

INTERSTATE MAINTENANCE RECOVERY.

8° Elizabeth II., No. XXVIII.

No. 28 of 1959.

AN ACT relating to maintenance recovery and reciprocity between Western Australia and other parts of the Commonwealth and New Zealand with respect to the service of summonses for maintenance and the enforcement of maintenance orders to amend the Child Welfare Act, 1947-1958 and for other purposes.

[Assented to 15th October, 1959.]

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

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Interstate Maintenance Recovery Act, 1959.*

Commence-
ment.

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

3. (1) The Interstate Destitute Persons Relief Act, 1912-1931, is hereby repealed. Repeal.

(2) Without prejudice to the operation of the other provisions of the Interpretations Act, 1918, the provisions of section fifteen of that Act are expressly declared to apply in respect of the Act so repealed and of this Act, and, for the purposes of applying the provisions of that section, a reference to any of the provisions of the Interstate Destitute Persons Relief Act, 1912, in any document, regulation or order of court made under that Act and having effect immediately prior to the coming into operation of this Act, shall be construed as a reference to the corresponding provisions of this Act. Application of Interpretation Act, 1918.

(3) The Child Welfare Act, 1947-1958, is amended in accordance with the First Schedule to this Act and as so amended may be cited as therein provided. Amendment of Child Welfare Act, First Schedule.

4. This Act is divided into parts as follows— Division of Act.

PART I.—PRELIMINARY, ss. 1-7.

PART II.—SUMMONSES FOR MAINTENANCE AND MAINTENANCE ORDERS UNDER THIS PART, ss. 8-9.

PART III.—RECIPROCITY BETWEEN THIS STATE AND OTHER STATES RELATING TO SERVICE OF SUMMONSES FOR MAINTENANCE AND MAINTENANCE ORDERS AND THE PROCEDURE RELATING THERETO, ss. 10-13.

PART IV.—ENFORCEMENT IN THIS STATE OF MAINTENANCE ORDERS MADE IN ANOTHER STATE, ss. 14-17.

PART V.—MAKING AND CONFIRMATION OF PROVISIONAL ORDERS AND THE VARIATION, SUSPENSION AND DISCHARGE OF MAINTENANCE ORDERS UNDER THIS ACT, ss. 18-24.

PART VI.—GENERAL AND SUPPLEMENTAL, ss. 25-35.

FIRST SCHEDULE.

SECOND SCHEDULE—Form No. 1 to Form No. 4.

Interpreta-
tion.

5. In this Act, unless the context otherwise requires—

“certified copy” in relation to a maintenance order, deposition or other document of a court means a copy of the order, deposition or document certified by the clerk of that court to be a true copy and includes a statement containing the substance of a maintenance order of a court certified as such by the clerk of that court;

“clerk” means the clerk or other officer of a court, being the officer ordinarily having the custody of the documents and proceedings showing the convictions, sentences, or orders, had, passed, or made before that court;

“collector” means the collector appointed by this Act, and includes—

(a) an officer appointed in another State, whose duties, or part of whose duties, are similar to those of the collector appointed under this Act; and

(b) an assistant collector;

“complainant” means a person at whose instance or in whose favour a maintenance order has been made;

“defendant” means a person against whom a maintenance order has been made or a summons for maintenance issued;

“deposition” means a statement of evidence given before a court which has been signed by the deponent and includes a transcription of evidence given before a court which has been recorded by shorthand or other recording process and certified by the clerk as a correct transcription of the evidence so recorded;

“justice” means justice of the peace for the State wherein the particular matter or thing to which the expression relates is done or required to be done;

“maintenance order” includes any order or judgment of a court whereby any person is adjudged, ordered, or directed to pay money, whether in one sum or by instalments, or to pay money periodically or otherwise, for or towards the support of any person and includes—

- (a) any order or judgment in or relating to affiliation proceedings;
- (b) any order, award, or judgment as to costs in or relating to a maintenance order or affiliation proceedings;
- (c) any order varying, suspending or discharging a maintenance order;
- (d) any order or judgment against a surety or a person who has entered into a recognisance in or in relation to affiliation proceedings or a maintenance order; and
- (e) any order registered or confirmed in this or in any other State under any law reciprocal to the Imperial Act intituled the Maintenance Orders (Facilities for Enforcement) Act, 1920;

“prescribed” means prescribed by this Act or by regulation or by rule of court;

“regulation” means regulation made under this Act;

“rule of court” means rule made by the Judges of the Supreme Court or any three of them under section twenty-six of this Act;

“State” means a State of the Commonwealth of Australia and includes the Dominion of New Zealand, the Australian Capital

Territory, a Territory of the Commonwealth of Australia, and a Territory governed, administered or controlled, whether solely or jointly by the Commonwealth of Australia under a mandate or a trusteeship;

“summons for maintenance” means a summons to show cause why a person should not support or should not contribute towards the support of another person.

Establishment of reciprocity by proclamation. (Cf. No. 30 of 1912, s. 5.)

6. (1) (a) Where in any State other than this State, an Act is in force containing provisions substantially similar to or corresponding with those contained in, or for carrying out objects substantially similar to or corresponding with the objects of Part III., Part IV. or Part V. of this Act, the Governor may, by proclamation published in the *Gazette*, declare that that Part shall extend to and be in force as regards that State.

(b) Upon publication of a proclamation as provided in this subsection that State shall, so long as the proclamation is in force, be a State in respect of which that Part of this Act is in force.

(c) One proclamation under paragraph (a) of this subsection may be published declaring that all or any of those Parts shall extend to and be in force as regards the same State.

(2) A proclamation under this section may be varied or revoked by a subsequent proclamation.

(3) In or in connection with anything done or required to be done, or any proceedings, under this Act, a proclamation under this section shall be deemed to be in force until a proclamation varying or revoking it is proved.

(4) The *Gazette* purporting to contain a proclamation under this section is sufficient evidence of the validity, contents, and publication of that

proclamation and is conclusive evidence of the existence of all conditions precedent to the valid making of the proclamation.

7. (1) (a) The person who for the time being holds or acts in the office of the Assistant Director of the Child Welfare Department under the Child Welfare Act, 1947, is appointed the collector.

Collector and
assistant
collectors.

(b) Where under or by virtue of any enactment amending or substituted for the Child Welfare Act, 1947, an office is substituted for that of the Assistant Director of the Child Welfare Department, the person who for the time being holds or acts in the office so substituted shall become the collector appointed by this Act.

(2) The Governor may appoint such assistant collectors and other officers as he considers necessary for the purposes of this Act.

PART II.—SUMMONSES FOR MAINTENANCE AND
MAINTENANCE ORDERS UNDER THIS PART.

8. (1) Where, in this State, at any time whether before or after the coming into operation of this Act—

Summons
for mainten-
ance against
defaulter in
another
State.
(Cf. No. 30
of 1912, s.7.)

- (a) a husband leaves his wife, or
- (b) a parent leaves his or her child who is under the age of eighteen years, whether legitimate or illegitimate, or
- (c) a person over the age of twenty-one years leaves his or her parent, or
- (d) any person liable to support, or contribute towards the support of another person leaves that other person,

without adequate means of support; and

- (e) the husband, or the parent or person, as the case may be, first referred to in the paragraphs (b), (c) and (d) of this subsection, each of whom is in this section

referred to as "the defaulter," goes to reside or resides, temporarily or permanently, in any State outside Western Australia,

any justice for this State may, upon application made by or on behalf of the wife, child, parent or person so left, each of whom is in this section referred to as "the plaintiff," sign and issue a summons for maintenance directed to the defaulter to show cause why he or she should not support, or should not contribute towards the support of, the plaintiff.

(Cf. No. 30 of 1912, s. 8 (1).)

(2) (a) No summons for maintenance shall be issued under this section unless the application therefor is supported by affidavit or declaration made by or on behalf of the plaintiff in the Form No. 1 in the Second Schedule to this Act, or in a form to that effect and containing the matters set out in Form No. 1.

Form No. 1
Second
Schedule.

(Cf. No. 30 of 1912, s. 8 (2).)

(b) On issuing a summons under this section the justice shall as soon as practicable deliver or send the affidavit or declaration supporting the application to the clerk of the nearest court of summary jurisdiction in this State, or, if the application was made by or on behalf of a child, to the clerk of the nearest children's court constituted under the Child Welfare Act, 1947, and the clerk shall file it in the office of that court.

(Cf. No. 30 of 1912, s. 8 (3).)

(c) For the purposes of this subsection the affidavit referred to in paragraph (a) shall be sworn before a commissioner for taking affidavits in the Supreme Court and the declaration shall be made before a justice.

(Cf. No. 30 of 1912, s. 9.)

(3) (a) In every summons issued under this section there shall be stated a place and time after service for the hearing which shall be fixed by the justice issuing the summons, regard being had, in fixing the time, to the distance of the alleged place of residence of the defaulter from the place so fixed for the hearing.

(Cf. No. 30 of 1912, s. 10 (1).)

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

(c) The due service of the summons, or the steps taken in attempting to serve the summons, shall be proved by affidavit sworn before any person authorised to take affidavits in this State or in the State in which service was effected or attempted, or by declaration made before a justice for this State or for the State wherein the service was effected or attempted.

(Cf. No. 30
of 1912, s.
10 (2).)

(4) (a) A summons issued under this section may be heard and determined

(Cf. No. 30
of 1912, s.
11.)

(i) by a court of summary jurisdiction constituted by a stipendiary magistrate appointed or deemed to have been appointed under the Stipendiary Magistrates Act, 1957, and holding office as such and at least one justice; or

(ii) if the summons was issued upon application by or on behalf of a child, by a children's court constituted under the Child Welfare Act, 1947,

and jurisdiction is hereby conferred on those courts as so constituted to exercise such powers, discretions and authorities as are respectively exercisable by them under the Justices Act, 1902, or the Child Welfare Act, 1947, as the case may be, for the purpose of giving effect to this section.

(b) Where at the hearing of a summons issued under this section or any adjournment of the hearing—

(Cf. No. 30
of 1912, s.
12.)

(i) service of the summons is proved; or

(ii) it is proved to the satisfaction of the court that a reasonable attempt was made to serve the summons, and that the defaulter had intentionally evaded service thereof;

the court may proceed to hear and may determine the summons.

(c) The court may if satisfied that the defaulter is able to support or contribute towards the support of the plaintiff, make an order for the payment to

(Cf. No. 30
of 1912, s.
12.)

the plaintiff or to a person for the support of the plaintiff of—

- (i) such sum, if any, as the court deems proper for past maintenance by instalments or otherwise;
- (ii) such periodical sums as the court deems proper for future maintenance; and
- (iii) costs to be fixed by the court.

Order under s. 8 may be enforced as an order under Justices Act, 1902.

9. Subject to this Act, an order for the payment of a sum of money whether as costs or maintenance made under section eight of this Act may be enforced in this State in the same manner as an order for the payment of a sum of money made under the Justices Act, 1902, the relevant provisions of which apply *mutatis mutandis* as if expressly enacted by this Act, and jurisdiction is hereby conferred on courts of summary jurisdiction to exercise such powers, discretions and authorities as are exercisable under that Act for the purpose of enforcing such an order.

PART III.—RECIPROCITY BETWEEN THIS STATE AND OTHER STATES RELATING TO SERVICE OF SUMMONSES FOR MAINTENANCE AND MAINTENANCE ORDERS AND THE PROCEDURE RELATING THERETO.

Summons for maintenance or maintenance order issued in another State may be served in this State. (Cf. No. 30 of 1912, s. 6.)

10. Where, in any State outside Western Australia in respect of which this Part of this Act is in force—

- (a) a summons for maintenance has been issued; or
- (b) a maintenance order has been made,

by any justice or by any court, before or after the coming into operation of this Act, and the person against whom the summons was issued or the order was made comes to reside, or is resident, temporarily or permanently, in this State, the summons or the order, or any process, notice or other document relating to that order may be served in this State.

11. (1) Where, in this State, before or after the coming into operation of this Act—

Summons issued or maintenance order made in this State may be served in another State.

- (a) a summons for maintenance has been issued; or
- (b) a maintenance order has been made and remains unsatisfied, wholly or in part;

any justice may, upon application made by or on behalf of the person who has taken out the summons, or by or on behalf of the complainant under the order, and on being satisfied that the person against whom the summons was directed or order made has gone to reside or is resident either temporarily or permanently in a State outside Western Australia in respect of which this Part of this Act is in force, direct that the summons or the order, or any process, notice or other document relating to that summons or order may be served in that State and, if he so directs, shall endorse the summons, order, process, notice or other document to that effect.

(2) In every summons, notice or other document endorsed under subsection (1) of this section, the justice shall, if the circumstances of the case require, state a place and a time after service for the hearing thereof, which shall be fixed by the justice, regard being had to the distance of the alleged place of residence of the defendant from the place fixed for the hearing.

(3) A summons, maintenance order, process, or other document relating to a maintenance order endorsed under subsection (1) of this section may be served either in this State or in any other State in respect of which this Part of this Act is in force.

(4) Service of a summons, maintenance order, process, notice or other document relating to a summons or a maintenance order, or the steps taken in attempting to serve the same, shall be proved by affidavit sworn before any person authorised to take affidavits in this State or in the State in which service was effected or attempted

or by declaration made before a person authorised to take statutory declarations in this State or the State in which the service was effected or attempted.

Procedure relating to maintenance order when defendant resides in another State.

12. (1) Where a maintenance order has been made in this State in favour of a person at the time resident in this State and the defendant goes to reside or is resident either temporarily or permanently in another State in respect of which this Part of this Act is in force, the collector of this State shall, upon application made by or on behalf of the complainant and on receiving from the applicant such documents and information as are necessary for the purpose, send to the collector of that other State the following documents:

- (a) a certified copy of the order in duplicate;
- (b) an affidavit in the form No. 2 in the Second Schedule to this Act or in a form to that effect, sworn by the collector before a justice;
- (c) a statement of such information as the collector is able to obtain for the purpose of enabling the collector to whom the documents are sent to identify and discover the whereabouts of the defendant;
- (d) a request that the order be enforced in that other State;

Form No. 2
Second
Schedule.

and shall at the same time notify the clerk of the court by which the order was made that proceedings have been commenced under this Act for the enforcement of the order in a State other than this State.

(2) Upon application by the collector of this State the clerk of the court by which a maintenance order was made or the authority responsible for collections and disbursements under the order, as the case may be, shall furnish to the collector—

- (a) a certified copy in quadruplicate of the order including any variation, if any, thereof;

- (b) a statement of moneys due and remaining unpaid under the order as appear from the record of the case;

or, if he has no record of the moneys so due and unpaid,

- (c) a certified copy of an affidavit sworn before a person authorised to take affidavits in this State, and which, when required, shall be furnished by the complainant, containing a statement of the moneys due and remaining unpaid under the order.

(3) When a clerk of a court is notified in accordance with subsection (1) of this section—

- (a) that court shall recall any process issued for the purpose of enforcing compliance with the order and shall cancel the process;
- (b) no fresh process relating to the enforcement of compliance with that order shall be issued unless and until the collector informs the clerk of the court that proceedings for enforcement of the order in another State have ceased;
- (c) the clerk of the court shall forward to the collector a certified copy in duplicate of every order, made subsequent to the commencement of proceedings under this Act, varying, suspending or discharging the order.

13. Where the collector of this State is advised by the collector of another State in which enforcement of an order is sought that the enforcement is not practicable, necessary or advisable or that proceedings for enforcement of the order in that State have ceased, the collector of this State shall furnish to the clerk of the court the enforcement of whose order is being sought, a statement of the moneys due and remaining unpaid under the order as appear from the records in his office relating to the order; and, on the application of the complainant, the court may issue or re-issue such process

When proceedings for enforcement of order in another State cease.

as the court is competent to issue for enforcing the order if still in force and unsatisfied in whole or in part.

PART IV.—ENFORCEMENT IN THIS STATE OF
MAINTENANCE ORDERS MADE IN ANOTHER STATE.

How main-
tenance
order made
in another
State can
be enforced
in this
State.

14. (1) The collector of this State, upon receiving from a collector of another State in respect of which this Part of this Act is in force the following documents—

- (a) a certified copy in duplicate of a maintenance order made by a court in that State in favour of any person resident at the time in that State; and
- (b) an affidavit in the Form No. 3 in the Second Schedule to this Act, or in a form to that effect, stating the particulars indicated in that form, sworn by the collector of the other State; and
- (c) a request that the maintenance order be enforced or made enforceable in this State;

Form No 3
Second
Schedule.

may forthwith take such steps as he considers necessary to enforce the order and may continue to enforce the order until enforcement is no longer practicable, necessary or advisable.

(2) A document purporting to be a document mentioned in subsection (1) of this section, and to be signed, certified, or sworn as thereby required, shall for the purposes of this Act without further proof, be deemed to be what it purports to be, and to be duly signed, certified or sworn unless the contrary is proved.

Unless
served on
defendant,
maintenance
order made
in another
State not
enforceable
in this
State.

15. (1) No maintenance order made by a court in a State outside Western Australia is enforceable, nor shall an order so made be enforced, in this State unless the collector of this State serves or causes to be served upon the defendant the duplicate or original certified copy of the order.

(2) Service of the order may be effected by delivering the original or duplicate certified copy of the order to the defendant or by posting the same

by registered letter addressed to him at his last known place of residence, or in accordance with any order for substituted service made by a court of summary jurisdiction in this State upon an application by the collector.

(3) Jurisdiction is hereby conferred on a court of summary jurisdiction in this State to hear an application for an order for substituted service referred to in subsection (2) of this section and the court may make such order in the matter, whether for service by advertisement or otherwise, as to the court may seem just.

(4) Upon service of the order it becomes enforceable in this State.

16. (1) Where service has been effected in accordance with the provisions of section fifteen of this Act, all moneys by the order adjudged, ordered or directed to be paid shall be paid to the collector who is hereby authorised to collect and receive them and to take all steps for recovery thereof.

Upon service of order moneys payable thereunder shall be paid to collector.

(2) The receipt by the collector of moneys paid under a maintenance order made enforceable in this State under the provisions of this Act is a valid discharge of the liability to pay those moneys.

17. (1) (a) Subject to this Act, a maintenance order which becomes enforceable in this State pursuant to this Part of this Act may be enforced in the same manner as an order for the payment of a sum of money made under the Justices Act, 1902, the relevant provisions of which apply *mutatis mutandis* as if expressly enacted by this Act, and jurisdiction is hereby conferred on courts of summary jurisdiction to exercise such powers, discretions and authorities as are exercisable under that Act for the purpose of enforcing and giving effect to such an order.

Jurisdiction of court to enforce order made enforceable under this Part.

(b) Notwithstanding the proviso to subsection (2a) of section one hundred and fifty-five of the Justices Act, 1902, the aggregate amount payable

under a maintenance order so enforceable is recoverable in default of payment whether or not the amount so payable exceeds the sum of periodical payments or instalments for six months.

(2) In, or in connection with, any proceedings in any court in this State to enforce a maintenance order so becoming enforceable, the legality or the justice of that order shall not be questioned.

(3) (a) The maintenance order may be enforced at the instance of the collector or of an assistant collector or person authorised in accordance with paragraph (b) of this subsection as though he were the party in whose favour the order was made.

(b) The collector may, by instrument under his hand, authorise any officer of the Child Welfare Department, or any clerk of petty sessions or any member of the Police Force to take enforcement proceedings on his behalf in relation to a specific case.

(c) A person so authorised shall for the purposes set out in the instrument of authorisation, have all the powers and authorities of the collector and the instrument of authorisation shall be deemed to be what it purports to be, without proof of the signature of the collector, or of the identity or official status of the person therein authorised, or the statements therein appearing.

PART V.—MAKING AND CONFIRMATION OF PROVISIONAL ORDERS AND THE VARIATION, SUSPENSION AND DISCHARGE OF MAINTENANCE ORDERS UNDER THIS ACT.

18. (1) (a) Where, pursuant to the provisions of Part IV. of this Act, a maintenance order is enforceable in this State—

the defendant

OR

the complainant,

if resident either temporarily or permanently in this State, may apply to the appropriate court mentioned in paragraph (b) of this subsection to have the order varied, suspended or discharged.

Complainant or defendant if residing in this State may apply to court for variation, etc., of maintenance order enforceable in this State.

(b) Subject to subsection (6) of this section, the appropriate court referred to in paragraph (a) of this subsection is a court in this State that would have been competent to make the maintenance order had proceedings relating or incidental to the order been commenced or taken in this State; and subject to this Act jurisdiction is hereby conferred on the court to hear the application in accordance with the practice and procedure of the court and to make an order under section nineteen of this Act.

(2) The court shall give timely notice to the collector and to the other party to the maintenance order, if that party is resident either temporarily or permanently in this State, and that other party, if resident in this State, shall be entitled to appear personally or by solicitor, to be heard, call witnesses and give evidence at the hearing.

(3) The collector, or an assistant collector or a person authorised in accordance with the provisions of paragraph (b) of subsection (3) of section seventeen of this Act, is entitled to be joined as a party to the application and to appear, be heard, give evidence and call witnesses at the hearing.

(4) The court may entertain an application under this section although the applicant is in default in complying with the maintenance order, if it is satisfied that good and sufficient reasons exist for the default.

(5) Subject to the provisions of section nineteen of this Act the court shall hear and determine the application and may make such order as, in the circumstances, it considers just, notwithstanding that the other party to the maintenance order has not been served with notice of the application and does not appear.

(6) An application under this section may be heard and determined by a court referred to in subsection (1) of this section situated at the place

nearest to the applicant's place of abode or at such other place as may be agreed upon by the applicant and the collector.

Making of order varying, suspending or discharging a maintenance order enforceable in this State.

19. (1) The court hearing an application made under section eighteen of this Act may, upon sufficient evidence being furnished and cause being shown to the satisfaction of the court, make an order varying, suspending for a specified period or discharging the maintenance order.

(2) A maintenance order in respect of which an application under section eighteen of this Act is made, may be

(a) so varied, suspended or discharged as from a date prior to the application; or

(b) so varied or suspended from time to time.

(3) The evidence of the parties and of the witnesses in any application under section eighteen of this Act shall be put into writing and shall be read over and signed by them respectively.

Order of variation suspension or discharge provisional only until confirmed.

20. (1) An order made by a court pursuant to an application under section eighteen of this Act is provisional only and has no effect unless and until confirmed by the court which made the original order in respect of which the application was made, or by a court having equal jurisdiction within the State in which the original order was made.

(2) Where the order is not one dismissing the application and the other party to the original maintenance order did not appear or was not represented at the hearing under this Part, the court may, if it thinks fit, state in writing the grounds upon which the making of the order might have been opposed by that other party had he appeared or been represented at the hearing.

(3) (a) The clerk shall, upon a provisional order being made, send to the collector certified copies in duplicate of

(i) the provisional order; and

(ii) the statement, if any, referred to in subsection (2) of this section of the grounds upon which the order might have been opposed; and

(iii) the depositions relevant to the order.

(b) The clerk shall attach to or endorse on each deposition his certificate that the deposition was read over to and signed by the deponent.

(4) Upon receipt of the documents mentioned in subsection (3) of this section, the collector shall note in his records all relevant facts relating to the order and forward the documents to the collector of the State in which the maintenance order in respect of which the application under section eighteen of this Act was made.

21. (1) Where a provisional order made under this Part of this Act, having come before a court of competent jurisdiction in another State for confirmation, has from that court been remitted through the collector of that State and the collector of this State to the court which made that provisional order for the purpose of taking further evidence, the court which made the provisional order or any other court having equal jurisdiction within the same geographical limits shall, after giving timely notice to the collector of this State, the applicant, and the other party to the application if resident in this State, proceed to hear and record the further evidence in the same manner and in accordance with the same provisions as evidence relating to an application under section eighteen of this Act may be heard or recorded.

Confirming court may remit provisional order to court which made it for further evidence.

(2) At the hearing, the court may in its discretion, consider any certified copies of depositions, taken in the confirming court in the other State, that may be placed before it.

(3) If, upon the hearing of further evidence, and the consideration in its discretion of those depositions, if any, it appears to the court that the

variation, suspension or discharge of the maintenance order ought not to have been made, the court may make an order rescinding the same.

(4) Certified copies of the depositions taken in the matter and of any decision of the court shall be remitted to the collector of this State and by him, after noting the relevant facts in his records, to the collector of the other State in the manner laid down with regard to a provisional order in section twenty of this Act.

Collector to serve defendant with copy of confirming order.

22. On receipt from the collector of a State in respect of which this Part of this Act is in force of a certified copy in duplicate of an order of a court of that State confirming or refusing to confirm a provisional order made in this State, the collector of this State shall, if the original maintenance order is one that became enforceable in this State pursuant to the provisions of this Act, cause the defendant to be served with a copy of the order of confirmation or refusal in a manner prescribed for the service of an order by section fifteen of this Act.

Rights of parties to application for provisional order.

23. The parties to an application for a provisional order under this Part of this Act have the same rights in all respects as they would have if they were parties to an application to a court of competent jurisdiction in this State for the variation, suspension or discharge of a maintenance order made by that court.

Confirmation or otherwise of provisional order made in another State.

24. (1) Where a maintenance order made in this State in favour of a person at the time resident in this State has been made the subject of proceedings for enforcement in another State and the collector has received from the collector of that other State the following documents, namely—

- (a) a certified copy in duplicate of a provisional order of a court of competent jurisdiction in that other State varying, suspending or discharging the original order;

- (b) certified copies in duplicate of the depositions taken in the matter, each deposition having attached thereto or endorsed thereon the clerk's certificate that the deposition has been read over to and been signed by the deponent; and
- (c) a certified copy in duplicate of a statement, if any, by the court in that other State of the grounds upon which the making of the provisional order might have been opposed by the other party had that party appeared at the hearing,

the collector shall forward those documents to the clerk of the court where the original order was made.

(2) On receipt of the documents mentioned in subsection (1) of this section the clerk shall take steps to have the question of the confirmation or otherwise of that provisional order come before that court for hearing and shall give timely notice of the hearing to the collector and to the party or parties resident in this State.

(3) If it appears to the court where the original order was made that the ends of justice would best be served by setting down the hearing at some other court having equal jurisdiction the court may remit the matter to that other court, due notice being given to the collector and the parties resident in this State who are affected thereby.

(4) At the hearing, the collector, an assistant collector, or a person authorised under paragraph (b) of subsection (3) of section seventeen of this Act shall be regarded as a party to the proceedings and shall be entitled to appear in person or by solicitor, be heard, give evidence, and call witnesses.

(5) A court before which a matter under this section is brought shall hear and determine the issue, whether or not all the parties appear.

(6) The court, after hearing such evidence as may be given and considering if it thinks fit the certified copies of depositions remitted to it may confirm the provisional order either with or without modifications, or refuse to confirm it, or remit the provisional order together with copies of the further depositions, if any, recorded by it through the collector to the court which made the provisional order for the taking of further evidence, and adjourn the proceedings for the purpose.

(7) A provisional order of variation, suspension or discharge, when confirmed under this section, shall have the same effect as an original order and the persons affected thereby shall have the same rights and obligations as if the confirmed order had been an order of the confirming court; but unless and until the provisional order is so confirmed, it has no effect.

(8) The clerk of a court which has, under the provisions of this section, confirmed or refused to confirm a provisional order of variation, suspension, or discharge of a maintenance order shall send to the collector of this State a certified copy in duplicate of the court's order of confirmation or refusal; and on receipt of those documents the collector shall remit them to the collector of the State in which the provisional order was made.

PART VI.—GENERAL AND SUPPLEMENTAL.

Regulations.

25. (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular without prejudice to the generality of the foregoing provisions may make regulations with respect to—

- (a) the duties, powers, and authorities of officers and employees and other persons engaged in the administration of this Act;

- (b) the methods to be employed by the collector and other officers, persons and employees in the exercise and discharge of their powers and duties;
- (c) the accounts, records and books to be kept by the collector and other officers, persons and employees and the methods of keeping the same;
- (d) the receipt, collection, banking, remittance and payment of moneys by the collector and persons employed under his control;
- (e) the forms of any documents to be used for the purposes of this Act, either in addition to or in variation of the forms in the Schedule to this Act; and
- (f) the time and manner in which any act, matter or thing required by this Act to be done or performed is to be done or performed.

(2) The regulations may prescribe penalties not exceeding twenty pounds which may be imposed by a court of summary jurisdiction upon conviction for any breach of the regulations.

26. Rules of Court may be made for carrying into effect the provisions and objects of this Act in matters affecting the Supreme Court; for facilitating communications and the transmission of documents between that Court and the collector of this State and collectors of other States; for the carrying out of the practice and procedure of that Court and the duties of the officers of that Court; and for providing for the payment of fees and for regulating the costs chargeable by solicitors in connection with matters applicable to that Court under this Act.

Judges may
make rules
of Court.

27. If any affidavit or other document or writing required for the purposes of this Act complies, as to the form and the manner of making thereof either

Form of
documents.

with the law of the State where the same was made, or with the law of this State, that affidavit or document or writing shall, as to the form and the manner of making thereof, be deemed sufficient in all proceedings under this Act and for all the purposes of this Act.

Certificate or affidavit of collector, etc., sufficient evidence of facts therein contained.

28. (1) A certificate signed or an affidavit sworn by a collector or by an assistant collector, stating that any sum therein specified has been paid in respect of a maintenance order therein mentioned shall be sufficient evidence of such payment in any proceedings before any court, justice, or other tribunal.

(2) A certificate so signed or an affidavit so sworn stating that a defendant has been imprisoned and the facts relative thereto, or that credit of a named sum has been given to a defendant, or that judgment has been given against a defendant for a specified sum, or that a warrant, writ, or other process has been issued against a defendant and the amount named therein shall be *prima facie* evidence of the facts so stated.

(3) (a) Upon production of a certificate or affidavit referred to in subsection (1) or subsection (2) of this section to the clerk of the court in which an original maintenance order was made, the clerk shall enter up satisfaction to the extent of the amount stated in the certificate or affidavit to have been paid or credited.

(b) Upon production of a certificate or affidavit referred to in subsection (1) or subsection (2) of this section to the officer of police or other official or person authorised to collect the moneys due under the maintenance order to which the certificate or affidavit refers, the officer, person or official shall note the facts contained therein, give the defendant credit in the amounts stated to have been paid by or credited to him and proceed to collect the balance, if any, from the defendant.

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

Audit of collector's accounts.

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

30. (1) Subject to subsection (2) of this section, when—

Onus of proof of identity of person served.

- (a) a summons or other process or notice by this Act made servable; or
- (b) a summons or notice issued under or by the authority of this Act; or
- (c) a certified copy of a maintenance order;

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

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

31. (1) Where a maintenance order is being enforced under this Act and the order either in whole or in part contains a provision for the support of a child who is being wholly or partly supported by payments made from funds appropriated by Parliament for the Child Welfare Department, the person who, under the terms of the order, is entitled

Collector may be authorised to pay Director of Child Welfare moneys held or received for support of child maintained by Government funds.

Form No. 4
Second
Schedule.

to any moneys received thereunder may give to the collector an authority in or to the effect of the Form No. 4 in the Second Schedule to this Act to pay to the Director of the Child Welfare Department all moneys then held or thereafter received by the collector, in pursuance of the order.

(2) The collector shall file the authority with his records relating to the order.

(3) From the date the collector receives the authority until the same is cancelled by written notice by or on the authority of the Minister for Child Welfare any payment made by or on the authority of the collector in accordance with such authority shall be a sufficient discharge.

(4) Where an authority has been lodged with the collector in pursuance of subsection (1) of this section, the person who signed the authority shall not be entitled except with the consent of the Director of the Child Welfare Department or of any officer authorised by the Director in that behalf to waive payment of, or allow credit for, any amount due and unpaid under the maintenance order.

(5) Any authority substantially similar to an authority referred to in this section given prior to the date of the coming into operation of this Act to the collector appointed under the Interstate Destitute Persons Relief Act, 1912, and not cancelled prior to that date, shall be deemed to have been given under this Act, and shall be subject to the provisions of this section.

Collector
may dele-
gate powers.

32. The collector may delegate to any officer or officers, person or persons appointed under this Act all or any of the powers or duties conferred upon him by this Act.

Certain
matters to
be presumed
in absence
of proof to
contrary.

33. (1) An averment in any complaint or information made or laid pursuant to the enforcement of a maintenance order becoming enforceable in this State under the provisions of this Act or a

statement on oath by the collector, or an assistant collector, or person authorised in accordance with paragraph (b) of subsection (3) of section seventeen of this Act—

- (a) that any proclamation, regulation or rule of court has been published in the *Gazette*;
or
- (b) that any person has been appointed to an office under this Act or regulations;

shall be *prima facie* evidence of the facts alleged.

(2) In the absence of proof to the contrary, the authority of the collector, an assistant collector or other officer, or employee appointed for the purpose of this Act to do any act or to take any proceedings shall be presumed.

(3) Any document purporting to be signed by a judge, magistrate, justices, an officer of a court, a collector or an assistant collector of this State or of a State in respect of which Part III., Part IV. or Part V. of this Act is in force shall unless the contrary is proved be deemed for the purposes of the administration of and of proceedings under this Act to have been so signed without proof of the signature or of the judicial or official character of the person appearing to have signed it, and the clerk or other officer of a court by whom a document is signed shall unless the contrary is proved be deemed to have been the proper officer of the court to sign the document.

34. A deposition or a copy of a deposition certified as correct by the clerk and taken in a court in any State outside Western Australia in connection with a maintenance order the subject of proceedings under this Act in this State may be received in evidence in those proceedings.

Certified copy of deposition taken in another State may be received in evidence in this State.

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

Salaries and expenses to be paid out of money provided by Parliament.

s. 3 (3).

FIRST SCHEDULE.

Child Welfare Act, 1947.

Citation.
Reprinted
Acts, Vol.
11.

1. (1) In this Schedule the Child Welfare Act, 1947-1958, is referred to as the principal Act.

(2) The principal Act as amended by this Schedule may be cited as the Child Welfare Act, 1947-1959.

s. 20
amended.

2. Section twenty of the principal Act is amended by adding after paragraph (d) a paragraph as follows—

(da) shall exercise the jurisdiction conferred on it by the Interstate Maintenance Recovery Act, 1959; .

SECOND SCHEDULE.

s. 8 (2).

Form No. 1.

Interstate Maintenance Recovery Act, 1959.

FORM OF AFFIDAVIT (OR DECLARATION) IN SUPPORT OF SUMMONS FOR MAINTENANCE FOR SERVICE OUT OF JURISDICTION.

Western Australia.

.....
(Full Christian Name and Surname of Plaintiff)
Complainant.

against

.....
(Full Christian Name and Surname of Defaulter)
Defendant.

I (full Christian name and surname), of (address and occupation) DO HEREBY MAKE OATH AND SAY (or do solemnly and sincerely declare) as follows:—

1. The abovenamed Defendant is (here state relation of Defendant to Complainant). (Or—On the..... day of....., an order was made by (here state name of Justice or Court) whereby the abovenamed Defendant was ordered to (here state effect of the order made for or towards the support of the Complainant).)

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

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

4. The Defendant (here state, so far as known or believed, what means the Defendant has and whether employed or not, and, if employed, how employed).

5. I desire to avail myself (or—I desire that the Complainant may have the benefit) of the Interstate Maintenance Recovery Act, 1959.

SWORN (or DECLARED) at }
....., the.....day }
of..... }
Before me
.....

Form No. 2.

S. 12 (1).

Interstate Maintenance Recovery Act, 1959.

FORM OF AFFIDAVIT TO SUPPORT APPLICATION TO ENFORCE MAINTENANCE ORDER OUTSIDE JURISDICTION.

Western Australia.

.....
(Full Christian name and surname of Complainant)
Complainant,

.....
(Full Christian name and surname of Defendant)
Defendant.

I,....., of....., make oath and say as follows:—

1. I am Collector appointed for the State of Western Australia under the Interstate Maintenance Recovery Act, 1959.

2. On the.....day of....., 19....., an order was made by the.....Court held atin the State of Western Australia, whereby the abovenamed Defendant was ordered to pay weekly and every week next ensuing for the use of the abovenamed Complainant, an allowance of..... and for the support of his children:

.....
an allowance of.....in respect of each child, provided that the foregoing order as to the support (and legal custody) of the said children should not have effect in regard to any child therein mentioned beyond the time when that child attains the age of.....years.

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

4. The arrears due and unpaid under the said order on theday of..... amount to..... (£.....).

5. To the best of my knowledge and belief the Defendant is now residing at....., in the State of.....

SWORN by the deponent at }
the..... }
day of..... } Collector.

Before me—

Justice of the Peace for the
State of Western Australia.

s. 14 (1).

Form No. 3.

Interstate Maintenance Recovery Act, 1959.

FORM OF AFFIDAVIT TO SUPPORT APPLICATION TO
ENFORCE MAINTENANCE ORDER OUTSIDE
JURISDICTION.

State of.....

(Full Christian name and surname of Complainant)
Complainant,

(Full Christian name and surname of Defendant)
Defendant.

On the.....day of....., in the year one thousand nine hundred and....., I....., of....., sworn, MAKE OATH AND SAY as follows:—

1. I am.....appointed for the State of.....under the (here state short title of Act under which application is made).

2. On the.....day of....., 19....., an order was made by the.....Court held at.....in the State of....., whereby the abovenamed Defendant was ordered to pay weekly and every week next ensuing.....for the use of the Complainant an allowance of.....and for the support of his children:

.....an allowance of.....in respect of each child, provided that the foregoing orders as to the support and legal custody of the said children should not have effect in regard to any child therein mentioned beyond the time when that child attains the age of.....years (or completes his or her.....year).

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

4. The following amount has been paid under the said order, namely.....

5. There is now remaining due and unsatisfied under the said order on.....the sum of..... being for.....weeks.

6. To the best of my knowledge and belief the Defendant is now residing at.....in the State of....., and has been residing there since about.....

SWORN by the deponent on }
the day first abovementioned at..... }

Before me—
.....

Form No. 4.

S. 31 (1).

Interstate Maintenance Recovery Act, 1959.

Child Welfare Department,
Perth,.....

Case No.....

Complainant,

v.

Defendant.

To.....

I,....., of....., do hereby authorise you to pay to the Director, Child Welfare Department, Perth, to be held by him on behalf of the Minister for Child Welfare, all moneys now held or hereafter received by you in pursuance of the order of the.....Court, whereby the abovenamed..... is liable to contribute towards the maintenance of his.....

I also authorise the Minister, in his discretion, to reimburse the funds of the Child Welfare Department out of the payments received under this authority to an amount not exceeding any allowances made or the cost of any services provided by that Department in connection with the maintenance of the said.....

No. 28.] *Interstate Maintenance Recovery.* [1959.

This authority is to remain in force until the Minister notifies you that he deems it no longer necessary to operate under this authority.

SIGNED at.....this.....day
of....., 19.....

Witness:.....

.....
Signature.
