

Approved for Reprint, 19th February, 1973.

WESTERN AUSTRALIA.

MARRIED PERSONS AND CHILDREN (SUMMARY RELIEF).

No. 109 of 1965.¹

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

No. 64 of 1967, assented to 5th December, 1967;

No. 88 of 1972,² assented to 4th December, 1972;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to amend and consolidate the law relating to the Summary Relief of Married Persons, the Maintenance of those Persons, the Custody and Maintenance of Children generally, and for other incidental purposes.

[Assented to 17th December, 1965.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Married Persons and Children (Summary Relief) Act, 1965-1972*.

Short title
[W.A., s. 1.]
Amended by
No. 88 of
1972, s. 1.

2. (1) Subject to subsection (2) of this section, this Act shall come into operation on a date to be fixed by proclamation.¹

Commence-
ment.
W.A., s. 2.

The abbreviations used in the marginal references of this Act to other Acts have the following meanings: U.K. = 8 & 9 Eliz. C.48; M.C.A. = Matrimonial Causes Act, 1959 (C'with); N.S.W. = Act No. 74 of 1964 (N.S.W.); Vic. = Act No. 7289 (Vict.); Qsld. = The Maintenance Act of 1965 (Queensland); S.A. = Social Welfare Act, 1926-1965 (S. Aust.); W.A. = Act No. 80 of 1960 (as amended); C.W.A. = Child Welfare Act, 1947 (as amended); IMRA. = Act No. 28 of 1959 (as amended); REMO. = Act No. 27 of 1921 (as amended).

¹ Proclaimed to come into operation on 1st March, 1966 (except s.s. 33 to 48). See *Gazette* 26/2/66, p. 550.

² Proclaimed to come into operation on 1st January, 1973. See *Gazette* 20/12/72, p. 4726.

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(2) It is not necessary that the whole of this Act be proclaimed to come into operation on one day; and the several Parts or sections may be proclaimed to come into operation on such respective days as are fixed by proclamation.

Arrange-
ment.
[W.A., s. 3.]
Amended by
No. 88 of
1972, s. 3.

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

PART I.—PRELIMINARY, sections 1-5.

PART II.—COURT, sections 6-8.

PART III.—RELIEF, sections 9-27.

Division 1.—Original Orders, sections 9-19c.

Division 2.—Ancillary Orders, sections 20-25.

Division 3.—Cessation of Orders, sections 26-27.

PART IIIA.—REGISTRATION OF MAINTENANCE AGREEMENTS, sections 27A-27G.

PART IV.—ENFORCEMENT WITHIN THE STATE OF ORDERS MADE UNDER PART III, sections 28-48.

Division 1.—Interpretation and transitional provisions, section 28.

Division 1A.—Disobedience to an Order, etc., sections 29-29B.

Division 1B.—Commitment proceedings etc., sections 30A-31M.

Division 1C.—Venue, defences, other methods of enforcement, etc., sections 32A-32J.

Division 2.—Enforcement by Attachment of Earnings, sections 33-48.

PART V.—RECIPROCAL ENFORCEMENT OF ORDERS, sections 49-88.

Division 1.—Interpretation and Administration, sections 49-52.

Division 2.—Interstate Orders, sections 53-62.

Division 3.—Overseas Orders, sections 63-79.

Division 4.—General, sections 80-88.

PART VI.—APPEALS, sections 89-90.

PART VII.—EVIDENCE, sections 91-100.

PART VIII.—PROCEDURE AND MISCELLANEOUS, sections 101-111.

4. (1) The Acts mentioned in Part I of the Schedule to this Act are repealed to the extent therein specified.

Repeal and savings.
Schedule, Pt. I.
W.A., s. 4.

(2) Notwithstanding the repeal of the Married Persons (Summary Relief) Act, 1960, effected by subsection (1) of this section—

- (a) every order that is, under or by virtue of that Act, still in force on the coming into operation of this Act, continues to have effect as though made under this Act;
- (b) every proceeding that has been commenced under that Act and not completed shall be continued as though commenced under this Act;

(3) For the purposes of subsection (2) of this section, an order of which the operation has been suspended is still in force.

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

“adopted” means—

- (a) adopted in accordance with the law of this State, or the law of another State or of a Territory of the Commonwealth; or
- (b) adopted in a country outside Australia and the Territories of the Commonwealth, if the adoption was effective according to the law of that country and the adoption is recognised by the law of this State as having effect in this State;

Interpretation.
W.A., s. 5.
Cf. U.K.
s. 16;
N.S.W., s. 7;
Vic., s. 3;
Qsld., s. 7;
and S.A.,
s. 5.
Amended by
No. 64 of
1967, s. 2;
No. 88 of
1972, s. 4.

“child”, in relation to any person or persons, includes an illegitimate or adopted child of that person or, as the case may be, of those persons, but does not include a child of that person or those persons adopted by another person or persons; and “mother”, “father” and “parent”, in relation to a child, shall be construed accordingly;

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

- (a) any child of both parties; and
- (b) any child of either party who has been accepted as one of the family by the other party;

“clerk” means a clerk or assistant clerk of the court, appointed under section one hundred and eight;

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

“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;

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

“court” means the Summary Relief Court established under this Act;

“dependant” means a person who is under the age of sixteen years, or a person who having attained the age of sixteen years is without means, or sufficient means, and to that extent depends on some other person for his support, and—

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

“Director” means the Director of the Department for Community Welfare, appointed under the Community Welfare Act, 1972¹;

“habitual drunkard” means a person who by reason of habitual intemperate drinking of alcoholic liquor—

- (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;

“marital offence” means any of the causes of complaint mentioned in section ten;

¹ See Act No. 27 of 1972, s. 4.

“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, or preserved by, this Act; and “final order” is used in this Act in contradistinction to an interim order;

“Part” means a Part of this Act;

“preliminary expenses”, in respect of the confinement of a woman, means the expenses of the maintenance of the woman during the period of two months immediately preceding the confinement, reasonable medical, surgical, hospital and nursing expenses attendant upon the confinement, and the expenses of the maintenance of the woman and the child or children born to the woman during the confinement for three months immediately after birth;

“section” means a section of this Act;

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

“Territory of the Commonwealth” includes a territory under the trusteeship of the Commonwealth;

“the rules” means the rules of the court made under section one hundred and ten;

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

M.C.A., 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.

(3) For the purposes of this Act, a man and a woman married by a subsisting marriage, whether monogamous or polygamous, shall, if the marriage is lawful and binding in the place where it was solemnized, be regarded as husband and wife.

PART II.—COURT.

6. (1) A court of summary jurisdiction called the "Summary Relief Court" is established by this Act.

Court.
W.A., s. 6.

(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 that 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 under the provisions of the Local Courts Act, 1904.

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

Constitution
of Court.
[W.A., s. 7.]
Amended by
No. 64 of
1967, s. 3.

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

(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 that is not an application made under Division 1 of Part III; 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.

(3) Notwithstanding the provisions of subsection (1) of this section, the court may, for the purpose of hearing an application made under section sixteen, be constituted by a Stipendiary Magistrate.

Decision of
Magistrate
to prevail.
W.A., s. 8.

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.

Division 1.—Original Orders.

Jurisdiction
of the Court.
Cf. N.S.W.,
s. 8; Vic. s. 4;
Qsld., s. 8;
S.A., s. 39A
and IMRA,
s. 8.
[Sic.]

9. (1) The court has jurisdiction to make an order under this Part, not being an order containing a provision for the custody of, or access to, a child,—

- (a) if the person against whom the order is sought; or
- (b) if the person for whose benefit the order is sought,

is resident in the State.

(2) The court has jurisdiction to make an order containing a provision for the custody of, or access to, a child—

- (a) if the child in respect of whom the order is sought is then present in the State; and
- (b) if the complainant or the defendant in the proceedings in which the order is sought is resident in the State.

(3) Subject to the preceding provisions of this section, the court has jurisdiction to make an order under this Part whether or not the facts or circumstances, or any of them, the existence or occurrence of which is necessary for the making of the order, took place or arose before the coming into operation of this Act or outside the State.

(4) A summons issued pursuant to this Part may be served outside the State.

10. A married person may apply, by way of complaint, to the court for an order 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 contribute 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

Grounds for relief of married persons and children of the family.
[W.A. s. 9.
U.K., s. 1.]
Amended by No. 88 of 1972, s. 5.

be made available for the purpose, it is reasonable in all the circumstances to expect a wife so to provide or contribute;

(e) has, since the marriage, for a period of at least twelve months immediately preceding the application—

(i) been a habitual drunkard; or

(ii) habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation,

or has, for a part or parts of that period, been a habitual drunkard and has, for the other part or parts of the period, habitually been so intoxicated;

or

(f) has, since the marriage, committed adultery or been guilty of 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 allow.

Relief for married persons and children of the family. [W.A., s. 10. Cf. U.K., s. 2.] Amended by No. 64 of 1967, s. 4; No. 83 of 1972, s. 6.

11. (1) On hearing a complaint made under section ten, the court may, subject to subsection (3) of this section, upon proof of any of the causes of complaint, 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;

(b) a provision that a party to the marriage pay to an officer of the court, for disbursement to a person named in the order, such weekly or periodical sum by way of maintenance of the other party to the marriage 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 custody of any child of the family;
- (d) a provision for access to a child of the family;
- (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 an officer of the court for disbursement to a person named in the order for the benefit of the child, 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 purposes of, 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 ten, 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 ten, unless the court is satisfied that the defendant has condoned,

or connived at, or by wilful neglect or conduct of the defendant has conducted 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.

(3a) On hearing a complaint made under section ten the court, in deciding whether to make a maintenance order in favour of any person, the duration of an order and the maintenance to be paid under an order, shall have regard to—

- (a) the needs of the parties, in determining which the court may have regard to the standard of living of the household which the parties had in common during the period in which they had been living together;
- (b) the ability of the parties to provide for their respective needs having regard to their circumstances and any duty of care towards a child of the family;
- (c) the potential earning capacity of the respective parties, and any other means at the disposal of either of them;
- (d) the responsibilities of the parties, including responsibility to any other person for whom either party has a legal obligation to support and (to such extent, if any, as the court in all circumstances, and having regard to the public interest, thinks proper) responsibility to any other person whom either party is in fact supporting;
- (e) the ability of either party to increase his or her earning capacity—
 - (i) if assisted to undertake a period of education or training or in establishing a business; or
 - (ii) in any other manner whatever;

- (f) the duration of the marriage and the extent to which it has affected the potential earning capacity of either party; and
- (g) any other circumstances that the court thinks relevant.

(3b) Notwithstanding subsection (3) of this section, the court shall not refuse to make a maintenance order in favour of a party on the ground of wrongful conduct if that party is, having regard to health, responsibility towards any child of the family, or other circumstances, unable to provide the necessities of life for himself or herself.

(3c) Notwithstanding subsection (3) of this section, where the parties are not living apart, the court may make a maintenance order if in the circumstances the court thinks fit, but where the parties continue to live together for a period of three months beginning with the date of the making of the order under this subsection the order ceases to have effect at the expiration of that period.

(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.

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(6) The court, in making an order containing a provision for maintenance may direct that the provision 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.

(7) The court, in making an order containing a provision for maintenance, may—

- (a) take into account the value of benefits provided otherwise than in monetary terms;
- (b) direct that in addition to or in lieu of the payment of a sum of money by way of maintenance by the defendant, or by the complainant, or by each of them, to an officer of the court there shall be paid or provided such particular amounts or other benefits as the court considers reasonably required in all the circumstances of the case and specifies in the order; or
- (c) prohibit the removal, disposal, or sale of any property specified in the order except upon such terms and subject to such conditions as the court thinks fit, and in any such case any person having an interest in the property that would be affected by the order may appear and be heard in the matter as a party to the application.

Effect of
separation
order.
W.A., s. 21.
Cf. M.C.A.
ss. 54-56.

12. 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.

13. (1) The court—

- (a) on hearing a complaint made under section ten; or
- (b) at any other time on application, by way of complaint, by a married person for an order against the other party to the marriage,

Non-molestation orders.
Repealed and re-enacted by No. 88 of 1972, s. 7.

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 the provisions of this Act, if it is satisfied that the making of the order is necessary for the protection of a party to the marriage or of any child of the family make an order (in this Act referred to as a "non-molestation order") requiring a party to the marriage not to, and not to attempt to, influence or interfere with the manner of living of, or to harass, or otherwise molest any person named in the order.

(2) Where an order is made under subsection (1) of this section the court may 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 do or refrain from doing or attempting any of the acts or things specified in the order during such period as specified in the order.

(3) A person who fails to comply with the provisions of an order made under this section is guilty of contempt of court.

(4) A person who fails to enter into a recognisance required to be entered into under this section is guilty of contempt of court and in default of his entering into the recognisance the court may commit him to prison for a period not exceeding six months, unless, meanwhile, the required recognisance is given.

Applications with respect to the custody of children, generally.

[Cf Act No. 23 of 1926, s. 8.]

Amended by No. 64 of 1967, s. 5; No. 88 of 1972, s. 8.

14. (1) Subject to subsection (2) of this section, a person may apply, by way of complaint, to the court for an order for the custody of a child.

(1a) A court shall not hear proceedings for a complaint under subsection (1) of this section unless it is satisfied that all the persons who appear to the court to be affected by the proceedings have been served or are represented.

(2) A person, other than a parent of the child or the Director, shall not bring a complaint under this section without the leave of the court, obtained on an application made in accordance with the rules; and a person shall not bring a complaint under this section where the order sought might be made pursuant to an application under section twenty-one.

(3) The court shall not grant an application made under subsection (2) of this section, unless—

- (a) the applicant can establish a *prima facie* case; and
- (b) the court is satisfied that the applicant has such an interest in the welfare of the child as, in the opinion of the court, warrants his bringing the complaint.

(4) On the hearing of a complaint made under subsection (1) of this section, the court may make an order containing a provision for the custody of the child and, in that event, may include in the order one or both of the following provisions, namely—

- (a) a provision for access to the child; and

- (b) a provision for the making of such weekly or periodical payments by a parent or the parents, in respect of the maintenance of the child, to an officer of the court for disbursement to the person having the custody of the child, for the benefit of the child, as the court, having regard to the means of the parent or of the parents, considers reasonable in all the circumstances of the case.

(5) Where an order is made under this section in respect of a child who is the subject of a provision for custody contained in a prior order, the order made under this section has the effect of varying the prior order.

(6) An application may be made to the court under this section for an order as to the custody of a child notwithstanding that the child is at the time of the application in the care and control of the person applying for the order.

14A. Where the court is satisfied—

- (a) that a man and a woman are the parents of an illegitimate child; and
- (b) that the complainant has made provision for the maintenance of that child, or is making, or will after the birth of the child be making, periodical payments under an order containing a provision for the maintenance of that child,

the court may, on the complaint of either of those persons, make an order for the custody of, and access to, that child.

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

- (a) shall regard the interests of the child as the paramount consideration; and

Custody of and access to illegitimate children. Added by No. 88 of 1972, s. 9.

Powers of the court with regard to custody. [W.A., s. 19. Cf. M.C.A., s. 85.] Amended by No. 64 of 1967, s. 6.

(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 proceedings, including the Director, 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, for the purposes of this section, 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 granted; and a welfare officer acting pursuant to an order made under this subsection shall, for the purposes of this section, be deemed to be an officer of the court.

(4) An order shall not be made containing a provision for the custody of a child, and, if made, the provision is of no effect, while—

- (a) the child is a ward, within the meaning of the Child Welfare Act, 1947; or
- (b) there is in force an order of the Supreme Court of this or of any other State or of a Territory of the Commonwealth for the custody or guardianship of the child, whether made under the law of the Commonwealth, of any State or of a Territory of the Commonwealth.

16. (1) Where an application is made to the court under this Act and it appears to the court that immediate provision should be made—

- (a) for the maintenance of a party to the marriage;

Interim
orders.

[W.A., s. 12.
Cf. U.K., s. 6.]

Amended by
No. 64 of
1967, s. 7;
No. 88 of
1972, s. 10.

- (b) for the maintenance of, access to, or the custody of, a child; or
- (c) in respect of any of the matters for which provision may be made under section thirteen,

the court may, at any time before it determines what final order, if any, should be made on the application, make an order under this section (in this Act referred to as an "interim order") in respect of those matters.

(2) Where an application for extension is made to the court whilst an interim order remains in force the court may, upon cause being shown, extend the operation of that order for a further period of not more than three months, but subject to any variation or suspension thereof an interim order remains in force only until—

- (a) it ceases to have effect pursuant to an order of a superior court;
- (b) the date of the making of the final order on, or the dismissal or withdrawal of, the application giving rise to the interim order;
- (c) the day, if any, specified in the interim order for the purpose; or
- (d) the expiration of a period of three months from the date on which it was made.

(3) An appeal does 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 does not operate as a stay of that order and the order shall not be stayed, pending the determination of the appeal.

(4) The provisions of this section extend, with the necessary modifications, to the making of an interim order by the Supreme Court or a Judge on an appeal instituted under section ninety.

(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 Division 2 of this Part, to be an order of the court and not of the Supreme Court.

(6) The powers conferred on the Supreme Court under this section do not affect the powers of that Court on an appeal under section ninety from the making, or refusal, of an interim order by the Court.

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

(8) Where an interim order containing a provision for maintenance ceases to be of effect, the provision for maintenance may, notwithstanding that event, be enforced so far as it relates to any period prior to the cessation.

(9) In determining what order, if any, should be made under this section the court shall, so far as the urgency of the case admits, have regard to the same considerations as would be relevant in determining what order should be made on the application; and any subsequent order for a provision may require that sums paid to or for the benefit of the person on whose behalf the application is made by virtue of this section shall be treated to such extent, if any, and in such manner as is provided by that order as having been paid on account of the provision made by that order.

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

17. (1) The parents of an illegitimate child are liable to provide for, or contribute towards, reasonable maintenance for the child.

(2) The mother of an illegitimate child may apply, by way of complaint, to the court for an order against the father of the child on the cause of complaint that he has not provided, or contributed

Relief for illegitimate children.
[Cf. C.W.A., ss. 67-72; N.S.W., ss. 15, 16; Vic. ss. 10-11; and Qsld., ss. 14-15.]
Amended by No. 64 of 1967, s. 8.

towards, reasonable maintenance for the child; and the Director may, in like manner, apply for an order against either, or both, of the parents, on that cause of complaint.

(3) On hearing a complaint made under subsection (2) of this section, the court, on being satisfied in the case of a male defendant, that he is the father of the illegitimate child, may, upon proof of the cause of complaint, make an order containing a provision for the making of such weekly or periodical payments by the father, by the mother or by each of them, in respect of the maintenance of the child, to an officer of the court, for disbursement to a person named in the order, for the benefit of the child, as the court, having regard to the means of both the father and the mother, considers reasonable in all the circumstances of the case.

(4) The court, in making an order under this section, may direct that a provision for maintenance contained in the order operate from a day not earlier than three months after the birth of the child.

(5) The court may be satisfied that a defendant is the father of an illegitimate child where he has been found to be the father in any other legal proceedings.

(6) An order made under this section shall recite the finding that the defendant is the father of the illegitimate child.

18. (1) A person is liable to provide for, or contribute towards, the payment of the preliminary expenses of a woman who, not being his wife, is pregnant by him or has been delivered of a child or a stillborn child of which he is the father.

Relief by payment of preliminary expenses.
[Cf. C.W.A., s. 74;
N.S.W., s. 17;
Vic. s. 12;
Qsld., s. 16;
and S.A., s. 61.]
Amended by No. 64 of 1967, s. 9; No. 88 of 1972, s. 11.

(2) A woman or the Director may apply, by way of complaint, to the court for an order against a person, not being the woman's husband, on the cause of complaint that—

(a) the woman—

(i) is pregnant by the defendant; or

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(ii) has been delivered of a child or a stillborn child of whom the defendant is, or was, the father;

and

(b) the defendant has not provided for, or contributed towards, the payment of the woman's preliminary expenses.

(3) On the hearing of a complaint made under subsection (2) of this section, the court may, upon proof of the cause of complaint, make an order containing a provision for the payment, by the defendant to an officer of the court for disbursement to a person or persons named in the order, of such preliminary expenses as the court, having regard to the means of both the defendant and the woman, considers reasonable in all the circumstances of the case.

(4) An order made under this section shall recite the finding (as the case may require) that the woman is pregnant by the defendant or that the woman has been delivered of a child or a stillborn child of which the defendant is, or was, the father.

(5) The court shall not make an order under this section where—

(a) the woman is pregnant, unless the court is satisfied by the evidence, or a certificate, of a legally qualified medical practitioner that the woman is quick with child; or

(b) the woman is delivered of a child or a stillborn child, unless the complaint is made within a period of twelve months after the happening of that event.

(6) Where an order is made under this section during the pregnancy of a woman, the order shall specify a date, not later than six months after the date of the order, on which it ceases to have effect, if the woman has not then been delivered of a child; and if—

(a) the woman is not delivered of a child before that date; or

- (b) the woman is delivered of a stillborn child before that date,

the order ceases to have effect on the date so specified or on the delivery of the stillborn child, as the case may be.

(7) Any moneys paid pursuant to an order made under this section and not disbursed shall, if—

- (a) the order ceases to have effect on a date specified in it pursuant to subsection (6) of this section, be repaid to the defendant; and
- (b) the order ceases to have effect on the delivery of a stillborn child, be—
 - (i) paid to the woman;
 - (ii) paid to the defendant; or
 - (iii) divided, in such proportions as the court thinks fit, between the woman and the defendant,

as the court may, on the application of any party or of its own motion, direct.

(8) Where an order is made under this section in favour of a woman during her pregnancy, the clerk may, from time to time direct the disbursement of moneys paid to an officer of the court pursuant to the order, in such manner as the clerk thinks proper, but so that disbursements aggregating more than half the moneys so paid are not made until the woman is delivered of a child or a stillborn child; and where the clerk is in doubt as to the propriety of, or of the manner of, any disbursement, he may apply to the court for directions and shall comply with any directions then given.

18A. (1) Where the court makes an order under section eighteen, whether before or after the birth of the child to whom it relates, the court may, upon the application of the complainant, make an order containing a provision for the making of such weekly or periodical payments by the father, by the mother or by each of them, in respect of the maintenance of the child, to an officer of the court, for

Court may make order for future maintenance on application for preliminary expenses. [N.S.W. s. 18; Vic. s. 13; Qsind. s. 17 and S.A. ss. 56-57.] Added by No. 64 of 1967 s. 10.

disbursement to a person named in the order, for the benefit of the child as the court, having regard to the means of both the father and the mother, considers reasonable in all the circumstances of the case.

(2) An order shall not be made under this section, unless the person or persons against whom the order is sought has or have been given notice of the intention to apply for, or has or have consented to the making of, the order.

(3) An order made under this section does not take effect until three months after the birth of the child to whom it relates or until the production, to the clerk, of a certified copy of the entry in the register of the birth of the child, whichever is the later; and does not take effect, at all, where the child is stillborn or where the child dies or is adopted before it would otherwise take effect.

(4) When an order made under this section takes effect, the clerk shall, forthwith, send by post to the person or persons against whom the order was made, at his, or each of their, last known place of residence or business, a notice setting out—

- (a) the name of the child or, as the case may be, the fact that the child is unnamed;
- (b) the date and place of the birth of the child; and
- (c) the date on which, and the place at which, the first payment pursuant to the order is required to be made.

Plural births.
Added by
No. 88 of
1972 s. 12.

18B. Where an order is made under this Act for the maintenance of a child, or in respect of the payment of the preliminary expenses of a woman, before the birth of the child to which that order relates, and two or more children are born, an application may be made for variation of the order to provide for the maintenance of the additional child or children or for the additional expenses occasioned thereby.

19. (1) The parents of an illegitimate child who was stillborn or has died before attaining the age of sixteen years are liable to provide for, or contribute towards, the payment of reasonable funeral expenses in respect of the child.

Relief in respect of funeral expenses of illegitimate child.

[Cf. C.W.A., s. 74; N.S.W., s. 19; Vic., s. 15; Qsld., s. 18; and S.A., s. 62.]

Amended by No. 64 of 1967, s. 11.

(2) Where an illegitimate child was stillborn or has died before attaining the age of sixteen years, the mother may apply, by way of complaint, for an order against the father of the child on the cause of complaint that he has not provided for, or contributed towards, the payment of reasonable funeral expenses in respect of the child; and the Director may, in like manner, apply for an order against either, or both, of the parents of the child, on that cause of complaint.

(3) On the hearing of a complaint made under subsection (2) of this section, the court, on being satisfied that the defendant was the father of the child, may, upon proof of the cause of complaint, make an order for the payment to an officer of the court, for disbursement to a person named in the order, of such funeral expenses in respect of the child as the court, having regard to the means of both the defendant and the mother, considers reasonable in all the circumstances of the case.

(4) The court shall not make an order under this section, unless—

- (a) the court is satisfied that the child quickened; and
- (b) the complaint is made within a period of twelve months after the death of the child.

19A. (1) A person obliged to make payments under an order containing a provision for maintenance or a provision for preliminary expenses is liable to provide for, or to contribute towards, the payment of medical expenses reasonably incurred by, or in respect of, a person for whose benefit the order was made, if the amount payable under the order is not sufficient to enable adequate provision to be made thereout for, or towards, the payment of those expenses.

Relief in respect of medical expenses. Added by No. 64 of 1967, s. 12.

(2) The person for whose benefit, or a person having the custody or care of a child for whose benefit, an order containing a provision for maintenance or a provision for preliminary expenses has been made under this Division or the Director may apply to the court, by way of complaint, for an order against the person obliged to make payments under the former order, on the cause of complaint that—

- (a) medical expenses have reasonably been, or or are reasonably required to be, incurred in respect of that person or of the child;
- (b) the amount payable under the order is not sufficient to enable adequate provision to be made thereout for, or towards, the payment of the medical expenses; and
- (c) the defendant has not provided for, or contributed towards, the payment of the medical expenses.

(3) On the hearing of a complaint made under subsection (2) of this section, the court may, upon proof of the cause of complaint, make an order for the payment to an officer of the court, for disbursement as provided by subsection (4) of this section, of such medical expenses as the court, having regard to the means of the defendant, considers reasonable in all the circumstances of the case.

(4) The court may, from time to time, of its own motion or on the application of a party to the proceedings or of the Director, give such directions as to the disbursement of moneys paid pursuant to an order made under subsection (3) of this section as it thinks fit, but so that moneys are not disbursed, except to the defendant, before the care or treatment in respect of which medical expenses are to be incurred has been rendered.

(5) Where a complaint might, but for that event, have been made under this section by a person who has died, the complaint may be made by a person who has paid, or is liable to pay, the medical expenses.

(6) An order shall not be made under this section upon a complaint made more than twelve months after the medical expenses have been incurred.

(7) In this section, "medical expenses" means the reasonable cost of medical, surgical, psychiatric, dental, hospital or nursing care or treatment.

19B. (1) Where, under the provisions of any other Act, a child was, at any time, committed to the care of the Department for Community Welfare and no order was then, or has since been, made for the maintenance of the child, the Director may apply, by way of complaint, for an order against a parent or the parents of the child on the cause of complaint that the child was so committed and the parent has not or the parents have not provided, or contributed towards, reasonable maintenance for the child.

Director may apply for maintenance of wards.
Added by No. 64 of 1967, s. 13.

(2) On hearing a complaint made under subsection (1) of this section, the court may, upon proof of the cause of complaint, make an order containing a provision for the making of such weekly or periodical payments by the parent or by the parents, in respect of maintenance of the child, to an officer of the court, for disbursement to the Director, as the court having regard to the means of the parent or the parents, considers reasonable in all the circumstances of the case.

19C. (1) The court shall not make an order under this Act containing a provision for the maintenance of a child who has attained the age of sixteen years unless the court is satisfied that the child is a dependant.

Maintenance of dependants over 16.
Added by No. 88 of 1972, s. 13.

(2) Notwithstanding that an agreement registered under Part IIIA of this Act contains a provision for the maintenance of a child which continues in force after the child attains the age of sixteen years, the agreement shall not, except in respect of money owing at the date on which the

child attains that age, be enforced under this Act after that date unless the court is satisfied that the child is a dependant.

(3) Where the court makes an order under this Act containing a provision for the maintenance of a child who has attained the age of sixteen years the court shall specify in that order the date, or the happening of any event, on which the provision ceases to have effect.

Division 2.—Ancillary Orders.

Suspension
of orders.
[W.A., s. 13.
Cf. U.K., s. 7.
Amended by
No. 64 of
1967, s. 14.

20. (1) Any party to a proceeding in which an order was made containing a provision for maintenance may apply to the court, by way of complaint, for an order suspending the operation of that provision.

(2) On hearing a complaint made under subsection (1) of this section, the court may, upon cause being shown by fresh evidence, make an order suspending the operation of the provision or suspending its enforcement or the operation of any warrant issued to enforce it, for such period as, having regard to all the circumstances of the case, it thinks fit.

(3) On making an order under this section the court shall specify the period of its operation and, on the expiration of that period, the provision suspended by that order shall, again, be of effect.

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

Variation
of orders.
[W.A., s. 14.
Cf. U.K., s. 8.]
Amended by
No. 64 of
1967, s. 15;
No. 88 of
1972, s. 14.

21. (1) Where—

- (a) a party to an order; or
- (b) a person to whom the custody or the care and control of a child is granted by an order; or

- (c) the Director, in respect of an order containing a provision for the maintenance of an illegitimate child,

applies, by way of complaint, to the court to have the provisions of that order varied the court may, upon cause being shown by fresh evidence, make an order—

- (d) varying any provision of that order; or
- (e) granting such further or other relief in accordance with this Part of this Act as may be sought in the application.

(2) Where a child of the marriage is born after the making of an order to which the parents are parties, application may be made under subsection (1) of this section for that order to be varied to include provisions in respect of that child.

(3) [*Repealed by No. 88 of 1972, S. 14.*]

(4) Where an order made under this section includes the variation of a provision for maintenance, the court may direct that the variation operate from such day and for such period, specified in the order, as it thinks fit.

(5) 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 if it had not been so varied.

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

(7) 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.

[W.A., s. 15. Cf. U.K., s. 8.]

Amended by No. 64 of 1967, s. 16; No. 88 of 1972, s. 15.

22. (1) A party to an order may apply, by way of complaint, to the court for an order discharging the order or any provision of the order; and—

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

(i) all the parties to the order have consented to the discharge of, or of any provision 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 or been guilty of sodomy or bestiality;

or

(b) upon cause being shown by fresh evidence, that the order or a provision of the order ought to be discharged,

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

(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, if the court is satisfied that the complainant has condoned or connived at or, by wilful neglect or conduct of the complainant, conduced or contributed to, that event or if the court is satisfied that having regard to health, responsibility towards any child of the family, or other circumstances, the party entitled to receive payments under the order is unable to provide the necessities of life for himself or herself and shall not discharge the order, except 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) A person obliged to make periodical payments under a provision for maintenance in respect of an illegitimate child may apply, by way of complaint, to the court for an order discharging that provision and, upon cause being shown by fresh evidence, that the provision ought to be discharged, the court may discharge the provision.

(3a) The Director may apply, by way of complaint, to the court for an order discharging a provision contained in an order for the maintenance or custody of, or access to, a child or, where the order contains no other provision, discharging the order; and, upon cause being shown, by fresh evidence, that the provision or order ought to be discharged, the court may discharge the provision or the order, as the case may require.

(4) In discharging an order under the provisions of this section, the court may direct that the discharge of any provision contained in the order operate from a day not earlier than the happening of the event in respect of which the complaint is made.

(5) 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.

(6) 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.

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

Revocation
of orders.
W.A., s. 16.
Cf. U.K., s. 8.

23. Upon the complaint of a person aggrieved by an order made under this Act, the court may, upon cause being shown by fresh evidence, revoke the order complained of and may, in such case, revive any provision of an order that 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
W.A., ss. 17
and 18.
Cf. U.K., s. 4.

24. (1) On hearing an application made under any of sections twenty to twenty-three inclusive or under section twenty-nine or thirty, 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.

(2) On hearing a complaint made under section ten, twenty-one or twenty-two, 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, a 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.

24A. (1) Except as otherwise provided by this Part, the court, in making an order containing a provision for maintenance, may direct that the provision operate from such day prior to the making of the order as it thinks fit; and, where the provision is to operate from a day prior to the making of the order, the court may direct that the amount that has accrued with respect to the period prior to the making of the order be paid in one sum or by instalments, as it thinks fit.

Court may make provision for past maintenance.

Added by No. 64 of 1967, s. 17.

Amended by No. 88 of 1972, s. 16.

(2) [*Repealed by No. 88 of 1972, s. 16.*]

24B. (1) Subject to the rules, the court may, on the application of a party to proceedings under this Act, for sufficient reason and on such conditions as the court thinks reasonable, order any other party to the proceedings to furnish to the applicant and to the court, within such period as may be specified in the order, a statement verified by affidavit showing the assets and liabilities of that other party and the total receipts, whether of money or any other property or advantage, of that other party during the preceding twelve months.

Disclosure of assets and liabilities.

Added by No. 88 of 1972, s. 17.

(2) A person who fails to make a full and accurate disclosure of means in accordance with the terms of an order made under this section is guilty of contempt of court.

25. In any proceedings taken under this Act, the court, whether on the adjournment of the hearing of or on 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

Costs.

[W.A., s. 20.]
Amended by No. 64 of 1967, s. 18; No. 88 of 1972, s. 18.

of the parties to the proceedings to an officer of the court, for disbursement to a person or persons named in the order, of the whole or part of the costs of all or any of the other parties.

Division 3—Cessation of Orders.

Cessation of orders for the benefit of children.
[W.A., s. 15A.]
Amended by No. 64 of 1967, s. 19.

26. (1) Subject to the provisions of subsection (2) of this section, a provision in an order for the maintenance of a child ceases to have effect, unless the order contains an express provision to the contrary, when the child attains the age of sixteen years and, in any case, ceases to have effect when the child marries, dies or is adopted or the person against whom the order is made dies.

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

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

and may, so long as the child continues to be a dependant, from time to time, by subsequent order made under this section, extend the period specified

in any previous order so made, for such period during that dependency as may be specified in the subsequent order.

(3) Notwithstanding the cessation, pursuant to this section, of a provision for the maintenance of a child, the provision may, except where the child for whose benefit it was made has died, be enforced so far as it relates to any period not exceeding six months immediately prior to the cessation.

27. (1) A provision in an order for the maintenance of a wife or a husband by the other party to the marriage, if not sooner discharged, ceases to have effect when either party dies.

Cessation of orders for the benefit of wives or husbands.

(2) Notwithstanding the cessation, pursuant to this section, of a provision for maintenance, the provision may, except where the person entitled to receive payment under it has died, be enforced so far as it relates to a period not exceeding six months immediately prior to the cessation.

PART IIIA.—REGISTRATION OF MAINTENANCE AGREEMENTS.

Part IIIA added by No. 88 of 1972, s. 19. Interpretation. Added by No. 88 of 1972, s. 19.

27A. In this Part of this Act—

“maintenance agreement” means—

- (a) any written agreement made between the parties to a marriage providing for the periodical payment by either party of sums of money towards the maintenance of the other party;
- (b) any written agreement made between any person and a man acknowledging himself to be the father of a child, and providing for the periodical payment by the man of sums of money towards the maintenance of the child;

(c) any written agreement made between the mother of a child and a man acknowledging himself to be the father of the child, and providing for the periodical payment by the man of sums of money towards the maintenance of the mother, where the mother is a person to whom—

(i) he is not married; and

(ii) he has never been married, or to whom he has been married but the marriage was dissolved before the conception of the child; or

(d) any written agreement made between a person entitled under Part III of this Act to apply for an order containing a provision for maintenance in respect of a child and any person against whom that order may be made, and containing a provision for the periodical payment by the person against whom that order may be made of sums of money towards the maintenance of the child,

and “agreement”, unless the context otherwise requires, shall be construed accordingly;

“registered maintenance agreement” means a maintenance agreement registered with the court pursuant to section twenty-seven B.

Registration
of
maintenance
agreements
and
variations.
Added by
No. 88 of
1972, s. 19.

27B. (1) Any party to a maintenance agreement, whether it was made before or after the coming into operation of this Part of this Act, may register the agreement with the court in the manner provided by the rules.

(2) Subject to this Act, a registered maintenance agreement, while it continues in force, has the same force and effect as if it were, and shall for the purposes of this Act be deemed to be, an order made

under this Act on the date of registration in the court, and the references in this Act relating to orders containing a provision for maintenance apply, with the necessary modifications, accordingly.

(3) If a registered maintenance agreement is varied by written agreement between the parties, the variation may be registered in the same manner as the original agreement, which thereafter has effect for the purposes of this section as so varied.

27C. (1) The court shall set aside the registration of a maintenance agreement if the court is satisfied that at the time of registration the agreement was not in force.

When registration may be set aside or cancelled. Added by No. 88 of 1972, s. 19.

(2) The court may make an order cancelling the registration of any maintenance agreement if it is satisfied that the agreement is no longer in force.

27D. (1) A registered maintenance agreement binds the parties for the payment of maintenance in respect of any person for whose maintenance provision is made in the agreement, according to its tenor.

Agreements to bind the parties. Added by No. 88 of 1972, s. 19.

(2) For the purposes of this Part it is immaterial whether or not the documents in which a maintenance agreement is embodied also provide for the separation of the parties or the custody of any child.

(3) A provision in a maintenance agreement whereby a person undertakes not to register the agreement under this Act is void.

(4) While a registered maintenance agreement continues in force no party to whom money is payable under that agreement is entitled to apply for an order under this Act against the party liable under the agreement in relation to the maintenance of any person in respect of whom maintenance is payable under that agreement, except—

(a) an order by way of enforcement or variation;

- (b) if the person liable under that agreement leaves the State; or
- (c) in respect of the discharge or suspension of that liability.

Agreements by persons under 21. Added by No. 88 of 1972, s. 19.

27E. A maintenance agreement that is entered into by a person under the age of twenty-one years is binding and may be enforced.

Enforcement against estate of deceased party. Added by No. 88 of 1972, s. 19.

27F. Except in respect of money owing at the date of death, no proceedings under this Act for the enforcement of a registered maintenance agreement shall be taken after the death of the person liable under the agreement, notwithstanding that it continues in force thereafter.

Recovery of arrears on cessation of agreement. Added by No. 88 of 1972, s. 19.

27G. Notwithstanding that any registered maintenance agreement has ceased to be in force, proceedings may be taken under this Act for the recovery of any money owing at the time when it ceased to be in force.

PART IV.—ENFORCEMENT WITHIN THE STATE OF ORDERS MADE UNDER PART III.

Heading substituted by No. 88 of 1972, s. 20.

Division 1.—Interpretation and transitional provisions.

Enforcement of orders. [W.A., s. 22.] Substituted by No. 88 of 1972, s. 20.

28. (1) In this Part unless inconsistent with the context or subject matter—

“arrears of maintenance” means the amount of money presently due and payable and which has not been paid under a maintenance order, and may include costs;

“commitment order” means an order for the commitment of the defendant to prison;

“defendant”, in relation to a maintenance order or to proceedings in connection with a maintenance order, means the person against whom the order was made;

“maintenance order” means an order containing a provision for maintenance made or deemed to have been made or enforceable as if made under this Act, and, if such an order has been varied, means the order as so varied, and includes—

- (a) such an order that has ceased to have effect if any arrears are recoverable under the order; and
- (b) an order for the payment of costs in any proceedings in which such an order was made.

(2) In this Part—

- (a) a reference to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive payments under the maintenance order either directly or through another person and the expression “payments” shall be read as including a reference to benefits provided otherwise than in monetary terms; and
- (b) a reference to proceedings relating to an order includes a reference to proceedings in which the order may be made.

(3) Without limiting the provisions of the Interpretation Act, 1918, generally, and in particular the provisions of section fifteen and section sixteen of that Act, it is hereby declared that the repeal by the Married Persons and Children (Summary Relief) Act Amendment Act, 1972, of the law relating to the enforcement of orders by warrant does not affect—

- (a) any right accrued, or obligation incurred, before the date of coming into operation of that Act under the law so altered; or
- (b) the validity or invalidity, or any operation, effect or consequence, of any warrant, or of anything done or suffered under a warrant, before that date; or

- (c) any action, proceeding or thing pending on that date or uncompleted on that date in relation to any such warrant for enforcement and that action, proceeding or thing may be carried on and completed as if the law relating to the enforcement of orders by warrant had not been repealed.

Heading added by No. 88 of 1972, s. 20.

Division 1A.—Disobedience to an Order, etc.

Disobedience of an order. [W.A., s. 23.] Amended by No. 64 of 1967, s. 21; No. 88 of 1972, s. 21.

29. (1) Where an order contains a provision for separation, a 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 the provision for separation, and where an order contains a provision for the custody of a child, a person who molests or interferes with, or attempts to molest or interfere with, that child, contrary to the 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 one hundred dollars or three months' imprisonment.

(2) Where an order contains a provision for access to a child, a person 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—

- (a) section thirteen;
- (b) section twenty-four B; or
- (c) subsection (1) or subsection (2) of 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 and in default of his entering into the recognisance may commit the person for a period not exceeding six months, unless, meanwhile, the required recognisance is given.

(4) Where an order contains a provision for maintenance, the person for whose maintenance that provision was made or, if the provision was made for the maintenance of a child, the person having the custody or care of the child, may apply to the court for an order that the person against whom the order was made be required, while the provision is in force, to enter into a recognisance for his due compliance with that provision; and the court, upon proof that the person against whom the order was made—

- (a) has persistently made default in complying with the provisions for maintenance;
- (b) has by his conduct indicated an intention of making default in complying with the provision for maintenance; or
- (c) is about to remove out of the State or into a distant part of the State, without making provision for the future compliance with the provision for maintenance,

may, in any such case as is mentioned in paragraph (a) of this subsection, adjudge him guilty of contempt and may, in any of those cases, require him forthwith to enter into a recognisance, with or without sureties, in such reasonable amount as the court thinks fit, for his due compliance with that provision, while in force, and, in default of his entering into the recognisance, may commit the person for a period not exceeding six months, unless, meanwhile, the required recognisance is given.

(5) A person who is guilty of contempt under—

- (a) section thirteen;
- (b) section twenty-four B; or
- (c) this section,

may be committed to prison for any period not exceeding six months and, in addition to, or in lieu of, that penalty, is liable to a fine not exceeding five hundred dollars.

(6) Where a person disobeys an order as to the custody of, or for access to, any child the court may vary or suspend any order containing a provision for the maintenance of that person, in such manner as the court thinks fit, for so long as the disobedience continues.

Offence in respect of custody orders made in other Australian States. Added by No. 88 of 1972, s. 22.

29A. (1) Where an order made in another Australian State under a law that corresponds with this Act commits the custody of a child to any person, any other person who, in this State—

- (a) molests or interferes with the child contrary to the order; or
- (b) having the care or control of the child in this State, refuses or fails on demand to deliver the child to the person entitled to the custody of the child under the order,

is guilty of an offence against this Act punishable by a fine not exceeding one hundred dollars or three months' imprisonment.

(2) Where such an order as is referred to in subsection (1) of this section makes provision for access to the child by any person, any other person who, in this State, without just cause or excuse refuses to afford, or prevents, or interferes with, access to the child in accordance with the order is guilty of an offence against this Act punishable by a fine not exceeding one hundred dollars or three months' imprisonment.

(3) Subsection (3) of section twenty-nine applies in relation to a conviction for an offence under this section as it applies in relation to a conviction under subsection (1) of that section as if the order in respect of which the offence was committed was a custody order.

29B. (1) Where the court is satisfied that a person has failed to comply with any of his obligations under a recognisance entered into pursuant to this Act it may, on its own motion or on an application by way of complaint by the clerk of the court or by or on behalf of a party to the proceedings in relation to which the recognisance was given, adjudge the recognisance to be forfeited.

Enforcement
of recognis-
ances.
Added by
No. 88 of
1972, s. 22.

(2) Upon adjudging the recognisance to be forfeited the court may—

- (a) order the persons bound by the recognisance, whether as principal or surety, to pay the sum for which they are respectively bound and in default to be imprisoned for a term not exceeding six months; and
- (b) commit the person who breached the recognisance to imprisonment for a term not exceeding six months.

(3) Unless the court adjudging the recognisance to be forfeit otherwise directs, the sums arising from the forfeiture of a recognisance under this section shall be paid to the clerk of the court in which the maintenance order stands.

(4) Where the recognisance related to an order containing a provision for maintenance the sums arising on the forfeiture may, subject to any directions which the court adjudging the recognisance to be forfeit may give, be applied by the clerk in or towards the discharge of any obligations arising under that order as and when the same are, or become, payable.

30. [*Repealed by No. 88 of 1972, s. 23.*]

Division 1B.—Commitment proceedings, etc.

Heading
added by
No. 88 of
1972, s. 23.

30A. (1) Where the court is satisfied that default has been made by the defendant in making the payments directed by a maintenance order it

Entry of
Judgment
in Local
Court,
Added by
No. 88 of
1972, s. 23.

Married Persons and Children (Summary Relief).

may, without requiring notice to be given to the defendant, grant to any person entitled to receive payment under the order a certificate stating the amount of the arrears of maintenance.

(2) Upon the certificate being filed in any Local Court judgment shall be entered against the defendant forthwith in favour of the person in whose name the certificate is granted for the amount stated in the certificate to be due together with the fees paid for the certificate and for filing and entering the judgment thereon.

(3) The Local Court shall forthwith send notice in writing of the entry of the judgment and of the amounts due to the clerk of the court at the place where payments under the maintenance order are for the time being required to be made.

(4) Where judgment is entered in a Local Court under this section proceedings for enforcement of the judgment shall not be commenced unless an affidavit has been filed stating that no proceedings are pending in another court for the recovery of any of the arrears of maintenance included in the amount of the judgment, and that the maintenance order has not been discharged, suspended or varied since the date of the certificate referred to in subsection (1) of this section in any way affecting any of the arrears of maintenance included in the amount of the judgment.

(5) Rules of court may prescribe the practice and procedure to be observed in the Local Court with regard to the filing of certificates and entering judgments thereon under this section and the fees to be paid.

(6) A judgment entered in the Local Court under this section may be enforced in any manner in which a final judgment in an action in the Local Court may be enforced.

30B. Where the court is satisfied upon complaint made by or on behalf of any person entitled to receive payment under a maintenance order, whether by way of a lump sum, by instalments, or by periodical payments, or for costs, that the defendant has disobeyed or failed to comply with the order and that arrears of maintenance are outstanding the court may order that the defendant be committed to prison in default of payment of the arrears and costs, the terms to be calculated at the rate of one day for every five dollars and any fractional part of five dollars but so that in no case shall the period of imprisonment exceed three months.

Power to court on complaint to commit defendant to prison for failure to pay maintenance. Added by No. 88 of 1972, s. 23.

31. [*Repealed by No. 88 of 1972, S. 23.*]

31A. Where it appears to the court making a commitment order under section thirty B that the defendant has been served personally with a copy of the complaint for commitment or that proceedings have previously been taken against him for enforcement or that he has otherwise had communicated to him the nature of proceedings under this Division neither the order nor a copy of the order need be served on the defendant before the issue of a warrant of commitment.

Notice of order of commitment not required. Added by No. 88 of 1972, s. 23.

31B. Upon the making of a commitment order under section thirty B or at any time thereafter the court may order that any amount due under the maintenance order be paid forthwith or within such time or by such instalments as the court allows, and the court may from time to time allow further time for the payment of any amount due or of any instalment or may vary any amount previously ordered to be paid under the commitment order.

Court may order mode of payment. Added by No. 88 of 1972, s. 23.

31C. Unless the court otherwise directs an order made under section thirty-one B is deemed to include a condition that the defendant in addition to paying the instalment so ordered to be paid,

Suspension of commitment subject to order being complied with. Added by No. 88 of 1972, s. 23.

continue to make periodical payment in terms of the maintenance order under which the commitment order is made.

Warrant of
commitment.
Added by
No. 88 of
1972, s. 23.

31D. Where a defendant has at any time been ordered, whether under this Part or under Part V, to pay any amount due under a maintenance order within a specified time or by instalments and the defendant fails to make payment thereof within the time specified, or fails to pay any instalment, or fails to comply with the condition that he continue to make current payments imposed under section thirty-one C, the whole amount due under the commitment order and not paid becomes due and payable forthwith and without any further or other authority than this section a warrant of commitment shall be issued in respect of the amount so due and payable, by the clerk of the court for the place where payments under the maintenance order are required to be made and such warrant shall be executed upon the defendant.

Court not
to commit
in certain
cases.
Added by
No. 88 of
1972, s. 23.

31E. A court shall not commit a defendant to prison pursuant to this Division if it is satisfied—

- (a) that the defendant has not and has not had the means and ability and could not by reasonable effort have had the means and ability to comply with the original order; or
- (b) that for any other reason the original order should not be enforced by imprisonment.

Where
court has
previously
refused to
commit
defendant
in respect
of amount
included in
complaint.
Added by
No. 88 of
1972, s. 23.

31F. Where a court that is asked to commit a defendant to prison under this Division for the non-payment of a sum is aware that a court in this State or another State has previously refused to commit the defendant to prison for non-payment of an amount included in that sum, the court shall only have regard to the figure by which the sum

still due and unpaid exceeds the original amount unless the court is satisfied that, since that refusal, the means and ability of the defendant to pay the original amount have so altered as to make it reasonable for him now to be committed to prison for non-payment of the original amount.

31G. A defendant shall not be liable to serve more than one period of imprisonment in respect of failure to pay an amount of arrears of maintenance but the liability to pay any such arrears shall not be discharged by imprisonment in respect thereto and the amount of any such arrears shall until paid remain a sum which may be recovered.

Defendant not liable to serve imprisonment more than once for any arrears, but arrears are to remain and be recoverable.
Added by No. 88 of 1972, s. 23.

31H. Notwithstanding anything to the contrary in any Act where an order has been made under this Division committing the defendant to prison in respect of arrears of maintenance and it appears to the clerk of the court to whom application is made for the issue of a warrant of commitment that the amount of the arrears of maintenance in respect of which the commitment order was made has been reduced the fact of such reduction shall be stated in the warrant of commitment and the term of imprisonment for which the defendant may be committed shall be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days in such term as the amount paid bears to the whole arrears of maintenance.

Reduction of term of imprisonment by part-payment, etc.
Added by No. 88 of 1972, s. 23.

31J. Notwithstanding anything to the contrary in any Act or in any warrant of commitment where any person is imprisoned for non-payment of arrears of maintenance he may pay or cause to be paid to the keeper of the gaol in which he is imprisoned—

Satisfaction of execution by payment.
Added by No. 88 of 1972, s. 23.

- (a) the whole of the arrears of maintenance or, having regard to section thirty-one H, the amount of those arrears remaining to be paid; or

(b) any amount which, having regard to the proportion mentioned in section thirty-one L, is (as nearly as may be) a fractional part of the whole amount adjudged to be paid, and in either case the keeper shall receive the payment.

Discharge of defendant by keeper. Added by No. 88 of 1972, s. 23.

31K. Where the amount mentioned in paragraph (a) of section thirty-one J is paid to the keeper the keeper shall thereupon discharge such person if he is in custody for no other matter.

Early discharge on part payment. Added by No. 88 of 1972, s. 23.

31L. Where an amount mentioned in paragraph (b) of section thirty-one J is paid to the keeper the term of imprisonment fixed by the commitment order shall be reduced by the number of days bearing the same proportion to the total number of days in such term as the amount paid bears to the whole of the arrears of maintenance and on the expiration of the term so reduced the person imprisoned shall if in custody for no other matter be discharged.

Order suspended during imprisonment. Added by No. 88 of 1972, s. 23.

31M. The operation of a provision for maintenance contained in the order by virtue of which he is imprisoned is, suspended during the continuance of that imprisonment; and if that imprisonment is being served under more than one warrant issued in respect of the same order, those warrants shall, for the purposes of the imprisonment, take effect cumulatively, but not for any period exceeding three months.

32. [*Repealed by No. 88 of 1972, s. 23.*]

Heading added by No. 88 of 1972, s. 24.

Division 1C.—Venue, defences, other methods of enforcement, etc.

Venue of hearing. Added by No. 88 of 1972, s. 24.

32A. (1) Proceedings for the enforcement of a maintenance order shall be heard by the court at the place where payments under the maintenance order are required to be made unless—

(a) the parties consent to the hearing of the complaint by a court sitting at another place; or

- (b) the hearing of the complaint is adjourned, upon the application of either party, to a court sitting at another place.

(2) Where the issue of a warrant of commitment with respect to an order is postponed in accordance with the provisions of this Part, then such warrant may be issued only by the clerk of the court in which the original order for maintenance stands.

32B. For the purpose of making an order under this Part, the court may receive evidence of any and every payment directed by the maintenance order to be made which, having become payable after the making of the complaint or application, was in arrears and not paid at the date of the hearing, as if the complaint had been duly made in respect of both of those payments and of the arrears that were due at the date of the making of the complaint or application, and in every such case the term "arrears" in this Part shall be construed as including those payments.

Arrears as at date of hearing. Added by No. 88 of 1972, s. 24.

32C. Where an order made under this Act contains a provision for the payment of any amount by instalments, if the person against whom the order is made makes default in the payment of any one instalment proceedings may be taken as if default had been made in the payment of all the instalments then unpaid.

Enforcement of instalment payments. Added by No. 88 of 1972, s. 24.

32D. Where proceedings are taken under this Part in respect of a failure to make payments for or towards the maintenance of a person it shall be a sufficient answer to those proceedings so far as relates to the failure to make payments during any period if it is proved that during that period the defendant adequately supported that person in a manner acceptable to that person.

Provision where defendant supported wife or child during any period. Added by No. 88 of 1972, s. 24.

Election
as to pro-
visions
to be
enforced.
Added by
No. 88 of
1972, s. 24.

32E. Where a person who is entitled to enforce any one or more of the provisions of an order, under this Part, elects, by notice in writing to the clerk not to enforce a provision specified in the notice, then, the clerk shall cause notice of the election to be given to the person or persons liable to make payments under the provision and, without affecting the enforcement of any other provision, the order shall not, without leave of the court first being obtained, be enforced as regards the provision so specified.

Duties
of clerk in
relation
to orders.
Added by
No. 88 of
1972, s. 24.

32F. (1) On application by or on behalf of any person entitled to enforce a maintenance order under this Act, to the clerk of the court in which the order is enforceable, such clerk may take all or any steps necessary or expedient to enforce the order on behalf of that person, but that person shall have the same liability for all costs properly incurred in or about the proceedings as if the proceedings had been taken by that person; and the clerk may refuse to act under the application if he deems it unreasonable for him so to do.

(2) In any proceedings under this Part for the purposes of enforcing payment of moneys ordered to be paid by an order under this Act or an order under any other Act registered for enforcement, the clerk is entitled to appear, to be heard, to give evidence, and to call, examine and cross examine witnesses.

(3) The fact that the clerk takes any proceedings for the enforcement of an order, shall be conclusive evidence of his authority so to do; and no person shall be concerned to enquire whether or not there has been a request under subsection (1) of this section or shall question the authority of the clerk on the ground that he may not be the clerk whose duty it is to take the proceedings.

(4) The clerk of the court shall not make a complaint under this section except upon a written application so to do made by or on behalf of a person

entitled to receive payment under an order, or, where that person is a child, by or on behalf of the parent or other person having the custody or care and control of that child, and the application may be either general or specific and, if general, may be complied with from time to time at the discretion of the clerk of the court.

(5) Nothing in this section shall affect any right of a person entitled to enforce a maintenance order, to proceed in person for recovery of any arrears due under the maintenance order.

32G. (1) The clerk of the court out of which a warrant was issued may—

Recall, cancellation, suspension and remand on warrants. Added by No. 88 of 1972, s. 24.

(a) recall any warrant in respect of which a fresh application or a new order is pending or has been made; and

(b) amend or cancel any warrant which is defective, or which is unexecuted and in respect of which subsequent payments have been made, or where the order has been varied, suspended or discharged.

(2) Where a warrant has been executed, the person at whose instance the warrant was issued or a person on whom the warrant was executed may apply by way of complaint to the court for an order and the court may, upon cause being shown,—

(a) make an order discharging the person taken into custody under the warrant;

(b) make a further order in accordance with section thirty-one B; or

(c) remand the person from time to time and from place to place with or without bail pending the hearing of the complaint.

32H. The provisions of this Part are without prejudice to any other method of enforcement, or to any penalty.

Other methods of enforcement and penalties. Added by No. 88 of 1972, s. 24.

Enforcement
outside the
State.
Added by
No. 88 of
1972, s. 24.

32J. Where an order containing a provision for the payment of money is to be enforced, as regards that provision, outside the State, the Collector, within the meaning of Part V, may, by *ex parte* application, apply to the court for the amendment of the order by the deletion of that part of it that relates to the manner of the enforcement of the provision; and, where the order is required subsequently to be enforced within the State, the Collector may, in like manner, apply for the restoration of the part of the order that was deleted; and, in either case, the court may, if it thinks fit, grant the application.

* *Division 2.—Enforcement by Attachment
of Earnings.*

Interpre-
tation.
[N.S.W., s.
48; Vic., s.
46; Qsld., s.
48; and S.A.,
s. 96a.]
Amended by
No. 88 of
1972, s. 25.

33.* (1) In this Division unless inconsistent with the context or subject-matter—

“attachment of earnings order” means an order under subsection (3) of section thirty-four or such an order as varied from time to time;

“earnings”, in relation to a defendant, means any sums payable to the defendant—

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

(b) by way of 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 in respect of or by way of compensation for the loss, abolition or relinquishment, or any

* Division 2 not yet proclaimed to come into operation.

diminution in the emoluments, of any office or employment,

but does not include any pension payable to the defendant under the Social Services Consolidation Act 1947, as amended by subsequent Acts, the Australian Soldiers' Repatriation Act 1920, as amended by subsequent Acts, or the Seamen's War Pensions and Allowances Act 1940, as amended by subsequent Acts, of the Commonwealth;

"employer", in relation to a defendant, means a person (including the Crown in the right of the State, a Minister of the Crown in right of the State, and any statutory authority representing the Crown in right of the State) by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the defendant;

"net earnings", in relation to a pay-day, means the amount of the earnings becoming payable by a particular employer on that pay-day, after deduction from those earnings of—

(a) any sum deducted from those earnings under Division 2 of Part VI of the Income Tax and Social Services Contribution Assessment Act 1936, as amended by subsequent Acts, of the Commonwealth; and

(b) any sum deducted from those earnings that would be an allowable deduction—

(i) under section 82H of that Act, as so amended, other than life insurance premiums, not being life insurance premiums payable in respect of superannuation; or

(ii) under section 82HA of that Act; as so amended;

“normal deduction”, in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order in respect of the period between that pay-day and either the last preceding pay-day, or, where there is no last preceding pay-day, the date on which the employer became, or last became, the defendant’s employer;

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

“protected earnings”, in relation to an attachment of earnings order and in relation to a pay-day, means the amount representing a payment at the protected earnings rate specified in the order in respect of the period between that pay-day and either the last preceding pay-day, or, where there is no last preceding pay-day, the date on which the employer became, or last became, the defendant’s employer.

Application
for
attachment
of earnings
order.
N.S.W., s. 49;
Vic., s. 47;
Qsld., s. 49;
and S.A.,
s. 96b.

34.* (1) A person entitled to receive payments under a maintenance order may apply, in the manner prescribed by the rules,—

- (a) where the name of an employer is specified in the application, to the court sitting at the place nearest to which the employer’s place of abode or business is situated; or
- (b) where the name of an employer is not so specified, to the court sitting at the place where payments under the order are required by the order to be made,

for an attachment of earnings order.

* See footnote to s.33 (1).

(2) An application under subsection (1) of this section may be made *ex parte* and without specifying the name of any particular employer.

(3) If the court is satisfied that the defendant is a person to whom earnings are payable or are likely to become payable and—

(a) that, at the time when the application was made, there was due under the maintenance order and unpaid an amount equal to not less than—

(i) in the case of an order for weekly payments—four payments; or

(ii) in any other case—two payments; or

(b) that the defendant has persistently failed to comply with the requirements of the order,

the court may order a person who appears to the court to be the defendant's employer in respect of those earnings or a part of those earnings to make out of those earnings or that part of those earnings payments in accordance with section thirty-five.

(4) The court shall not make an attachment of earnings order if it appears to the court, in a case to which paragraph (a) of subsection (3) of this section applies, that the failure of the defendant to make payments under the maintenance order was not due to his wilful refusal or culpable neglect.

(5) An attachment of earnings order shall—

(a) specify either generally or in relation to any particular pay-day or pay-days the normal deduction rate, that is to say, the rate at which the court considers it to be reasonable that the earnings to which the order relates should be applied in satisfying the

requirements of the maintenance order but not exceeding the rate that appears to the court to be necessary for the purpose of—

- (i) securing payment of the sums from time to time falling due under the maintenance order; and
- (ii) securing payment within a reasonable time of any sums already due and unpaid under the maintenance order and any costs incurred in proceedings relating to the maintenance order that are payable by the defendant;

and may specify a higher normal deduction rate to apply for a specified number of pay-days after the order comes into force and a lower normal deduction rate to apply to subsequent pay-days;

- (b) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the defendant and of any person for whom he must or reasonably may provide, the court considers it to be reasonable that the earnings to which the order relates should not be reduced by a payment under the order;
- (c) provide that payments under the order are to be made to the clerk at the place specified in the order;
- (d) contain such particulars as the court thinks proper for the purpose of enabling the person to whom the order is directed to identify the defendant; and
- (e) be served on—
 - (i) the defendant; and
 - (ii) the person to whom the attachment of earnings order is directed,

and shall not come into force until the expiration of seven days after the day on which a copy of the order is served on the person to whom the order is directed.

35.* (1) An employer to whom an attachment of earnings order is directed, being an attachment of earnings order that is in force, shall, in respect of each pay-day, if the net earnings of the defendant exceed the sum of—

Employer to make payments under order. N.S.W., s. 50; Vic., s. 48; Qld., s. 50; and S.A., s. 96c.

- (a) the protected earnings of the defendant; and
- (b) so much of any amount by which the net earnings that became payable on any previous pay-day were less than the protected earnings in relation to that pay-day as has not been made good on any other previous pay day,

pay, so far as that excess permits, to the clerk at the place specified in the order—

- (c) the normal deduction in relation to that pay-day; and
- (d) so much of the normal deduction in relation to any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

(2) A payment made by the employer under subsection (1) of this section is a valid discharge to him as against the defendant to the extent of the amount paid.

36.* Where an attachment of earnings order has been made, no warrant shall, while the order is in force, issue for the enforcement of any provision of an order to which that attachment of earnings order relates and any warrant issued and unexecuted prior to the making of the attachment of earnings order shall be recalled by the court.

Warrants not to issue while attachment of earnings order is in force. N.S.W., s. 51; Vic., s. 49; Qld., s. 51; and S.A., s. 96d (2).

37.* (1) The court sitting at the place where the order was made may, on the application of the defendant or a person entitled to receive payments under the maintenance order, make an order discharging, suspending or varying the attachment of earnings order.

Discharge or variation of order. N.S.W., s. 52; Vic., s. 50; Qld., s. 52; and S.A., s. 96e.

* See footnote to s.33 (1).

Married Persons and Children (Summary Relief).

(2) An order suspending or varying an attachment of earnings order shall be served on—

- (a) the respondent to the application; and
- (b) the person to whom the attachment of earnings order is directed,

and shall not come into force until the expiration of seven days after the day on which a copy of the order is served on the person to whom the order is directed.

Cessation of attachment of earnings order.
N.S.W., s. 53;
Vic., s. 51;
Qld., s. 53;
and S.A.,
s. 96f.

38.* (1) An attachment of earnings order ceases to have effect—

- (a) upon being discharged under section thirty-seven; or
- (b) subject to subsection (2) of this section, upon the suspension, variation or discharge of the maintenance order in relation to which the attachment of earnings order was made.

(2) Where it appears to the court discharging a maintenance order that arrears under the order remain to be recovered under the order, the court may direct that the attachment of earnings order continue to have effect until those arrears have been paid.

(3) Where an attachment of earnings order ceases to have effect the clerk shall forthwith give notice accordingly to the person to whom the order was directed and, where the maintenance order in respect of which the attachment of earnings order was made is an order made by the court sitting at some other place, to the clerk at that other place.

(4) Where an attachment of earnings order ceases to have effect the person to whom the attachment of earnings order is directed shall not incur any liability in consequence of his treating the order as

* See footnote to s.33 (1).

still in force at any time before the expiration of seven days after the date on which the notice required by subsection (3) of this section or a copy of the discharging order, as the case may be, is served on him.

39.* A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other law, but subject to this Division, comply with the order.

Compliance with order. N.S.W., s. 54, Vic., s. 52; Qsld., s. 54; and S.A., s. 96g.

40.* (1) Where on any occasion on which earnings become payable to a defendant there are in force in relation to those earnings two or more attachment of earnings orders, the person to whom the orders are directed—

Where two or more orders are in force. N.S.W., s. 55; Vic., s. 53; Qsld., s. 55; and S.A., s. 96h.

- (a) shall comply with those orders according to the respective dates on which they took effect and shall disregard any order until an earlier order has been complied with; and
- (b) shall comply with any order as if the earnings to which the order relates were the residue of the defendant's earnings after the making of any payment under any earlier order.

(2) For the purposes of this section an attachment of earnings order that has been varied is deemed to have been made as so varied on the day on which the attachment of earnings order was made.

41.* (1) A person who makes a payment in compliance with an attachment of earnings order shall give to the defendant a notice specifying particulars of the payment.

Notices to be given. N.S.W., s. 56; Vic., s. 54; Qsld., s. 56; and S.A., s. 96i.

(2) Where a person on whom an attachment of earnings order that is directed to him is served—

- (a) is not the defendant's employer at the time when the order is served on that person; or

* See footnote to s.33 (1).

- (b) is the defendant's employer at that time but ceases to be the defendant's employer at any time thereafter.

that person shall give notice in writing accordingly to the clerk and shall give that notice—

- (c) where paragraph (a) of this subsection applies, forthwith after service on that person of the order; and
- (d) where paragraph (b) of this subsection applies, forthwith after that person ceases to be the defendant's employer.

Determina-
tion as to
what
payments are
earnings.
N.S.W., s. 57;
Vic., s. 55;
Qsld., s. 57;
and S.A.,
s. 96j.

42.* (1) The court shall, on the application of the person to whom the order is directed, determine whether payments to the defendant of a particular class or description specified in the application are earnings for the purpose of that order.

(2) A person to whom an attachment of earnings order is directed who makes an application under subsection (1) of this section does not incur any liability for failing to comply with the order with respect to any payments of the class or description specified in the application that are made by him to the defendant while the application, or any appeal from a determination made on the application, is pending.

(3) Subsection (2) of this section does not apply in respect of any payment made after the application has been withdrawn or an appeal from a determination made on the application has been abandoned.

Service.
N.S.W., s. 58;
Vic., s. 56;
Qsld., s. 58;
and S.A.,
s. 96k.

43.* Any order or document that is required or permitted to be served on a person under this Division may be served on that person—

- (a) by delivering a copy thereof to that person;

* See footnote to s.33 (1).

- (b) by leaving a copy thereof at the usual or last known place of residence or business of that person, with some person who apparently lives, or is employed, there and who is apparently over the age of sixteen years; or
- (c) by sending a copy thereof to him at his usual or last known place of residence or business by certified mail.

44.* (1) A person who fails to comply with a requirement of this Division or of any attachment of earnings order under this Division that is applicable to him is guilty of an offence.

Offence.
[N.S.W., s.
59; Vic.,
s. 57; Qld., s.
59; and S.A.,
s. 96ka.]
Amended by
No. 113 of
1965, s. 8.

Penalty: Two hundred dollars.

(2) It is a sufficient defence to a person charged with an offence under subsection (1) of this section if he proves that he took all reasonable steps to comply with the requirement or order.

45.* (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 the employee or that the person is required to make payments under such an order in relation to the employee is guilty of an offence.

Dismissing
an employee,
etc., by
reason of
the making
of an
attachment
of earnings
order.
[N.S.W., s.
60; Vic., s.
58; Qsid., s.
60; and S.A.,
s. 96m.]
Amended by
No. 113 of
1965, s. 8.

Penalty: Two hundred dollars.

(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.

* See footnote to s.33 (1).

Reimbursement of wages and reinstatement.

N.S.W., s. 61; Vic., s. 59; Qsid., s. 61; and S.A., s. 96n.

46.* (1) Where a person is convicted of an offence arising under subsection (1) of section forty-five the court by which he is convicted may order that the employee be reimbursed any wages lost by him and may also direct that the employee be reinstated in his former, or in a similar, position.

(2) Any amount ordered to be reimbursed under subsection (1) of this section may be recovered from the person convicted, as if it were part of the penalty to which such person is liable under subsection (1) of section forty-five.

Application of Division.

N.S.W., s. 62; Vic., s. 60; Qsid., s. 62; and S.A., s. 96na.

47* This Division has effect in relation to a defendant, notwithstanding any law that would otherwise prevent the attachment of his earnings or limit the amount capable of being attached.

Payments by Crown, etc.
N.S.W., s. 63; Vic., s. 61; Qsid., s. 64; and S.A., s. 96p.

48.* The provisions of this Division have effect in relation to deductions from earnings falling to be paid by the Crown in right of the State, a Minister of the Crown in right of the State, or a statutory authority representing the Crown in right of the State, or out of the Consolidated Revenue Fund and those earnings shall be treated as falling to be paid by the permanent head or principal officer of the department, office or other body concerned, but the provisions of section forty-four do not apply to the permanent head or principal officer.

PART V.—RECIPROCAL ENFORCEMENT OF ORDERS.

Division 1.—Interpretation and Administration.

Interpretation.

[N.S.W., s. 66; Vic., s. 68; Qsid., s. 67; and S.A., s. 99a.
Cf. IMRA., s. 5 and REMO. s. 2.1
Amended by No. 64 of 1967, s. 22; No. 88 of 1972, s. 2.

49. (1) In this Part, unless inconsistent with the context or subject-matter—

“another Australian State” means an Australian State other than this State;

“Australian State” means a State or Territory of the Commonwealth;

* See footnote to s.33 (1).

“certified copy”—

- (a) in relation to a maintenance order or other order of a court (not being an order made under the Matrimonial Causes Act 1959 of the Commonwealth), means a copy of the order certified to be a true copy by an officer of the court that made the order, or a copy of such a copy certified to be a true copy by an officer of a court in or by which the order has been registered or confirmed or, in the case of an overseas order, by the Under Secretary;
- (b) in relation to a maintenance order or other order made under the Matrimonial Causes Act 1959, of the Commonwealth means—
 - (i) a certificate of the order issued under the rules made under that Act;
 - (ii) if the order is included in a decree *nisi*, a copy of the decree *nisi*; or
 - (iii) a copy of such a certificate or of the decree *nisi* in which the order is included certified to be a true copy by an officer of a court in which the order has been registered under that Act; and
- (c) in relation to a record of the evidence of a witness in proceedings before a court, means a copy of the record certified to be a true copy by an officer of that court;

“Collector”—

- (a) in relation to this State, means the Collector of Maintenance, the Deputy Collector of Maintenance or an Assistant Collector of Maintenance appointed under this Division; and

- (b) in relation to another Australian State, means an officer appointed under the law of that State whose duties, or part of whose duties, are similar to those of the Collector of Maintenance, the Deputy Collector of Maintenance or an Assistant Collector of Maintenance appointed under this Division;

“collector’s certificate”—

- (a) in relation to a local order, or an overseas order enforceable in this State, means a certificate in or to the effect of the prescribed form signed by the Collector; and
- (b) in relation to a maintenance order made in another Australian State, or an overseas order that is or has been enforceable in another Australian State, means a certificate in, or to the effect of, such form prescribed by or under the law of that other Australian State as corresponds with the form of collector’s certificate prescribed for the purposes of this Part;

“complainant”, in relation to a maintenance order or to proceedings in connection with a maintenance order, means the person for whose benefit the maintenance order was made, or a person acting on behalf of that person;

“country” includes any State, Province or other part of a country outside Australia, or any Territory of such a country;

“country having restricted reciprocity” means a reciprocating country that is, for the time being, declared, by a proclamation in force under section seventy-nine, to have restricted reciprocity with the State;

“court”, in relation to any order made or to be made or any act, matter or thing done or to be done—

- (a) in any place outside the State, means a court or magistrate, or a justice or justices, or any other person or persons, exercising judicial powers in that place; and
- (b) within the State means the court as defined by section five;

“defendant”, in relation to a maintenance order or to proceedings in connection with a maintenance order, means the person against whom the order was made;

“depositions”, in relation to a witness in proceedings, means the record, or a certified copy of the record, of the evidence of that witness in those proceedings;

“interstate order” means a maintenance order—

- (a) made in another Australian State by a court constituted by a magistrate or justices; or
- (b) made by the Supreme Court of any Australian State (whether under the law of that State or under a law of the Commonwealth) and registered, for the purposes of enforcement, in a court of summary jurisdiction in another Australian State, under the law of an Australian State or under a law of the Commonwealth;

“justice”, in relation to the exercise or discharge of any power, authority, duty or function, means a justice of the peace authorised to exercise or discharge that power, authority, duty or function in accordance with the law of the place where it is exercised or discharged;

“local order” means a maintenance order—

- (a) made in this State by the court;

- (b) made in a Children's Court of this State and registered in the court; or
- (c) made by the Supreme Court (whether under the law of the State or under a law of the Commonwealth) and registered, for the purposes of enforcement, in a court of summary jurisdiction; under a law of an Australian State or under a law of the Commonwealth;

“maintenance order” means an order (whether made before or after the commencement of this Act and whether made in this State or elsewhere), being—

- (a) an order whereby a person is ordered to pay money, whether in a lump sum or by instalments, or to pay sums of money periodically, for or towards the maintenance of another person or by way of recoupment of moneys spent in, or provided for, the maintenance of another person; or
- (b) an order made under, or of a kind similar to an order made under, section eighteen or nineteen,

and, if such an order has been varied, means the order as so varied and all orders, wherever made, by which it has been varied and includes an order for the payment of costs in any proceedings in which an order referred to in paragraph (a) or (b) of this definition was made;

“officer”, in relation to a court, includes a person, or one of the persons, constituting the court;

“overseas order”, in relation to a reciprocating country, means—

- (a) in the case where in a proclamation under subsection (1) or (2) of section seventy-nine it is declared that

maintenance orders made in that country shall be enforceable in the State, in accordance with the provisions of Division 3 of this Part, as on and from a date specified in the proclamation, a maintenance order made on or after that date in that country by a court of competent jurisdiction; and

- (b) in any other case, a maintenance order made in that country by a court of competent jurisdiction, whether before or after the making of the proclamation;

“reciprocating country” means a country that is for the time being declared by a proclamation in force under section seventy-nine to be a reciprocating country for the purposes of this Part;

“Under Secretary” means Under Secretary of the Crown Law Department or any person acting as Under Secretary of that Department.

(2) A reference in this Part to a certified copy of an order shall, where the order has been varied or otherwise affected by a provisional order of one court that has effect by virtue of the fact that it has been confirmed (whether with or without modification) by another court, be read as including a reference to both a certified copy of the provisional order and a certified copy of the confirming order.

(3) A reference in this Part to an order made by a court shall be read as including a reference to an order made by another court on an appeal in connection with proceedings that originated in the former court.

(4) For the purposes of this Part, where a person is working in a place, whether temporarily or permanently, he is deemed to be resident in that place as well as in the place where he is in fact resident.

Collector of Maintenance.
Deputy Collector of Maintenance. and Assistant Collectors of Maintenance. N.S.W., s. 67; Vic., s. 69; Quid., s. 68; and S.A., s. 99b.

50. (1) For the purposes of this Part, the Governor may appoint a Collector of Maintenance, a Deputy Collector of Maintenance and as many Assistant Collectors of Maintenance and other officers as are necessary for the administration of this Part.

(2) The Deputy Collector of Maintenance and every Assistant Collector of Maintenance shall have and may exercise, subject to any directions of the Collector of Maintenance, all the powers, authorities, duties and functions of the Collector of Maintenance.

Powers, etc., of Collector. N.S.W., s. 68; Vic., s. 70; Quid., s. 69; and S.A., s. 99c.

51. (1) The Collector has power to do all things necessary or convenient to be done for the enforcement in this State of maintenance orders that are enforceable in the State by virtue of this Part.

(2) The Collector shall—

- (a) receive moneys payable to him pursuant to orders enforceable under this Part and moneys remitted to him by Collectors for other Australian States and authorities in reciprocating countries, and give receipts for moneys so received;
- (b) keep proper accounts of all moneys received, remitted or paid by him;
- (c) remit to Collectors for other Australian States and to the proper authorities in reciprocating countries moneys received by him in respect of maintenance orders made for the benefit of persons residing in those Australian States or in those countries and payable to or for the benefit of those persons, together with proper accounts in respect of those moneys; and
- (d) pay other moneys received by him to the persons entitled thereto,

and has such other powers, authorities, duties and functions as are specified in this Part or are prescribed.

(3) In all proceedings under this Part, the Collector, or any officer of the Child Welfare Department authorised by the Collector, is entitled to appear, to be heard, to give evidence and to call, examine and cross-examine witnesses.

(4) The Collector may by instrument in writing delegate to an officer of the Child Welfare Department, an officer of the court or a member of the Police Force any of his powers, authorities, duties and functions under this Part in respect of any case or class of cases specified in the instrument, and that officer or member may act in accordance with the delegation.

52. (1) The provisions of Part IX of the Justices Act, 1902, relating to proceedings against justices with respect to any act done by a justice as a justice extend and apply, with such modifications as are necessary, with respect to acts done by the Collector, or by the Deputy Collector or an Assistant Collector, or any delegate of the Collector, in pursuance of this or any other Act.

Protection of Collector, etc.
[N.S.W., s. 69; Vic., s. 71; Qsld., s. 70; and S.A., s. 99d.]
Amended by No. 88 of 1972, s. 27.

(2) Without in any way limiting or derogating from the provisions of subsection (1) of this section, no order for costs shall be made by any court against the Collector, the Deputy Collector or an Assistant Collector, or any delegate of the Collector, with respect to anything *bona fide* done by him when purporting to act in accordance with the provisions of this Act.

Division 2.—Interstate Maintenance.

53. (1) Where a local order is presently enforceable in this State but is not presently enforceable under the law of any other Australian State, and it appears to the Collector that the defendant is resident in, or proceeding to, another Australian State, the Collector may send to the Collector for that other Australian State—

Transmission of local orders for enforcement in other States.
N.S.W., s. 70; Vic., s. 72; Qsld., s. 72; and S.A., s. 99dc.
Cf. IMBRA ss 12 and 13

(a) three certified copies of the order;

Married Persons and Children (Summary Relief).

- (b) a collector's certificate relating to the order;
 - (c) such information and material as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
 - (d) a request in writing that the order be made enforceable in that other Australian State.
- (2) Where—
- (a) a local order is, under the law of another Australian State, enforceable in that other Australian State; and
 - (b) the Collector is satisfied that there are reasonable grounds for believing that the defendant is not resident in, or proceeding to, that other Australian State or it appears to the Collector that there is some other good reason why the order should no longer be enforceable in that other Australian State,

he may send to the Collector for that other Australian State a request in writing that the order be made no longer enforceable in that other Australian State and, for the purposes of this Act, the order shall, upon the sending of the request, cease to be enforceable in that other Australian State.

(3) The fact that a local order has ceased to be enforceable in another Australian State by reason of action taken in that other Australian State as a result of a request made under subsection (2) of this section does not prevent a further request under subsection (1) of this section that the order be again made enforceable in that other Australian State.

(4) Where a local order is, in pursuance of a request under subsection (1) of this section, made enforceable in another Australian State—

- (a) the order ceases to be enforceable in this State;

- (b) the order remains unenforceable in this State unless and until it ceases to be enforceable in that other Australian State; and
- (c) every warrant or other process under this Act arising out of the order previously issued in this State and not executed ceases to have effect.

54. (1) Where the Collector receives from the Collector for another Australian State—

- (a) three certified copies of an interstate order made or registered in that State;
- (b) a collector's certificate relating to the order; and
- (c) a request in writing that the order be made enforceable in this State,

Enforcement in the State of orders made in other Australian States. [N.S.W., s. 71; Vic. s. 73; Qsid., s. 73; and S.A., s. 99dd. Cf. IMRA., ss. 14-17.] Amended by No. 88 of 1972, s. 28.

he shall, if it appears to him that there are reasonable grounds for believing that the defendant is resident in, or proceeding to, this State, send the documents to the clerk of the court, at Perth, with a request that the order be registered in that court.

(2) Where a request is so made to the clerk, the clerk shall (whether or not the order is of such a kind as could be made in this State) register the order by filing in the court a certified copy of the order and the collector's certificate and noting the fact and date of the registration on that certified copy.

(3) An interstate order so registered is, until the registration is cancelled, enforceable in this State both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.

(4) Upon registration of the interstate order, the Collector shall notify the Collector for the other Australian State accordingly and shall cause a cer-

tified copy of the order to be served upon the defendant, together with a notice of registration of the order in this State—

- (a) specifying the amount, if any, of the arrears due under the order;
- (b) stating that payments under the order are to be made to the Collector; and
- (c) giving an address at which such payments may be made.

(5) Where—

- (a) an interstate order is registered in this State under this section; and
- (b) the Collector receives from the Collector for the other Australian State a request in writing that the order be made no longer enforceable in this State,

the Collector shall request the clerk to cancel the registration of the order, and the clerk shall thereupon cancel the registration by noting the fact and date of the cancellation on the certified copy of the order filed in the court.

(6) Where the registration of an interstate order is so cancelled—

- (a) the order ceases to be enforceable in this State;
- (b) the order remains unenforceable in this State unless and until it is again registered in the State; and
- (c) every warrant or other process under this Act arising out of the order previously issued in this State and not executed ceases to have effect.

55. Where an interstate order has been registered in this State under this Division and the Collector has reasonable grounds for believing that the defendant is no longer resident in the State, but is resident in, or proceeding to, another Australian State, he shall forthwith notify the Collector in the State in which the order was made or, where the

Collector to notify original State when defendant leaves the State.
[N.S.W., s. 72; Vic., s. 74; Qsld., s. 74; and S.A., s. 99e.]
Amended by No. 64 of 1967, s. 23.

order was made in a Supreme Court, the Collector for the State in which the order was first registered in a court of summary jurisdiction for enforcement of the fact and shall give him such information as he possesses concerning the whereabouts and intended movements of the defendant.

56. (1) Where an interstate order made by a court of summary jurisdiction is enforceable in this State by virtue of this Division, an application in writing in accordance with the prescribed form may be made by or on behalf of the complainant or the defendant to the court for an order discharging, suspending, varying or reviving the interstate order, and that court has jurisdiction to hear and determine the application.

Application for provisional order of variation, etc.
N.S.W., s. 73;
Vic., s. 75;
Qsld., s. 75;
and S.A., s. 99g.
Cf. IMRA., s. 18.

(2) Where a local order is enforceable in another Australian State by virtue of provisions corresponding with this Division, an application in writing in accordance with the prescribed form may be made by or on behalf of the complainant or the defendant to the court, at Perth, for an order discharging, suspending, varying or reviving the local order, and the court has jurisdiction to hear and determine the application.

(3) The applicant shall cause notice of an application under this section to be served, not less than fourteen days before the hearing of the application, upon the Collector personally or by post and the Collector shall, forthwith upon receipt by him of the notice, notify the Collector for the Australian State in which the interstate order was made, or the local order is enforceable, as the case may be.

(4) The evidence of any witness who is examined at the hearing of any such application shall be put into writing and shall be read over to or by and signed by him.

(5) While a local order is enforceable in another Australian State under the law of that other Australian State, no application for the discharge, sus-

pension, variation or revival of the order shall be made in this State except in accordance with this section.

Discharge,
suspension
or variation
of order
made in
absence of
defendant.
[N.S.W., s.
74; Vic., s.
76; Qsld. s.
76; and S.A.,
s. 99g.]
Amended by
No. 88 of
1972, s. 29.

57. Where—

- (a) an application is made under subsection (1) of section fifty-six by a defendant for the discharge, suspension or variation of an interstate order;
- (b) the defendant neither appeared at the hearing of the complaint upon which the original interstate order was made nor was served personally in the State or Territory of the Commonwealth in which that order was made with a summons issued pursuant to the complaint upon which that order was made; and
- (c) the application is made within six months after service on the defendant of notice of registration of the order in this State,

the defendant may, in addition to raising any matter that he might raise on a complaint made under Division 2 of Part III, raise any ground of opposition that he could have raised in the original proceedings.

Law to be
applied.
N.S.W., s. 75;
Vic., s. 77;
Qsld. s. 77;
and S.A.,
s. 99h.,

58. In an application under section fifty-six, the law to be applied is, except in matters of practice or procedure, the law of the State in which the original order was made.

Order of
variation,
etc., to be
provisional
only.
N.S.W., s. 76;
Vic., s. 78;
Qsld. s. 78;
and S.A.,
s. 99i.
Cf. IMRA.,
s. 20.

59. (1) Except as provided in subsection (2) of this section, an order made on an application under section fifty-six discharging, suspending, varying or reviving a maintenance order is provisional only and shall have no effect unless and until confirmed by a competent court of the Australian State in which the maintenance order was made or is enforceable, and shall be expressed accordingly.

(2) Where the respondent to the application has been served personally in this State with notice of the application or appears on the hearing of the application, any order made on the application shall recite that fact, and the order has effect forthwith in the State.

(3) Where an order made on an application under section fifty-six is expressed to be provisional, the clerk of the court making the provisional order shall send a certified copy of the order, together with the depositions of the witnesses, to the Collector for transmission to the Collector for the other Australian State.

(4) Where an order referred to in subsection (3) of this section has been confirmed (whether with or without modification) by a competent court of the other Australian State, the order has effect in this State as so confirmed.

60. (1) Where a provisional order made under the foregoing provisions of this Division is remitted by a court in another Australian State to the court for the taking of further evidence, the court shall, after notice has been given to the Collector and to such persons in such manner as the court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the other Australian State.

Procedure where provisional order remitted by court of another Australian State.
N.S.W., s. 77;
Vic., s. 79;
Qsld., s. 79;
and S.A., s. 99j.
Cf. IMRA., s. 21.

(2) If, upon the taking of the further evidence, it appears to the court that the order ought not to have been made, the court may rescind the order and may, if it thinks fit, make a fresh provisional order on the application under section fifty-six.

61. (1) Where the Collector receives—

(a) a certified copy of—

(i) a provisional order made by a court in another Australian State discharging, suspending, varying or reviving a local order enforceable in that other Australian State; or

Confirmation in the State of provisional orders made in other Australian States.
N.S.W., s. 78;
Vic., s. 80;
Qsld., s. 80;
and S.A., s. 99k.
Cf. IMRA., s. 24.

(ii) a provisional order made by a court of another Australian State discharging, suspending, varying or reviving an interstate order made in that Australian State and enforceable in this State by virtue of this Division; and

(b) the depositions of the witnesses who gave evidence at the hearing of the application upon which the provisional order was made,

the Collector shall, on behalf of the party on whose application the provisional order was made in the other Australian State, apply to the court for an order confirming the provisional order.

(2) The Collector shall cause notice, in accordance with the prescribed form, of the application under this section to be served on the respondent to the application not less than seven days before the hearing of the application.

(3) Upon the hearing of such an application, the court may—

(a) confirm the provisional order, either with or without modification;

(b) discharge the provisional order; or

(c) adjourn the proceedings and remit the provisional order to the court that made it with a request that that court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed has effect in this State as if it were an order to the like effect made by the court.

62. (1) Where an interstate order is enforceable in this State by virtue of this Division,—

(a) all proceedings may be taken for the enforcement of the order according to its terms; and

- (b) the provisions of this Act, so far as they are applicable and with such modifications as are necessary to give effect to the terms of the order, apply to and in relation to proceedings for the enforcement of the order,

as if it were an order containing a provision for maintenance made under Part III.

(2) The Collector may take any proceedings that are authorised by subsection (1) of this section.

(3) Where proceedings are so taken by the Collector, the court shall, unless it is satisfied by evidence to the contrary, presume that the enforcement of the order (being an order of the kind referred to in paragraph (a) or (b) of the definition of "maintenance order" in subsection (1) of section forty-nine) is required for the actual support of the person for whose benefit the order was made and that no moneys have been paid under the order since its registration in this State other than any moneys so paid to the Collector.

(4) Subsection (3) of this section applies to all proceedings taken by the Collector to enforce an order under this Division, including proceedings for the recovery of maintenance in respect of a past period and notwithstanding that the financial position of the persons for whose benefit the order was made has changed since the moneys became due and payable or that the order has, since that time, ceased to have effect.

Division 3.—Overseas Maintenance.

63. (1) Where a local order is presently enforceable in the State but not under the law of any other Australian State and it appears to the Collector that the defendant is resident in, or proceeding to, a reciprocating country, the Collector may send to the Under Secretary—

- (a) three certified copies of the local order;
- (b) a collector's certificate relating to the local order;

Transmission of maintenance orders made in the State for enforcement in reciprocating countries.
N.S.W., s. 80;
Vic., s. 82;
Qld., s. 82;
and S.A.,
s. 99m.
Cf. REMO.,
s. 4.

Married Persons and Children (Summary Relief).

- (c) such information and material as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
- (d) a request in writing that the Under Secretary seek to have the local order made enforceable in that reciprocating country,

and the Under Secretary shall, on receipt of those documents, transmit the documents referred to in paragraphs (a), (b) and (c) of this subsection to the reciprocating country concerned, or cause those documents to be so transmitted, with a request in writing that the local order be made enforceable in that reciprocating country.

(2) This section does not apply in relation to an order under section seventeen, eighteen or nineteen, or under any corresponding previous enactment, where the order relates to an illegitimate child or to the mother of an illegitimate child, unless the defendant appeared in the proceedings in which his paternity of the child was held to be established, or was duly served with a summons to appear in those proceedings or consented to the making of the order made in those proceedings.

Power to make provisional order against person resident in reciprocating country.
 N.S.W., s. 81;
 Vic., s. 83;
 Qld., s. 83;
 and S.A., s. 99n.
 Cf REMO, s. 5.

64. (1) Upon application made in writing in accordance with the prescribed form to the court for a maintenance order of a kind that may be made by way of a provision for maintenance under section eleven against any person and upon proof that that person is resident in, or proceeding to, a reciprocating country, the court may, in the absence of that person, make any order it could have made if a summons had been duly served on that person and he had failed to appear at the hearing.

(2) An order made under subsection (1) of this section shall be provisional only and shall have no effect unless and until confirmed (either with or without modification) by a competent court in a reciprocating country in which the defendant is resident at the time of that confirmation, and shall be expressed accordingly.

(3) The evidence of any witness who is examined on any such application shall be put into writing and shall be read over to or by and signed by him.

(4) Where the court makes an order under subsection (1) of this section, the clerk of the court shall send to the Collector—

- (a) the depositions of the witnesses;
- (b) three certified copies of the order; and
- (c) a statement of the grounds on which the making of the order could have been opposed if the defendant had appeared at the hearing.

(5) Upon receiving the documents, the Collector shall send the documents, together with any information and material the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant, to the Under Secretary for transmission to the reciprocating country referred to in subsection (1) of this section.

(6) Where any such provisional order has come before a court in a reciprocating country for confirmation and the order has by that court been remitted to the court for the taking of further evidence, the court shall, after notice has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the reciprocating country.

(7) If, upon the taking of the further evidence, it appears to the court that the order ought not to have been made, it may rescind the order and may, if it thinks fit, make a fresh provisional order under subsection (1) of this section.

(8) Where a court in a reciprocating country in which the defendant is for the time being resident confirms (either with or without modification) a provisional order made under this section, the order has effect in this State as so confirmed.

(9) Where a court in a reciprocating country confirms (either with or without modification) a provisional order made under this section, then, in any proceedings arising out of or relating to the order, there is a presumption, unless the contrary is proved, that the defendant was resident in that reciprocating country at the time when the order was confirmed.

Cancellation
of
registration.
N.S.W., s. 82;
Vic. s. 84;
Qsld., s. 84;
and S.A.,
s. 99na.

65. Where—

- (a) a local order is, under the law of a reciprocating country, enforceable in that reciprocating country; and
- (b) the Collector is satisfied that there are reasonable grounds for believing that the defendant is not resident in, or proceeding to, that reciprocating country or it appears to the Collector that there is some other good reason why the order should no longer be enforceable in that reciprocating country,

the Under Secretary may, at the request of the Collector, send, or cause to be sent, to an appropriate authority in that reciprocating country a request in writing that the order be made no longer enforceable in that reciprocating country and, for the purposes of this Act, the order shall, upon the sending of the request, be deemed to cease to be enforceable in that reciprocating country.

Registration
of overseas
orders.
N.S.W., s. 83;
Vic. s. 85;
Qsld., s. 85;
and S.A.,
s. 99p.
Cr. REMO.,
s. 3.

66. (1) Where the Under Secretary receives—

- (a) a certified copy of an overseas order; and
- (b) a certificate signed by an officer of a court or other authority in the reciprocating country relating to the order and containing—
 - (i) a statement that the order is, at the date of the certificate, enforceable in that reciprocating country; and

- (ii) a statement as to the amount of any arrears due under the order, distinguishing any amount in respect of which the defendant has been imprisoned,

the Under Secretary shall, if it appears to him that there are reasonable grounds for believing that the defendant is resident in or proceeding to the State, send the documents received by him to the Collector.

(2) In the case of an overseas order in the nature of an affiliation order, or an overseas order consequent upon such an order, the Under Secretary shall not send the documents relating to the order to the Collector if it appears to him from those documents that the defendant did not appear in the proceedings on which the order was made or consent to the making of the order.

(3) In the case of an overseas order originating in a country having restricted reciprocity, the Under Secretary shall not send the documents relating to the order to the Collector unless the Under Secretary is satisfied that the order is a maintenance order of such a kind as can be made, by way of a provision for maintenance, under Part III.

(4) Where the Collector receives from the Under Secretary the documents referred to in subsection (1) of this section, he shall transmit the documents to the clerk at Perth with a request that the order be registered in that court.

(5) Where a request is so made, the clerk shall register the order by filing in the court a certified copy of the order and the certificate relating thereto and noting the fact and date of the registration on that certified copy.

(6) An overseas order so registered shall, until the registration is cancelled, be enforceable in the State, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.

(7) Upon registration of an overseas order, the Collector shall notify an officer of the court or other authority in the reciprocating country accordingly and cause a certified copy of the order to be served upon the defendant, together with a notice of registration of the order in the State—

- (a) specifying the amount, if any, of the arrears due under the order;
- (b) stating that payments under the order are to be made to the Collector; and
- (c) giving an address at which such payments may be made.

Confirmation of provisional orders made overseas.
[N.S.W., s. 84; Vic., s. 86; Qsld., s. 86; and S.A., s. 99g.
Cf. REMO., s. 6.]
Amended by No. 64 of 1967, s. 25.

67. (1) Where—

- (a) an overseas order (other than an order in the nature of an affiliation order or an order consequent upon such an order) has no effect under the law of the reciprocating country in which it is made unless and until confirmed by a court outside that reciprocating country (whether or not it appears from the order that it may be confirmed by a court in the State);
- (b) a certified copy of the order and the depositions of the witnesses in the proceedings in which the order was made, together with a statement of the grounds on which the making of the order could have been opposed if the defendant had appeared at the hearing, have been received by the Under Secretary; and
- (c) it appears to the Under Secretary that—
 - (i) there are reasonable grounds for believing that the defendant is resident in, or proceeding to, the State; and

- (ii) the order will have effect under the law of the reciprocating country if it is confirmed by a court in the State,

the Under Secretary shall send the documents received by him to the Collector.

(2) In the case of a provisional order made in a country having restricted reciprocity, the Under Secretary shall not send the documents relating to the order to the Collector unless the Under Secretary is satisfied that the order is of such a kind as could be made (otherwise than as a provisional order) under Part III.

(3) After receipt of the documents by the Collector, a summons may, on the application of the Collector, be issued by any justice calling upon the defendant to appear before the court to show cause why that order should not be confirmed.

(4) At the hearing it shall be open to the defendant to raise any ground of opposition that he could have raised in the original proceedings or any ground of opposition that he could have raised had the proceedings on which the provisional overseas order was made been heard in the State, and the statement referred to in subsection (1) of this section shall be conclusive evidence that the grounds referred to in that statement are the grounds of opposition that could have been raised in the original proceedings.

(5) If the defendant, having been served in the State with the summons, does not appear at the hearing, or if the defendant appears at the hearing but fails to satisfy the court that the order ought not to be confirmed, the court may—

- (a) confirm the provisional order (either with or without modification);
- (b) discharge the provisional order; or

- (c) adjourn the proceedings and remit the provisional order to the court that made it, with a request that that court take further evidence and further consider its provisional order.

(6) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed has effect in the State as if it were an order to the like effect made by the court.

(7) If, at the hearing, the court is of opinion that it is necessary to remit the case to the court that made the provisional order for the taking of further evidence, the case may be so remitted.

(8) The Collector shall, as soon as may be practicable after an order is made, under this section, confirming or discharging a provisional order, send to the proper officer of the court that made the provisional order particulars of the order so made.

68. (1) Where an overseas order is enforceable in the State under this Division, and it appears to the Collector that there are reasonable grounds for believing that the defendant has ceased to reside in the State and is resident in, or proceeding to, another Australian State, the Collector may send to the Collector for that Australian State—

- (a) three certified copies of the overseas order;
- (b) a collector's certificate relating to the order;
- (c) such information and material as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
- (d) a request in writing that the order be made enforceable in that Australian State,

Order enforceable in the State may be sent to another Australian State.
N.S.W., s. 85;
Vic., s. 87;
Qsld., s. 87;
and SA., s. 99r.

and, if he does so, shall forthwith notify an appropriate officer in the reciprocating country of the fact that he has so sent the documents.

(2) Where a request is made under subsection (1) of this section—

- (a) the order ceases to be enforceable in the State and, if the order has been registered in the court, that registration is deemed to be cancelled;
- (b) the order remains unenforceable in the State, unless and until it is registered, or again registered, in the State; and
- (c) every warrant or other process under this Act arising out of the order previously issued in the State and not executed ceases to have effect.

69. (1) Where—

(a) the Collector receives from the Collector for another Australian State—

- (i) three certified copies of an overseas order;
- (ii) a collector's certificate signed by the Collector for that Australian State relating to the order; and
- (iii) a request in writing that the order be made enforceable in this State; and

(b) it appears from the collector's certificate that—

- (i) the order has been registered in, or confirmed by, a court in that Australian State under a law of that Australian State corresponding with this Division; and
- (ii) the order was, at the date of the certificate, presently enforceable in that Australian State in accordance with that law,

Registration of overseas orders registered or confirmed in another Australian State.
N.S.W., s. 86;
Vic., s. 88;
Qsld., s. 88;
and S.A., s. 99s.

he shall, if it appears to him that there are reasonable grounds for believing that the defendant is residing in, or proceeding to, this State, send the documents to the clerk at Perth, with a request that the order be registered in the court.

(2) Where a request is so made, the clerk shall (whether or not the order is of such a kind as could be made under Part III) register the order by filing in the court a certified copy of the order and the Collector's certificate and noting the fact and date of the registration on that certified copy.

(3) An overseas order so registered shall, until the registration is cancelled, be enforceable in the State, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.

(4) Upon registration of an overseas order, the Collector shall notify the officer of a court or other authority in the reciprocating country accordingly, and shall cause a certified copy of the order to be served upon the defendant, together with a notice of registration of the order in the State—

- (a) specifying the amount, if any, of the arrears due under the order;
- (b) stating that payments under the order are to be made to the Collector; and
- (c) giving an address at which the payments may be made.

Transmission
of docu-
ments
where
defendant
not in the
State.
N.S.W., s. 87;
Vic., s. 89;
Qsld., s. 89;
and S.A.,
s. 99t.

70. Where the Under Secretary receives documents relating to an overseas order (including a provisional order) that have been transmitted to the State for the purpose of having the order made enforceable or confirmed in the State and it appears to him that the defendant is not resident in, or proceeding to, the State but is resident in, or proceeding to, another Australian State or a reciprocating country other than that in which the

order was made, the Under Secretary may, instead of taking steps with a view to the registration or confirmation of the order in the State—

- (a) transmit the documents to the Collector for that other Australian State or an appropriate authority in that other reciprocating country together with such information as he possesses concerning the whereabouts and intended movements of the defendant; and
- (b) give to the officer of a court or other authority in the reciprocating country in which the order was made notice of the fact that he has so transmitted the documents.

71. (1) Where—

- (a) an overseas order is registered or confirmed under this Division; and
- (b) the Collector receives a request in writing made by an officer of the court that made the order or some other competent authority in the reciprocating country that the order be made no longer enforceable in the State,

Cancellation
of
registration.
N.S.W., s. 88;
Vic., s. 90;
Qsld., s. 90;
and S.A.,
s. 99u.

the Collector shall send the request to the clerk at Perth who shall file the request and, if the order is registered under this Division, cancel the registration of the order by noting the fact and date of the cancellation on the certified copy of the order filed in the court.

(2) Where such a request has been so filed—

- (a) the overseas order ceases to be enforceable in the State;
- (b) the order remains unenforceable in the State, unless and until it is registered, or again registered, in the State; and
- (c) every warrant or other process under this Act arising out of the order previously issued in the State and not executed ceases to have effect.

Proceedings
for
enforcement.
N.S.W., s. 89;
Vic., s. 91;
Qld., s. 91;
and S.A.,
s. 99v.

72. (1) Where an overseas order is enforceable in the State by virtue of this Division—

- (a) all proceedings may be taken for the enforcement of the order; and
- (b) the provisions of this Act shall, so far as they are applicable and with such modifications as are necessary, apply to and in relation to proceedings for the enforcement of the order,

as if it were an order containing a provision for maintenance made under Part III.

(2) The Collector may take any proceedings that are authorised by subsection (1) of this section.

(3) Where proceedings are so taken by the Collector, the court shall, unless it is satisfied by evidence to the contrary, presume that the enforcement of the order (being an order of the kind referred to in paragraph (a) of the definition of "maintenance order" in subsection (1) of section forty-nine) is required for the actual support of the person for whose benefit the order was made and that no moneys have been paid under the order since its registration in the State other than any moneys so paid to the Collector.

Defendant
in the State
may apply
for order of
variation,
etc.
N.S.W., s. 90;
Vic., s. 92;
Qld., s. 92;
and S.A.,
s. 99w.

73. (1) Where an overseas order is enforceable in the State by virtue of this Division, the defendant may make an application in writing, in accordance with the prescribed form, to the court, at Perth, for an order discharging, suspending or varying the overseas order, and the court has jurisdiction to hear and determine the application.

(2) Where a local order is enforceable under the law of a reciprocating country in which the defendant is for the time being resident, the complainant may make an application in writing, in accordance with the prescribed form, to the court, at Perth, for an order varying, or (if the order has been suspended) reviving, the order.

(3) The applicant shall cause notice of an application under this section to be served upon the Collector personally or by post not less than fourteen days before the hearing of the application.

(4) The evidence of any witness who is examined at the hearing of any such application shall be put into writing and shall be read over to or by and signed by him.

(5) The court shall, as far as practicable, hear and determine an application under this section as if it were a similar application under Division 2 of Part III.

74. Where—

- (a) an application is made under subsection (1) of section seventy-three by a defendant for the discharge, suspension or variation of an overseas order;
- (b) the defendant either did not appear at the hearing of the proceedings upon which the overseas order was made or was not served in the manner referred to in subsection (3) of section eighty-seven in the country in which that order was made with a summons issued pursuant to the complaint upon which that order was made; and
- (c) the application is made within six months after service on the defendant of notice of registration of the order in the State,

Discharge, suspension or variation of order made in absence of defendant. N.S.W., s. 91; Vic., s. 93; Qsld., s. 93; and S.A., s. 99x.

the defendant may, in addition to raising any matter that he might raise on a complaint made under Division 2 of Part III, raise any ground of opposition that he could have raised had the proceedings on which the overseas order was made been heard in the State.

75. In an application under section seventy-three, the law to be applied is the law of the State.

Law to be applied. N.S.W., s. 92; Vic., s. 94; Qsld., s. 94; and S.A., s. 99y.

Certain orders to be provisional only.

N.S.W., s. 93;
Vic., s. 95;
Qsld., s. 95;
and S.A.,
s. 99z.

76. (1) Where the court proposes to make an order on an application under section seventy-three and any court in the reciprocating country will, if the order is provisional only, have jurisdiction to confirm the order, the order shall be provisional only and shall have no effect unless and until confirmed (either with or without modification) by such a court, and shall be expressed accordingly.

(2) Where a provisional order is made in accordance with this section, the Collector shall send a certified copy of the provisional order, together with the depositions of the witnesses, to an officer of a court in the reciprocating country having jurisdiction to confirm the provisional order.

(3) Where a court in the reciprocating country confirms (either with or without modification) a provisional order made on an application under section seventy-three, the order has effect in the State as so confirmed.

(4) Notwithstanding anything contained in this section, if a provisional order made on an application under subsection (2) of section seventy-three is confirmed (either with or without modification) by a court of a reciprocating country (not being the country specified in the order) in which the defendant is resident at the time of the confirmation, the order has effect in the State as so confirmed.

Procedure where provisional order remitted by court in reciprocating country.

N.S.W., s. 94;
Vic., s. 96;
Qsld., s. 96;
and S.A.,
s. 99za.

77. (1) Where a provisional order made in accordance with section seventy-six is remitted by a court in a reciprocating country to the court for the taking of further evidence, the court shall, after notice has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the reciprocating country.

(2) If, upon the taking of the further evidence, it appears to the court that the order ought not to have been made, the court may rescind the order

and may, if it thinks fit, make a fresh provisional order on the application under section seventy-three.

78. (1) Where the Collector receives—

(a) a certified copy of —

- (i) a provisional order made by a court of a reciprocating country discharging, suspending, varying or reviving a local order enforceable in that reciprocating country; or
- (ii) a provisional order made by a court in a reciprocating country discharging, suspending, varying or reviving an overseas order made in that reciprocating country and enforceable in the State by virtue of this Division;

Confirmation in the State of provisional orders of variation, etc., made in reciprocating countries. N.S.W., s. 95; Vic., s. 97; Qsld., s. 97; and S.A., s. 99zb.

and

- (b) the depositions of the witnesses who gave evidence at the hearing of the application upon which the provisional order was made,

the Collector shall, on behalf of the party on whose application the provisional order was made in the reciprocating country, apply to the court for an order confirming the provisional order.

(2) The Collector shall cause notice in accordance with the prescribed form of the application under this section to be served on the respondent to the application not less than seven days before the hearing of the application.

(3) Upon the hearing of any such application, the court may—

- (a) confirm the provisional order (either with or without modification);
- (b) discharge the provisional order; or
- (c) adjourn the proceedings and remit the provisional order to the court that made it with a request that the court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this section (whether with or without modification) the order as so confirmed has effect in the State as if it were an order to the like effect made by the court.

Governor
may declare
reciprocating
countries
N.S.W., s. 96;
Vic., s. 98;
Qld., s. 98;
and S.A.,
s. 99zc.

79. (1) Where the Governor is satisfied that the law in any country makes provision for the enforcement in that country of maintenance orders made in another country, the Governor may, by proclamation published in the *Gazette*, declare that country to be a reciprocating country for the purposes of this Part.

(2) If it appears to the Governor that the jurisdiction of the courts of a country specified, or to be specified, in a proclamation under subsection (1) of this section to make maintenance orders extends to the making of orders that are not of the same kind as orders that may be made in the State under Part III, he may, by the same or a subsequent proclamation, declare that that country has restricted reciprocity with the State.

(3) In a proclamation made under subsection (1) or (2) of this section the Governor may specify, in relation to the country to which the proclamation applies, a date, which may be before or after or the same day as the date of the proclamation, and declare that maintenance orders made in that country on or after that date shall be enforceable in the State in accordance with the provisions of this Division.

(4) The Governor may, by the like proclamation, revoke or vary or further vary any proclamation made under subsection (1) or (2) of this section.

(5) Where a country that has been a reciprocating country ceases to be a reciprocating country—

- (a) a maintenance order made in that country and enforceable in the State by virtue of this Division ceases to be so enforceable; and

- (b) every warrant or other process under this Act arising out of any such order previously issued in the State and not executed ceases to have effect,

but this subsection does not affect the validity of anything done under this Act for the enforcement of a maintenance order while that country was a reciprocating country.

(6) At least once in every year the Collector shall cause to be published in the *Gazette* a list of the names of the reciprocating countries, showing the respective dates upon which they became reciprocating countries, indicating the date, if any, specified in relation to any such country in accordance with subsection (3) of this section, and indicating which of those countries are countries having restricted reciprocity.

(7) Production of a copy of the *Gazette* containing such a list is evidence of the matters stated in the list and of the fact that a country shown in the list as a reciprocating country of either class continues to be a reciprocating country of that class.

Division 4.—General.

80. While a maintenance order is enforceable in the State under this Part, all moneys directed by the order to be paid are payable to the Collector, and the receipt of the Collector for any such moneys is a sufficient discharge of the liability of a person to pay those moneys in accordance with the order.

Payments to be made to Collector.
N.S.W., s. 97;
Vic., s. 99;
Qsld., s. 100;
and S.A.,
s. 99zd.

81. Where the operation of a local order enforceable in another Australian State or in a reciprocating country, or the operation of an interstate order or overseas order enforceable in the State, is affected by an order (other than a provisional order), event or other matter made, occurring or arising in the State of which the Collector has notice, the Collector shall send to the Collector for the other Australian State, or to an

Collector to notify changes in orders enforceable in other Australian States or reciprocating countries.
N.S.W., s. 98;
Vic., s. 100;
Qsld., s. 101;
and S.A.,
s. 99ze.

appropriate officer in the reciprocating country, a certified copy of the order, or a notice in writing giving particulars of the event or other matter, by which the operation of the order so enforceable has been so affected.

Collector to note changes in orders made or enforceable in the State. N.S.W., s. 99; Vic., s.101; Qsid., s. 102; and S.A., s. 99zf.

82. (1) Where the Collector receives from the Collector for another Australian State or from an appropriate officer in a reciprocating country a certified copy of an order (other than a provisional order), or a notice in writing giving particulars of an event or other matter, made, occurring or arising in that other Australian State, or in that reciprocating country and affecting, in a manner appearing from the certified copy or notice, the operation of a local order enforceable in that other Australian State or in that reciprocating country, or of an interstate order or overseas order enforceable in the State under this Part, the Collector shall—

- (a) file the certified copy or notice in the court in which the order affected was made or confirmed or is registered; and
- (b) if the complainant or defendant is resident in the State, cause a copy of the certified copy or notice to be served on the complainant or defendant, as the case may be.

(2) Where a certified copy or notice is filed in accordance with subsection (1) of this section in relation to a maintenance order, the order, event or matter has the like effect in the State as it appears from the certified copy or notice to have in the other Australian State or reciprocating country.

(3) Subsections (1) and (2) of this section do not apply in relation to an order made in a reciprocating country affecting a maintenance order in a manner adverse to the defendant unless it appears from the documents received by the Collector that the defendant appeared on the hearing of the proceedings.

83. (1) For the purposes of this Part, an overseas order (including a provisional order) or a certificate or notice originating in a reciprocating country, that refers to an amount of money (including an amount of arrears) expressed in the currency of a reciprocating country shall be deemed to refer to the amount that was the equivalent amount in Australian currency on the prescribed date on the basis of the telegraphic transfer rate of exchange that prevailed on that date.

Conversion
of currency.
N.S.W., s.
100; Vic., s.
105; Quid., s.
103; and S.A.,
s. 99zg.

(2) For the purposes of this section, a certificate signed by the Collector, or the Collector for another Australian State, and purporting to be based on information obtained by him from a bank, that a specified amount in Australian currency was, on a specified date, the equivalent of a specified amount in another currency on the basis of the telegraphic transfer rate of exchange prevailing on that date is evidence of the matter stated in the certificate.

(3) Where a certificate of a Collector in accordance with subsection (2) of this section has been filed in the court in relation to an order, certificate or notice, every copy of that order, certificate or notice served on any person shall be accompanied by a copy of the first-mentioned certificate.

(4) Where, under section fifty-one, the Collector is required to remit an amount of money to a country outside the Commonwealth, he shall remit such amount in the currency of that country as he is able to remit by the expenditure of that first-mentioned amount.

(5) In this section "the prescribed date" means—

(a) in relation to a maintenance order registered under this Part, or a certificate with respect to the arrears payable under a maintenance order sought to be so registered, the day upon which the order is registered;

- (b) in relation to a provisional order confirmed under this Part, the day upon which the order is confirmed; or
- (c) in relation to an order or notice referred to in subsection (1) of section eighty-two, the day upon which the certified copy of the order or the notice is filed in a court in accordance with that subsection.

Translation of orders, records, etc. N.S.W., s. 101; Vic., s. 103; Qsld., s. 104; and S.A., s. 99zh.

84. Where a certified copy of an order of a court (including a provisional order), a record of the evidence of a witness or other document arising out of, or relating to, proceedings in a court outside the Commonwealth is not in the English language, it shall not be used for the purpose of registering an order under this Part, or received in evidence in proceedings under this Part, unless it is accompanied by a translation of the document into the English language certified under the hand of an officer of that court to be a correct translation, or bearing the seal of that court, and where such a document is accompanied by such a translation—

- (a) the translation may be received in evidence to the same extent as the document of which it is a translation and shall, unless the contrary is proved, be deemed to be a correct translation;
- (b) all notations made on the document shall be made also on the translation; and
- (c) any copy of the document served on any person shall be accompanied by a copy of the translation.

Certificate of payments. N.S.W., s. 102; Vic., s. 104; Qsld., s. 105; and S.A., s. 99zl.

85. In any proceedings under or for the purposes of this Part, a certificate purporting to be signed by the Collector or the Collector for another Australian State, or an officer of a reciprocating country in which a maintenance order was made or is enforceable, concerning amounts paid or unpaid under a maintenance order is evidence of the facts stated in the certificate.

86. (1) For the purposes of this Part and in proceedings under or arising out of this Part, a document purporting to be—

- (a) a certified copy of an order (including a provisional order) of a court;
- (b) the record, or a certified copy of the record, of the evidence of a witness in proceedings before a court; or
- (c) a certificate or notice of a kind referred to in this Part,

shall, unless the contrary is proved, be taken to be such a certified copy, record, certificate or notice, and shall be admitted in evidence without proof of the signature of the person purporting to have signed it or of his official position.

(2) The depositions of a witness in proceedings before a court in another Australian State or in a reciprocating country, received in the State for the purposes of this Part, shall be admissible in evidence in proceedings under this Part in the court.

(3) Where application is made under section fifty-six or section seventy-three the Collector may produce to the court the depositions of a witness in the proceedings before the originating court, and such depositions shall be admissible in evidence in proceedings under this Part in the court.

87. (1) Except where the contrary intention appears in this Part, any document required or permitted by this Part to be served on a person shall be served on that person personally.

(2) A document required by subsection (4) of section fifty-four, subsection (7) of section sixty-six, subsection (4) of section sixty-nine, or section eighty-two, to be served on a person may be served on that person—

- (a) personally; or
- (b) by post at his usual or last-known place of residence or business.

Evidentiary.
[N.S.W., s.
103; Vic., s.
105; Qsld., s.
106; and S.A.,
s. 992.]
Amended by
No. 88 of
1972, s. 30.

Service of
documents.
N.S.W., s.
104; Vic., s.
106; Qsld., s.
107; and S.A.,
s. 992k.

(3) A reference in this Part to any document being served on a person personally shall be read as a reference to that document being served by—

- (a) delivering a copy of the document to that person; or
- (b) leaving a copy of the document at the usual or last-known place of residence or business of that person with some other person who apparently resides therein or is employed thereat, and is apparently over the age of sixteen years.

Repeals and
savings.
Schedule,
Pt. II.

88. (1) The Acts mentioned in Part II of the Schedule to this Act are repealed.

(2) Every order that was, before the day of the coming into operation of this Part, registered—

- (a) in the Married Persons' Relief Court, under the provisions of the Interstate Maintenance Recovery Act, 1959; or
- (b) in a court of summary jurisdiction, under the provisions of the Reciprocal Enforcement of Maintenance Orders Act, 1921,

shall, on that day, be deemed to be registered in the court, at Perth.

(3) Every order that was, before the day of the coming into operation of this Part, registered in the Supreme Court, under the provisions of the Reciprocal Enforcement of Maintenance Orders Act, 1921, shall on that day continue to be so registered and may, thereafter, be enforced in any manner in which it might before that day have been enforced, but shall, for all other purposes, be dealt with by that Court in accordance with the provisions of Division 3 of this Part, modified to such extent as may be necessary.

PART VI.—APPEALS.

89. (1) Where in any proceedings under this Act an order is made against any party to those proceedings in his absence in default of appearance he may, within twenty-one days next after the making of the order make application to the court that made the order to set aside the order and re-hear the matter of the complaint in respect of which the order was made.

Application to set aside. Repealed and re-enacted by No. 88 of 1972, s. 31.

(2) Notice in writing of the intention to make the application, and of the grounds of the application, shall be served on the clerk of the court and, on payment by the applicant of the fee prescribed as that payable on a complaint, the clerk shall appoint a time and place for the hearing of the application by the court and shall in writing notify the applicant and any other party to the proceedings of the time and place.

(3) At the time and place appointed by the clerk for the hearing of the application the court shall, if satisfied that all the parties to the proceedings have been duly notified, proceed to hear the application and if the court thinks it just in the circumstances to do so, the court may—

- (a) refuse the application to set aside the order; or
- (b) set aside the order and any proceedings under that order and proceed either at that time or at some future time to hear and determine the matter in respect of which the order set aside had been made; and
- (c) in any case make such order as to costs, and as to any proceedings arising under the order set aside, as the court thinks fit.

(4) Where an order is set aside under this section any order thereafter made in the same matter in respect of a provision for maintenance may be made to take effect from the day upon which the order set aside could have been made to take effect.

Rectifica-
tion by
the court.
Added by
No. 88 of
1972, s. 32.

89A. Where the court makes an order that is contrary to, or not in conformity with, the provisions of this Act, the court may, of its own motion or on the application of a party to the proceedings in which the order was made and after giving the parties an opportunity to be heard, recall the order so made and make an order that is not contrary to, and that is in conformity with, the provisions of this Act.

Appeals.
W.A. s. 34.

90. (1) Subject to subsection (3) of section sixteen, 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.

(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 on an appeal under the provisions of this section shall, for the purposes of its enforcement and for the purposes of section twenty, twenty-one and twenty-two, 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 of the Supreme Court remitting the complaint to the court.

PART VII.—EVIDENCE.

Standard of
proof.
W.A. s. 35.
M.C.A., s. 96.

91. (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.

(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.

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

Fresh evidence.
W.A., s. 36.

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

93. (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.

Evidence of parties and of husbands and wives of parties.
W.A., s. 37.
M.C.A., s. 97.

(2) Subject to 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.

Evidence of
non-access.
W.A., s. 38.
M.C.A., s. 98.

94. 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 as
to adultery.
W.A., s. 39.
M.C.A., s. 99.

95. (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.

(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.

Restrictions
on the
making of
orders under
ss. 17, 18 and
19.
C.W.A., s. 73.

96. On hearing a complaint made under section seventeen, against a male defendant, or a complaint under section eighteen or nineteen, the court shall not be satisfied that the defendant is or was the father of a child or stillborn child or that the woman is pregnant by the defendant (as the case may be), and shall not make an order,—

- (a) upon the evidence of the mother or woman, unless her evidence is corroborated in some material particular; or
- (b) if the court is satisfied that, at the time the child was conceived, the mother or woman was a common prostitute.

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

Certain documents admissible as evidence. [W.A., s. 40.] Amended by No. 64 of 1967, s. 26; No. 88 of 1972, s. 33.

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

(2) A certificate, purporting to be under the hand of the clerk at the place where payments are required to be made pursuant to an order, certifying—

- (a) the payments, if any, pursuant to the order, that are of record, or that there is no record of a particular payment or of any payments, in the court at that place; or
- (b) that payments pursuant to the order were in arrears in an amount specified on a date specified,

may be produced by the clerk of the court at which proceedings under this Act are being heard, or by any party to those proceedings, and may be admitted as evidence of the matters so certified; and there is a presumption that the payments that are of record in the court are the only payments made pursuant to the order to which the record refers.

98. (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 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

Evidence of rape and other offences. W.A., s. 41. M.C.A., s. 101.

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 was guilty of 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.
W.A., s. 42.

99. (1) 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.

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

Wards of
the State.
Added by
No. 64 of
1967, s. 27.

99A. (1) Where an order contains a provision for the maintenance of a child who is subsequently committed to the care of the Department for Community Welfare, if the Director files in the court a certified copy of the order committing the child, all moneys subsequently becoming due under that provision, while the child remains a ward, shall, on payment or recovery be disbursed by the clerk to the Director.

(2) Where a child to whom subsection (1) applies ceases to be a ward, the Director shall give notice to the court of that event.

(3) Where a child is, or becomes, a ward, the Director is, for the purposes of this Act, deemed, while the child remains a ward, to be a party to a proceeding in which an order containing a provision for the maintenance of that child was made and, for those purposes, has the custody of the child.

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

Alternative modes of taking evidence.
W.A., s. 43.

- (a) that any particular fact or facts may be proved by affidavit;
- (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 requires the production of a witness for cross-examination, in good faith, 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.

101. (1) Where an application is made, on an allegation of adultery, under paragraph (f) of subsection (1) of section ten or under paragraph (a) of subsection (1) of section twenty-two, 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 to that person, subject to, and in such manner as may be prescribed by, the rules.

Joinder of parties.
W.A., s. 44.

(2) Where an application made under the provisions of section twenty-one, twenty-two or twenty-three, may affect the custody of, access to

or maintenance for a child, 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.

Procedure
by way of
application.
Added by
No. 88 of
1972, s. 34.

101A. (1) A person desiring to make an application to a court under this Act shall lodge notice of his intention to make the application with the clerk of the court concerned.

(2) Except in the case of an *ex parte* application or an application authorized to be held *ex parte*, a court shall not hear an application under this Act unless it is satisfied that a copy of the notice of the intention to make the application lodged under subsection (1) of this section has been served upon such persons as appear to the court to be affected by the application.

Procedure
by way of
complaint.
Added by
No. 88 of
1972, s. 34.

101B. (1) A complaint made for the purposes of this Act shall be in writing and, if the complaint is made on behalf of any person, it shall state the person on whose behalf it is made.

(2) A complaint may be made before—

- (a) a Justice of the Peace;
- (b) a clerk of the court, or assistant clerk of the court, appointed under section one hundred and eight; or
- (c) a clerk of petty sessions,

and an originating complaint or a complaint for an order for ancillary relief may be made and tendered to the court by a legal practitioner on behalf of a complainant.

(3) A summons signed and issued by a clerk of the court, an assistant clerk of the court, or a clerk of petty sessions has the same force and effect as a summons signed and issued before a justice, and for the purposes of this section a reference to a justice shall be deemed to include a reference to those other persons.

(4) Where a complaint is so made or tendered a justice—

- (a) may issue a summons addressed to the defendant commanding him to attend the court upon the hearing of the complaint;
- (b) if satisfied by oath—
 - (i) that the whereabouts of the defendant are unknown to the complainant; or
 - (ii) that the defendant has moved or is about to move, out of the State or into a distant part of the State without providing reasonable maintenance for the complainant, or for any child,

may issue a warrant for the apprehension of the defendant and for his being brought before a court under this Act;

(c) where the complaint is made under Part IV, if satisfied by oath—

- (i) that the whereabouts of the defendant are unknown to the complainant; or
- (ii) that the defendant is about to move out of the State or into a distant part of the State; or
- (iii) that the defendant when served with a summons may move and that such removal may unreasonably delay the hearing of the complaint or tend to defeat the enforcement of the order,

may issue a warrant for the apprehension of the defendant and for his being brought before a court and dealt with in accordance with Part IV.

Court may proceed in absence of the defendant. Added by No. 88 of 1972, s. 34.

101C. (1) If a person to whom a summons or notice of application has been issued does not appear in accordance with that summons or notice or on any day to which the hearing is adjourned the court, upon proof of the service of the summons or notice, may proceed with the hearing in the absence of that person, and, in any case where that person is alleged to be in breach of an order made under Part IV of this Act, or to have moved or to be about to move out of the State or into a distant part of the State, or to have failed to appear to a summons requiring him to attend as a witness, may issue a warrant for the apprehension of that person and for his being brought before the court.

(2) Where a warrant has been issued for the apprehension of a person, whether in the first instance or upon that person having failed to appear in accordance with a summons or notice, and the court is satisfied that after strict inquiry and search that person cannot be found the court may proceed to hear the matter in his absence.

(3) The inquiry and search made for a person for the purposes of this section may be proved by evidence given orally or by the affidavit of the person or persons who made that inquiry and search.

(4) Where proceedings are adjourned *sine die* a party causing them to be relisted shall give to the other party or parties a notice of the date fixed for the continuation of the hearing, at least seven days before that date.

(5) Where the court proceeds with the hearing of a matter in the absence of a person for whose apprehension a warrant has been issued and the court makes an order in the matter the warrant shall be recalled and cancelled unless the court otherwise directs.

101D. A person brought before a court under a warrant issued pursuant to this Act may be remanded by the court from time to time and from place to place with or without bail.

Person apprehended may be remanded. Added by No. 88 of 1972, s. 34.

102. (1) Any document required or authorized to be served on a person 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 by such other means as may be prescribed.

Service. [W.A., s. 45.] Amended by No. 88 of 1972, s. 35.

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

(3) Service by post shall be effected by the clerk dispatching the document 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 complainant 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.
[W.A., s. 46.
M.C.A., s. 118.]
Amended by No. 88 of 1972; s. 36.

103. (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.

(3) Proceedings under this Act arising out of the birth, or expected birth, of an illegitimate child shall for the purposes of this section be proceedings in which there are deemed to be special circumstances that make it desirable that the jurisdiction of the court should not be exercised in open court.

Restrictions on publication of evidence.
[W.A. s. 47
M.C.A., s. 123.]
Amended by No. 88 of 1972, s. 37.

104. (1) Except as provided by this section, a person shall not print or publish or cause to be printed or published any particulars or account of proceedings under sections fourteen, seventeen,

eighteen or nineteen of this Act, whatsoever, or particulars or an account of any other proceedings under this Act, other than—

- (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 be not 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 one thousand dollars 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 two thousand dollars 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 intended in good faith 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.
W.A., s. 48.

105. Subject to the rules, the court, wherever sitting, may hear an application made under Division 2 of Part III, in respect of an order made by the court sitting at another place.

Procedure generally.
W.A., s. 49.

106. 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 Part III.

107. Where any person—

Punishment
of contempt.
[W.A., s. 50.]
Amended by
No. 88 of
1972, s. 38.

- (a) is guilty of a contempt of court under this Act or the rules in respect of which no other penalty is provided;
- (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;
- (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,

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

108. (1) The Governor may appoint a person as clerk of the court and a person as assistant 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.
[W.A., s. 51.]
Amended by
No. 64 of
1967, s. 28.

(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 the Justices Act, 1902, and the Evidence Act, 1906.

Married Persons and Children (Summary Relief).

(4) The provisions of Part IX of the Justices Act, 1902, relating to proceedings against justices with respect to any act done by a justice, as a justice, extend and apply, with such modifications as are necessary, with respect to acts done by the clerk, or by the assistant clerk, in pursuance of this or any other Act.

(5) Civil or criminal proceedings shall lie not against a person, by reason, only, of—

- (a) anything done in reliance on an order apparently made, or a document apparently given, in accordance with the requirements of this Act;
- (b) any act, matter or thing done, or commanded to be done, by a person for the purported purpose of carrying out the provisions of this Act; or
- (c) any act, matter or thing omitted to be done,

unless the act, matter or thing was done, commanded to be done, or omitted to be done maliciously or without reasonable and probable cause.

Affidavits
by whom
sworn.
W.A., s. 52.

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

Rules.
W.A., s. 53.

110. 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;
- (e) the duties of officers of the court and the manner of keeping all books, entries and accounts;
- (f) the establishment and operation of a central registry of the court;
- (g) the forms of, and the manner of keeping, books of account;
- (h) manner of the application and of the appropriation of moneys paid to the court pursuant to an order or to any direction given, or condition imposed, by a court under the provisions of subsection (2) of section thirty-two or under the provisions of any other Act; and
- (i) all such other matters and things for which rules are contemplated or required by this Act, and such other matters and things as are, in his opinion, necessary or expedient for giving full effect to the provisions of, and for the due administration of, this Act.

111. (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.

Fees.
W.A., s. 54.

(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.

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

- (a) indorse the process with the words, “*in forma pauperis*” and the prescribed fees shall, thereupon, in the case of a complaint,

be payable upon the order of the court, only; and in the case of a warrant, upon recovery from the person liable to make payment thereunder; and

- (b) where the proceeding is an application under Division 2 of Part III, waive payment of the prescribed fees.

SCHEDULE.

Section 4.

Part I.

<i>Title of Act.</i>	<i>Extent of Repeal.</i>
Married Persons (Summary Relief) Act, 1960	The whole Act.
Married Persons (Summary Relief) Act Amendment Act, 1964	The whole Act.
Justices Act, 1902-1964	Sections 155A to 155D, inclusive.

Part II.

Section 88.

Title of Act.

Interstate Maintenance Recovery Act, 1959.
Interstate Maintenance Recovery Act Amendment Act, 1960.
Interstate Maintenance Recovery Act Amendment Act, 1962.
Interstate Maintenance Recovery Act Amendment Act, 1964.
Reciprocal Enforcement of Maintenance Orders Act, 1921.
Reciprocal Enforcement of Maintenance Orders Act Amendment Act, 1923.
Reciprocal Enforcement of Maintenance Orders Act Amendment Act, 1936.
Reciprocal Enforcement of Maintenance Orders Act Amendment Act, 1958.