

**MARRIED PERSONS AND
CHILDREN
(SUMMARY RELIEF).**

No. 88 of 1972.

**AN ACT to amend the Married Persons and Children
(Summary Relief) Act, 1965-1967.**

[Assented to 4th December, 1972.]

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

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

Short title
and citation.

(2) In this Act the Married Persons and Children (Summary Relief) Act, 1965-1967, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Married Persons and Children (Summary Relief) Act, 1965-1972.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Section 3
amended.

3. Section 3 of the principal Act is amended—
- (a) as to the heading PART III., by deleting the passage "*sections 9-19*", in line five, and substituting the passage "*sections 9-19C*";
 - (b) by adding a new heading as follows—

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

- (c) as to the heading PART IV., by deleting the item "*Division 1.—Enforcement by Warrant, etc., sections 28-32.*", in lines four and five and substituting four new items as follows—

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.

Section 5
amended.

4. Subsection (1) of section 5 of the principal Act is amended by deleting the interpretations of the terms "dependant" and "habitual drunkard", and by inserting in the appropriate alphabetical order two new interpretations as follows—

"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;

“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;

5. Section 10 of the principal Act is amended by deleting paragraph (e) and substituting a new paragraph as follows—

Section 10
amended.

- (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;

Section 11
amended.

6. Section 11 of the principal Act is amended—

(a) as to subsection (1), in paragraph (b),—

(i) by deleting the passage commencing with the words “a provision”, in line one, and ending with the word “behalf”, in line four, and substituting the passage “a provision that a party to the marriage pay to an officer of the court, for disbursement to a person named in the order”; and

(ii) by inserting after the word “maintenance”, in line six, the words “of the other party to the marriage”;

(b) by inserting after subsection (3) three new subsections as follows—

(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. ; and

(c) by deleting subsection (7) and substituting a new subsection as follows—

(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

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the order may appear and be heard in the matter as a party to the application. .

7. The principal Act is amended by repealing section 13 and re-enacting it with amendments as follows—

Section 13
repealed and
re-enacted.

13. (1) The court—

Non-
molestation
orders.

- (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,

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 is 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.

Section 14
amended.

8. Section 14 of the principal Act is amended—

(a) as to subsection (1), by deleting the words commencing with the word “against”, in line three, and ending with the word “custody”, in line six, and substituting the words “for the custody of a child”;

(b) by adding after subsection (1) a new subsection as follows—

(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. ;

(c) as to subsection (4), by deleting the passage “, on cause being shown and having regard to the provisions of section fifteen,” in lines three, four and five; and

(d) by adding after subsection (5) a new subsection as follows—

(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. .

9. The principal Act is amended by inserting after section 14 a new section as follows— Section 14A added.

- 14A. Where the court is satisfied— Custody of and access to illegitimate children.
- (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. .

10. Section 16 of the principal Act is amended— Section 16 amended.

- (a) by deleting subsection (1) and subsection (2) and substituting new subsections as follows—

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— Interim orders.

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

(b) by deleting subsection (4) and substituting a new subsection as follows—

(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. ;

(c) by adding after subsection (8) two new subsections as follows—

(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.

11. Section 18 of the principal Act is amended— Section 18 amended.

(a) as to subsection (3), by inserting immediately following the word “court” in line five the words “for disbursement to a person or persons named in the order”; and

(b) as to subsection (7), by deleting the passage “subsection (5)”, in line two of paragraph (a), and substituting the passage “subsection (6)”.

12. The principal Act is amended by inserting after section 18A a new section as follows— Section 18B added.

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. Plural births.

Section 19C
added.

13. The principal Act is amended by inserting after section 19B a new section as follows—

Maintenance
of
dependants
over 16.

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.

(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.

Section 21
amended.

14. Section 21 of the principal Act is amended by deleting subsections (1), (2) and (3) and substituting two new subsections as follows—

Variation
of orders.

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. .

15. (1) Subsection (1) of section 22 of the principal Act is amended— Section 22
amended.

- (a) by deleting the words “a marriage”, in line one, and substituting the words “an order”;
- (b) by deleting the words “any order or any provision of an order”, in line three, and substituting the words “the order or any provision of the order”;
- (c) by deleting the words “both parties to the marriage”, in line six, and substituting the words “all the parties to the order”; and
- (d) by deleting the word “shall”, in line nineteen, and substituting the word “may”.

(2) Subsection (2) of section 22 of the principal Act is amended by adding after the word “event”, in line eight, the passage “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.” .

16. Section 24A of the principal Act is amended by deleting subsection (2). Section 24A
amended.

Section 24B
added.

17. The principal Act is amended by adding after section 24A a new section as follows—

Disclosure
of assets and
liabilities.

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.

(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. .

Section 25
amended.

18. Section 25 of the principal Act is amended by adding after the word “whether”, in line two, the words “on the adjournment of the hearing of or on”.

Part IIIA
added.

19. The principal Act is amended by inserting after section 27 a new Part IIIA as follows—

PART IIIA.—REGISTRATION OF MAINTENANCE
AGREEMENTS.

Interpreta-
tion.

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.

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.

When
registration
may be set
aside or
cancelled.

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.

(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.

Agreements
to bind the
parties.

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.

(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.

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

Agreements
by persons
under 21.

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.

Enforcement
against
estate of
deceased
party.

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.

Recovery of
arrears on
cessation of
agreement.

20. The principal Act is amended as to Part IV—

Part IV
amended.

- (a) by deleting the subtitle "*Division 1.—Enforcement by Warrant, etc.*", and substituting a new subtitle as follows—

Division 1.—Interpretation and transitional provisions. ;

(b) by deleting section 28, and substituting a new section as follows—

Interpreta-
tion.

28. (1) In this Part unless inconsis-
tent 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 main-
tenance order or to proceedings
in connection with a mainten-
ance 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 enforce-
able 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 recover-
able under the order; and

(b) an order for the payment
of costs in any proceed-
ings 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. ; and

- (c) by inserting after section 28 a new subtitle as follows—

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

Section 29
amended.

21. Section 29 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “twenty pounds or by imprisonment with or without hard labour not exceeding one month”, in the last two lines thereof, and substituting the words “one hundred dollars or three months’ imprisonment”;

- (b) in subsection (3), by deleting the passage “under subsection (1) or (2) of this section”, in lines two and three, and substituting the passage—

under—

(a) section thirteen;

(b) section twenty-four B; or

(c) subsection (1) or subsection (2) of this section, ; and

- (c) by adding after subsection (4) two new subsections as follows—

(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. .

22. The principal Act is amended by inserting after section 29 two new sections as follows—

Sections 29A
and 29B
added.

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—

Offence in
respect of
custody
orders made
in other
Australian
States.

- (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

Enforcement
of recognis-
ances.

party to the proceedings in relation to which the recognisance was given, adjudge the recognisance to be forfeited.

(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.

Part IV
further
amended.

23. The principal Act is further amended as to Part IV—

(a) by inserting after section 29B a new subtitle as follows—

*Division 1B.—Commitment proceedings,
etc. ;*

(b) by deleting section 30, section 31, and section 32; and

(c) by inserting fourteen new sections as follows—

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 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.

Entry of
Judgment
in Local
Court.

(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.

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

Power to court on complaint to commit defendant to prison for failure to pay maintenance.

Notice of order of commitment not required.

Division neither the order nor a copy of the order need be served on the defendant before the issue of a warrant of commitment.

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.

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

Suspension of commitment subject to order being complied with.

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

Warrant of commitment.

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.

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.

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.

Defendant not liable to serve imprisonment more than once for any arrears, but arrears are to remain and be recoverable.

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.

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.

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.

- (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.

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.

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.

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.

Part IV further amended.

24. Part IV of the principal Act is further amended—

(a) by inserting after section 31M a new subtitle as follows—

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

(b) by inserting nine new sections as follows—

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—

Venue of hearing.

- (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.

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

Enforcement of instalment payments.

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.

Provision where defendant supported wife or child during any period.

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.

Election as to provisions to be enforced.

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.

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—

(a) recall any warrant in respect of which a fresh application or a

Recall,
cancellation,
suspension
and
remand on
warrants.

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.

Other methods of enforcement and penalties.

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

Enforcement outside the State.

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. .

25. Section 33 of the principal Act is amended— Section 33 amended.

- (a) as to subsection (1), by deleting the interpretation of the expressions “defendant” and “maintenance order”; and
- (b) by deleting subsection (2).

26. Section 49 of the principal Act is amended, Section 49 amended.
as to subsection (1)—

- (a) in the interpretation of the term “certified copy”, by repealing paragraph (b) and re-enacting it with amendments as follows—
 - (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 ; and
- (b) in the interpretation of the term “interstate order”, by deleting the word “another”, in line two of paragraph (b) of that interpretation, and substituting the word “any”.

Section 52
amended.

27. Section 52 of the principal Act is amended—

- (a) by redesignating the section as subsection (1); and
- (b) by adding a new subsection as follows—

(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. .

Section 54
amended.

28. Section 54 of the principal Act is amended by adding after the word “made”, in line two of paragraph (a) of subsection (1), the words “or registered”.

Section 57
amended.

29. Section 57 of the principal Act is amended, as to paragraph (b),—

- (a) by deleting the words “either did not appear”, in line one of that paragraph, and substituting the words “neither appeared”; and
- (b) by deleting the words “or was not”, in lines three and four of that paragraph, and substituting the words “nor was”.

Section 86
amended.

30. Section 86 of the principal Act is amended by adding after subsection (2) a new subsection as follows—

(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. .

31. The principal Act is amended by repealing section 89 and re-enacting it with amendments as follows—

Section 89
repealed and
re-enacted.

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.

(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. .

Section 89A
added.

32. The principal Act is amended by adding after section 89 a new section as follows—

Rectifica-
tion by
the court.

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. .

Section 97
amended.

33. Section 97 of the principal Act is amended, as to subsection (2), by deleting the passage “is admissible in evidence and, if admitted, is *prima facie*”, in lines thirteen and fourteen, and substituting the passage “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”.

Part VIII
amended.

34. The principal Act is amended, as to Part VIII, by adding after section 101 four new sections as follows—

Procedure
by way of
application.

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.

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. Procedure
by way of
complaint.

(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.

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.

35. Section 102 of the principal Act is amended—

Section 102
amended.

- (a) as to subsection (1), by deleting the words “A summons or notice issued pursuant to a complaint”, in lines one and two, and substituting the words “Any document required or authorized to be served on a person”; and
- (b) as to subsection (3), by deleting the words “summons or notice”, in line two, and substituting the word “document”.

Section 103
amended.

36. Section 103 of the principal Act is amended by adding after subsection (2) a new subsection as follows—

(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. .

Section 104
amended.

37. Section 104 of the principal Act is amended as to subsection (3)—

- (a) in paragraph (a) by deleting the words “five hundred pounds” and substituting the words “one thousand dollars”; and
- (b) in paragraph (b), by deleting the words “one thousand pounds” and substituting the words “two thousand dollars”.

Section 107
amended.

38. Section 107 of the principal Act is amended—

- (a) by deleting paragraph (a) and substituting a new paragraph as follows—
 - (a) is guilty of a contempt of court under this Act or the rules in respect of which no other penalty is provided; ; and
- (b) in the last line thereof, by deleting the words “fifty pounds” and substituting the words “one hundred dollars”. .