

WESTERN AUSTRALIA.



ANNO TERTIO
GEORGII QUINTI REGIS,
XI.

No. 30 of 1912.

AN ACT for the Relief of Persons whose Relatives liable to support them reside in another State of the Commonwealth, and for other purposes.

[Assented to 27th September, 1912.]

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

PART I.—PRELIMINARY.

- 1. This Act may be cited as the *Inter-State Destitute Persons Relief Act, 1912.* Short title.
- 2. This Act shall come into operation on a day to be fixed by the Governor by Proclamation published in the *Government Gazette* Commencement.
- 3. This Act is divided into Parts, as follows:— Division of Act.
 - PART I.—PRELIMINARY.
 - PART II.—SUMMONS FOR MAINTENANCE AGAINST PERSON IN ANOTHER STATE.
 - PART III.—ENFORCING ORDER FOR MAINTENANCE MADE IN ANOTHER STATE.
 - PART IV.—MISCELLANEOUS,

Interpretation.
S.A. No. 1008, s. 4.
T. 1910, No. 55,
s. 4.

4. In this Act, unless inconsistent with the context or subject matter—

“Collector” means an officer appointed in another State, whose duties, or part of whose duties, are similar to those of the Collector appointed under this Act;

“Commonwealth” means the Commonwealth of Australia;

“Justice” means justice of the peace;

“Order” includes judgment, and an order means an order or judgment whereby any person is adjudged, ordered, or directed to pay money, whether in one sum or by instalments, or to pay money periodically, for or towards the support of any person, or otherwise to make provision for or towards the support of any person;

“Prescribed” means prescribed by this Act or by regulation;

“Regulation” means regulation made under this Act;

“State” means, in Part II., any State in the Commonwealth concerning which a proclamation under subsection one of section five has been published and is in force for the time being; and in Part III. “State” means any State in the Commonwealth concerning which a proclamation under subsection two of section five has been published and is in force for the time being;

“Summons for relief” means a summons to show cause why a person should not support, or should not contribute towards the support of, another person;

“The Collector” means the Collector appointed under this Act;

“This Act” includes regulations made under this Act;

“This State” means the State of Western Australia.

Establishment of
reciprocity by
Proclamation.
Ibid., s. 5.

5. (1.) When in any State in the Commonwealth an Act is in force containing provisions substantially similar to those contained in, or for carrying out objects substantially similar to the objects of, section six, the Governor may by proclamation published in the *Government Gazette* declare that Part II. of this Act shall be in force as regards such State, and such State shall thereafter be a State within the meaning of Part II.

(2.) When in any State in the Commonwealth an Act is in force containing provisions substantially similar to those contained in, or for carrying out objects substantially similar to the objects of, Part III., and sections twenty-one to twenty-three, both inclusive, the Governor may by proclamation published in the *Government Gazette* declare that Part III. of this Act shall be in force as regards such State, and such State shall thereafter be a State within the meaning of Part III.

(3.) Notwithstanding anything in this section, if at any time after the publication of any proclamation under this section neither the provisions in consequence of which such proclamation was published nor any similar provisions are in force in the State regarding which such proclamation was published, such proclamation shall cease to be in force upon the publication in the *Government Gazette* of a proclamation by the Governor revoking the former proclamation, and such State shall thereupon cease to be a State within the meaning of Part II. or Part III., as the case may be.

(4.) A proclamation under subsection one or subsection two shall be deemed to be in force until a proclamation revoking the same is proved.

(5.) Proclamations under subsections one and two or proclamations under subsection three, regarding the same State, may be in the same or separate documents.

(6.) The *Government Gazette* purporting to contain a proclamation under this section shall be sufficient evidence of the validity, contents, and publication of such proclamation, and shall be conclusive evidence of the existence of all conditions precedent to the valid making thereof.

PART II.—SUMMONS FOR MAINTENANCE AGAINST PERSON IN ANOTHER STATE.

6. Whenever in any State—

- (a.) i. Any husband leaves his wife; or
- ii. Any parent leaves his or her child under the age of eighteen years, whether legitimate or illegitimate; or
- iii. Any child over the age of twenty-one years leaves his or her parent; or
- iv. Any person liable to support, or to contribute towards the support of, another person leaves such other person,

without adequate means of support; or

- v. An order has been made by any justice or justices or by any court, not being a court of record, and such order remains unsatisfied wholly or in part;

and in any such case—

- (b.) Such husband, parent, child, or person, or the person by such order adjudged, ordered, or directed to pay or make provision (each of whom is hereinafter referred to as “the defaulter”), comes to reside or resides, either temporarily or permanently, in this State,

any summons for relief or any process to enforce such order, granted or issued in any State by any justice or justices or out

Summons for relief issued in another State may be served in this State.
Ibid., s. 6.

of any court (not being a court of record) upon application made by or on behalf of the wife, child, parent, or person so left, or by or on behalf of the person for whose support such order was made, and against or directed to the defaulter, may be served in this State.

Summons for relief
against defaulter
in another State.

Ibid., s. 7.

7. Whenever in this State—

- (a.) i. Any husband leaves his wife; or
 - ii. Any parent leaves his or her child under the age of eighteen years, whether legitimate or illegitimate; or
 - iii. Any child over the age of twenty-one years leaves his or her parent; or
 - iv. Any person liable to support, or contribute towards the support of, another person leaves such other person, without adequate means of support; or
 - v. An order has been made by any justice or justices or by any court, not being a court of record, and such order remains unsatisfied, wholly or in part; and
- (b.) Such husband, parent, child, or person, or the person by such order adjudged, ordered, or directed to pay or make provision (each of whom is hereinafter referred to as "the defaulter"), goes to reside or resides, either temporarily or permanently, in any State other than this State,

any justice for this State may, upon application made by or on behalf of the wife, child, parent, or person so left, or by or on behalf of the person for whose support such order was made (each of whom is hereinafter referred to as "the complainant"), sign and issue a summons directed to the defaulter, to show cause why he or she should not support or should not contribute towards the support of the complainant, or should not pay any moneys due and to become due under such order, as the case may require.

Evidence in sup-
port of applica-
tion for summons.

Ibid., s. 8.

8. (1.) No summons shall be issued under section seven unless the application therefor is supported by an affidavit or declaration made by or on behalf of the complainant, in the form contained in the First Schedule, or to the like effect, and stating the matters indicated in the said schedule.

(2.) A justice upon issuing a summons under section seven shall retain the affidavit or declaration whereon the same was made, and shall, as soon as practicable, deliver or send such affidavit or declaration to the clerk of the nearest local court, who shall file the same in the office of his court.

(3.) An affidavit for the purposes of this section shall be sworn before a commissioner for taking affidavits in the Supreme Court, and a declaration for such purposes may be made before a justice.

9. Every summons issued under section seven shall state a place and a time after service for the hearing hereof, which shall be fixed by the justice issuing the summons, regard being had in fixing the length of time to the distance of the alleged place of residence of the defendant from the place fixed for the hearing.

Time and place for hearing summons.
Ibid., s. 9.

10. (1.) A summons issued under section seven may be served either in this State or any other State.

Service of summons and proof thereof.
Ibid., s. 10.

(2.) Service of such summons, or the steps taken in attempting to serve the same, shall be proved by affidavit sworn before a commissioner for taking affidavits in the Supreme Court of this State or of the State wherein service was effected or attempted, or by declaration made before a justice for this State or for the State wherein the service was effected or attempted.

11. A summons issued under section seven may be heard and determined by any justice or justices for this State.

Who may hear summons.
Ibid., s. 11.

12. If at the hearing of a summons issued under section seven or any adjournment of such hearing—

Powers of justices hearing the summons.
Ibid., s. 12.

(a.) Service of the summons is proved; or

(b.) It is proved to the satisfaction of the justice or justices that a reasonable attempt has been made to serve the summons, and that the defendant has intentionally evaded service thereof,

the justice or justices may proceed to hear and may determine the summons, and may, if satisfied that the defendant is able to support or contribute towards the support of the complainant, make an order for the payment to or on behalf of the complainant of—

- i. Such sum (if any) as the justice or justices deem proper for past maintenance, by instalments or otherwise; and
- ii. Such periodical sums as the justice or justices deem proper for future maintenance; and
- iii. Costs, to be fixed by the justice or justices.

PART III.—ENFORCING ORDER FOR MAINTENANCE MADE IN ANOTHER STATE.

13. (1.) The Governor shall appoint a Collector for the purposes of this Act, and may appoint such Assistant Collectors and other officers as he deems necessary for such purposes.

Collector for Interstate destitute persons.
Ibid., s. 13.

(2.) The official title of the Collector shall be "Collector for Inter-State Destitute Persons," and the official title of an Assistant Collector shall be "Assistant Collector for Inter-State Destitute Persons."

Application for making order for relief enforceable in this State.
Ibid., s. 14.

14. (1.) The Collector, upon receiving from a collector appointed in another State the following documents, namely:—

i. The original or a duplicate of an order made by a justice or justices for such State signed by him or them, or a copy of such order, certified as correct under the hand or hands of the justice or justices by whom such order was made, or a certificate of an order made by a court of such State (not being a court of record) under the hand of the clerk or other proper official of such court and the seal thereof, such order, in any case, being made in favour of any person resident in such State;

ii. An affidavit in the form in the Second Schedule, or to the like effect, and stating the particulars indicated in the said schedule, sworn by such collector before a commissioner for taking affidavits in the Supreme Court of such State; and

iii. A request that the order be made enforceable in this State, shall attend before a justice and apply to have such original or duplicate order, certified copy, or certificate endorsed as provided by section fifteen.

(2.) A document purporting to be such a document as mentioned in subsection one, and to be signed or signed and sealed as thereby required, shall, for the purposes of this Act, without proof of any signature or seal appearing thereon, be deemed to be what it purports to be, and to be duly signed or signed and sealed, until the contrary is proved.

To be endorsed of defaulter resident in this State.
Ibid., s. 15.

15. Upon such application being made to a justice and upon production of the original or duplicate order, certified copy, or certificate and the affidavit referred to in section fourteen, the justice, if satisfied that the person against whom the order was made is resident, either temporarily or permanently, within this State, shall endorse such original or duplicate order, certified copy, or certificate with a fiat directing that the order be enforced within this State, and shall sign such endorsement.

Collector to serve copy of endorsed order.
Ibid., s. 16.

16. (1.) Upon obtaining the endorsement referred to in section fifteen the Collector shall serve, or cause to be served, a copy of such order, certified copy, or certificate, and of the endorsement thereon, certified as correct under his hand, upon the person against whom the order was made; and such order shall thereupon be and continue to be enforceable in this State.

(2.) The service required by this section may be effected by delivering the document to the person to be served, or by posting the same by registered letter addressed to him at his last known place of residence.

17. When an original or duplicate order, certified copy, or certificate has been endorsed pursuant to section fifteen, and a copy thereof has been served pursuant to section sixteen, all moneys by the order adjudged, ordered, or directed to be paid shall be payable to the Collector, who is hereby authorised to collect and receive the same, and to take all such steps for the recovery thereof as might be taken by the person in whose favour the order was made; and the receipt of the Collector for any such money shall be a valid discharge of the liability to pay the same.

After service all moneys to be payable to the collector.
Ibid., s. 17.

18. In addition to the powers and duties hereinbefore conferred and imposed, it shall be the duty of the Collector—

Other powers and duties of Collector.
Ibid., s. 18.

- i. To collect all moneys payable to him as provided by section seventeen, and give receipts for the sums so collected;
- ii. To keep proper accounts of all moneys collected and received by him and of all moneys remitted and paid by him;
- iii. To file in his office, and keep proper records of, all documents received by him as mentioned in section fourteen;
- iv. Once at least in every fortnight, or as often as prescribed, to remit to the collectors appointed in the various States all moneys collected and received by him in respect of orders received from such States respectively, less the costs and expenses of collection and remittance, together with proper accounts showing in respect of what orders the various moneys were collected and received and the costs and expenses deducted in respect of such various moneys;
- v. To pay the various moneys received by him from the collectors appointed in other States to the persons on whose behalf such moneys are respectively received, less any costs and expenses connected with the receipt and payment thereof respectively; and
- vi. To exercise such other powers and discharge such other duties as are conferred or imposed upon him by regulation.

19. When an order has been made and signed by a justice or justices for this State, or an order has been made by a court of this State, not being a court of record, in favour of any person resident in this State, and the person against whom the same is made goes to reside or is resident, either temporarily or permanently, in another State, the Collector shall, upon application made by or on behalf of the person in whose favour such order was made,

Collector to forward orders for relief for service in other States.
Ibid. s. 19.

send to a collector appointed in such other State the following documents, namely:—

- i. The original or a duplicate of the said order made by a justice or justices signed as aforesaid, or a copy of such order certified as correct under the hand or hands of the justice or justices by whom such order was made, or a certificate of the said order made by a court under the hand of the clerk or other proper officer of such court and the seal thereof;
- ii. An affidavit in the form in the Second Schedule, or to the like effect, and stating the particulars indicated in the said schedule, sworn by the Collector before a commissioner for taking affidavits in the Supreme Court of this State;
- iii. A statement of such information as the Collector is able to obtain for the purpose of enabling the collector to whom the documents are sent to identify and discover the whereabouts of the person against whom the order was made; and
- iv. A request that the order be made enforceable in such other State.

Affidavit or certificate of collector sufficient proof of payment.
Ibid., s. 20.

20. (1.) A certificate under the hand of the Collector or of a collector appointed in another State, or an affidavit sworn by either of such collectors, stating that any sum or sums therein specified has or have been paid in respect of an order therein mentioned, shall be sufficient evidence of such payment in any proceedings before any court, justice, or other tribunal.

(2.) Upon production of such certificate or affidavit to the clerk of the court in which such order was made, such clerk shall enter up satisfaction of such order to the extent of the amount by such certificate or affidavit stated to have been paid.

PART IV.—MISCELLANEOUS.

Onus of proof of identity of person served.
Ibid., s. 21.

21. (1.) Subject to subsection two, when—

- i. A summons or other process by this Act made servable;
- OR
- ii. A summons issued under this Act; or
- iii. A copy of an original or duplicate order, or of a certified copy of an order, or of a certificate of an order,

is served upon any person in manner prescribed by this Act, such person shall be deemed to be the person upon whom the same was to be served, until the contrary is shown to the satisfaction of the court, magistrate, justice, or justices before whom the question is in issue.

(2.) This section shall not apply unless the person by whom the document was so served states in his affidavit or declaration of service, or otherwise on oath, a firmation, or declaration, that he believes the person upon whom such document was served to be the person upon whom the same was to be served: Provided that nothing in this section shall prevent such identity being proved by any evidence deemed sufficient by the court, magistrate, justice, or justices before whom the question is in issue.

22. (a.) Any order made under this Act, and any order made enforceable in this State by virtue of the provisions of this Act, may be enforced in the same manner as an order requiring the payment of a sum of money is enforceable, and

How orders made under, or made enforceable under, this Act to be enforced.
Ibid., s. 22.

(b.) All moneys which, by any order made under this Act or by any order so made enforceable, are adjudged, ordered, or directed to be paid, may be raised and levied, or payment thereof may otherwise be enforced, in the same manner as the sum which is required to be paid by an order requiring the payment of a sum of money may be raised and levied, or as payment thereof may otherwise be enforced,

under the provisions of the Justices Act, 1902, and any Act amending the same, or of any Act for the time being in force in that behalf: Provided that—

i. An order made under this Act may be enforced, and any money thereby adjudged, ordered, or directed to be paid may be raised and levied, or payment thereof may be otherwise enforced, at the instance of any person in whose favour such order was made or of any other person in his behalf; and

ii. An order made enforceable in this State by virtue of the provisions of this Act shall be enforced, and any money thereby adjudged, ordered, or directed to be paid shall be raised and levied, or payment thereof shall be otherwise enforced, only at the instance of the Collector or of an Assistant Collector.

23. If any affidavit or other document or writing required for the purposes of this Act complies, as to the form and the manner of making thereof, either with the law of the State where the same was made or with the law of this State, such affidavit or other document or writing shall, as to the form and the manner of making thereof, be deemed sufficient in all proceedings under this Act and for all the purposes of this Act.

Form and manner of making affidavit.
Ibid., s. 23.

Audit of collector's accounts.
Ibid., s. 25.

24. (1.) The Collector's accounts shall, once at least in every year, and also whenever directed by the Governor, be audited by the Auditor General.

(2.) The Auditor General shall, in respect of such accounts, have all the powers conferred upon him by the Audit Act, 1904, and any Act for the time being in force relating to the audit of public accounts.

Salaries and expenses paid out of moneys provided by Parliament.
Ibid., s. 26.

25. The salaries of officers appointed under this Act, and the other expenses of administering this Act, shall be paid out of moneys provided by Parliament.

Regulations.
Ibid., s. 27.

26. (1.) The Governor may make regulations not inconsistent with this Act prescribing all matters and things which by this Act are contemplated, required, or permitted to be prescribed, and prescribing, amongst others, the following matters and things:—

- i. The duties of the Collector and other officers appointed under this Act;
- ii. The methods to be adopted by the Collector and other officers in the exercise and discharge of their powers and duties;
- iii. The accounts, records, and books to be kept by the Collector and other officers, and the methods of keeping the same;
- iv. The collection, remittance, and payment of moneys by the Collector;
- v. Generally such matters and things as may be necessary or convenient to enable the Collector and other officers to exercise and discharge their powers and duties;
- vi. The forms of any documents to be used for the purposes of this Act, either in addition to or in variation of or substitution for the forms in the schedules to this Act; and
- vii. All such other matters and things as may be necessary or convenient for giving effect to this Act, or for carrying out its objects.

(2.) Any regulation so made may impose a penalty not exceeding Twenty pounds for any breach of the same or any other regulation.

(3.) All regulations so made shall—

- (a.) Be published in the *Government Gazette*;
- (b.) Take effect from the date of such publication, or from a later date to be specified herein; and

(c.) Be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in session, and if not, then within fourteen days after the commencement of the next session of Parliament.

(4.) Notwithstanding any publication thereof, no regulation so made shall continue to have any force or effect if the same is disapproved by resolution of either House of Parliament within thirty sitting days after such regulation has been laid before Parliament, if Parliament is so long in session: Provided that if either House of Parliament is not in session for thirty sitting days after such regulation has been laid before it, then such regulation shall not continue to have any force or effect if disapproved by such House of Parliament within thirty sitting days after the commencement of the next session of Parliament.

Disapproval by
Parliament.

27. (1.) All proceedings in respect of offences against this Act shall be by complaint.

Procedure for
offences.
Ibid., s. 28.

(2.) Such complaint shall be heard and determined in a summary way before any police or resident magistrate or any two justices of the peace, under the Justices Act, 1902, or any Act for the time being in force relating to the duties of justices of the peace as to summary proceedings.

(3.) Such magistrate or justices may make any order as to costs which he or they think fit.

(4.) All convictions and orders made by such magistrate or justices may be enforced as provided in the said Act or in any other Act.

28. There shall be an appeal from any conviction under this Act, or from any order dismissing any information for any offence against this Act, or any other order made on any such complaint, and Part VIII. of the Justices Act, 1902, shall apply.

Appeals.
Ibid., s. 29.

THE SCHEDULES.

Section 8.

THE FIRST SCHEDULE.

Form of Affidavit (or Declaration) in support of Summons for Relief for Service out of the Jurisdiction.

Western Australia.

[Full Christian name and surname of Complainant]
Complainant,
against
[Full Christian name and surname of Defaulter]
Defendant.

I [full Christian name and surname] of [address and occupation] do hereby make oath and say (or do solemnly and sincerely declare) as follows:—

1. The above-named defendant is [here state relation of defendant to complainant]. (or On the day of an order was made by [here state name of Justice or Court] whereby the above-named defendant was ordered to [here state effect of the order made for or towards the support of the complainant]).

2. To the best of my knowledge and belief the said defendant is now residing at in the State of and has been residing there since about [here state the time so far as known or believed].

3. The said defendant left me without adequate means of support. (or There is now due and unpaid under the said order the sum of).

4. The said defendant [here state, so far as known or believed, what means the defendant has and whether employed or not, and, if employed, how employed].

5. I desire to avail myself (or I desire that the complainant may have the benefit) of "The Inter-State Destitute Persons Relief Act, 1912."

Sworn (or declared) at , }
the day of }
before me

Sections 14 and 19.

THE SECOND SCHEDULE.

Form of Affidavit to support Application to enforce Order outside the Jurisdiction.
[Name of State where Affidavit sworn.]

[Full Christian name and surname of person in whose favour the order was made]
Complainant,
against
[Full Christian name and surname of person against whom the order was made]
Defendant.

I, of in the State of ,
do hereby make oath and swear as follows:—

1. I am the collector for inter-State destitute persons [or as the official title may be] appointed for the said State under [short or other title of Act].

2. On the _____ day of _____ an order was made by [state by whom or by what court] whereby the above-named defendant was ordered to [state effect of the order and how payments were ordered to be made].

3. The period for appealing against the said order has expired, and the said order is still in force.

4. The following amount has been paid under the said order, namely [state the amount (if any) paid, and when paid, and, in case payable by instalments or periodically, up to what time payments have been made] (or No amount has been paid under the said order).

5. There is now remaining due and unsatisfied under the said order the sum of _____ being for _____ weeks [or as the case may be] at _____ per week [or as the case may be].

6. To the best of my knowledge and belief the said defendant is now residing at _____ in the State of _____, and has been residing there since about [state the time so far as known or believed].

Sworn at _____ in the }
State of _____, }
the _____ day of _____
before me