding, means a court exercising jurisdiction in divorce;

“the court” means the Married Persons’ Relief Court established under this Act, and “the clerk” means a clerk of that court, appointed under section fifty-one of this Act;

“the rules” means the rules of the court made under section fifty-three of this Act;

“welfare officer” means an officer of the Child Welfare Department engaged in the duties of investigating the welfare of children.

Cf. Matrimonial Causes Act (C’with) 1959, s. 29.

(2) Without limiting the meaning of desertion—

- (a) a married person whose conduct constitutes just cause or excuse for the other party to the marriage to live separately or apart, and occasions that person to live separately and apart, is deemed to have deserted that other party, notwithstanding that that person may not in fact have intended the conduct to occasion that other party to live separately and apart; and

- (b) where a party to the marriage has been deserted by the other party, the desertion is not deemed to have been terminated by reason only that the deserting party has become incapable of forming or having an intention to continue the desertion, if it appears to the court that the desertion would probably have continued if the deserting party had not become so incapable.

PART II.—COURT.

Court.

6. (1) A court called the "Married Persons' Relief Court" is established by this Act.

(2) The court is a court of record.

(3) The court may, subject to subsection (4) of this section, sit at any time and shall sit at such places in the State which the Governor, by Order in Council, from time to time appoints and until places are so appointed the court shall sit at those places where Local Courts are held.

(4) The court shall sit in such buildings as the Minister from time to time appoints and until those buildings are appointed the court shall sit in any building used as a court at a place appointed under this section, but, in the latter case, hearings shall not proceed at any hour when the business of any other court is being transacted, except where accommodation is available to the court, in some other part of the building.

7. (1) Subject to subsection (2) of this section the court is constituted by a Stipendiary Magistrate and one Justice of the Peace.

Constitution
of Court.

(2) Notwithstanding the provisions of subsection (1) of this section, the court shall be constituted by a Stipendiary Magistrate where—

- (a) all parties to a complaint so elect;
- (b) one of the parties to a complaint is resident in another State or a Territory of the Commonwealth;
- (c) the court is hearing an application which is not an application made under section nine of this Act; or
- (d) it is certified to the court, in the manner prescribed by the rules, that no Justice of the Peace can be found, within ten miles of the place where the court is sitting, who is capable of acting and willing to act.

Cf. Judiciary Act (C'with) 1903, s. 39 (2).

Cf. Justices Act, 1902 (W.A.), s. 32.

Decision of Magistrate to prevail.
Cf. Justices Act, 1902 (W.A.), s. 30.

8. Where a Stipendiary Magistrate and a Justice of the Peace exercising jurisdiction under this Act disagree, the decision of the former shall prevail and be the decision of the court.

PART III.—RELIEF.

Grounds for relief.
Cf. 8 and 9 Eliz. 2, C. 48 (U.K.), s. 1.

9. A married person may apply, by way of complaint, to the court for an order under this Act, against the other party to the marriage on any one or more of the following causes of complaint, namely, that the defendant—

- (a) has deserted the complainant;
- (b) has been guilty of cruelty to the complainant or to an infant child of the family;
- (c) being the husband, has wilfully neglected to provide reasonable maintenance for the wife or for any child of the family who is, or would but for that neglect have been, a dependant;

- (d) being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance for the husband or for any child of the family who is, or would but for that neglect have been, a dependant, in a case where, having regard to any resources of the husband and of the wife respectively which are or should properly be made available for the purpose, it is reasonable in all the circumstances to expect a wife so to provide or contribute;
- (e) where, since the marriage, for a period of at least twelve months immediately preceding the application, the defendant—
 - (i) has been an habitual drunkard;
 - (ii) has habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation; or
 - (iii) has, for part or parts of that period, been an habitual drunkard and has, for the other part or parts of the period, habitually been so intoxicated;

or

- (f) where, since the marriage, the defendant has committed adultery, sodomy or bestiality, if the application is made within six months from the date on which that offence, or the facts from which that offence is inferred, first became known to the complainant, or within such extended time as the court may, in proper case, allow.

10. (1) On hearing a complaint made under section nine of this Act, the court may make an order containing any one or more of the following provisions, namely—

- (a) a provision that the complainant be no longer bound to cohabit with the defendant;

Relief.
Ibid. s. 2.

- (b) a provision that the defendant shall pay to the complainant, or to any officer of the court for the complainant's use, or to a third person on the complainant's behalf, such weekly or periodical sum by way of maintenance as the court, having regard to the means of both parties to the marriage, considers reasonable in all the circumstances of the case;
- (c) a provision for the legal custody of any child of the family;
- (d) a provision for access to any child of the family by either of the parties to the marriage, or by any other person who is a parent of that child, in a case where that child is committed by the order to the legal custody of a person other than that party or parent; or
- (e) a provision for the making of such weekly or periodical payments by the defendant, or by the complainant, or by each of them, in respect of the maintenance of any child of the family, to any person to whom the legal custody of the child is committed by the order as the court, having regard to the means of both parties to the marriage, considers reasonable in all the circumstances of the case.

(2) In and for the following sections of this Act, a reference to—

- (a) a provision for separation is a reference to such a provision as is mentioned in paragraph (a); and
- (b) a provision for maintenance is a reference to such a provision as is mentioned in paragraphs (b) and (e),

of subsection (1) of this section.

(3) On hearing a complaint made under section nine of this Act, the court shall not make an order containing a provision for separation or for maintenance of the complainant—

- (a) on the ground that the defendant has been guilty of a marital offence, if the court is satisfied that the complainant has condoned, or connived at, or by wilful neglect or conduct of the complainant condoned or contributed to the commission of, that offence;
- (b) where the complainant is proved to have committed a marital offence such as is mentioned in paragraph (a), (b), (e) or (f) of section nine of this Act, unless the court is satisfied that the defendant has condoned, or connived at, or by wilful neglect or conduct of the defendant has condoned or contributed to the commission of, that offence; or
- (c) where there has been unreasonable delay in bringing the application, in the sense that the complainant, with full knowledge of the circumstances, has culpably failed or neglected to take any action.

(4) In considering whether any, and if so what, provision should be included in an order for the payment of maintenance by one of the parties, in respect of a child of the family who is not a child of that party, the court shall have regard to the extent, if any, to which that party had, on or after the acceptance of that child as one of the family, assumed responsibility for the maintenance of that child, and to the liability of any person other than a party to the marriage to maintain the child.

(5) Where any order contains both a provision for maintenance of the complainant and a provision for maintenance of a child of the family, the respective amounts payable in terms of those provisions shall be specified in the order; and where

the order contains a provision for maintenance in respect of more than one child of the family, the names of those children and the amount payable in respect of each child shall be specified in the order.

(6) The court, in making an order containing a maintenance provision may, in proper case, direct that such provision shall operate from a day not earlier than six months prior to the making of the order, or from the day on which the application was made, whichever day is the later.

Party may be bound over.
Cf. Justices Act, 1902.
(W.A.) s. 178.

11. On hearing a complaint made under section nine of this Act, the court may, at the instance of a party or of its own motion, and in addition to or in lieu of any order which it may make under section ten of this Act, require any of the parties to the complaint forthwith, or at some time to be specified by it, to enter into a recognisance, with or without sureties, in such reasonable amount as the court thinks fit, to keep the peace towards any person therein named, for any time not exceeding six months, or in default, may commit the defaulting party for such time not exceeding six months as the court thinks fit, unless, meanwhile, the required recognisance is given.

Interim orders.
Cf. 8 and 9 Eliz. 2. c. 48
(U.K.) s. 6.

12. (1) Where—

- (a) in any matrimonial proceeding pending and unheard before a superior court both parties to a marriage are parties, if neither of them has made any application (including an application for the benefit of any child of the marriage) for maintenance pending the trial of that proceeding and either of them applies by way of complaint to the court under the provisions of this section; or
- (b) any application is made to the court under this Act and the court, at any time before making its final order on the complaint, adjourns the hearing of the complaint for seven days or any longer period; or

- (c) an application is made to the court under section thirty-three of this Act and the court adjourns the hearing of the application for seven days or any longer period or sets aside the decision in respect of which the application is made; or
- (d) an appeal from, or from the refusal of, an order by the court is instituted under section thirty-four of this Act,

and cohabitation between the parties to the marriage has ceased then, in any case falling within paragraph (a), (b) or (c) of this subsection, the court, or falling within paragraph (d) thereof, the Supreme Court or a Judge thereof, may make an order under this section (in this Act referred to as an "interim order").

(2) An interim order may contain any provision for maintenance or for access to a child of the family and the reference in paragraph (e) of that subsection to any person to whom the custody of a child of the family is committed by an order shall, for the purposes of this subsection, be construed as including a reference to any person, being one of the parties or a parent of the child, who for the time being has the care of the child.

(3) An appeal shall not lie against an interim order, if that appeal relates only to the terms of a provision in that order; and, in any event and notwithstanding the provisions of any other Act, an appeal against an interim order shall not operate as a stay of that order and the order shall not be stayed, pending the determination of the appeal.

(4) Without prejudice to the provisions of section thirteen, fourteen, fifteen or sixteen of this Act, an interim order shall cease to be of effect on whichever of the following days occurs first, that is to say—

- (a) in any case falling within paragraph (a) of subsection (1) of this section, the day on which the proceeding is disposed of by the

superior court, or on which an application (including an application for the benefit of any child of the marriage) for maintenance pending the trial of the proceeding is made by either party to the marriage;

(b) in any case falling within paragraph (d) of subsection (1) of this section, where the appeal is—

(i) dismissed or allowed and, on allowance, a final order is made or takes effect, then on that day; or

(ii) allowed and the complaint is remitted to the court, then on whichever day occurs first, under any other provision of this subsection; and

(c) in any other case—

(i) the day, if any, specified for the purpose in the interim order;

(ii) the day of the expiration of three months from the making of the interim order or, where there is more than one the first interim order; or

(iii) the day of the making of a final order on, or the dismissal of, the complaint by the court.

(5) An interim order made by the Supreme Court or a Judge thereof under this section is deemed, for the purposes of its enforcement and for the purposes of section thirteen, fourteen or fifteen of this Act, to be an order of the court and not of the Supreme Court.

(6) The powers conferred on the Supreme Court under this section shall be without prejudice to the powers of that Court on an appeal under section thirty-four of this Act from the making, or refusal, of an interim order by the court.

13. (1) Any person obliged to make periodical payments under a provision for maintenance contained in an order may apply to the court, by way of complaint, for an interim order suspending the operation of that provision.

Suspension
of orders.
Ibid. s. 7.

(2) On hearing a complaint made under subsection (1) of this section, the court may, upon cause being shown upon fresh evidence to the satisfaction of the court, make an interim order suspending the operation of any provision such as is in that subsection mentioned, or may suspend the enforcement of any such provision, for such period as, having regard to all the circumstances of the case, it thinks fit.

(3) On making an interim order under this section the court shall specify the period, of its operation and, on the expiration of that period any provision suspended or varied by that order shall be of effect to the extent that it would have been had it not been so suspended or varied.

(4) On making any interim order under this section the court may, in proper case, direct that such order shall operate from a day not earlier than one month prior to the making of the order or such further period as the court having regard to any special circumstances may determine.

14. (1) Where an order contains a provision for maintenance, or a provision for custody of, or access to, a child of the family, an application may be made to the court, by way of complaint—

Variation of
orders.
Ibid. s. 8.

(a) by a party to the marriage, for an order varying any of those provisions; or

(b) by a person other than a party to the marriage to whom the legal custody of a child of the family is committed, for an order varying any of those provisions relating to that child.

(2) On hearing a complaint made under this section, the court may, upon cause being shown upon fresh evidence to the satisfaction of the court, make an order varying any provision mentioned in subsection (1) of this section.

(3) Where an order made under this section includes a variation of a provision for maintenance, the court may direct that the variation shall operate from a day not earlier than one month prior to the making of the order; and may direct that the variation shall operate for a period specified in the order.

(4) Where the court directs that a variation of a provision for maintenance shall operate for a specified period, the provision varied shall, at the expiration of that period, be of effect to the extent that it would have been had it not been so varied.

(5) Any order made under this section of which the operation is not limited to any specified period has the effect of a final order.

(6) An application may be made under this section notwithstanding that matrimonial proceedings have been commenced by one of the parties in a superior court.

Discharge of orders.
Ibid. s. 8.

15. (1) A party to a marriage may apply, by way of complaint, to the court for an order discharging any order and—

(a) upon proof of any of the following events, namely, that—

- (i) both parties to the marriage have consented to the discharge of the order;
- (ii) the parties to the marriage have voluntarily resumed cohabitation; or
- (iii) the party on whose complaint the order was made has, during the subsistence of the marriage committed adultery, sodomy or bestiality;

or

- (b) upon cause being shown, upon fresh evidence, to the satisfaction of the court that the order ought to be discharged,

the court shall, subject to the provisions of subsection (2) of this section, discharge the order.

(2) The court shall not—

- (a) discharge an order on proof of the event mentioned in subparagraph (iii) of paragraph (a) of subsection (1) of this section, unless the court is satisfied that the complainant has not condoned or connived at or, by wilful neglect or conduct of the complainant, conduced or contributed to, that event and then only at the instance of the party who was the defendant in the proceedings wherein the order was made;

or

- (b) be bound to discharge any provision for custody of, access to, or maintenance for, a child of the family contained in the order, but may direct that any such provision remain in force, notwithstanding the discharge of any other provision of the order.

(3) In discharging an order under the provisions of this section, the court may direct that the discharge of any maintenance provision contained in the order operate from the happening of the event in respect of which the complaint is made.

(4) An application may be made under this section in respect of any of the events mentioned in subsection (1) of this section—

- (a) irrespective of the time of the happening of that event; and
- (b) notwithstanding that matrimonial proceedings have been commenced by one of the parties in a superior court.

(5) If the parties to the marriage reside in the same household for a continuous period of one month or more and one of those parties effectively maintains the other of them or they both make an effective contribution to their joint maintenance, during that period, that circumstance is *prima facie* evidence of the intention of the parties voluntarily to resume cohabitation.

Revocation
of orders.
Ibid. s. 8.

16. Upon the complaint of a person aggrieved by an order made under this Act, the court may, upon cause being shown, upon fresh evidence, to the satisfaction of the court, revoke the order complained of and may, in such case, revive any provision of an order which may have been discharged by the court, with effect from any day, after that on which the order was discharged, as the court thinks fit.

Court may
make
alternative
orders.

17. On hearing an application made under section thirteen, fourteen, fifteen, sixteen, or twenty-three of this Act, the court may, notwithstanding the provisions of any of those sections, make an order under any of them, in addition to, or in lieu of, the order sought.

Court to give
consideration
to effect
of
proceedings
on children.
Ibid. s. 4.

18. On hearing a complaint made under section nine, fourteen or fifteen of this Act, the court, notwithstanding the provisions of those sections and whether or not making the order for which the complaint is made, may make a final order containing, or, as the case may be, vary a final order so that it contains, any provision for custody of, access to or maintenance for a child of the family which, after giving each party to the marriage an opportunity of making representations, the court thinks proper in the circumstances; and the court shall not dismiss or make a final order on any complaint in a case where the powers conferred on the court by this

section are or may be exercisable, until it has decided whether or not, and if so how, those powers should be exercised.

19. (1) In making, or refusing to make, an order containing a provision for the custody of a child of the family, the court—

Powers of the court with regard to custody. Cf. Matrimonial Causes Act 1959 (C'with) s. 35.

- (a) shall regard the interests of the child as the paramount consideration; and
- (b) may, subject to paragraph (a) of this subsection, make such order in respect of that matter as it thinks proper, including an order placing the child in the custody of a person other than a party to the marriage, or commit the child to the care of the Child Welfare Department, until the child attains the age of eighteen years or for any lesser period.

(2) Before making, or refusing to make, an order such as is mentioned in subsection (1) of this section, the court may adjourn the proceedings until a report relevant to that matter has been received from a welfare officer and may receive that report in evidence.

(3) For the purposes of subsection (2) of this section, the court may grant an order authorising a welfare officer to enter into and inspect the premises where a child of the family is, or is intended to be, housed by a party to the proceedings or other person to whom the custody of the child may for the time being be committed.

Cf. Child Welfare Act 1947 (W.A.) s. 146A.

20. In any proceedings taken under this Act, the court, whether making an order on, or dismissing, the application is empowered in its discretion to make an order containing a provision for the payment by any of the parties to the proceedings of the whole or part of the costs of all or any of the other parties.

Costs.

Effect of separation order.
Cf. Matrimonial Causes Act 1959 (O'with) s. 54, 55 and 56.

21. An order containing a provision for separation, while relieving the complainant of the obligation to cohabit with the other party to the marriage, does not otherwise affect the marriage or the status, rights and obligations of the parties to the marriage, except that—

- (a) while a provision for separation is in operation either party to the marriage may bring proceedings in contract or in tort against the other party; and
- (b) where upon, or in consequence of, the making of a provision for separation, a husband is required by a provision for maintenance to pay maintenance to his wife and the maintenance is not duly paid, the husband is liable for necessaries supplied for the wife's use,

and a provision for separation does not prevent a wife from joining in the exercise of any power given to herself and her husband jointly.

PART IV.—ENFORCEMENT OF ORDERS.

Enforcement of orders.

22. (1) Where any order contains a provision for maintenance or a provision for the payment of costs, the order shall direct the manner of enforcement of that provision, on default of payment, as provided by the Justices Act, 1902, and any person entitled to receive payment under a provision of the order may, without prejudice to the right conferred by subsection (3) of this section, enforce payment in that manner; but, for the purposes of this subsection—

- (a) the proviso to subsection (2a) of section one hundred and fifty-five of that Act does not apply; and
- (b) subsection (1) of section one hundred and sixty-seven of that Act shall be read and construed as though the words, "three months," were substituted for the words, "six months," in that subsection.

Local Courts Act, 1904, in the same manner as if the sum of those amounts were the amount of a judgment of the Local Court.

(4) Any process of execution or enforcement issued under the provisions of this section ceases to be of effect, upon the subsequent issue of any process of execution or enforcement in respect of, or partly in respect of, or which takes into account, the same default as the former process.

(5) Without prejudice to any of the foregoing provisions of this section, where any order sought to be enforced under this section, including an order registered in the court, pursuant to section one hundred and five of the Matrimonial Causes Act 1959 of the Commonwealth, does not direct the manner of its enforcement, that order shall, on default, be enforceable by imprisonment in the first instance and the provisions of section one hundred and fifty-eight of the Justices Act, 1902, shall apply to that order, as though the order directed that the person in default should be imprisoned.

Disobedience
of an order.
Cf. Married
Women's
Protection
Act, 1922.
(W.A.) s. 16.

23. (1) Where an order contains a provision for separation, any party to the marriage who molests or interferes with, or attempts to molest or interfere with, the other party to the marriage in the manner of living of that other party, contrary to that provision for separation, and where an order contains a provision for the custody of a child of the family, any person who molests or interferes with, or attempts to molest or interfere with, that child, contrary to that provision for custody, is guilty of contempt of court and is further guilty of an offence against this Act punishable by a fine not exceeding twenty pounds or by imprisonment with or without hard labour not exceeding one month.

(2) Where an order contains a provision for access to a child of the family, any party to the marriage, or other person to whom the custody of the child is committed, who refuses to afford, or prevents, or interferes with, access to that child, contrary to that provision, is guilty of contempt of court.

(3) A person who is guilty of an offence, or of contempt, under this section, may, in addition to, or in lieu of, suffering any penalty, be required forthwith to enter into a recognisance, with or without sureties, in such reasonable amount as the court, or, in the case of an offence under subsection (1) of this section, the court before which that person is brought, thinks fit, to abide by the provision of the order disobeyed.

24. The Court may, of its own motion, recall any warrant issued out of the court and unexecuted.

25. (1) Any person taken into custody, in execution of a warrant issued, by operation of the Justices Act, 1902, under section twenty-two of this Act, may apply to the court or to a Court of Petty Sessions for an order suspending the operation of that warrant.

Rights of a person arrested on default.

(2) A person electing to make an application under this section—

(a) may (except where applying under the circumstances mentioned in subsection (3) of this section) be admitted to bail as if taken into custody without warrant, under the provisions of section sixty-four of the Justices Act, 1902; and

(b) shall be brought before the court, or a Court of Petty Sessions, as soon as practicable after so electing.

(3) Where after being committed to prison in execution of a warrant mentioned in subsection (1) of this section a person, not having made any such prior application in respect of that warrant, elects to make an application under this section, that person shall be brought before the court or a Court of Petty Sessions as soon as practicable after so electing.

26. (1) The court before whom a person is brought, pursuant to section twenty-five of this Act, in the first instance, may remand that person from time to time and from place to place, with or

Procedure on application under s. 25.

without bail; and may remand that person for sufficient time to permit such notice of the application made under the provisions of that section as that court sees fit to be sent to the person at whose instance the warrant was issued, and the latter person shall, in that event, be at liberty to be heard upon the hearing of that application.

(2) Subject to the provisions of subsection (1) of this section, a court may—

- (a) further remand the person in that subsection mentioned, from time to time and from place to place;
- (b) unless satisfied that the default of that person is not a wilful default or is not due to culpable neglect, order the warrant to be put into operation; or
- (c) suspend the operation of the warrant for such time as, and direct that any payment in respect of which the warrant is issued be made by such day or in such instalments and under such conditions as, it thinks fit;

and may, in addition, in its discretion, make an order for the payment by that person of such costs as it thinks fit.

(3) Where a court making an order under the provisions of subsection (2) of this section is not the court out of which the warrant issued, the court making the order shall communicate the terms thereof to the latter court.

PART V.—ATTACHMENT OF EARNINGS.

27. In this Part, unless a contrary or other intention appears—

“earnings” means any sums payable to a person by way of—

- (a) wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary); or

Cf. Matrimonial Causes Act, 1959 (C with 3rd Schedule, 6 and 7 Eliz. 2, c. 39 (U.K.) s. 21.

(b) pension, including—

- (i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; and
- (ii) periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment,

but not including pension payable to that person under any Act of the Commonwealth or in respect of injury, disablement or disability;

“net earnings,” in relation to a pay day means the amount of the earnings becoming payable on that pay day after deduction from those earnings of—

- (a) any sum required to be deducted under Division 2 of Part VI. of the Income Tax and Social Services Contribution Assessment Act 1936-1959; and
- (b) any sum that would be an allowable deduction under section eighty-two H of that Act;

“pay day” means an occasion on which earnings, to which an attachment of earnings order relates, become payable.

28. (1) Without limiting the powers conferred on the court by section twenty-two of this Act, where any provision of a final order directs a person to make periodical payments and that person—

- (a) is a person to whom earnings fall to be paid; and
- (b) consents,

Attachment
of earnings
orders.
Ibid. s. 6.

the court may, subject to the rules and whether any payment is in default or not, by an order, in this Act referred to as an "attachment of earnings order," require the person to whom the order is directed, being a person appearing to the court to be one on whom liability to make payment of those earnings falls, to make out of those earnings such payments to the court as may be specified in the order.

(2) An attachment of earnings order shall—

- (a) specify the rate (in this Part called "the normal deduction rate")—
 - (i) at which the earnings would, in any event, need to be applied, on any pay day, for the purpose of securing the payment of the amount falling due, under a provision for maintenance contained in the final order; and
 - (ii) at which the court thinks it reasonable that the earnings should be applied, on any pay day, for securing the payment of the amount (if any) of which payment is in default, under the final order;
- (b) specify the rate (in this Part called "the protected earnings rate") below which, having regard to the needs of the person to whom the earnings fall to be paid, and the needs of persons for whom he must, or reasonably may, provide, the court thinks it reasonable that the net earnings should not be reduced, on any pay day, by payments made pursuant to the attachment of earnings order;
- (c) designate the officer of the court to whom periodical payments are to be made in terms of the order and specify the time within which payments are to be made to that officer;

- (d) contain such particulars as may be prescribed for the purpose of enabling the person to whom the earnings fall to be paid to be identified by the person to whom the order is directed; and
- (e) not come into operation until the expiration of seven days from the day on which a copy of the order is served on the person to whom it is directed.

(3) Subject to subsection (1) of this section, the court may make an attachment of earnings order on the application of a person entitled to receive, or of a person required to make, periodical payments under a provision of a final order, but where the latter person does not agree to the normal deduction rate, or to the protected earnings rate, fixed by the court, he is deemed not to have consented to an attachment of earnings order.

(4) Where an attachment of earnings order has been made, no warrant shall, while the order is of effect, issue for the enforcement of any provision of a final order to which that attachment of earnings order relates and any warrant issued and unexecuted prior to the making of that order shall be recalled by the court.

29. The provisions of section twenty-eight of this Act have effect in relation to earnings falling to be paid by the Crown in right of the State, or by a Minister of the Crown in right of the State, or out of the public revenue of the State and those earnings shall be treated as falling to be paid by the principal officer of the department, office or other body concerned, but the provisions of subsection (2) of section thirty-one of this Act do not apply to that officer.

Attachment
of earnings
payable by
the Crown.
Ibid., s. 14.

Variation or discharge of attachment of earnings orders.
Ibid. s. 9.

30. (1) On the application of a person whose earnings are attached under an attachment of earnings order, the court shall discharge that order.

(2) The court shall vary an attachment of earnings order where—

- (a) under section fourteen or seventeen of this Act, the court varies any maintenance provision of a final order to which an attachment of earnings order relates; but where the final order is varied by increasing the amount payable under any provision to which the attachment of earnings order relates and the person whose earnings are attached does not consent to the normal deduction rate therein specified being increased by a like amount, the court shall discharge the attachment of earnings order; or
- (b) the normal deduction rate specified by the attachment of earnings order exceeds the rate of periodical payments required by the provisions of the final order to which it relates.

(3) Where, for any reason, the normal deduction rate specified by an attachment of earnings order does not fully secure, or the protected earnings rate so specified precludes, payment of the amounts falling due, from time to time, under a provision of a final order, the court may, of its own motion, discharge the attachment of earnings order.

(4) Where notice is given to the court pursuant to the provisions of paragraph (c) of subsection (1) of section thirty-one of this Act, the court shall discharge the attachment of earnings order to which that notice relates.

(5) Upon cause being shown by any person to the satisfaction of the court, that an attachment of earnings order ought to be discharged, the court may discharge that order.

(6) An attachment of earnings order ceases to be of effect upon the discharge of the final order to which it relates.

(7) Upon an attachment of earnings order being discharged or ceasing to be of effect, the clerk shall forthwith give notice of that event to the person to whom the attachment of earnings order is directed and shall communicate to any person entitled to receive the benefit of payments made under that order the substance of any order made under this section.

31. (1) A person to whom an attachment of earnings order is directed—

Duties &c. of persons to whom attachment of earnings orders are directed.
Ibid. s. 10.

(a) shall, notwithstanding the provisions of any other Act, comply with the order or, if the order is subsequently varied by the court, with the order as so varied;

(b) on making a payment to the court pursuant to the order, shall give to the person whose earnings are so affected a statement in writing, specifying the amount of that payment; and

(c) who, at the time the order is served, is not, or who at any time thereafter ceases to be, a person on whom liability falls to make payment of any earnings to the person to whom the order relates, shall forthwith give notice in writing of that fact to the court.

(2) A person who fails to comply with subsection (1) of this section, or who gives such a notice as is mentioned in that subsection which he knows to be false in a material particular, or recklessly gives such a notice which is false in a material particular, is, subject to subsection (3) of this section, liable on summary conviction to a fine not exceeding fifty pounds and, in the case of a second or subsequent conviction, to a fine not exceeding one hundred pounds.

(3) It is a defence for a person charged with failing to comply with subsection (1) of this section to prove that he took all reasonable steps to comply with the attachment of earnings order to which the failure relates.

(4) A payment made to the court, pursuant to an attachment of earnings order, is a valid discharge of the amount paid to the person making it, as against the person whose earnings are so affected.

(5) On any occasion of making a payment to the court, pursuant to an attachment of earnings order, the person to whom the order is directed may, notwithstanding the provisions of any other Act, out of the balance of the earnings then remaining retain for his own use the amount of one shilling.

Employment
not to be
prejudiced
by
attachment
of earnings
order.
Matrimonial
Causes Act
1959 (C'with)
3rd Schedule.

32. (1) A person who dismisses an employee, or injures him in his employment, or alters his position to his prejudice, by reason of the circumstance that an attachment of earnings order has been made in relation to that employee, or that the person is required to make payments under such an order in relation to the employee, is guilty of an offence punishable summarily by a fine not exceeding one hundred pounds.

(2) In any proceedings for an offence arising under subsection (1) of this section, if all the facts and circumstances constituting the offence other than the reason for the action of the person charged with having committed the offence are proved, the burden lies upon that person to prove that he was not actuated by the reason alleged in the charge.

(3) The court by which a person is convicted under this section may order that the employee to whom the offence relates be reimbursed any wages lost by him and may also direct that the employee be reinstated in the position held by him, at the time of the offence, or in a similar position.

PART VI.—APPEALS.

33. Any party to a complaint made under this Act has all the rights conferred on a complainant or a defendant under the provisions of section one hundred and thirty-six A of the Justices Act, 1902, and any reference in that section to a Court of Petty Sessions shall, for the purposes of this Act, be read and construed as being a reference to the court. Applications to set aside decisions.

34. (1) Subject to subsection (3) of section twelve of this Act, an appeal shall lie from, and from the refusal of, any order of the court or of a Court of Petty Sessions acting, or purporting to act, under the provisions of this Act. Appeals.

(2) Subject to the rules, an appeal shall be brought as provided by Part VIII. of the Justices Act, 1902, and, where the appeal is from a decision of the court, any reference in that Part to a Court of Petty Sessions shall be read and construed as being a reference to the court.

(3) Subject to subsection (4) of this section, any order of the Supreme Court or a Judge thereof on an appeal under the provisions of this section shall, for the purposes of its enforcement and for the purposes of section thirteen, fourteen, or fifteen of this Act, be treated as if it were an order of the court and not of the Supreme Court.

(4) The provisions of subsection (3) of this section do not apply to an order remitting the complaint to the court.

PART VII.—EVIDENCE.

35. (1) For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the court. *Ibid.* s. 96.

(2) Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it is sufficient if the court is reasonably satisfied of the existence of that ground or fact or as to that other matter.

Fresh evidence.

36. A reference in this Act to fresh evidence is a reference to—

- (a) evidence of events which have occurred, or of circumstances which have changed, since the matter to which they relate was last before the court;
- (b) evidence which has, since the time mentioned in paragraph (a) of this section, come to the knowledge of a party and which might not, by reasonable means, have come to the knowledge of that party, before that time; and
- (c) evidence of material facts which were withheld from the court or that any material evidence given before the court was false.

Evidence of husbands and wives. *Ibid.* s. 97.

37. (1) Subject to this Part, all parties and the wives and husbands of all parties are competent and compellable witnesses in proceedings under this Act.

(2) Subject to the subsection (3) of this section, in proceedings under this Act a husband is competent, but not compellable, to disclose communications made between him and his wife during the marriage, and a wife is competent, but not compellable, to disclose communications made between her and her husband during the marriage.

(3) Where a husband and wife are both parties to proceedings under this Act, each of them is competent and compellable to disclose communications made between them during the marriage.

(4) Subsections (2) and (3) of this section apply to communications made before, as well as to communications made after, the commencement of this Act.

38. In proceedings under this Act, either party to a marriage may give evidence proving, or tending to prove, that the parties to the marriage did not have sexual relations with each other at any particular time, but is not compellable to give such evidence if it would show, or tend to show, that a child born to the wife during the marriage was illegitimate.

Evidence of non-access. *Ibid.* s. 98.

39. (1) A witness in proceedings under this Act who, being a party, voluntarily gives evidence on his own behalf or, whether he is a party or not, is called by a party may be asked, and is bound to answer, a question the answer to which may show, or tend to show, adultery by or with the witness, where proof of that adultery would be material to the decision of the case.

Evidence as to adultery. *Ibid.* s. 99.

(2) Except as provided by subsection (1) of this section, a witness in proceedings under this Act (whether a party to the proceedings or not) is not liable to be asked, or bound to answer, a question the answer to which may show, or tend to show, that the witness has committed adultery.

40. In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place whether in Australia or elsewhere.

Proof of marriage. *Ibid.* s. 100.

41. (1) In any proceedings under this Act—

(a) evidence that a person, being a party to a marriage, was, after the marriage, convicted, whether in Australia or elsewhere, of

Evidence of rape and other offences. *Ibid.* s. 101.

the crime or offence of rape, or any other crime or offence in which sexual intercourse with a person of the opposite sex is an element, is evidence that the former person committed adultery with the person on whom the rape or other crime or offence was committed; and

- (b) evidence that a person, being a party to a marriage, was, after the marriage, convicted, whether in Australia or elsewhere, of the crime or offence of sodomy or bestiality is evidence that that person committed sodomy or bestiality.

(2) In proceedings under this Act, a certificate of the conviction of a person for a crime or offence, on a date specified in the certificate, by a court of a State or Territory of the Commonwealth or of any part of the Queen's dominions, being a certificate purporting to be signed by the registrar or other appropriate officer of that court, is evidence of the fact and date of the conviction.

Court may call evidence.

42. The court may, of its own motion, call evidence in any proceedings taken under this Act and a person called under this section may be examined by any party to the proceedings.

Alternative modes of taking evidence.

43. Subject to the rules, the court may, at any time, for sufficient reason and on such conditions as the court thinks reasonable, order—

- (a) that any particular fact or facts may be proved by affidavit; or
- (b) that the affidavit of any witness may be read at the hearing; or
- (c) that any witness whose attendance before the court ought, for some sufficient cause, to be dispensed with be examined before the court sitting at some other place, or before an examiner appointed by the court;

except that, where it appears to the court that one of the parties *bona fide* requires the production of a witness for cross-examination and that the witness can be produced, an order shall not be made authorising the evidence of that witness to be given by affidavit.

PART VIII.—PROCEDURE AND MISCELLANEOUS.

44. (1) Where an application is made, on an allegation of adultery, under paragraph (f) of subsection (1) of section nine, or under paragraph (a) of subsection (1) of section fifteen, of this Act, the complaint shall name the person (if known) with whom it is alleged the defendant has committed adultery and notice of the complaint shall be given, subject to, and in such manner as may be prescribed by the rules, to that person. Joinder of parties.

(2) Where an application made under the provisions of section thirteen, fourteen, fifteen or sixteen of this Act, may affect the custody of, access to or maintenance for a child of the family, notice of the complaint shall be given to such persons, other than the parties, and in such manner, as may be prescribed by the rules.

(3) Any person to whom notice of a complaint is required to be given pursuant to the provisions of this section may be heard, upon the hearing of the complaint, as a party to the proceedings, and the court shall not proceed to hear the complaint, unless it is proved to the satisfaction of the court, on oath, or in such other manner as may be prescribed by the rules, that such steps have been taken, as may be so prescribed, with a view to giving to that person notice of the complaint and of the time and place appointed for the hearing, or unless, in the case of a person mentioned in subsection (1) of this section, the identity or whereabouts of that person are not reasonably ascertainable.

(4) For the purpose of satisfying itself whether it should proceed to hear any complaint to which the provisions of this section apply, the court may, subject to the rules, sit in chambers, in the absence of a party.

Service
of Justices
Act, 1902
(W.A.). s. 56.
Local Courts
Act, 1904,
(W.A.). s. 43.

45. (1) A summons or notice issued pursuant to a complaint under this Act shall, except where otherwise provided by this section, be served upon the person to whom it is directed, by delivering a duplicate of the summons to him personally or, if he cannot be found, by leaving it with some person for him at his last known place of abode, or by such other means as may be prescribed.

(2) Where the court is satisfied that to effect service by any of the methods provided by subsection (1) of this section would involve undue expense, the court may allow service to be effected by post.

(3) Service by post shall be effected by the clerk dispatching the summons or notice as a prepaid registered letter addressed to the party or person at his place of abode or business and the court may accept as proof of service the certificate of the clerk of the posting as by this subsection provided, together with an acknowledgment of delivery of the letter purporting to have been signed by the person to whom it was addressed.

(4) Where the court is satisfied that every reasonable effort has been made to effect service of a summons or notice and that service cannot be effected by any means provided by this section, the court may order that the plaintiff or other person be at liberty to proceed as if service had been so effected, subject to any conditions which the court may think fit to impose.

Hearings to
be in open
court.
Matrimonial
Causes Act
1959 (C with)
s. 118.

46. (1) Except to the extent to which this Act or the rules provide for proceedings, or part of proceedings, to be heard in chambers, the jurisdiction of the court shall, subject to subsection (2) of this section, be exercised in open court.

(2) Where in any proceedings the court is satisfied that there are special circumstances that make it desirable, in the interests of the proper administration of justice, that the proceedings, or any part of the proceedings, should not be heard in

open court, the court may order that any persons, not being party to the proceedings or their counsel or solicitors, shall be excluded during the hearing of the proceedings, or the part of the proceedings, as the case may be.

47. (1) Except as provided by this section, a person shall not print or publish or cause to be printed or published an account of evidence in any proceedings under this Act, or any other account or particulars of those proceedings, other than—

Restrictions
on
publication
of evidence.
Ibid., s. 123.

- (a) the names, addresses and occupations of the parties and witnesses, and the name or names of the member or members of the court and of counsel and solicitors;
- (b) a concise statement of the nature and grounds of the proceedings and of the charges, defences and counter-charges in support of which evidence has been given;
- (c) submissions on any point of law, arising in the course of the proceedings, and the decision of the court on those points; or
- (d) the final decision of the court and observations made by the court in giving that decision and the terms of any order made thereon.

(2) The court may, if it thinks fit, in any particular proceedings, order that the matters, or any one or part of any one, of the matters, referred to in paragraph (a), (b), (c) or (d) of subsection (1) of this section shall not be printed or published.

(3) A person who contravenes subsection (1) of this section, or any order of the court made under subsection (2) of this section, is guilty of an offence punishable on conviction—

- (a) in the case of a first offence, or a second or subsequent offence prosecuted summarily, by a fine not exceeding five hundred pounds or imprisonment for a period not exceeding six months; and

(b) in the case of a second or subsequent offence being an offence prosecuted on indictment, by a fine not exceeding one thousand pounds or imprisonment for a period not exceeding one year.

(4) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Attorney General.

(5) The preceding provisions of this section do not apply or relate to—

- (a) the printing of any complaint, transcript of evidence, or other document for use in connection with proceedings in any court or the communication of any such document to any person concerned in the proceedings;
- (b) the printing or publishing of a notice or report, in pursuance of the rules or a direction of the court;
- (c) the printing or publishing of any publication *bona fide* intended primarily for the use of members of the legal profession, being part of a series of law reports or other publication of a technical character; or
- (d) the printing or publishing of a photograph of any person, not being a photograph forming part of the evidence in a proceeding under this Act.

Court may entertain applications affecting orders wherever made.

48. Subject to the rules, the court, wherever sitting, may hear an application made under section thirteen, fourteen, fifteen or sixteen of this Act, in respect of an order made by the court at another place.

Procedure generally.

49. Except where otherwise provided by this Act or prescribed by the rules, the procedure provided by the Justices Act, 1902, for summary proceedings before justices, applies to proceedings taken under this Act, but the provisions of section fifty-one of that Act do not apply to applications made under section nine, fourteen or sixteen of this Act.

50. Where any person—

- (a) is guilty of contempt under section twenty-three of this Act; or
- (b) being summoned as a witness neglects or refuses to appear at the time and place appointed and no just excuse is offered for such neglect or refusal; or
- (c) wilfully insults, interferes with or obstructs a member of the court or a clerk or other officer of the court or a party to any proceeding before the court or any witness summoned to attend the court, during his sitting or attendance in court or in going to or returning from the court; or
- (d) wilfully interrupts the proceedings of the court or otherwise misbehaves himself in court,

Punishment of contempt.
Cf. Local Courts Act, 1904 (W.A.), s. 156.

the court may commit that person to prison for any period not exceeding three months, or impose on that person a fine not exceeding fifty pounds.

51. (1) The Governor may appoint a person as clerk of the court at any place where the court sits and, in the absence of such appointment, a person appointed a clerk of the Local Court at that place shall perform the duties, and exercise the powers, of the clerk.

Appointment of clerk.
Ibid. s. 13.

(2) During the absence or temporary incapacity of the clerk, at any place, the Minister may appoint a substitute to discharge the duties of the clerk.

(3) In addition to any other powers conferred by this Act, the clerk shall exercise the powers conferred on clerks of petty sessions, under section fifty-three of the Justices Act, 1902.

52. Any affidavit to be used in the court may be sworn before a Stipendiary Magistrate, the clerk or a clerk of a Local Court, a Justice of the Peace or a commissioner for taking affidavits in the Supreme

Affidavits by whom sworn.
Ibid. s. 80.

Court and the powers conferred by this section shall be exercised without any commission being issued for that purpose.

Rules.
Ibid. s. 158.

53. (1) The Governor may from time to time make, alter and revoke rules of court prescribing—

- (a) the practice and procedure of the court, including *ex parte* procedure, and the venue of the hearing of applications;
- (b) forms for use in the court;
- (c) fees to be paid to the court;
- (d) the manner of service and execution of any process, issued out of the court; and
- (e) the duties of officers of the court and the manner of keeping all books, entries and accounts.

(2) All rules of court shall be published in the *Government Gazette* and any amendment to the rules falling within paragraph (a) or (d) of subsection (1) of this section shall not take effect until one month after publication.

Fees.

54. (1) Any fees payable to the court under the rules shall be paid in the first instance by the party on whose behalf a proceeding is taken and shall be paid before that proceeding is taken.

(2) Any fees payable to the clerk and any fine imposed under this Act and received by the clerk shall be paid into the Consolidated Revenue Fund.

s. 4.

THE SCHEDULE.

No. of Act.	Short Title.
28 of 1922	Married Women's Protection Act, 1922.
14 of 1926	Married Women's Protection Act Amendment Act, 1926.
50 of 1954	Married Women's Protection Act Amendment Act, 1954.
