

WELFARE AND ASSISTANCE.

10° Elizabeth II., No. XXII.

No. 22 of 1961.

AN ACT to authorise and regulate the rendering of financial assistance to or on behalf of indigent persons and for payment of funeral expenses of persons dying in necessitous circumstances; to make provision for the recovery of moneys advanced and expended for such purposes; and for other purposes.

[Assented to 30th October, 1961.]

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. This Act may be cited as the *Welfare and Assistance Act, 1961.*

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

3. Nothing in this Act shall prejudice or affect any of the provisions of the Acts specified in the First Schedule to this Act, or of any other Act so far as the same relates to maintenance for persons or for children, or to financial aid or relief for destitute persons, and this Act shall be read and construed as separate and distinct from any of those Acts to the intent that the provisions of this Act are in addition to and not in derogation of or substitution for any of the provisions of those Acts. Construc-
tion.

4. In this Act unless the context requires otherwise— Interpreta-
tion.

“advances” include moneys advanced by or on the authority of the Minister prior to the commencement of this Act by way of financial aid or relief to or on behalf of persons who, if this Act had been in operation at the time of the advance, would be indigent persons;

“child” means a person under the age of eighteen years;

“Department” means the Child Welfare Department constituted under the Child Welfare Act, 1947;

“Director” means the Director of the Child Welfare Department appointed under the Child Welfare Act, 1947, and includes the Assistant Director appointed under that Act;

“indigent person” means—

- (a) any woman who satisfies the Minister that she is without adequate support and has not sufficient means of subsistence;

- (b) any child who in the opinion of the Minister is without adequate support and has not sufficient means of subsistence;
- (c) any destitute child within the meaning of the Child Welfare Act, 1947, or any ward within the meaning of that Act;
- (d) any person entitled to moneys by way of compensation or damages, or in settlement of a claim under a policy of insurance or life assurance, or to any assets as a beneficiary in the estate of a deceased person; or
- (e) any person who is in such necessitous circumstances as in the opinion of the Minister warrant assistance being rendered that person under this Act;

“Minister” means the Minister of the Crown charged for the time being with the administration of the Child Welfare Act, 1947.

Administra-
tion.

5. Subject to its provisions, this Act shall be administered by the Minister through the Department.

Inspectors
and other
officers.

6. The Governor may from time to time appoint inspectors and other officers, with such powers and functions as he deems necessary to carry out the purposes of this Act.

Delegation
of powers.

7. (1) The Minister may by writing signed by him delegate all or any of the powers conferred upon him by this Act, with the exception of this power of delegation, to the Director, or to any other officer of the Department, or to any officer appointed under this Act.

(2) The person to whom power is so delegated may exercise the power in the same manner and with the same effect as if the power were directly conferred upon him by this Act and not by delegation.

(3) Where the exercise of the power is dependent upon the opinion, belief, satisfaction or other state of mind of the Minister in relation to any matter, the power when delegated may be exercised by the delegate upon his opinion, belief, satisfaction or state of mind in relation to the matter.

(4) A person who purports to exercise power pursuant to a delegation conferred under the provisions of this section is presumed to do so in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) Every delegation of power pursuant to the provisions of this section may be revoked wholly or partly by the Minister at any time, and no delegation shall prevent the Minister from exercising the power.

8. The Minister may for the purpose of rendering and affording financial assistance—

Minister
may make
advances.

- (a) to or on behalf of indigent persons;
- (b) for the transport of indigent persons; or
- (c) for payment of funeral expenses not exceeding thirty-five pounds in any one instance in respect to the burial of persons dying in necessitous circumstances,

make advances at his discretion to persons who apply for such assistance and satisfy the Minister that in the circumstances of the case such assistance should be given.

9. (1) Every application for assistance under this Act shall be made to the Department, shall contain such particulars as are prescribed, and shall be investigated forthwith in such manner, by such means and to such extent as having regard to the particulars contained in the application appear to the Director necessary or advisable.

Applications
for assist-
ance to be
investigated.

(2) The result of the investigation made under this section and the apparent merits or otherwise of the application as disclosed by such investigation shall be reported to the Minister, together with such recommendation and advice to the Minister as the officer making the investigation thinks proper.

Minister may
grant
application.

10. (1) If the Minister, after considering the report and the recommendation and advice referred to in section nine of this Act, is satisfied that the person the subject of the application for assistance is in need and deserving of financial assistance under this Act, he may from time to time grant to the applicant such assistance under this Act as he thinks fit in accordance with the scale of rates determined by him, and which he is hereby authorised to determine, from time to time and subject to such terms and conditions as to payment, expenditure and repayment as in his discretion he considers advisable or necessary.

(2) Notwithstanding the provisions of subsection (1) of this section, where in any case the Minister considers the circumstances to be unusual and exceptional and the person by or on behalf of whom the application is made to be deserving of assistance to an extent greater than that provided in the scale of rates for the time being applicable, he may at his discretion grant additional assistance to such extent as in that case appears to him necessary.

Liability for
funeral
expenses.

11. For the purposes of this Act, the relatives of any person who dies in necessitous circumstances shall be liable to pay or contribute towards the funeral expenses incurred in respect of the burial of that person—

- (a) in the case of a person (other than an unmarried child)—the husband or widow, as the case may be, and the adult children of that person;
- (b) in the case of an unmarried child—the father, the mother, the step-father, the step-mother,

and the Minister may by action commenced in a local court sue for and recover from those relatives, or any of them, the amount of advances made under this Act by way of assistance in payment of the funeral expenses incurred in respect of the burial of that person.

12. (1) In any case where the Minister makes advances under this Act to or on behalf of an indigent person being a married woman, whether for herself or for her child or children or any of them,—

Advances to a wife deemed to be necessaries.

- (a) pending the making or hearing of an application for an order against the husband of that woman for maintenance; or
- (b) where maintenance has been ordered to be paid and has not been duly paid by the husband,

the amount of those advances shall be deemed to have been expended in supplying necessaries for the use of the wife, and notwithstanding any Act or rule of law to the contrary, but subject to the provisions of subsection (2) of this section, the wife shall be presumed to have authority to pledge the credit of her husband.

(2) The Minister may sue for and recover from the husband in any court of competent jurisdiction the amount of advances made to or on behalf of the wife of that husband pursuant to the provisions of subsection (1) of this section, but in an action under this subsection, if the husband satisfies the court that in the circumstances (other than the circumstance that he and his wife were living apart) the wife was not entitled to pledge his credit, it is a defence that the amount of those advances was not expended for maintenance of the child or children of the wife, but such defence is available only to the extent of the amount not so expended.

(3) This section does not apply in respect of a child born to the wife as a result of any act of adultery committed by her during her marriage, except where the child has been accepted by the husband as a child of the family within the meaning of the Married Persons (Summary Relief) Act, 1960, in which case the court in considering the liability of the husband under this section shall have regard also to the provisions of that Act.

Powers of
Minister
where
assistance
granted.

13. (1) Where the assistance granted under the provisions of this Act to or on behalf of any person has been so granted on the ground that the person was rendered indigent in that—

- (a) a debt lawfully due and owing to that person had not been recovered, or that difficulty was being experienced in recovering the same;
- (b) maintenance payable to such person under the terms of an agreement in writing or by order of a competent court was in arrear, or that an application for maintenance made to a competent court had not been heard; or
- (c) any money or property to which such person was lawfully entitled had not been paid, delivered or transferred to that person,

such person shall, if the Minister so orders, as he is hereby authorised to do, be deemed to have assigned absolutely to the Minister that debt, maintenance, money or property and to have passed and transferred the legal right thereto and all legal and other remedies and the power to give a good discharge for the same, until such time as the assistance so granted to such person has been repaid, or until the Minister revokes the order made by him under this subsection.

(2) While the debt, maintenance, money or property is deemed to be assigned to the Minister pursuant to the provisions of subsection (1) of this section, the Minister may, after giving to the debtor written notice of the assignment, or without giving such notice if the Minister considers it impracticable so to do, either himself or in the name of the person to or on behalf of whom the assistance was granted, exercise all or any of the legal or other remedies and take any legal action, including the issue of warrants of execution or commitment, which such person is entitled to exercise or take for recovery of the debt, maintenance, money or property, or any part thereof, and shall have the power on recovery to give a good discharge for the same without the concurrence of such person.

(3) Where the debt, maintenance or money deemed to be assigned to the Minister pursuant to subsection (1) of this section is paid or to be paid into any court, the Minister may give to—

- (a) the Registrar of the Supreme Court, if such court is the Supreme Court; or
- (b) the clerk of the court, if the court is other than the Supreme Court,

written notice of the assignment, and after receipt of such notice the Registrar, or, as the case may be, the clerk of the court, shall not pay out of court to any person other than the Minister or such person as the Minister may direct, any moneys then in the court or thereafter paid into the court in respect of the debt, maintenance or money, unless and until the Minister withdraws such notice and of that withdrawal gives notice in writing to the Registrar, or, as the case may be, the clerk of the court.

14. Action for recovery of advances pursuant to the provisions of this Act may be taken by the Minister at any time notwithstanding the provisions of section fifty-one of the Justices Act, 1902, and may be so taken for recovery of the whole or any part of those advances as the Minister thinks fit.

Action for recovery of advances may be taken at any time.

15. (1) Where an order for payment of maintenance is made and the maintenance is deemed to be assigned to the Minister pursuant to section thirteen of this Act, the Minister may give to the Registrar of the Supreme Court, if the court in which the order is made is the Supreme Court, or to the clerk of the court, if the court in which the order is made is other than the Supreme Court, written notice of the assignment, and after receipt of such notice the Registrar, or, as the case may be, the clerk of the court, shall—

Written notice of assignment may be given to court making maintenance order.

- (a) give to the Director notice in writing of any application for variation, suspension or discharge of the order so made; and

- (b) endorse a memorandum of the assignment on every certified copy of that order, or certificate stating the amount due under that order, issued by him.

(2) The Minister is entitled to be joined as a party to any application for variation, suspension or discharge of an order referred to in subsection (1) of this section and to appear by an officer of the Department or by solicitor, and to be heard, give evidence and call witnesses at the hearing.

(3) Where it is sought to enforce payment under an order for maintenance deemed to be assigned to the Minister pursuant to this Act and an affidavit is required to be made for that purpose by the person entitled under a provision of the order to receive payment of any amount of which payment is in default, it shall be sufficient compliance with that requirement if an affidavit is made by the Director deposing to so much of the required information as he can ascertain.

Application
of moneys
recovered by
Minister.

16. Any moneys recovered by the Minister under the provisions of sections twelve or thirteen of this Act shall, after deduction therefrom of the costs of and incidental to the recovery, be appropriated and applied in or towards satisfaction of advances made under this Act to or on behalf of the person in respect of whom the moneys are recovered and any interest charged on those advances, and any balance then remaining may be paid to or for such person, or, if the person be a child, to the institution or person having the care, charge or custody of the child.

Provisions as
to person
arrested on
enforcement
of order.

17. In any case where a person liable under an order made by a court of competent jurisdiction to pay maintenance is arrested under a warrant of commitment in respect of non-payment by him thereof and the maintenance is pursuant to the provisions of section thirteen of this Act deemed to be assigned to the Minister, the provisions of Part IV. of the Married Persons (Summary Relief) Act,

1960, shall continue to apply to such person except that the Minister shall be deemed to be the person entitled to receive payment under the order being enforced.

18. (1) Where an order has been made by a competent court for payment of maintenance by a defendant to or for his wife and children, or any of them, and payment into court has been ordered, and the legal right of the person entitled to such maintenance is pursuant to the provisions of section thirteen of this Act deemed to be assigned to the Minister, the Registrar of the Supreme Court, if the court is the Supreme Court, or the clerk of the court, if the court is other than the Supreme Court, shall at the request of the Director or an officer of the Department issue his certificate stating the amount due under the order at the date of the certificate.

Certificate
of amount
due and
judgment
thereon.

(2) A certificate issued pursuant to this section may be filed by the Director or an officer of the Department, either on behalf of the Minister or of the person entitled to receive the amount stated in the certificate, in a local court, if that amount is within the jurisdiction of the local court, or otherwise in the Supreme Court, and the clerk of the local court, or, as the case may be, the appropriate officer of the Supreme Court, shall enter judgment for the Minister for the amount stated to be due in the certificate together with the fees paid for the certificate and for filing the same and entering judgment.

(3) A judgment entered under this Act may be enforced in any manner in which a final judgment in an action in a local court, or, as the case may be, in the Supreme Court, may be enforced.

(4) Rules of court may be made prescribing the practice and procedure in the Supreme Court and in local courts to be observed with respect to the filing of certificates and entering of judgments pursuant to this section and the fees to be paid.

Provisions where person assisted entitled to compensation, etc.

cf. Commonwealth Act, No. 26 of 1947, s. 115.

19. (1) Where the person to or on behalf of whom financial assistance has been granted under this Act is entitled to receive compensation or damages, or the proceeds of any policy of insurance or life assurance, or a share in the estate of any deceased person, the Minister may by notice in writing served on the person liable to pay the compensation, damages, proceeds or share, inform that person that the Minister proposes to recover from him the whole or portion of the amount of the financial assistance paid to or on behalf of the person so entitled.

(2) The Minister may by the same notice or by a subsequent notice in writing served on the person liable to pay the compensation, damages, proceeds or share, specify an amount payment of which is claimed by the Minister and thereupon that person shall become liable to pay to the Minister the amount so specified and in default of payment the Minister may recover the specified amount from that person in any court of competent jurisdiction.

(3) After service on him of a notice under subsection (1) of this section, the person liable to pay the compensation, damages, proceeds, or share shall not pay to or on behalf of the person entitled thereto any amount thereof until the Minister has specified the amount which the firstmentioned person is liable to pay to the Minister.

(4) Payment of an amount to the Minister under this section by the person liable to pay the compensation, damages, proceeds or share shall, to the extent of that payment, operate as a discharge to that person as against the person entitled to the compensation, damages, proceeds or share, as the case may be.

(5) This section shall have effect, in relation to the State or an authority of the State, notwithstanding the provisions of any Act which, but for this subsection, would prevent this section having effect.

(6) For the purposes of this section, "person", in relation to the person liable to pay the compensation, damages, proceeds or share, includes the Commonwealth or an authority of the Commonwealth, and the State or an authority of the State, and any insurer of that person.

20. Where a person has applied for, or is receiving, assistance under this Act and before the application is granted, or while the assistance is being received, a change occurs in the financial position of that person whereby his financial position is or will be improved or bettered, that person shall furnish to the Department forthwith full particulars of the change which has occurred and the circumstances relating to the same.

Improvement in financial position to be notified to Department.

21. (1) Any person who—

- (a) makes, whether orally or in writing, a false or misleading statement in any application, declaration or other document under or for the purposes of this Act;
- (b) obtains payment of any advance which is not payable; or
- (c) obtains payment of any advance by means of a false or misleading statement or by means of impersonation or a fraudulent device,

False statement punishable.

commits an offence against this Act.

Penalty: Fifty pounds, or imprisonment for three months.

(2) A person convicted of an offence against this section may, in addition to the penalty imposed for the offence, be ordered to repay to the Minister any amount paid by way of advances in consequence of the act, failure or omission in respect of which that person was convicted.

Action to recover debt, etc., deemed assigned to Minister an offence.

22. Any person who, without the consent of the Minister first had and obtained, exercises or attempts to exercise any legal or other remedy or takes or attempts to take any legal action with a view to recovering any debt, money, property or maintenance deemed to be assigned to and vested in the Minister under the provisions of this Act commits an offence against this Act.

Penalty: Fifty pounds, or imprisonment for three months.

Recovery of over-payment.

23. Where in consequence of a false statement or representation, or in consequence of a failure or omission to comply with any provision of this Act, moneys have been paid by way of advances under this Act which would not have been paid but for the false statement or representation, failure or omission, the amount so paid shall be recoverable in a court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the State.

Offences generally.

24. (1) A person who does not do a thing which by or under this Act he is required or directed to do, and a person who does or attempts to do a thing which by or under this Act he is prohibited from doing, commits an offence against this Act.

General penalty.

(2) A person who commits an offence against this Act is liable to the penalty expressly mentioned as the punishment for the offence, but where a penalty is not expressly mentioned is liable—

- (a) where the offence is not a continuing offence, to a maximum penalty of fifty pounds; and
- (b) where the offence is a continuing offence, to a penalty of one pound for each day during which the offence continues.

25. (1) The funds available for the purpose of enabling the Minister to make advances under this Act shall consist of money appropriated by Parliament to the purposes of this Act.

Provision for
expenditure.

(2) All moneys received in repayment, either in whole or in part, of advances made under this Act shall be paid to the credit of the Consolidated Revenue Fund.

26. (1) The Director shall keep or cause to be kept in full and proper form accounts of all operations under this Act, and the accounts shall once at least in every year be audited by the Auditor General.

Accounts
and audit..

(2) The Auditor General has and shall exercise in respect of such accounts the powers conferred on him by the Audit Act, 1904.

27. The Director shall cause to be prepared annually a written report of the proceedings and operations under this Act during the preceding year and shall submit such report together with copies of the accounts prepared for that year duly audited, and the Auditor General's report thereon, to the Minister who shall as soon as practicable in each year lay them before both Houses of Parliament.

Annual
report.

28. A person, not being an officer appointed under this Act, who takes the name, designation or description of any officer appointed under this Act, or pretends or asserts that he is such an officer, is guilty of an offence.

Personation
of officers.

29. A person who occupies or has occupied the office of Minister, Director, or officer appointed under this Act, or who otherwise carries out or has carried out any duty or function under this Act, is not personally liable for anything done or omitted in good faith in or in connection with the exercise

Exemption
from
personal
liability.

or purported exercise of any power conferred or which purports to be conferred, or the carrying out of any duty imposed or which purports to be imposed, by this Act.

Evidence.

30. (1) All courts shall take judicial notice of the signature of any person who holds or has held the office of Director or Assistant Director, and of the fact that that person holds or has held that office, if the signature purports to be on or appended to any official document, and any document purporting to be so signed shall be received in all courts as *prima facie* evidence of the facts and statements contained therein.

(2) A statement in writing signed by a person who holds or has held any office referred to in subsection (1) of this section that a person is or was on a certain date, in receipt of assistance under this Act at a certain rate shall be received in all courts as *prima facie* evidence that the lastmentioned person was on that date in receipt of such assistance and of the rate thereof.

(3) Upon the hearing of any proceedings brought by the Minister under this Act for recovery of the amount of any advances made under this Act, allegations that advances have been made and have not been repaid, and that the person proceeded against is liable to repay to the Minister the amount of any advances, shall be received as *prima facie* proof of those allegations respectively, and the onus of proving that such advances have not been made, or that they have been repaid, or that the person proceeded against is not liable so to repay the amount thereof, shall lie upon the defendant.

**Information
as to appli-
cants.**

31. The Minister, or the Director, may by notice in writing served by post on a person whom he believes to be in a position to do so, require that person to furnish to him a confidential report relating to any matter which might affect the granting of assistance under this Act to any indigent person, or the recovery of any advances made under

this Act, and the person so required shall furnish a report accordingly within fourteen days after service upon him of such notice, and shall not furnish a report which is false or misleading in any particular.

Penalty: Ten pounds.

32. The Minister, the Director, and any officer appointed under this Act, shall not be required to produce in any court any application, or any determination of an application, under this Act, or to divulge or communicate to any court or to any person any matter or thing which has come to his knowledge or under his notice in the performance of his duties or in the exercise of his powers or functions, under this Act, except where it is necessary so to do for the purposes of giving effect to the provisions of this Act.

Secrecy to be observed.

33. (1) The Governor may make such regulations as he considers necessary, convenient or desirable for facilitating the operation of this Act or giving effect to the purposes of this Act or for better enabling the Minister and the Director to carry out their respective functions under this Act.

Regulations.

(2) Without prejudice to the generality of the power conferred by subsection (1) of this section, the Governor may prescribe such forms and fees as he considers necessary to give effect to this Act and may by regulation prescribe as a penalty for the breach of any regulation so made a penalty not exceeding fifty pounds.

FIRST SCHEDULE.

s 3.

The Act for the Relief of Destitute Persons (Act 9 Victoriae No. 2).

Guardianship of Infants Act, 1920.

Guardianship of Infants Act, 1926.

Child Welfare Act, 1947.

Interstate Maintenance Recovery Act, 1959.

Married Persons (Summary Relief) Act, 1960.