

MAINTENANCE

No. 20 of 1968

An Ordinance relating to the Maintenance of Wives, Husbands and Children.

PART I.—PRELIMINARY.

- Short title.** 1. This Ordinance may be cited as the *Maintenance Ordinance 1968* ~~1968~~ - 1974.
- Commence-
ment.** 2. This Ordinance shall come into operation on a date to be fixed by the Minister by notice published in the *Gazette*.[†]
- Parts.** 3. This Ordinance is divided into Parts, as follows:—
 Part I.—Preliminary (Sections 1-9).
 Part II.—Maintenance Orders and Other Orders.
 Division 1.—General (Sections 10-12).
 Division 2.—Maintenance Orders (Sections 13-21).
 Division 3.—Ancillary Orders (Sections 22-25).
 Division 4.—General Provisions relating to Orders (Sections 26-31).
 Division 5.—Discharge, Suspension, Variation and Annulment of Orders (Sections 32-39).
 Part III.—Enforcement of Orders made in the Territory.
 Division 1.—Interpretation (Section 40).
 Division 2.—Imprisonment, Recognizances, etc. (Sections 41-47).
 Division 3.—Attachment of Earnings (Sections 48-62).
 Division 4.—Miscellaneous (Sections 63-64).
 Part IV.—Reciprocal Enforcement of Orders made outside the Territory.
 Division 1.—Interpretation and Administration (Sections 65-66).
 Division 2.—State Maintenance Orders (Sections 67-76).
 Division 3.—Overseas Maintenance Orders (Sections 77-93).
 Division 4.—Miscellaneous (Sections 94-101).
 Part V.—Appeals (Sections 102-103).
 Part VI.—Miscellaneous (Sections 104-122).
- Repeal.** 4.—(1.) The Ordinances specified in the Schedule to this Ordinance are repealed.
 (2.) A maintenance order—
 (a) registered, immediately before the commencing day, in the Supreme Court or the Court of Petty Sessions under the *Maintenance Orders (Facilities for Enforcement) Ordinance 1927* or under that Ordinance as subsequently amended; or

* Made on 26 September 1968; notified in the *Commonwealth Gazette* on 30 September 1968.

† The date fixed was 1 January 1969; see *Commonwealth Gazette* 23 December 1968, p. 7571.

- (b) registered, immediately before the commencing day, in the Register of Australian Maintenance Orders kept under the *Maintenance Recovery (Reciprocity with States) Ordinance 1963-1966*,

shall be deemed to be registered in the Court of Petty Sessions under Part IV., and that Part applies to and in relation to the maintenance order accordingly.

(3.) Where a maintenance order to which the last preceding sub-section applies was, immediately before the commencing day, registered in the Supreme Court, the Registrar of the Supreme Court shall transmit to the Clerk of the Court of Petty Sessions all the papers held as of record in the Supreme Court in relation to that order.

(4.) The repeal of an Ordinance specified in the Schedule to this Ordinance does not affect anything duly done under that Ordinance in relation to a maintenance order made in the Territory for the purpose of enforcing the maintenance order in a State or in a place outside the Commonwealth and, if immediately before the commencing day the maintenance order is registered in a State, in a Territory of the Commonwealth other than the Australian Capital Territory or in a place that is a reciprocating country within the meaning of Part IV., that Part applies to and in relation to the maintenance order, subject to this section, as if the maintenance order had been so registered under that Part at the time when the thing was duly done.

(5.) Where a provisional order has been confirmed under an Ordinance specified in the Schedule to this Ordinance, the order, in so far as it is in force immediately before the commencing day and, if it has been varied before that day, as so varied, has the same force and effect on and after that day as it would have had if it had been confirmed under Part IV. and, in the case of an order that had been varied, if the variation had also been made or given effect to under that Part.

(6.) An order made by the Court of Petty Sessions under an Ordinance specified in the Schedule to this Ordinance, being an order that was in force immediately before the commencing day, continues in force, subject to the next succeeding sub-section, as if it had been made under Part IV.

(7.) Where—

(a) an appeal has been instituted before the commencing day in relation to an order made under an Ordinance specified in the Schedule to this Ordinance but had not been determined or withdrawn before that day; or

(b) an appeal could be instituted against an order made under an Ordinance specified in the Schedule to this Ordinance but for the repeal of that Ordinance by this Ordinance,

the appeal may be instituted or continued and heard and determined as if this Ordinance had not been made.

(8.) An order made upon an appeal referred to in the last preceding sub-section operates and has effect as if the order appealed from had been made under and the appeal had been instituted under this Ordinance.

(9.) The Collector for the purposes of the *Maintenance Recovery (Reciprocity with States) Ordinance* 1963-1966 shall, notwithstanding the repeal of that Ordinance, continue in office on and after the commencing day but only for the purpose of delivering to the person appointed to be the Collector under this Ordinance all documents and other papers held by him in relation to an order to which that Ordinance applied immediately before that day.

New South
Wales Acts to
cease to apply.

5.—(1.) The Deserted Wives and Children Act, 1901, and Parts I. and II. of the Infant Protection Act, 1904, of the State of New South Wales cease to apply in the Territory as laws of the Territory.

(2.) An order in force immediately before the commencing day under the Deserted Wives and Children Act, 1901 of the State of New South Wales in its application in the Territory or under Part I. or Part II. of the Infant Protection Act, 1904, of that State in its application in the Territory continues in force, subject to this section, as if this Ordinance had been in force on the day on which the order was made and the order had been made under the provisions of this Ordinance that correspond with the provisions of the Act under which the order was made.

(3.) Subject to the succeeding sub-sections of this section, this Ordinance applies to and in relation to an order continued in force by virtue of the last preceding sub-section.

(4.) Proceedings under an Act specified in sub-section (1.) of this section, including proceedings to enforce an order continued in force by sub-section (2.) of this section, instituted before the commencing day may be continued as if this Ordinance had not come into operation.

(5.) An appeal may be instituted against a decision of the Court made before the commencing day in proceedings under an Act specified in sub-section (1.) of this section and the appeal may be heard and determined as if this Ordinance had not come into operation.

(6.) Where an order is made on or after the commencing day in proceedings instituted before the commencing day to which sub-section (4.) of this section applies, an appeal may be brought against the order under the last preceding sub-section and, subject to any appeal so brought, an order made on the determination of the proceedings has effect on and after it is made as if it had been made in proceedings instituted under the provisions of this Ordinance that correspond with the provisions of the Act under which the proceedings were instituted.

Interpretation.

6.—(1.) In this Ordinance, unless the contrary intention appears—
“adopted”, in relation to a child, means—

- (a) adopted in accordance with the law of the Australian Capital Territory, of a State or of another Territory of the Commonwealth; or
- (b) adopted by a person in accordance with the law of another place and recognized by the law of the Australian Capital Territory as being the adopted child of that person;

“child” includes an illegitimate child;

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“complaint” means a complaint made to the Court under Part II.;

“complainant” means—

- (a) in relation to a complaint instituting proceedings seeking the making of a maintenance order or to any such proceedings—the person for whose benefit the maintenance order was or is being sought; and
- (b) in relation to a maintenance order or proceedings in connexion with a maintenance order—the person for whose benefit the maintenance order was made;

“defendant” means—

- (a) in relation to a complaint instituting proceedings seeking the making of a maintenance order or to any such proceedings—the person against whom the maintenance order was or is being sought; and
- (b) in relation to a maintenance order or to proceedings in connexion with a maintenance order—the person liable to make payments under the order;

“maintenance order” means an order under this Ordinance for the payment of moneys for or towards the maintenance of a wife, husband or child, and includes an order made under section 16, 18, 19 or 20 of this Ordinance;

“nominal order” means an order made under section 21 of this Ordinance, other than an order so made that has been varied to provide for the payment of a greater amount than the nominal amount directed to be paid by the order before it was varied;

“preliminary expenses”, in relation to a woman who has been, or expects to be, confined, means the following expenses:—

- (a) the expense of maintaining the woman for a period of two months immediately before her confinement or expected confinement;
- (b) reasonable medical, surgical, hospital and nursing expenses of her confinement or expected confinement; and
- (c) the expense of maintaining the woman, and any child or children born to her during her confinement or expected confinement, for a period of three months immediately following the birth of that child or those children;

“the Clerk” means the person for the time being holding the office of Clerk of the Court of Petty Sessions or an office of Deputy Clerk of the Court of Petty Sessions;

“the Collector” means the Collector of Maintenance holding office under this Ordinance, and includes a Deputy Collector of Maintenance exercising the powers or performing the functions of the Collector of Maintenance under this Ordinance;

“the commencing day” means the day fixed under section 2 of this Ordinance;

“the Court” means the Court of Petty Sessions;

“the repealed Ordinances” means any of the Ordinances repealed by section 4 of this Ordinance, and includes the Act and parts of an Act that have ceased to apply in the Territory by virtue of section 5 of this Ordinance;

“the Territory” includes the Territory accepted by the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act 1915*;

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“woman” includes a girl who has not attained the age of ~~twenty-one~~ years.

(2.) For the purposes of this Ordinance—

(a) a child adopted since the marriage of two persons by those persons or by either of them with the consent of the other; or

(b) a child of a party to a marriage (including an illegitimate child of a party to a marriage and a child adopted by a party to a marriage otherwise than with the consent of the other party to the marriage) if the child has at any time ordinarily been a member of the household of the parties to the marriage,

shall be deemed to be a child of the marriage, and a child of the parties to a marriage (including a child born before the marriage), whether legitimated by the marriage or not, who has been adopted by another person or other persons shall be deemed not to be a child of the marriage.

(3.) In the application of this Ordinance in relation to a child, where a child is to be deemed to be the child of a marriage, the husband shall be deemed to be the father of the child and the wife shall be deemed to be the mother of the child.

(4.) A union in the nature of marriage entered into outside Australia or under Division 3 of Part IV. of the *Marriage Act 1961*, or of that Act as amended at any time, that was, when entered into, potentially polygamous or polygamous is a marriage for the purposes of this Ordinance if the law that was applicable to local marriages in the country where the union was entered into permitted polygamy on the part of the male party, and the man and the woman who entered into the union shall be regarded as husband and wife.

(5.) The provisions of this section apply in relation to a purported marriage that is void as if the purported marriage were a marriage.

(6.) For the purposes of this Ordinance, a person shall be taken to have been adjudged by a court to be the father of a child—

(a) if the court has made an order in such circumstances that it was not entitled to make the order unless it found as a fact that the person was the father of the child; or

(b) if, at any time within six months before the birth of the child, a court made an order in such circumstances that it was not entitled to make the order unless it found as a fact that the child's mother was at that time with child by the person.

(7.) In this Ordinance, a reference to an illegitimate child shall be read as not including a reference to a child that, although illegitimate when born, is an adopted child, unless express provision to the contrary is made in relation to the reference.

7. This Ordinance shall not be taken to limit the operation of any other law in force in the Territory (whether relating to child welfare, family welfare, social services or otherwise) by which a person is or may be required to contribute towards or make a payment on account of the maintenance or support of another person.

Operation of other laws not limited by this Ordinance.

8.—(1.) For the purposes of this Ordinance, there shall be a Collector of Maintenance, who shall be appointed by the Attorney-General.

Collector and Deputy Collector.

(2.) The Attorney-General may appoint a person to be a Deputy Collector of Maintenance.

(3.) The Attorney-General may appoint a person to act in the office of Collector of Maintenance or Deputy Collector of Maintenance during any vacancy in the office or in the event of any illness or absence of the Collector of Maintenance or a Deputy Collector of Maintenance, as the case may be.

(4.) A person appointed under the last preceding sub-section to act in the office of Collector of Maintenance has all the powers, and shall perform all the duties and functions, of the Collector of Maintenance under this Ordinance during any vacancy in the office, or in the event of any illness or absence, of the Collector of Maintenance.

(5.) A Deputy Collector of Maintenance may, subject to any directions of the Collector, exercise any power or perform any duty or function of the Collector.

(6.) A person appointed under sub-section (3.) of this section to act in the office of Deputy Collector of Maintenance may, subject to any directions of the Collector, exercise any power or perform any duty or function of the Collector during the vacancy in the office or in the event of any illness or absence of the Deputy Collector.

(7.) The Collector shall—

- (a) keep proper accounts of all moneys received, remitted or paid by him under this Ordinance; and
- (b) subject to this Ordinance, pay moneys received by him under this Ordinance to the persons entitled to those moneys,

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

9. This Ordinance shall be administered by the Attorney-General.

Administration of Ordinance.

PART II.—MAINTENANCE ORDERS AND OTHER ORDERS.

Division 1.—General.

10.—(1.) The Court has jurisdiction to make a maintenance order upon the hearing of a complaint if the complainant or the defendant is ordinarily resident in the Territory.

Jurisdiction of the Court.

(2.) The Court has jurisdiction to make an order under section 23 of this Ordinance—

- (a) if the child in respect of whom the order is sought is present in the Territory at the time when the order is made; and
- (b) if the mother or father of the child is ordinarily resident in the Territory.

(3.) An order may be made, or refused, under a section included in this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencing day or outside the Territory.

Defence to a complaint.

11. Where, under this Ordinance, the Court is required to be satisfied, upon the hearing of a complaint, that, when the complaint is heard by the Court, the defendant is not adequately maintaining the complainant, or that the defendant is about to depart from the Territory without making adequate provision for the maintenance of the complainant, it is a defence to the complaint if the defendant satisfies the Court that, when the complaint is heard by the Court, he has just cause or excuse for not adequately maintaining the complainant.

Matters affecting amount of order.

12.—(1.) Where, in proceedings instituted by a complaint, the Court is required to be satisfied that a defendant is not adequately maintaining the complainant or has not made adequate provision for the maintenance of the complainant, the Court shall have regard to the accustomed condition in life, but not the means (other than means provided by the defendant) or earning capacity, of the complainant.

(2.) Where, after a complaint is made to the Court, payments are made by the defendant for or towards the maintenance of the complainant, the Court may disregard the payments for the purposes of determining whether, at the time of the hearing of the complaint, the defendant is providing adequate maintenance for the complainant or has made adequate provision for the maintenance of the complainant unless the Court is satisfied that the defendant is providing, and intends to continue to provide, adequate maintenance for the complainant.

(3.) Where, upon the hearing of a complaint, the Court makes an order for the maintenance of the complainant, the Court, in determining the amount that the defendant is to be ordered to pay for the maintenance of the complainant, may, if it deems it appropriate to do so, disregard—

- (a) the earnings or savings from earnings from an occupation engaged in by the complainant, or any part of those earnings or savings, if it is satisfied that the complainant engaged in that occupation solely or mainly because the complainant was not being, or reasonably expected not to be, adequately maintained by the defendant; and
- (b) the earning capacity of the complainant, if it is satisfied that the complainant would engage in an occupation solely or mainly because the complainant is not being, or reasonably expects not to be, adequately maintained by the defendant.

(4.) In the application of the last preceding sub-section in relation to an order for the benefit of a child, references in paragraphs (a) and (b) of that sub-section to the defendant shall be read as including references to the parents of the child.

(5.) Where the Commonwealth is making an allowance for the support of a person, the Court shall disregard, in determining the amount that a defendant is to be ordered to pay under this Part for the maintenance of the person, the fact that the allowance is being paid for the person.

Division 2.—Maintenance Orders.

13. Where the Court, upon complaint made by or on behalf of a wife, is satisfied—

Order for maintenance of a wife.

- (a) that, on a date specified in the complaint, her husband was not adequately maintaining her and that, when the complaint is heard by the Court, her husband is still not adequately maintaining her; or
- (b) that her husband is about to depart from the Territory without making adequate provision for her maintenance,

the Court may order the husband to pay for or towards her maintenance such an amount as it thinks reasonable.

14. Where the Court, upon complaint made by or on behalf of a child, is satisfied—

Order for maintenance of a child.

- (a) that, on a date specified in the complaint, the defendant, being a parent of the child, was not adequately maintaining the child and that, when the complaint is heard by the Court, the defendant is still not adequately maintaining the child; or
- (b) that the defendant, being a parent of the child, is about to depart from the Territory without making adequate provision for the maintenance of the child,

the Court may order the defendant to pay for or towards the maintenance of the child such an amount as it thinks reasonable.

15. Where the Court, upon complaint made by or on behalf of a husband, is satisfied that the husband is, by reason of illness or other reasonable cause, unable to support himself adequately and—

Order for maintenance of a husband.

- (a) that, on a date specified in the complaint, his wife was not adequately maintaining him and that, when the complaint is heard by the Court, his wife is still not adequately maintaining him; or
- (b) that his wife is about to depart from the Territory without making adequate provision for his maintenance,

the Court may order the wife to pay for or towards his maintenance such amount as it thinks reasonable, having regard to his accustomed condition in life, his means and earning capacity at the time of the hearing and any evidence before the Court as to his wife's means, earning capacity and ability to pay maintenance.

Order for
payment of
preliminary
expenses.

16.—(1.) Where the Court, upon complaint made by or on behalf of a woman, is satisfied—

- (a) that she is pregnant by the defendant (not being her husband) or has been delivered of a child of whom the defendant (not being her husband) is the father; and
- (b) that the defendant has not made adequate provision for the payment of her preliminary expenses,

the Court may, subject to this section, order the defendant to pay to the Collector for or towards her preliminary expenses such amount as it thinks reasonable.

(2.) Where the woman for whose benefit a complaint has been made under sub-section (1.) of this section has not been delivered of the child to whom the complaint relates, the Court shall not make the order sought unless it is satisfied by the evidence or the certificate of a medical practitioner that the woman is quick with child.

(3.) Where an order under sub-section (1.) of this section is made in the case of a woman who has not been delivered of the child to whom it relates and—

- (a) the woman is not delivered of a child before a date specified in the order for the purposes of this sub-section, being a date not later than six months after the order is made; or
- (b) the woman is delivered of a still-born child before the date so specified,

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

(4.) Where an order ceases to have effect on the date specified in it for the purposes of the last preceding sub-section, any moneys paid under it and not disbursed shall be repaid to the defendant.

(5.) Where an order ceases to have effect on the delivery of a still-born child, any moneys paid under it and not disbursed shall, as directed by the Court upon application made by the complainant or the defendant—

- (a) be paid to the woman;
- (b) be paid to the defendant; or
- (c) be divided between the woman and the defendant in such proportions as the Court thinks fit.

(6.) Where the Court, upon application made by the complainant in respect of an order that has ceased to have effect on the delivery of a still-born child, is satisfied that the defendant did not, before the order ceased to have effect, pay a sufficient sum under the order to meet the expenses to which the order relates, the Court may order the defendant to pay to the complainant such sum as it considers reasonable to meet those expenses less any sum already paid under the first-mentioned order.

(7.) Where an order is made under sub-section (1.) of this section in the case of a woman who has not been delivered of the child to whom it relates, the Collector may disburse any amounts paid under the order

in such manner as he thinks proper, but not so as to disburse, before the woman is delivered of a child, amounts aggregating more than one-half of the amount required to be paid under the order.

(8.) Where the Court is hearing and determining a complaint under section 14 of this Ordinance in respect of an illegitimate child of whom the defendant is the father, the Court may, if a claim for preliminary expenses for the mother of the child is made at the hearing of the complaint, make an order under sub-section (1.) of this section for the payment of preliminary expenses notwithstanding that a complaint has not been made under this section.

(9.) Where a claim for preliminary expenses is made under the last preceding sub-section, the Court shall adjourn the hearing of the claim—

- (a) if the defendant, being before the Court, applies for an adjournment and the Court is of opinion that the defendant will be prejudiced unless the hearing is adjourned—for such period as the Court thinks fit; or
- (b) if the defendant is not before the Court—for such period as the Court thinks necessary to enable notice of the claim and of the date of the adjourned hearing to be given to the defendant.

(10.) The Court may make an order for preliminary expenses notwithstanding that the child to whom an order relates died or was adopted before the commencement of this Part or before the making of the order.

(11.) A complaint under sub-section (1.) of this section, or a claim under sub-section (8.) of this section, made after the expiration of twelve months from the birth of the child to whom it relates is of no force or effect.

(12.) In this section, unless the contrary intention appears, “child” includes a still-born child.

17.—(1.) Where a complaint has been or is made to the Court under the last preceding section before the birth of the child to whom the complaint relates, a further complaint may be made to the Court for an order that the defendant pay a reasonable amount for or towards the maintenance of the child.

Order for
maintenance of
unborn child.

(2.) Where the Court, upon complaint made under the last preceding sub-section, is satisfied that—

- (a) the defendant has been ordered by the Court to pay an amount for or towards the preliminary expenses of the mother of the child;
- (b) it is unlikely that the defendant will adequately maintain the child after the expiration of three months from the child's birth; and
- (c) the defendant has been given notice of the complaint,

the Court may order the defendant to pay for or towards the maintenance of the child such amount as it thinks reasonable.

(3.) Subject to the next succeeding sub-section, the first period in respect of which a payment is to be payable under an order made under the last preceding sub-section is the period commencing on—

- (a) if a certified copy of the registration of the birth of the child is produced to the Collector before the expiration of a period of three months from the birth of the child—the Monday last preceding the expiration of that period; or
- (b) in any other case—the day on which that certified copy is produced to the Collector.

(4.) Where the child to whom an order made under sub-section (2.) of this section relates is still-born, dies or is adopted before the commencement of the first period in respect of which a payment under the order is to be payable, the order does not have any force or effect.

(5.) Where a certified copy of the registration of the birth of the child to whom an order under sub-section (2.) of this section relates is produced to the Collector, the Collector shall forthwith send by post to the defendant, at his place of residence last known to the Collector, a notice stating the name of the child (if stated in the certified copy), the date and place of birth of the child and the date on which and place at which the first payment under the order is to be made.

Order for
funeral expenses
of child.

18.—(1.) Where the Court, upon a complaint made by or on behalf of a parent of a child, is satisfied—

- (a) that the defendant is the other parent of the child;
- (b) that the child has died on or after the commencing day and before attaining the age of ~~twenty-one~~ years or the birth of the child (being a still-born child) occurred on or after that day; and
- (c) that the defendant has not made adequate provision for the funeral expenses of the child,

the Court may, subject to sub-section (3.) of this section, order the defendant to pay for or towards the funeral expenses of the child such amount as it thinks reasonable.

(2.) Where the Court, upon complaint made by or on behalf of the person who has paid or is liable to pay the funeral expenses of a child (not being a person who is a parent of the child), is satisfied—

- (a) that the defendant is a parent of the child;
- (b) that the child has died on or after the commencing day and before attaining the age of ~~twenty-one~~ years, or the birth of the child (being a still-born child) occurred on or after that day; and
- (c) that the defendant has not made adequate provision for the funeral expenses of the child,

the Court may, subject to the next succeeding sub-section, order the defendant to pay for or towards the funeral expenses of the child such amount as it thinks reasonable.

(3.) Where a complaint is made under sub-section (1.) or (2.) of this section in relation to an illegitimate child, the Court shall not order the defendant (not being the mother of the child) to pay an

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amount for or towards the funeral expenses of the child unless it is satisfied that the defendant is the father of the child or that the defendant has been adjudged by a court in Australia to be the father of the child.

(4.) An order shall not be made under this section in relation to a still-born child unless the Court is satisfied by the evidence or the certificate of a medical practitioner that the mother of the child had been quick with the child.

(5.) A complaint under this section made after the expiration of twelve months from the still-birth or death of the child to whom it relates is of no force or effect.

19.—(1.) Where the Court, upon complaint made by a person, is satisfied—

- (a) that the defendant is the father of an illegitimate child or has been adjudged by a court in Australia to be the father of an illegitimate child;
- (b) that the mother of the child has, after the commencement of this section, died during, and in consequence of, her pregnancy or in consequence of the birth of the child;
- (c) that the defendant has not made adequate provision for the funeral expenses of the mother; and
- (d) that the complainant has paid or is liable to pay the funeral expenses of the mother,

Order for funeral expenses of mother of illegitimate child.

the Court may order the defendant to pay, for or towards the funeral expenses of the mother, such amount as it thinks reasonable.

(2.) Where the child in relation to whom a complaint is made for the purposes of this section was still-born, an order shall not be made under this section unless the Court is satisfied by the evidence or a certificate of a medical practitioner that the mother of the child had been quick with the child.

(3.) A complaint for the purposes of this section made after the expiration of twelve months from the death of the mother is of no force or effect.

(4.) The Court may make an order under sub-section (1.) of this section if the child was illegitimate at birth whether or not the child is, when the order is made, an adopted child.

(5.) In this section, "child" includes a still-born child.

20.—(1.) Where the Court, upon complaint made by or on behalf of—

- (a) a person for whose maintenance an order under section 13, 14, 15 or 17 of this Ordinance is in force; or
- (b) a person in respect of whom an order under section 21 of this Ordinance is in force,

Order for payment of medical and like expenses.

is satisfied that—

- (c) the person reasonably required and has received, or reasonably requires, medical, surgical, psychiatric, dental, hospital or nursing care or treatment, including physiotherapy directed by a medical practitioner;

- (d) the amount payable by the defendant under the order for the maintenance of the person is not sufficient to enable the person to make adequate provision for the expenses of that care or treatment;
- (e) the defendant has not made adequate provision for or towards those expenses; and
- (f) it is just and equitable in all the circumstances of the case that the defendant pay, or contribute towards, those expenses,

the Court may order the defendant to pay to the Collector for or towards those expenses such amount as it thinks reasonable.

(2.) Where the Court, upon complaint made by or on behalf of a child in relation to whom an order under section 16 of this Ordinance is or has been in force, is satisfied—

- (a) if the child has not attained the age of three months—that the child reasonably requires care or treatment of a kind referred to in paragraph (c) of the last preceding sub-section; or
- (b) in any other case—that the child reasonably required, and has received, care or treatment of such a kind before attaining that age,

and is also satisfied—

- (c) that the amount payable by the defendant under that order is or was insufficient to enable the mother to make adequate provision for or towards the expenses of that care or treatment;
- (d) that the defendant has not made adequate provision for or towards those expenses; and
- (e) that it is just and equitable in all the circumstances of the case that the defendant pay, or contribute towards, those expenses,

the Court may order the defendant to pay to the Collector for or towards those expenses such amount as it thinks reasonable.

(3.) Where an order is made under either of the last two preceding sub-sections, moneys payable under the order shall not be disbursed by the Collector before the care or treatment to which the moneys relate has been rendered.

(4.) Where the Court, upon complaint made by or on behalf of a person who has paid or is liable to pay the expenses of care or treatment of a kind referred to in paragraph (c) of sub-section (1.) of this section that has been received by a person referred to in paragraph (a) or (b) of that sub-section or a child referred to in sub-section (2.) of this section, is satisfied—

- (a) that the second-mentioned person or the mother of the child, as the case may be, died after the provision of that care or treatment; and

- (b) that the Court would, if the second-mentioned person or the mother were still alive, make an order against the defendant under sub-section (1.) or (2.) of this section, as the case may be,

the Court may order the defendant to pay to the first-mentioned person, for or towards those expenses, such amount as it thinks reasonable.

(5.) For the purposes of this section, references to the expenses of any care or treatment received or required by a person shall be read as including references to any expenses reasonably incurred in connexion with the person travelling to or from the place where the person has received or will receive the care or treatment.

(6.) A complaint for the purposes of this section made in respect of care or treatment rendered before the commencement of this section is of no force or effect.

21.—(1.) Where the Court is satisfied, upon the hearing of a complaint under section 13, 14, 15 or 17 of this Ordinance for the maintenance of a person, that it would make an order for the maintenance of that person except for the fact— Nominal orders.

- (a) that the defendant is at the time of the hearing adequately maintaining the person; or
 (b) that the defendant is not at the time of the hearing able to contribute towards the support of the person,

the Court may make an order setting out its findings on the complaint, and directing the payment by the defendant of a nominal amount towards the maintenance of the person.

(2.) Proceedings shall not be taken under this Ordinance to enforce payment of the nominal amount directed to be paid by an order made under the last preceding sub-section.

(3.) Section 34 of this Ordinance applies to and in relation to an order made under sub-section (1.) of this section in like manner as it applies to a maintenance order.

(4.) Where an order made under sub-section (1.) of this section is varied to provide for the payment of a greater amount than the nominal amount directed to be paid by that order—

- (a) this Ordinance applies to and in relation to the order when so varied as if it were a maintenance order made under whichever of sections 13, 14, 15 or 17 of this Ordinance is appropriate; and
 (b) the order ceases to be a nominal order for the purposes of this Ordinance.

Division 3.—Ancillary Orders.

22. In this Division, “child” does not include an illegitimate child. Definition.

23.—(1.) Subject to this section, where application is made to the Court by or on behalf of a parent of a child, the Court may make an order committing the custody of the child to that parent and may, by Orders for custody of child

the same or a subsequent order, make such provision as it thinks fit with respect to access to the child by the other parent during the currency of the order.

(2.) An order committing the custody of a child to a parent of the child shall not be made under the last preceding sub-section—

- (a) unless an order for the maintenance of the child is in force and the moneys ordered to be paid under the order are payable to that parent;
- (b) if the Minister of State for the Interior is the guardian of the child by virtue of section 19 of the *Child Welfare Ordinance 1957-1966*; or
- (c) if there is in force in respect of the child an order made by the Supreme Court of the Australian Capital Territory or the Supreme Court of a State or other Territory of the Commonwealth granting the custody of the child to a person.

(3.) Where a parent of a child makes a complaint under section 13 or 15 of this Ordinance, the parent may state in the complaint that he intends to make application at the hearing of the complaint for the following additional orders, namely, an order committing the custody of the child to the parent and an order for the maintenance of the child.

(4.) Where a complaint contains the statement referred to in the last preceding sub-section, the summons issued in pursuance of the complaint shall contain notice of the proposed applications and the Court may, upon the hearing of the complaint, if it makes an order for the maintenance of the parent, also make either or both of the additional orders so sought.

(5.) In proceedings with respect to the custody of a child or access to a child under this section, the Court shall regard the interests of the child as the paramount consideration.

(6.) Where an order for the maintenance of a child in respect of whom an order under sub-section (1.) of this section is in force is discharged by the Court, that last-mentioned order ceases to have effect.

**Ex parte order
for maintenance
of child.**

24.—(1.) In this section—

“ complaint ” means a complaint for the purposes of section 14 of this Ordinance seeking an order for the payment of maintenance in respect of a child;

“ *ex parte* order ” means an order made under the next succeeding sub-section for the payment of maintenance in respect of a child pending the disposal of a complaint.

(2.) At any time after a complaint has been made to the Court, the Court may, upon application made to the Court *ex parte*, order the defendant to pay for the maintenance of the child, pending the disposal of the complaint, such amount per week (not being more than Five dollars per week) as the Court thinks reasonable.

(3.) Maintenance for a child ceases to be payable under an *ex parte* order—

- (a) upon the Court making or refusing to make an order for the maintenance of the child under section 14 or 25 of this Ordinance; or
- (b) upon the expiration of three months after the making of the *ex parte* order,

whichever first occurs.

(4.) Where, upon the hearing of the complaint, the Court refuses to make an order, or makes a nominal order under section 21 of this Ordinance, for the maintenance of the child, any moneys that would, but for this sub-section, be payable but have not actually been paid under an *ex parte* order for the maintenance of the child cease to be payable.

(5.) Where, upon the hearing of a complaint, the Court makes an order for the maintenance of a child (in this sub-section referred to as “the maintenance order”) in respect of whom an *ex parte* order has been made and the maintenance order is to take effect from a date before the date upon which maintenance ceases to be payable under the *ex parte* order, an amount equal to the sum of any payments made under the *ex parte* order for the maintenance of the child in respect of the period after the date as from which the maintenance order is to take effect shall be deemed to have been made under the maintenance order.

(6.) Division 5 of this Part does not apply to or in relation to an *ex parte* order.

(7.) An appeal does not lie from an *ex parte* order made under this section.

25.—(1.) In this section, “interim order” means an order made under the next succeeding sub-section for the payment of maintenance in respect of a person.

Interim order for payment of maintenance.

(2.) Where the Court adjourns the hearing of a complaint made for the purposes of section 13, 14 or 15 of this Ordinance for a period of not less than seven days (whether or not the hearing has previously been adjourned), the Court may order the defendant to pay for or towards the maintenance of the complainant such amount as it thinks reasonable.

(3.) Moneys cease to be payable for the maintenance of a complainant under an interim order—

- (a) upon the Court making or refusing to make an order for the maintenance of the complainant under section 13, 14 or 15 of this Ordinance, as the case requires;
- (b) upon the Court commencing the hearing of the complaint or next continuing the hearing of the complaint after making the interim order; or
- (c) upon the expiration of three months after the making of the order,

whichever first occurs.

(4.) Where, upon the hearing of a complaint, the Court makes an order for the maintenance of a person (in this sub-section referred to as the "the maintenance order") in respect of whom an interim order has been made and the maintenance order is to take effect from a date before the date upon which moneys cease to be payable for the maintenance of the complainant under the interim order, an amount equal to the sum of any payments made under the interim order for the maintenance of the person in respect of a period after the date as from which the maintenance order is to take effect shall be deemed to have been made under the maintenance order.

(5.) Division 5 of this Part does not apply to or in relation to an interim order.

(6.) An appeal does not lie from an interim order made under this section.

Division 4.—General Provisions relating to Orders.

Duration of orders.

26.—(1.) Subject to the next succeeding section, an order shall not be made under this Part—

- (a) for the maintenance of; or
- (b) in respect of the custody of,

a child who has attained the age of sixteen years.

(2.) Subject to the next succeeding section, maintenance ceases to be payable under an order for the maintenance of a child—

- (a) upon the child attaining the age of sixteen years or being adopted; or
- (b) upon the death of the child or the defendant,

whichever first occurs.

(3.) An order with respect to the custody of a child ceases to have effect when the child attains the age of sixteen years or is adopted, whichever first occurs.

(4.) Maintenance ceases to be payable under an order for the maintenance of a wife or husband upon the death of either party to the marriage.

Maintenance for child over sixteen.

27.—(1.) Where, upon application made to the Court on behalf of a child who has not attained the age of sixteen years, being a child for whose maintenance a maintenance order is in force under this Ordinance, the Court is satisfied that the child will be engaged in a course of education or training after he attains that age and that maintenance should continue to be payable by the defendant after the child attains that age for the purpose of making provision for or towards the maintenance of the child while he is so engaged and of meeting the expenses of the course, the Court may order that maintenance continue to be payable under the order after the child attains the age of sixteen years for such period, not exceeding two years, from the date on which he attains that age as is specified in the order.

(2.) Where, upon application made to the Court on behalf of a child who has attained the age of sixteen years, being a child for whose maintenance a prescribed order was in force immediately before the child attained that age, the Court is satisfied—

- (a) that the child is engaged or will engage in a course of education or training and that maintenance should be payable by the defendant for the purpose of making provision for or towards the maintenance of the child while he is so engaged and of meeting the expenses of the course; and
- (b) that the defendant was the person required under the prescribed order to pay maintenance in respect of the child,

the Court may order the defendant to pay such amount as it thinks reasonable for or towards the maintenance of the child and meeting the expenses of the course.

(3.) Where complaint is made to the Court under section 14 of this Ordinance on behalf of a child who has attained the age of sixteen years, being a child for whose maintenance a prescribed order under which the defendant was required to pay maintenance for the child was not in force immediately before the child attained that age, the Court may make an order under that section notwithstanding the fact that the child has attained the age of sixteen years if it is satisfied that the child is engaged or will engage in a course of education or training and that maintenance should be payable by the defendant for the purpose of making provision for or towards the maintenance of the child while he is so engaged and of meeting the expenses of the course.

(4.) Where the Court makes an order under sub-section (2.) of this section or section 14 of this Ordinance in pursuance of the power conferred by this section, the Court shall specify in the order a period, being a period commencing not earlier than the date on which the order is made and ending not later than two years after that date, during which maintenance shall, subject to this Ordinance, be payable under the order.

(5.) In sub-sections (2.) and (3.) of this section, a “prescribed order”, in relation to a child, means an order, whether made under this Ordinance or under the repealed Ordinances, by virtue of which maintenance was payable for the child, other than such an order that has been set aside upon appeal or that has been annulled.

(6.) The Court may, from time to time, upon application made on behalf of a child in respect of whom an order is in force under this section, make a further order extending the period for which maintenance is to be payable in respect of the child for such further period, not exceeding two years, as is specified in the further order, being a period commencing upon the expiration of the period for which maintenance is then payable.

(7.) An order under this section shall not provide for the payment of maintenance for a child in respect of any period after the child attains the age of twenty-one years.

(8.) Where the Court makes an order under sub-section (1.) or sub-section (6.) of this section in relation to a maintenance order, it may, by the same order, vary the amount payable under the maintenance order in such manner as it thinks fit.

**Provision for
past
maintenance.**

28.—(1.) Subject to this Ordinance, the Court may, in an order under this Part for the maintenance of a person, order the payment of maintenance in respect of a period immediately preceding the date on which the order is made, being a period commencing not earlier than three months before that date.

(2.) The Court may exercise its power under the last preceding sub-section whether or not the complaint to which the order relates sought maintenance in respect of a period immediately preceding the making of the order.

(3.) Where the Court exercises, in an order, the power conferred by sub-section (1.) of this section, the Court may direct that the maintenance in respect of the immediately preceding period be paid in one sum or by such instalments as it thinks fit.

**Recovery of
arrears.**

29.—(1.) Subject to the succeeding sub-sections of this section, the fact that maintenance ceases to be payable upon the occurrence of a particular event does not prevent the recovery of maintenance in respect of any period before the occurrence of that event.

(2.) Subject to the next succeeding sub-section, where maintenance ceases to be payable upon the death of a person, any maintenance in respect of any period before the death of the person is not recoverable under this Ordinance or otherwise.

(3.) Where a child in respect of whom maintenance is payable dies, any maintenance payable in respect of a period before the death of the child is recoverable from the person ordered to pay the maintenance, but only during the life of that person, by the person who was maintaining the child immediately before the child's death.

**Offer to
provide a
home.**

30. Where—

(a) the conduct of a person constitutes just cause or excuse for the spouse of the person to live separately and apart from the person and does in fact—

(i) cause the spouse so to live; or

(ii) cause the spouse so to live and to take a child of the marriage to live with the spouse; or

(b) the conduct of a person constitutes just cause or excuse for a child of the person to live separately and apart from the person and does in fact cause the child so to live,

a genuine offer by the person to provide a home for the spouse or the child, as the case may be, is not in itself a sufficient answer to a complaint under this Part for the maintenance of the spouse or the child, or a sufficient reason for the discharge, suspension or variation of an order under this part for the maintenance of the spouse or the child.

31.—(1.) Where, upon the hearing of a complaint made for the purposes of this Part, the mother of an illegitimate child gives evidence that the defendant is the father of the child, an order shall not be made upon the complaint unless the evidence of the mother is corroborated in a material particular.

Order relating to illegitimate child.

(2.) Nothing in the last preceding sub-section shall be taken to require the mother of an illegitimate child to give evidence upon the hearing of a complaint in order that the Court may be satisfied that the defendant is the father of the child.

(3.) In Division 2 and Division 3 of Part II. of this Ordinance, a reference to the Court being satisfied that a person is the father of a child shall, in a case where the child is an illegitimate child, be read as a reference to the Court being so satisfied beyond reasonable doubt.

Division 5.—Discharge, Suspension, Variation and Annulment of Orders.

32.—(1.) In this Division, unless the contrary intention appears, “original order” means an order made under section 13, 14, 15, 16, 17, 18, 19, 20 or 21 of this Ordinance, other than an order dismissing a complaint.

Interpretation.

(2.) In this Division, a reference to a maintenance order shall, in the case of a maintenance order that has been varied, be read as a reference to that order as so varied.

33. Where a maintenance order is enforceable in a State, or in a Territory of the Commonwealth other than the Australian Capital Territory, under Part IV., the Court shall not make an order under this Division discharging, suspending, varying or reviving the order except as provided in section 70 of this Ordinance.

Application of this Division.

34.—(1.) Subject to this Division, the Court, upon application made by or on behalf of a party to a maintenance order, may at any time make a further order—

Discharge, suspension or variation of orders.

- (a) discharging the maintenance order;
- (b) varying the maintenance order in any manner the Court thinks fit; or
- (c) suspending the payment of maintenance under the maintenance order in respect of a period specified in the further order or until the Court otherwise orders.

(2.) An order shall not be made discharging or varying a maintenance order, or suspending the payment of maintenance under a maintenance order, unless the Court is satisfied—

- (a) that the original order, or, if the original order has been varied, the original order or any order varying the original order, was obtained by fraud or upon the basis that two persons were married to each other who were, in fact, not so married;

- (b) that new facts or circumstances have arisen that have not previously been disclosed to the Court and, by reason of those facts or circumstances, it is reasonable to make the first-mentioned order; or
 - (c) that facts or circumstances in existence at the time of the making of the original order, or, if the original order has been varied, at the time of the making of the original order or any order varying the original order, have not previously been disclosed to the Court and were not known, and could not by the exercise of reasonable diligence have previously been known, to the applicant and, by reason of those facts and circumstances, it is reasonable to make the first-mentioned order.
- (3.) An order under sub-section (1.) of this section—
- (a) may discharge or vary a maintenance order as from a date specified in the first-mentioned order, which may be a date before the date of the first-mentioned order;
 - (b) may discharge or vary a maintenance order notwithstanding that maintenance has ceased to be payable under the order or that the defendant has made default in complying with the maintenance order; and
 - (c) may suspend the payment of maintenance under a maintenance order during a period specified in the first-mentioned order (which may be a period commencing before the date of the first-mentioned order) or as from a date specified in the first-mentioned order (which may be a date before the date of the first-mentioned order) until the further order of the Court.

Effect of suspension of order.

35.—(1.) Where an order is made under the last preceding section suspending the payment of maintenance under a maintenance order in respect of a specified period, maintenance again becomes payable under the order, unless the order is earlier revived under the next succeeding section, upon the expiration of that period.

(2.) Where the payment of maintenance is suspended under the last preceding section until the further order of the Court, maintenance does not become payable under the maintenance order except in accordance with an order under the next succeeding section reviving the maintenance order.

(3.) Subject to the next succeeding sub-section, the suspension of the payment of maintenance under a maintenance order does not prevent the recovery of any maintenance payable under the maintenance order in respect of any period ending before the date as from which the payment is suspended.

(4.) Where the Court suspends the payment of maintenance under a maintenance order, the Court may further order that the whole or any part of the moneys owing under the order at the date as from which the payment of maintenance is suspended shall not be recoverable under this

Ordinance during the period of the suspension, and that further order prevents the taking of any proceeding under this Ordinance for the purpose of recovering, during the period of the suspension, the moneys so payable.

36.—(1.) Where payment of maintenance under a maintenance order has been suspended under section 34 of this Ordinance, the Court may, upon application made by or on behalf of a person for whose benefit the maintenance is payable, make an order reviving the suspended order in whole or in part as it thinks fit.

Court may
revive order.

(2.) An order under the last preceding sub-section may revive a maintenance order as from a date specified in the first-mentioned order, which may be a date before the date of the first-mentioned order, and the maintenance order, when so revived, has effect as if maintenance had been or is payable under the order as from the date as from which it was or is revived.

(3.) Where the Court revives a maintenance order as from a past day, it may make a further order directing the manner in which moneys payable in respect of the period from and including that day to and including the day immediately before the day on which it revives the order are to be paid.

(4.) Where the Court revives a maintenance order, it may make a further order varying the maintenance order as from the day as from which it was or is revived.

37.—(1.) Where the Court has made an order under this Part on the basis that the defendant is the father of an illegitimate child, the defendant may, at any time, file an application to annul the order.

Application to
annul order.

(2.) An application filed under the last preceding sub-section shall not be heard and determined by the Court unless a magistrate has granted leave, under the next succeeding sub-section, for the application to be set down for hearing.

(3.) At any time after an application has been filed under sub-section (1.) of this section, a magistrate may, upon application made *ex parte*, grant the applicant leave to set the application down for hearing.

(4.) A magistrate shall not grant leave to set an application down for hearing under the last preceding sub-section unless—

(a) evidence on oath is furnished to him, either orally or by affidavit, stating the nature of the evidence that the applicant intends to submit to the Court if the application is heard and the names and addresses of the witnesses who will give that evidence; and

(b) the magistrate is satisfied that that evidence is material to the paternity of the child and was not produced to the Court when the maintenance order was made.

(5.) Where the magistrate grants leave for an application to be set down for hearing, the magistrate shall fix a date and time for the hearing and summon the mother of the child, or such other person as the magistrate thinks appropriate in the circumstances, to appear before the Court upon the hearing.

(6.) Where the mother of the child, or the other person to be summoned, as the case may be, is living out of the Territory, the date fixed for the hearing of the application shall be a date that will allow the mother or that other person, as the case may be, reasonable time to come to the Territory for the hearing of the application.

Annulment of order.

38.—(1.) Upon the hearing of an application under the last preceding section to annul a maintenance order, the Court shall have regard to the evidence that was given when the original order was made and to the further evidence given upon the hearing of the application.

(2.) The applicant shall first furnish the evidence that he wishes to be considered in support of the application and if, upon the completion of that evidence, the Court is satisfied that no evidence material to the paternity of the child that has not previously been produced to the Court has now been furnished to the Court, the Court shall dismiss the application.

(3.) The Court shall not annul a maintenance order unless it is satisfied that the applicant is not the father of the child.

(4.) The Court shall hear and determine an application under the last preceding section whether or not the applicant has made default in complying with the maintenance order.

(5.) Where the Court annuls a maintenance order, the defendant is not liable to pay any amounts due and unpaid under the order and is not entitled to recover from any person any amounts actually paid under the order.

(6.) Where a maintenance order is annulled, the annulment of the order does not, except as provided in the last preceding sub-section, affect the previous operation of the order or anything duly done or suffered under it.

Maintenance for twins, &c.

39.—(1.) Where an order for the payment of maintenance for the child of whom a woman is expected to be delivered is made under section 17 of this Ordinance and the woman is in fact delivered of two or more children, application may be made to the Court under this Division for orders under the next succeeding sub-section.

(2.) Upon the hearing of an application under the last preceding sub-section, the Court may discharge the maintenance order in respect of the child expected to be born to the woman and make an order for the maintenance of each child born to the woman.

**PART III.—ENFORCEMENT OF ORDERS MADE IN THE
TERRITORY.**

Division 1.—Interpretation.

40.—(1.) In this Part, “maintenance order” includes an order for the payment of costs in proceedings in which an order under this Ordinance for the payment of moneys for the maintenance of a wife, husband or child, or an order under section 16, 18, 19, 20, 21, 34, 36 or 38 of this Ordinance, is made. Interpretation.

(2.) In this Part, a reference to a maintenance order shall, in the case of a maintenance order that has been varied, be read as a reference to that order as so varied.

(3.) Where a maintenance order, or a maintenance order as varied, has been discharged but arrears are recoverable under the order or the order as varied, this Part applies to and in relation to the order or the order as varied, for the purpose of the recovery of the arrears, notwithstanding its discharge.

Division 2.—Imprisonment, Recognizances, &c.

41.—(1.) Where the defendant, being a male person, has disobeyed or failed to comply with a maintenance order and a sum of money (in this section referred to as “arrears”) due under the order is unpaid, application to commit the defendant to prison may be made to the Court by or on behalf of the person for whose benefit the order was made. Imprisonment for disobedience of order for the payment of money.

(2.) Subject to section 105 of this Ordinance, the Court may, upon application made under the last preceding sub-section, order that the defendant be committed to prison for such period, not exceeding twelve months, as the Court thinks proper.

(3.) For the purpose of the last preceding sub-section, the arrears shall be taken to include an amount that the defendant is ordered to pay in respect of the costs of the application.

(4.) The defendant is not liable to be committed to prison in respect of his failure to pay any arrears—

- (a) if he has previously served a term of imprisonment in respect of his failure to pay those arrears; or
- (b) if he is, by virtue of an order made under section 43 of this Ordinance, to be deemed to have served a term of imprisonment in respect of his failure to pay those arrears.

(5.) The fact that a defendant is not liable to be committed to prison in respect of his failure to pay any arrears does not affect the recovery of those arrears under any other section of this Ordinance.

(6.) The period of detention in prison of a person under an order under sub-section (2.) of this section is subject to the provisions of section 157 of the *Court of Petty Sessions Ordinance 1930-1967*.

(7.) Where the arrears in respect of which an application has been made to the Court under sub-section (1.) of this section are paid after the service of a copy of the application on the defendant and before the Court makes an order for the issue of a warrant committing the defendant to prison, the Court may order the defendant to pay the costs of and incidental to the application.

(8.) Sub-section (2.) of section 151 of the *Court of Petty Sessions Ordinance 1930-1967* applies to and in relation to an order under the last preceding sub-section as if it was an order to which sub-section (1.) of that section applies.

(9.) Where a person is entitled to receive payments under each of two or more maintenance orders against the same defendant, one application may be made under sub-section (1.) of this section in respect of the arrears due and unpaid under each of those orders.

(10.) Where a person makes one application to the Court in respect of the arrears due and unpaid under each of two or more maintenance orders, the Court shall, in determining the period for which the defendant is to be committed to prison, have regard to the amount ascertained by aggregating those arrears and subtracting from the total sum the amount of any arrears, or the sum of the amounts of any arrears, in respect of which the defendant is not liable to be committed to prison as if that amount was the amount of the arrears due under one maintenance order.

Court not to
commit
defendant to
prison in
certain cases.

42.—(1.) A Court shall not commit a defendant to prison under the last preceding section if it is satisfied—

(a) that the defendant—

- (i) does not have the means and ability to comply with the order under which the moneys are due and unpaid;
- (ii) has not had, since the order was made, that means and ability; and
- (iii) could not by reasonable effort have had that means and ability; or

(b) that for any other reason the order ought not to be enforced by imprisonment.

(2.) Where the Court becomes aware, upon the hearing of an application under the last preceding section to commit a defendant to prison for the non-payment of a particular sum of money due under a maintenance order, that the Court had previously refused to commit the defendant to prison for the non-payment of that sum of money (in this sub-section referred to as “the original sum”) or of a sum of money (in this sub-section referred to as “the part of the original sum”) included in the original sum, the Court shall have regard only to the amount by which the sum due and unpaid exceeds the original sum or the part of the original sum, as the case may be, unless it is satisfied that since that previous refusal the means and ability of the defendant to pay the original sum or the part of the original sum has so altered as to make it reasonable for him to be committed to prison for its non-payment.

Provision for
postponing
issue of
warrant.

43.—(1.) Where the Court makes an order under section 41 of this Ordinance committing a person to prison, the Court may upon making the order, or a magistrate may at any time after the Court has made the order, upon such conditions as it or he thinks fit—

- (a) postpone the issue or execution of a warrant of commitment under the order for a specified period;
- (b) order that a warrant of commitment be issued, or, if a warrant of commitment has been issued but the person has not been imprisoned under the warrant, revoke the warrant and order that another warrant of commitment be issued, committing the person to prison for a period specified in the order, being a period less than the period for which the person has been ordered under section 41 of this Ordinance to be committed to prison; or
- (c) order that the defendant pay the amount found to be due and unpaid together with any costs of the application that the defendant is ordered to pay by instalments specified in the order,

and may further order that if the defendant fails to comply with any of the conditions or to pay such an instalment, a magistrate may direct the issue or execution of the warrant.

(2.) Where a magistrate issuing a warrant, or directing the execution of a warrant, under the last preceding sub-section, is satisfied that the defendant has paid part of the amount (in this sub-section referred to as “the amount due”) in respect of which the warrant is being or was issued, the magistrate shall, by virtue of this sub-section, issue the warrant, or amend the warrant already issued, so as to provide for the commitment of the defendant to prison for a number of days that bears as nearly as possible the same proportion to the number of days that the defendant was ordered to serve in prison as the balance of the amount due bears to the amount due.

(3.) Where the Court orders, under paragraph (b) of sub-section (1.) of this section, that a warrant of commitment be issued committing a person to prison for a period—

- (a) the Court shall specify the arrears of maintenance in respect of which the person is, if he is imprisoned under the warrant, to be deemed to have served a term of imprisonment for the purposes of sub-section (4.) of section 41 of this Ordinance; and
- (b) if the order was made on conditions to be complied with by the person—the Court may at any time after the person has failed to comply with such a condition further order that a warrant of commitment be issued committing the person to prison for the balance of the period for which the person has been ordered under section 41 of this Ordinance to be committed to prison.

Recovery of
arrears in
the Supreme
Court.

44.—(1.) Where the Clerk is satisfied that a sum of money due and payable under a maintenance order is unpaid, he may issue a certificate stating the amount due and payable under the maintenance order at the date of the certificate.

(2.) A certificate under the last preceding sub-section shall not be issued stating that an amount is due and payable under a maintenance order unless evidence that the amount is due and payable and has not been paid is given to the Clerk by affidavit.

(3.) A certificate under sub-section (1.) of this section may be filed in the Supreme Court.

(4.) Where a certificate is filed under the last preceding sub-section, the Registrar of the Supreme Court shall enter judgment in that court in favour of the person for whose benefit the sum is payable and against the person by whom the sum is payable for an amount equal to the sum of the amount stated in the certificate and the fees paid for the certificate, for filing it in the Supreme Court and for entering the judgment.

(5.) Where the Registrar of the Supreme Court enters judgment under the last preceding sub-section, he shall forthwith send notice in writing of the entry of the judgment to the Clerk and to the person to whom payments under the maintenance order are required to be made.

(6.) A judgment entered in the Supreme Court under sub-section (4.) of this section has, for all purposes, the same force and effect as a judgment entered in that court upon the hearing and determination of an action by that court.

(7.) A judgment entered in pursuance of the filing of a certificate under sub-section (1.) of this section in respect of a maintenance order shall not be enforced—

- (a) unless an affidavit is filed stating the amount due and unpaid under the judgment when the affidavit is sworn;
- (b) unless that affidavit, or another affidavit that has been filed, states that, when the affidavit is sworn, no proceedings are pending in any other court for the recovery of any of the arrears of maintenance included in the amount of the judgment and that, since the date of the certificate, the liability of the defendant to pay any of those arrears of maintenance has not been affected by the discharge, suspension or variation of the maintenance order; and
- (c) unless that affidavit or each of those affidavits was sworn on, or as nearly as practicable before, the day on which it is so filed.

(8.) A certificate may be granted under this section stating the sum of the amounts due and unpaid under two or more maintenance orders if—

- (a) the person entitled to receive payment under each of the maintenance orders is the same person; and
- (b) the person required to make payments under each of the orders is the same person.

45.—(1.) Where the Court makes a maintenance order, the Court may, upon making the maintenance order or at any time while the maintenance order is in force, upon application made by or on behalf of the person for whose benefit the maintenance order was made, order the defendant to enter into a recognizance, with or without sureties, to the satisfaction of the Clerk for the due performance of his obligations under the maintenance order during a specified period, being a period not exceeding twelve months.

Court may direct the defendant to enter into recognizance.

(2.) An order shall not be made under this section unless the Court is satisfied—

- (a) that the defendant has, by his conduct, shown that he is likely to make default in complying with the maintenance order; or
- (b) that the defendant has persistently failed to comply with the maintenance order.

(3.) Where the Court makes an order under this section, the Court may also, unless the defendant personally enters into the recognizance immediately after the order is made, commit the defendant to prison until—

- (a) the expiration of the term, not exceeding twelve months, specified by the Court;
- (b) he enters into the recognizance; or
- (c) he performs his obligations under the maintenance order in respect of the period for which he would be required to perform those obligations under the proposed recognizance,

whichever first happens.

(4.) Where a defendant fails to comply with his obligations under a recognizance entered into under this section, the recognizance may be forfeited by a magistrate and any moneys recovered as a result of the forfeiture of the recognizance shall be applied, first, for or towards payment of any costs ordered to be paid by the defendant in the proceedings for the order under sub-section (1.) of this section, to the extent to which those costs have not already been paid, secondly, for or towards the costs incurred in having the recognizance forfeited and moneys recovered as a result of the forfeiture and, thirdly, for or towards the payment of maintenance due or to become due under the maintenance order.

46.—(1.) Where a defendant has, under this Ordinance or under any of the repealed Ordinances, been committed to prison for disobeying or failing to comply with a maintenance order, the Governor-General may, by order in writing, direct the release of the defendant from prison upon his entering into a recognizance—

Release on recognizance of persons in prison.

- (a) in such an amount, and with or without sureties, as is specified in the order;
- (b) conditioned for his complying with the maintenance order and paying, weekly, fortnightly or otherwise periodically as specified in the order, an amount specified in the order in respect of the arrears of maintenance due under the maintenance order; and

(c) containing such other conditions as the Governor-General thinks fit.

(2.) Where a person who has been released in pursuance of this section fails to comply with a condition of the recognizance entered into under this section, the Court may order that the recognizance of the person and of his surety or sureties (if any) be forfeited and may further order that the defendant be committed to prison for the unexpired portion of the term for which he was originally committed to prison.

(3.) Any moneys recovered as a result of the forfeiture of the recognizance shall be applied in like manner as moneys received as a result of the forfeiture of a recognizance under sub-section (4.) of section 45 of this Ordinance are required by that sub-section to be applied.

(4.) For the purposes of this section, "the Governor-General" means the Governor-General of the Commonwealth, or the person for the time being administering the government of the Commonwealth, acting with the advice of the Attorney-General.

Execution
against
property, &c.

47.—(1.) Where an order for the payment of moneys has been made under Part II. of this Ordinance, the Court may, upon application made by or on behalf of the person for whose benefit the moneys are payable, by order, direct a specified person, during a period specified in the order, to seize and sell any goods, chattels and securities belonging to the defendant, to the extent necessary to satisfy the order, and to demand and receive any annuity, rents or other income (not being earnings of the defendant for the purposes of the next succeeding Division) payable to the defendant or credited to the defendant in a bank account, to the extent necessary to satisfy the order, and to apply any moneys so received, first, towards the payment of his costs and charges and, secondly, towards payment of the amount payable under the maintenance order.

(2.) A person so directed has full power and authority to do all acts and things incidental to the matters that he is authorized and directed to do.

(3.) A person shall not refuse to comply with a demand made upon him under this section by a person directed to make that demand.

Penalty: Two hundred dollars.

(4.) One application may be made to the Court under sub-section (1.) of this section in respect of two or more maintenance orders if—

- (a) the person entitled to receive payment under each of those maintenance orders is the one person; and
- (b) the person required to make payments under each of those maintenance orders is the one person.

Division 3.—Attachment of Earnings

Interpretation.

48.—(1.) In this Division, unless the contrary intention appears—
"attachment of earnings order" means an order under section 49 of this Ordinance;

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

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary); or
- (b) by way of pension, including—
 - (i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; and
 - (ii) periodical payments in respect of or by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment,

but not including any pay or allowances as a member of the Defence Force or any moneys payable to the defendant under the *Social Services Act 1947-1967*, the *Repatriation Act 1920-1966*, the *Repatriation (Far East Strategic Reserve) Act 1956-1964*, the *Repatriation (Special Overseas Service) Act 1962-1965* or the *Seamen's War Pensions and Allowances Act 1940-1966*;

“employer”, in relation to a defendant, means a person by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the defendant;

“net earnings”, in relation to an attachment of earnings order and in relation to a pay-day, means the amount of the earnings becoming payable on that pay-day to the defendant by the employer to whom the order is directed, after deduction from those earnings of—

- (a) any sum deducted from those earnings under Division 2 of Part VI. of the *Income Tax Assessment Act 1936-1967*;
- (b) any sum of a kind referred to in section 82H of that Act deducted from those earnings, not being a sum deducted in respect of a life insurance premium other than a life insurance premium payable under a superannuation or retirement benefit scheme; and
- (c) any sum of a kind referred to in section 82HA of that Act deducted from those earnings;

“normal deduction”, in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order, or at the normal deduction rate so specified that is applicable to that pay-day, as the case may be, in respect of the period between that pay-day and either the

last preceding pay-day, or, where there is no last preceding pay-day, the date on which the employer became, or last became, the defendant's employer;

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

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

(2.) In this Division—

- (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 or for transmission to another person; and
- (b) a reference to proceedings relating to an order includes a reference to proceedings in which the order may be made.

Attachment of earnings order.

49.—(1.) Subject to this Division, a person entitled to receive payments under a maintenance order may apply to the Court for an attachment of earnings order.

(2.) An application under the last preceding sub-section may be made *ex parte* and without specifying the name of any employer of the defendant.

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

- (a) that, at the time when the application was made—
 - (i) there was due under the maintenance order and unpaid an amount equal to not less than, in the case of an order for weekly payments, four payments or, in the case of any other order for periodical payments, two payments; or
 - (ii) there was due under the maintenance order, and unpaid for not less than four weeks, an amount in respect of costs or an amount payable otherwise than by way of periodical payments; or
- (b) that the defendant has persistently failed to comply with the requirements of the order,

the Court may, in its discretion, by an order require a person who appears to the Court to be the defendant's employer in respect of those earnings or a part of those earnings to make out of those earnings or that part of those earnings payments in accordance with the next succeeding section.

(4.) The Court shall not make an attachment of earnings order if it appears to the Court that the failure of the defendant to make payments under the maintenance order was not due to his wilful refusal or culpable neglect.

(5.) An attachment of earnings order shall specify a normal deduction rate or normal deduction rates and, where it specifies two or more such rates, it shall also specify the pay-day or pay-days to which each of those rates is applicable.

(6.) The rate to be specified as a normal deduction rate shall be the rate at which the Court considers it to be reasonable that the earnings to which the order relates should, or should on the pay-day or pay-days to which the rate is to be applicable, as the case may be, be applied in satisfying the requirements of the maintenance order but not exceeding the rate that appears to the Court to be necessary for the purpose of—

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

(7.) An attachment of earnings order shall also specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the defendant and of any person for whom he must or reasonably may provide, the Court considers it to be reasonable that the net earnings of the defendant on any pay-day should not be reduced by a payment under the order.

(8.) An attachment of earnings order shall provide that payments under the order are to be made to the Collector.

(9.) An attachment of earnings order shall contain such particulars as the Court thinks proper for the purpose of enabling the person to whom the order is directed to identify the defendant.

(10.) An attachment of earnings order does not come into force until the expiration of seven days after the day on which a copy of the order is served on the person to whom the order is directed.

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

**Employer to
make payments
under order.**

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

pay, so far as that excess permits, to the Collector—

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

(2.) A payment made by the employer under the last preceding sub-section is a valid discharge to him as against the defendant to the extent of the amount paid.

Enforcement of maintenance orders.

51.—(1.) Where proceedings are brought in the Court to enforce a maintenance order, the Court may, instead of making any other order, make an attachment of earnings order.

(2.) Where an attachment of earnings order is in force, no writ, order or warrant of commitment or attachment shall be issued or made in proceedings for the enforcement of the maintenance order that were begun before the making of the attachment of earnings order, unless the court in which those proceedings were taken otherwise orders.

Discharge, suspension or variation of order.

52.—(1.) The Court may, in its discretion, on the application of the defendant or a person entitled to receive payments under a maintenance order, make an order discharging, suspending or varying the attachment of earnings order previously made by the Court in relation to that maintenance order.

(2.) An order suspending or varying an attachment of earnings order shall not come into force until the expiration of seven days after the date on which a copy of the order is served on the person to whom the attachment of earnings order is directed.

Cessation of order.

53.—(1.) An attachment of earnings order shall cease to have effect—

- (a) upon the issuing of a writ or other process, or upon the making of an order, for the enforcement of the maintenance order in relation to which the attachment of earnings order applies;
- (b) upon the discharge of the attachment of earnings order; or
- (c) subject to the next succeeding sub-section, upon the discharge or variation of that maintenance order.

(2.) Where the Court discharges a maintenance order and it appears to the Court that arrears under the order will remain to be recovered under the order, the Court may, in its discretion, in addition to discharging the order, direct that the attachment of earnings order shall not cease to have effect until those arrears have been paid.

(3.) Where an attachment of earnings order ceases to have effect, the Clerk shall forthwith serve notice in writing accordingly on the person to whom the order was directed.

(4.) Where an attachment of earnings order ceases to have effect, the person to whom the attachment of earnings order is directed does not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days after the date on which the notice required by the last preceding sub-section is served on him.

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

Employer to comply with order.

55.—(1.) Subject to the succeeding sub-sections of this section, where, on any occasion on which earnings become payable to a defendant, there are in force two or more attachment of earnings orders in relation to those earnings, the person to whom the orders are directed—

Procedure where two or more orders in force.

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

(2.) Where, on any occasion on which earnings become payable to a defendant, there is in force, in addition to an attachment of earnings order under this Ordinance directed to the employer in respect of the defendant, an attachment of earnings order under the *Matrimonial Causes Act 1959-1966* directed to the employer in respect of the defendant, the manner in which the employer shall comply with the order under this Ordinance shall be as directed in the Third Schedule to that Act.

(3.) For the purposes of sub-sections (1.) and (2.) of this section, where a variation of an order has come into force, the order shall be deemed to have come into force as so varied on the day upon which the order came into force.

56. A person who makes a payment in compliance with an attachment of earnings order shall give to the defendant a notice in writing specifying particulars of the payment.

Notice to be given to defendant.

57. Where a person on whom a copy of an attachment of earnings order that is directed to him is served—

- (a) is not the defendant's employer at the time when the copy of the order is served on him; or
- (b) is the defendant's employer at that time but ceases to be the defendant's employer at any time before the order ceases to have effect,

Employer to notify the Collector if he ceases to be defendant's employer.

the person shall give notice in writing accordingly to the Collector—

- (c) in a case to which paragraph (a) of this sub-section applies—forthwith after the copy of the order is served on the person; and
- (d) in a case to which paragraph (b) of this sub-section applies—forthwith after the person ceases to be the defendant's employer.

Determination as to what payments are earnings.

58.—(1.) The Court shall, upon application by the person to whom an attachment of earnings order is directed, of the defendant or of the person in whose favour an attachment of earnings order was made, determine whether payments to the defendant of a particular class or description specified in the application are earnings for the purposes of that order.

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

(3.) The last preceding sub-section does not apply in respect of any payment made after the application has been withdrawn or any appeal from a determination made on the application has been abandoned.

Service of documents.

59.—(1.) A copy of an order or other document that is required or permitted to be served on a person other than an incorporated company, society or association under this Division may be served on the person—

- (a) by delivering the document to the person personally;
- (b) by leaving the document at the usual place of residence or business of the person, or at the last place of residence or business of the person known to the person on whose behalf the document is being served, with a person who apparently resides in, or is employed at, that place and is apparently over the age of sixteen years; or
- (c) by properly addressing and posting (under prepaid postage) the document as a registered letter to the person at any place referred to in the last preceding sub-paragraph.

(2.) A copy of an order or other document that is required or permitted to be served on an incorporated company, society or association under this Division may be served on the company, society or association—

- (a) by leaving the document at any place of business of the company, society or association, or at any place that is the registered office of the company, society or association under the law of the Australian Capital Territory, of any

State or of another Territory of the Commonwealth, with a person who is apparently employed at that place and is apparently over the age of sixteen years; or

- (b) by properly addressing and posting (under prepaid postage) the document as a registered letter to the company, society or association at any place referred to in the last preceding sub-paragraph.

(3.) Service of a document in accordance with paragraph (c) of sub-section (1.), or paragraph (b) of sub-section (2.), of this section shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

60.—(1.) A person who—

Offences.

- (a) fails to comply with a requirement of this Division, or of an order under this Division, that is applicable to him;
- (b) in any statement or notice furnished to the Court under this Division or in compliance with an order made under this Division makes a statement that he knows to be false or misleading in a material particular; or
- (c) recklessly furnishes such a statement or notice that is false or misleading in a material particular,

is guilty of an offence punishable, upon conviction, by a fine not exceeding Two hundred dollars.

(2.) It is a defence if a person charged with an offence arising under paragraph (a) of the last preceding sub-section proves that he took all reasonable steps to comply with the requirement or order.

61.—(1.) A person who dismisses an employee, or injures him in his employment, or alters his position to his prejudice, by reason of the circumstance that an attachment of earnings order has been made in relation to the employee or that the person is required to make payments under such an order in relation to the employee is guilty of an offence punishable, upon conviction, by a fine not exceeding Two hundred dollars.

The defendant not to be dismissed.

(2.) In any proceedings for an offence arising under the last preceding sub-section, if all the facts and circumstances constituting the offence, other than the reason for the action of the person charged with having committed the offence, are proved, the burden lies upon that person to prove that he was not actuated by the reason alleged in the charge.

(3.) Where a person is convicted by the Court of an offence arising under sub-section (1.) of this section, the Court may order that the employee be reimbursed an amount determined by the Court to be the amount of any wages lost by him and may also direct that the employee be reinstated in his old position or in a similar position.

(4.) Where the Court has made an order under the last preceding sub-section, a certificate under the hand of the Clerk specifying the amount ordered to be reimbursed and the persons by whom and to whom the amount is payable may be filed in a court having civil jurisdiction to the extent of that amount and is thereupon enforceable in all respects as a final judgment of that last-mentioned court.

Application of
this Division.

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

Division 4.—Miscellaneous.

Defence to
proceedings to
enforce
maintenance
order.

63. Where proceedings are taken in the Court under this Part in respect of the failure of the defendant to make payments under a maintenance order during a specified period in accordance with the maintenance order, the Court shall not make an order (other than an order dismissing the proceedings) or issue a warrant or other process to enforce the maintenance order if the defendant satisfies the Court that during that period he adequately supported the person for whose benefit the maintenance order was made.

Penalty for
molesting child.

64.—(1.) Where, by virtue of an order under section 23 of this Ordinance, the custody of a child is committed to a parent of the child—

- (a) a person shall not remove the child from the care and control of that parent contrary to the order or interfere with the exercise by that parent of his rights under the order to the care and control of the child; and
- (b) a person who has the care and control of the child shall not, upon demand by the parent entitled to the custody of the child under the order, refuse or fail to deliver the child to that parent.

(2.) Where an order under section 23 of this Ordinance makes provision with respect to access to a child by a parent of the child, a person shall not, without just cause or excuse, refuse to afford, prevent or interfere with access to the child by that parent in accordance with the order.

(3.) Where the custody of a child is committed to a parent of the child by an order made by a court in a State or a Territory of the Commonwealth other than the Australian Capital Territory under an Act or Ordinance that makes like provision as is made by section 23 of this Ordinance—

- (a) a person shall not remove the child from the care and control of that parent contrary to the order or interfere with the exercise by that parent of his rights under the order to the care and control of the child; and

- (b) a person who has the care and control of the child shall not, upon demand by the parent entitled to the custody of the child under the order, refuse or fail to deliver the child to that parent.

(4.) It is a defence to a prosecution for an offence against subsection (1.) or (3.) of this section if the defendant proves that he did not know, and could not reasonably be expected to have known, of the order committing the custody of the child to the parent of the child.

(5.) A person who contravenes or fails to comply with a preceding provision of this section commits an offence punishable, upon conviction, by a fine not exceeding Two hundred dollars or by imprisonment for a period not exceeding six months.

(6.) Where a person is convicted by the Court of an offence against the last preceding sub-section, the Court may, either in place of imposing a penalty under the last preceding sub-section or in addition to any penalty imposed under that sub-section, require the person to enter into a recognizance, with or without sureties, in such reasonable amount as the Court thinks fit to comply with the provisions of this section and, if the person does not enter into the recognizance forthwith, may order him to be imprisoned until he enters into the recognizance or until the expiration of a period of three months, whichever first occurs.

PART IV.—RECIPROCAL ENFORCEMENT OF ORDERS MADE OUTSIDE THE TERRITORY.

Division 1.—Interpretation and Administration.

65.—(1.) In this Part, unless the contrary intention appears— Interpretation.
“certified copy”—

- (a) in relation to a maintenance order or other order of a court (not being an order made under the *Matrimonial Causes Act 1959-1966*)—means a copy of the order certified to be a true copy by an officer of the court that made the order, or a copy of such a copy certified to be a true copy by an officer of a court in or by which the order has been registered or confirmed or, in the case of an overseas order, by the Secretary;
- (b) in relation to a maintenance order or other order made under the *Matrimonial Causes Act 1959-1966*—means—
- (i) a certificate of the order issued under the rules made under that Act;
 - (ii) if the order is included in a decree *nisi*—a copy of the decree *nisi*; or
 - (iii) a copy of such a certificate or of the decree *nisi* in which the order is included certified to be a true copy by an officer of a court in which the order has been registered under that Act; and

- (c) in relation to a record of the evidence of a witness in proceedings before a court—means a copy of the record certified to be a true copy by an officer of that court;

“Collector”—

- (a) in relation to the Territory—means the Collector of Maintenance or a Deputy Collector of Maintenance appointed or acting under this Ordinance; and
- (b) in relation to a State—means an officer appointed under the law of that State whose duties, or part of whose duties, are similar to the duties of the Collector of Maintenance for the Territory;

“collector’s certificate”—

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

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

“country having restricted reciprocity” means a reciprocating country that has, for the time being, by virtue of the regulations, restricted reciprocity with the Territory;

“court”, in relation to any order made or to be made or any act, matter or thing done or to be done in any place outside the Territory, means a court or magistrate, or a justice or justices, or any other person or persons, exercising judicial powers in that place;

“court of summary jurisdiction” means a justice or justices of the peace or other magistrate of the Commonwealth or part of the Commonwealth, or of a State or part of a State, sitting as a court for the making of summary orders or the summary punishment of offences under the law of the Commonwealth or part of the Commonwealth or under the law of a State or by virtue of his or their commission or commissions or any Imperial Act;

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

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

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

(a) an order whereby a person is ordered to pay money, whether in a lump sum or by instalments, or to pay sums of money periodically, for or towards the maintenance of another person or by way of recoupment of moneys spent in, or provided for, the maintenance of another person; or

(b) an order made under, or of a kind similar to an order made under, section 16, 18, 19 or 20 of this Ordinance,

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

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

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

(a) in the case where the regulations provide that maintenance orders made in that country are enforceable in the Territory in accordance with the provisions of Division 3 of this Part on or after a date specified in the regulations—a maintenance order made on or after that date in that country by a court of competent jurisdiction; and

(b) in any other case—a maintenance order made in that country by a court of competent jurisdiction, whether before or after the country is so specified;

“reciprocating country” means a country that is for the time being declared by the regulations to be a reciprocating country for the purposes of this Part;

“State” means—

(a) a State of the Commonwealth; or

(b) a Territory of the Commonwealth other than the Australian Capital Territory;

“State order” means a maintenance order—

(a) made in a State by a court of summary jurisdiction;

or

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

“ Territory order ” means a maintenance order—

- (a) made in the Territory by the Court; or
 (b) made by the Supreme Court and registered, for the purposes of enforcement, in the Court of Petty Sessions under the *Matrimonial Causes Act 1959-1966*;

“ the Secretary ” means the Secretary to the Attorney-General’s Department.

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

(3.) A reference in this Part to an order made by a court shall be deemed to include a reference to an order made by another court on an appeal in connexion with proceedings that originated in the first-mentioned court.

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

(5.) A reference in this Part to the depositions of a witness shall be read as a reference—

- (a) in a case where the witness gave evidence in the Territory—
 (i) if a record of the evidence was made in accordance with sub-section (1.) of section 60 of the *Court of Petty Sessions Ordinance 1930-1967*—to a transcript of the record certified in accordance with sub-section (5.) of that section; or
 (ii) if the depositions were taken down in writing and signed in accordance with sub-section (2.) of that section—to the depositions as so taken down and signed; or
 (b) in any other case—to a record of the depositions certified as required by the law in force in the place where the evidence was given or to the depositions taken down when the evidence was given or a certified copy of the depositions so taken down.

Powers, &c.,
of Collector.

66.—(1.) The Collector may do all things necessary or convenient to be done for the enforcement in the Territory of maintenance orders enforceable in the Territory by virtue of this Part.

(2.) The Collector shall—

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

(3.) In all proceedings under this Part, the Collector is entitled to appear, to be heard, to give evidence and to call, examine and cross-examine witnesses.

Division 2.—State Maintenance Orders.

67.—(1.) Where a Territory order is presently in operation in the Territory but is not presently enforceable under the law of a State, and it appears to the Collector that the defendant is resident in, or proceeding to a State, the Collector may send to the Collector for that State—

Transmission of Territory orders for enforcement in a State.

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

(2.) Where—

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

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

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

(4.) Where a Territory order is, in pursuance of a request under sub-section (1.) of this section, made enforceable in a State—

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

Enforcement
in the Territory
of orders made
in States.

68.—(1.) Where the Collector receives from the Collector for a State—

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

he shall, if it appears to him that there are reasonable grounds for believing that the defendant is resident in, or proceeding to, the Territory, send the documents to the Clerk with a request that the order be registered in the Court.

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

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

(4.) Upon registration of the order, the Collector shall notify the Collector for the State accordingly and shall cause a certified copy of the order to be served upon the defendant, together with a notice of registration of the order in the Territory—

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

(5.) Where—

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

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

- (6.) Where the registration of an order is so cancelled—
- (a) the order ceases to be enforceable in the Territory;
 - (b) the order remains unenforceable in the Territory unless and until it is again registered in the Territory; and
 - (c) every warrant or other process under this Ordinance arising out of the order previously issued in the Territory and not executed ceases to have effect.

69. Where a State order has been registered in the Territory under this Division and the Collector has reasonable grounds for believing that the defendant is no longer resident in the Territory, but is resident in, or proceeding to, another State, he shall forthwith notify the Collector in the State in which the order was made of the fact and shall give him such information as he possesses concerning the whereabouts and intended movements of the defendant.

Collector to notify original State when defendant leaves the Territory.

70.—(1.) Where a State order made by a court of summary jurisdiction is enforceable in the Territory by virtue of this Division, an application in writing may be made by or on behalf of the complainant or the defendant to the Court for an order discharging, suspending, varying or reviving the order, and the Court has jurisdiction to hear and determine the application.

Application for provisional order of variation, &c.

(2.) Where a Territory order is enforceable in a State by virtue of provisions corresponding with this Division, an application in writing may be made by or on behalf of the complainant or the defendant to the Court for an order discharging, suspending, varying or reviving the Territory order, and the Court has jurisdiction to hear and determine the application.

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

(4.) While a Territory order is enforceable in a State under the law of that State, no application for the discharge, suspension, variation or revival of the order shall be made in the Territory except in accordance with this section.

71. Where—

- (a) an application is made under sub-section (1.) of section 70 of this Ordinance by a defendant for the discharge, suspension or variation of a State order;
- (b) the defendant either did not appear at the hearing of the complaint upon which the original State order was made or was not served personally in the State or Territory of the Commonwealth in which that order was made with a summons issued in pursuance of the complaint upon which that order was made; and

Discharge, suspension or variation of order made in absence of defendant.

(c) the application is made within six months after service on the defendant of notice of registration of the order in the Territory,

the defendant may, in addition to raising any matter that he may raise under section 34 of this Ordinance, raise any ground of opposition that he could have raised in the original proceedings.

Law to be applied.

72. In an application under sub-section (1.) of section 70 of this Ordinance, the law to be applied is, except in matters of practice and procedure, the law of the State in which the original order was made.

Order of variation, &c., to be provisional only.

73.—(1.) Except as provided in sub-section (2.) of this section, an order made on an application under section 70 of this Ordinance discharging, suspending, varying or reviving a maintenance order is provisional only and has no effect unless and until confirmed by a competent court of the State in which the maintenance order was made or is enforceable, and shall be expressed accordingly.

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

(3.) Where an order made on an application under section 70 of this Ordinance is expressed to be provisional, the Clerk shall send a certified copy of the order, together with the depositions of the witnesses, to the Collector for transmission to the Collector for the State.

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

Procedure where provisional order remitted by court of a State.

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

(2.) If, upon the taking of the further evidence, it appears to the Court that the order ought not to have been made, the Court may rescind the order and may, if it thinks fit, make a fresh provisional order on the application under section 70 of this Ordinance.

Confirmation in the Territory of provisional orders made in States.

75.—(1.) Where the Collector receives—

(a) a certified copy of—

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

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

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

(2.) The Collector shall cause a copy of the application under this section to be served on the respondent to the application not less than seven days before the hearing of the application.

(3.) Upon the hearing of the application, the Court may—

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

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

76.—(1.) Where a State order is enforceable in the Territory by virtue of this Division— Proceedings for enforcement.

- (a) proceedings for the enforcement of the order may be taken under Part III.; and
- (b) the provisions of this Ordinance, other than the provisions of Part II., apply to and in relation to proceedings for the enforcement of the order,

as if the State order were a maintenance order within the meaning of Part III.

(2.) The Collector may take any proceedings that are authorized by sub-section (1.) of this section.

(3.) Where proceedings are so taken by the Collector for the enforcement of an order (being an order of the kind referred to in paragraph (a) of the definition of “maintenance order” in sub-section (1.) of section 65 of this Ordinance), unless the Court is satisfied by evidence to the contrary, the Court shall presume—

- (a) that the moneys due and payable under the order—
 - (i) if the order has ceased to be in force—were, when the moneys became due and payable, required for the maintenance of the person for whose benefit the order was made; or
 - (ii) in any other case—are required for the maintenance of that person; and
- (b) that no moneys have been paid under the order since its registration in the Territory other than any moneys that have been paid to the Collector.

Division 3.—Overseas Maintenance Orders.

Transmission of maintenance orders made in the Territory for enforcement in reciprocating countries.

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

- (a) three certified copies of the Territory order;
- (b) a collector's certificate relating to the Territory order;
- (c) such information and material (if any) as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
- (d) a request in writing that the Secretary should seek to have the Territory order made enforceable in that reciprocating country,

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

(2.) Where a Territory order is, in pursuance of a request under the last preceding sub-section, made enforceable in a reciprocating country—

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

(3.) This section does not apply in relation to an order under section 16, 17, 18, 19 or 20 of this Ordinance, or under any corresponding previous enactment, where the order relates to an illegitimate child or to the mother of an illegitimate child, unless the defendant appeared in the proceedings in which the Court adjudged him to be the father of the child, or was duly served with a summons to appear in those proceedings or consented to the making of the order made in those proceedings.

Power to make provisional order against person resident in reciprocating country.

78.—(1.) Upon application made to the Court for a maintenance order of a kind that may be made under section 13, 14 or 15 of this Ordinance against a person and upon proof that that person is resident in, or proceeding to, a reciprocating country, the Court may, in the absence of that person, make any order it could have made if a summons had been duly served on him and he had failed to appear at the hearing.

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

(3.) Where the Court makes an order under sub-section (1.) of this section, the Clerk shall send to the Collector—

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

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

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

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

(7.) Where the Court takes evidence in pursuance of a request of another court made under sub-section (5.) of this section, the Court may, for the purposes of sub-section (6.) of this section, have regard to the evidence given at the hearing in that other court.

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

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

79. Where—

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

Cancellation of
registration.

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

Registration of overseas orders.

80.—(1.) Where the Secretary receives—

- (a) a certified copy of an overseas order; and
- (b) a certificate signed by an officer of a court or other authority in the reciprocating country relating to the order and containing—
 - (i) a statement that the order is, at the date of the certificate, enforceable in that reciprocating country; and
 - (ii) a statement as to the amount of any arrears due under the order, distinguishing any amount in respect of which the defendant has been imprisoned,

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

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

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

(4.) Where the Collector receives from the Secretary the documents referred to in sub-section (1.) of this section, he shall transmit the documents to the Clerk with a request that the order be registered in the Court.

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

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

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

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

81.- (1.) Where—

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

Confirmation
of provisional
orders
made
overseas.

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

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

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

(4.) At the hearing it shall be open to the defendant to raise any ground of opposition that he could have raised in the original proceedings or any ground of opposition that he could have raised had the proceedings on which the provisional overseas order was made been

heard in the Territory, and the statement referred to in sub-section (1.) of this section shall be conclusive evidence that the grounds referred to in that statement are the grounds of opposition that could have been raised in the original proceedings.

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

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

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

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

Order enforceable in the Territory may be sent to a State.

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

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

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

(2.) Where a request is made under sub-section (1.) of this section—

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

83.—(1.) Where—

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

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

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

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

Registration of overseas orders registered or confirmed in a State.

he shall, if it appears to him that there are reasonable grounds for believing that the defendant is residing in, or proceeding to, the Territory, send the documents to the Clerk with a request that the order be registered in the Court.

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

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

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

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

84. Where the Secretary receives documents relating to an overseas order (including a provisional order) that have been transmitted to the Territory for the purpose of having the order made enforceable or confirmed in the Territory and it appears to him that the defendant is not

Transmission of documents where defendant not in the Territory.

resident in, or proceeding to, the Territory but is resident in, or proceeding to, a State or a reciprocating country other than that in which the order was made, the Secretary may, instead of taking steps with a view to the registration or confirmation of the order in the Territory—

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

Cancellation of registration.

85.—(1.) Where—

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

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

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

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

Proceedings for enforcement.

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

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

as if it were a maintenance order made under Part II. of this Ordinance.

(2.) The Collector may take any proceedings that are authorized by sub-section (1.) of this section.

(3.) Where proceedings are so taken by the Collector for the enforcement of an order (being an order of the kind referred to in paragraph (a) of the definition of "maintenance order" in sub-section (1.) of section 65 of this Ordinance), unless the Court is satisfied by evidence to the contrary, the Court shall presume—

- (a) that the moneys due and payable under the order—
 - (i) if the order has ceased to be in force—were, when the moneys became due and payable, required for the maintenance of the person for whose benefit the order was made; or
 - (ii) in any other case—are required for the maintenance of that person; and
- (b) that no moneys have been paid under the order since its registration in the Territory other than any moneys that have been paid to the Collector.

87.—(1.) Where an overseas order is enforceable in the Territory by virtue of this Division, the defendant may make an application in writing to the Court for an order discharging, suspending or varying the overseas order, and the Court has jurisdiction to hear and determine the application.

Defendant in the Territory may apply for order of variation, &c.

(2.) Where a Territory order is enforceable under the law of a reciprocating country in which the defendant is for the time being resident, the complainant may make an application in writing to the Court for an order varying, or, if the order has been suspended, reviving, the order.

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

(4.) The Court shall, as far as practicable, hear and determine an application under this section as if it were similar to an application under Division 5 of Part II. of this Ordinance.

88. Where—

- (a) an application is made under section 87 of this Ordinance by a defendant for the discharge, suspension or variation of an overseas order;
- (b) the defendant either did not appear at the hearing of the proceedings upon which the overseas order was made or was not served in the manner referred to in sub-section (3.) of section 101 of this Ordinance in the country in which that order was made with a summons issued in pursuance of the complaint upon which that order was made; and
- (c) the application is made within six months after service on the defendant of notice of registration of the order in the Territory,

Discharge, suspension or variation of order made in absence of defendant.

the defendant may, in addition to raising any matter that he may raise under section 34 of this Ordinance, raise any ground of opposition that he could have raised had the proceedings on which the overseas order was made been heard in the Territory.

Law to be applied.

89. In an application under section 87 of this Ordinance, the law to be applied is the law in force in the Territory.

Certain orders to be provisional only.

90.—(1.) Where the Court proposes to make an order on an application under section 87 of this Ordinance and any court in the reciprocating country will, if the order is provisional only, have jurisdiction to confirm the order, the order is provisional only and has no effect unless and until confirmed (with or without modification) by such a court, and shall be expressed accordingly.

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

(3.) Where a court in the reciprocating country confirms (with or without modification) a provisional order made on an application under section 87 of this Ordinance, the order has effect in the Territory as so confirmed.

(4.) Notwithstanding anything contained in this section, if a provisional order made on an application under sub-section (2.) of section 87 of this Ordinance is confirmed (with or without modification) by a court of a reciprocating country (not being the country specified in the order) in which the defendant is resident at the time of the confirmation, the order has effect in the Territory as so confirmed.

Procedure where provisional order remitted by court in reciprocating country.

91.—(1.) Where a provisional order made in accordance with section 90 of this Ordinance is remitted by a court in a reciprocating country to the Court for the taking of further evidence, the Court shall, after notice has been given to such persons and in such manner as the Court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the reciprocating country.

(2.) If, upon the taking of the further evidence, it appears to the Court that the order ought not to have been made, the Court may rescind the order and may, if it thinks fit, make a fresh provisional order on the application under section 87 of this Ordinance.

Confirmation in the Territory of provisional orders of variation, &c., made in reciprocating countries.

92.—(1.) Where the Collector receives—

(a) a certified copy of—

(i) a provisional order made by a court of a reciprocating country discharging, suspending, varying or reviving a Territory order enforceable in that reciprocating country; or

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

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

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

(2.) The Collector shall cause a copy of the application under this section to be served on the respondent to the application not less than seven days before the hearing of the application.

(3.) Upon the hearing of the application, the Court may—

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

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

93.—(1.) Where the Attorney-General is satisfied that the law of a country makes provision for the enforcement in that country of maintenance orders made in another country and that under that law Territory orders may be made enforceable in that country, regulations may be made under this Ordinance declaring that country to be a reciprocating country for the purposes of this Part. Reciprocating countries.

(2.) If it appears to the Attorney-General that the jurisdiction of the courts of a country so declared, or to be so declared, to make maintenance orders extends to the making of orders that are not of the same kind as orders that may be made in the Territory under Part II. of this Ordinance, the regulations may provide that that country has restricted reciprocity with the Territory.

(3.) The regulations may specify, in relation to the country declared by the regulations to be a reciprocating country, a date, which may be before or after or the same day as the date on which the regulations come into operation, and provide that maintenance orders made in that country on or after that date are enforceable in the Territory in accordance with the provisions of this Division.

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

- (a) a maintenance order made in that country and enforceable in the Territory by virtue of this Division ceases to be so enforceable; and
- (b) every warrant or other process under this Ordinance arising out of any such order previously issued in the Territory and not executed ceases to have effect,

but this sub-section does not affect the validity of anything done under this Ordinance for the enforcement of a maintenance order while that country was a reciprocating country.

Division 4.—Miscellaneous.

Payments to be made to Collector.

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

Collector to notify changes in orders enforceable in States or reciprocating countries.

95. Where the operation of a Territory order enforceable in a State or in a reciprocating country, or the operation of a State order or overseas order enforceable in the Territory, is affected by an order (other than a provisional order), event or other matter made, occurring or arising in the Territory of which the Collector has notice, the Collector shall send to the Collector for that State, or to an appropriate officer in the reciprocating country, a certified copy of the order, or a notice in writing giving particulars of the event or other matter, by which the operation of the order so enforceable has been so affected.

Collector to note changes in orders made or enforceable in the Territory.

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

- (a) file the certified copy or notice in the Court; and
- (b) if the complainant or defendant is resident in the Territory, cause a copy of the certified copy or notice to be served on the complainant or defendant, as the case may be.

(2.) Where a certified copy or notice is so filed in relation to a maintenance order, the order, event or matter has the like effect in the Territory as it appears from the certified copy or notice to have in the State or reciprocating country.

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

Conversion of currency.

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

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

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

(4.) Where, under section 66 of this Ordinance, the Collector is required to remit an amount of money to a country outside the Commonwealth, he shall remit such amount in the currency of that country as he is able to remit by the expenditure of that first-mentioned amount.

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

- (a) in relation to a maintenance order registered under this Part or a certificate with respect to the arrears payable under a maintenance order sought to be so registered—the day upon which the order is registered;
- (b) in relation to a provisional order confirmed under this Part—the day upon which the order is confirmed; or
- (c) in relation to an order or notice referred to in sub-section (1.) of section 96 of this Ordinance—the day upon which the certified copy of the order or the notice is filed in the Court in accordance with that sub-section.

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

Translation of orders, records, &c.

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

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

Certificate of payments.

Evidentiary.

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

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

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

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

Service of documents under Part IV.

101.—(1.) A document required or permitted by this Part to be served on a person shall, unless the contrary appears in this Part, be served on that person personally.

(2.) A document required by sub-section (4.) of section 68, sub-section (7.) of section 80, sub-section (4.) of section 83 or section 96 of this Ordinance to be served on a person may be served on him—

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

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

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

PART V.—APPEALS.

Appeals.

102.—(1.) A person aggrieved by an order of the Court under this Ordinance may, within twenty-one days after the order is made, appeal to the Supreme Court against the order in the manner provided by the rules made for the purposes of section 208A of the *Court of Petty Sessions Ordinance* 1930-1967.

(2.) The appellant shall serve notice of the appeal on the Clerk within a period of twenty-one days after the day on which the order is made and on all other parties directly affected by the appeal before or as soon as practicable after the expiration of that period.

(3.) Where it appears to the Court that notice of appeal cannot be served personally on a person on whom it is required to be served by the last preceding sub-section, the Court may order that the notice be given or served in a manner specified by the Court.

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(4.) An appeal to the Supreme Court under this section shall be in the nature of a re-hearing.

(5.) The provisions of sub-section (2.) of section 212 and of section 213 of the *Court of Petty Sessions Ordinance 1930-1967* apply to and in relation to an appeal to the Supreme Court under this section in like manner as they apply to an appeal to the Supreme Court under that Ordinance.

(6.) Where a defendant appeals to the Supreme Court against an order made under section 16 of this Ordinance before the birth of the child to whom the order relates, the defendant may, in his notice of appeal, request that the appeal be not heard before the birth of the child.

(7.) Where a notice of appeal contains the request mentioned in the last preceding sub-section, the appeal shall not be set down for hearing before the Supreme Court until evidence of the birth of the child is furnished to the Registrar of the Supreme Court.

(8.) Where a person appeals to the Supreme Court against an order made in proceedings instituted by a complaint made on behalf of a child, the Supreme Court may, at the request of a party to the appeal, make an order directing the person who has the custody of the child to produce the child before the Supreme Court upon the hearing of the appeal.

103.—(1.) Where a person appeals to the Supreme Court under the last preceding section against an order for the payment of moneys or against an order varying an order for the payment of moneys, the Supreme Court may order that the order appealed from be stayed pending the hearing and determination of the appeal and, if it thinks fit, also make an order for the payment of maintenance in respect of a person pending the hearing and determination of the appeal.

Orders pending appeals.

(2.) Where a person appeals to the Supreme Court under the last preceding section against an order made under section 23 of this Ordinance, the Supreme Court may order that the order appealed from be stayed pending the hearing and determination of the appeal and, if it thinks fit, by the same or a subsequent order, make such provision as it thinks fit with respect to the custody of, or to access to, the child by a parent of the child pending the hearing and determination of the appeal.

(3.) Where the Supreme Court makes an order for the payment of maintenance under sub-section (1.) of this section, moneys cease to be payable under the order upon the determination of the appeal by the Supreme Court.

(4.) Where, after the Supreme Court has made an order (in this sub-section referred to as the "interim order") under sub-section (1.) of this section for the payment of maintenance in respect of a person, the Supreme Court makes an order on the determination of the appeal (in this sub-section referred to as the "final order") that results in maintenance becoming payable in respect of that person from a specified date, being a date before the date upon which moneys cease

to be payable under the interim order, an amount equal to the sum of the payments made under the interim order for the maintenance of the person in respect of a period after the specified date shall be deemed to have been made in respect of the maintenance payable as a result of the final order.

PART VI.—MISCELLANEOUS.

Complaints.

104.—(1.) A complaint shall be taken not to have been duly made for the purposes of this Ordinance unless it is made to the Clerk in writing and upon oath.

(2.) Where a complaint for the purposes of this Ordinance is made to the Clerk, the Clerk—

- (a) may issue a summons requiring the defendant to attend before the Court on a date, and at a time and place, specified in the summons; or
- (b) may, subject to the next succeeding sub-section, issue a warrant for the apprehension of the defendant and for bringing him before the Court to answer the complaint.

(3.) The Clerk shall not issue a warrant for the apprehension of a defendant under the last preceding sub-section unless he is satisfied, by evidence furnished to him upon oath, that the whereabouts of the defendant are unknown to the complainant or that the defendant is about to move, or has moved, out of the Territory without having made adequate provision for the maintenance of the complainant.

(4.) Two or more complaints made against a defendant by a complainant, whether on the complainant's own behalf, on behalf of other persons or both on the complainant's own behalf and on behalf of other persons, may be joined in the one form of complaint.

(5.) Where, in pursuance of sub-section (4.) of this section, two or more complaints are joined in the one form of complaint—

- (a) one summons may be issued in respect of those complaints;
- (b) those complaints shall, unless the Court otherwise orders, be heard and determined by the Court at the same time; and
- (c) two or more orders in respect of those complaints may be joined in the one form of order but the order in respect of each complaint shall, for the purposes of this Ordinance, be deemed to be a separate order.

(6.) Where complaints—

- (a) for the maintenance of a child of a marriage are made by the same complainant against the father as well as against the mother of that child; or
- (b) for the maintenance of an illegitimate child are made by the same complainant against a person alleged to be the father of that child as well as against the mother of that child,

the complaints may, if the Court thinks fit, be heard and determined by the Court at the same time.

105.—(1.) Where the defendant does not appear before the Court—

Court may proceed in absence of defendant in certain cases.

- (a) at the time and place specified in a summons issued in relation to a complaint; or
- (b) at the time and place specified in an application made under sub-section (1.) of section 41 of this Ordinance to commit the defendant to prison,

or on any day to which the hearing of the complaint or application is adjourned, the Court may, subject to the next succeeding sub-section, issue a warrant for the apprehension of the defendant or proceed to hear and determine the complaint or application in the absence of the defendant.

(2.) The Court shall not proceed as provided by the last preceding sub-section, unless the Court is satisfied—

- (a) that the summons, or a copy of the application, as the case may be, was duly served on the defendant; or
- (b) that the complainant, or person making the application, as the case may be, has, after strict inquiry and search for the purpose of ascertaining the whereabouts of the defendant, been unable to effect service of the summons or of a copy of the application, as the case may be, on the defendant.

(3.) Where, under sub-section (1.) of this section, the Court issues a warrant for the apprehension of the defendant, the Court shall adjourn the hearing of the complaint until the defendant is brought before the Court.

(4.) Where a warrant has been issued for the apprehension of the defendant (whether in the first instance or upon the defendant so failing to appear) and the Court is satisfied that after strict inquiry and search the defendant cannot be found, the Court may proceed to hear the complaint in the absence of the defendant.

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

106. An application to the Court for the purposes of this Ordinance shall be in accordance with the prescribed form.

Form of applications.

107.—(1.) Subject to section 105 of this Ordinance and to the next succeeding sub-section, where the Court is satisfied that service of a copy of an application has been effected on each person, other than the applicant, who appears to the Court to be affected by the application, the Court may hear and determine the application whether or not every person on whom such a copy was served is present at the hearing.

Hearing of application.

(2.) The last preceding sub-section does not apply to an application of a kind that is permitted by this Ordinance to be made *ex parte*.

Complaints or applications made on behalf of persons.

108.—(1.) A complaint or an application under this Ordinance purporting to be made on behalf of a person shall, in the absence of evidence to the contrary, be deemed to be made on behalf of that person.

(2.) Where a complaint or an application under this Ordinance may be made by a person on behalf of a child, that person may make the complaint or application whether or not he has been duly authorized to do so.

How payment to be made under a maintenance order.

109.—(1.) Where the Court makes a maintenance order under this Ordinance, the moneys payable by the defendant under the order are, by virtue of this sub-section, payable to the Collector at the Law Courts Building, Canberra, unless the Court, by the order, directs that the payments be made to another person and at another place specified in the order.

(2.) The Court shall, in an order made under this Ordinance directing the payment of moneys, direct that the moneys be paid—

(a) if the moneys are payable for or towards the maintenance of a person—except where otherwise provided in this Ordinance, weekly, fortnightly or otherwise periodically; and

(b) in the case of any other moneys payable under the order—in one sum or by instalments.

Clerk to notify defendant of the terms of an order.

110. Where the Court makes a maintenance order under this Ordinance, the Clerk shall post to the defendant at the last known address of the defendant, postage being prepaid, a notice setting out the terms of the order and particulars of the person to whom and place at which the moneys payable under the order are to be paid.

Payments under orders.

111.—(1.) Subject to any order made under this Ordinance in relation to the appropriation of moneys, moneys received under an order for the payment of moneys made under this Ordinance by the person entitled to receive those moneys shall be deemed to be a payment made by the defendant to that person so as to discharge, to the extent of the moneys received, first, any sums due and unpaid under the order (a sum due at an earlier date being discharged before a sum due at a later date) and, secondly, any costs incurred in proceedings relating to the order that were payable by the defendant in respect of any previous proceedings for the enforcement of the order.

(2.) In proceedings relating to an order for the payment of moneys enforceable under this Ordinance, the production of books purporting to be the books of account of the Court in relation to the order are evidence that the payments to which the entries in those books purport to refer have been made and that those payments are the only payments that have been made.

(3.) Where—

(a) the Collector or other person to whom the payment of moneys is, by virtue of sub-section (1.) of section 109 of this Ordinance, directed to be made under two or more

orders made against the same defendant receives from the defendant an amount that is less than the total amount payable under those orders; and

- (b) no order for the appropriation of that amount has been given by the defendant to the Collector or other person,

the Collector or other person shall, subject to sub-section (1.) of this section, appropriate that amount to the payment of the sums payable under each of those orders in such manner as the Collector or other person thinks proper or as is prescribed.

112.—(1.) Where an order (in this section referred to as an “original order”) under this Ordinance contains a direction with respect to the payment of moneys payable under the order—

Further orders.

- (a) the Court may, by a subsequent order, revoke those directions and give any other directions concerning the payment of moneys under the original order that it is authorized to give by section 109 of this Ordinance; and
- (b) the Court may make such other orders as it thinks fit—
- (i) for regulating the disbursement of moneys paid under the original order;
 - (ii) for regulating the investment and application of the proceeds of the sale of any goods, chattels or securities directed to be sold, or any annuity, rents or income directed to be collected, under an order made under section 47 of this Ordinance; or
 - (iii) for ensuring the proper appropriation of any such moneys.

(2.) An order may, at the discretion of the Court, be made under this section—

- (a) either with or without an application for the order; and
- (b) either upon notice of the application being given to the defendant against whom the original order was made or without notice being given.

113.—(1.) Where moneys payable in accordance with an order under this Ordinance are payable to the Collector, the Collector may, on behalf of the person entitled to those moneys, in his discretion, take proceedings under this Ordinance for the purpose of enforcing payment of those moneys or of recovering those moneys.

Collector may enforce maintenance orders.

(2.) In any proceedings under this Ordinance for the purpose of enforcing payment of moneys ordered to be paid by an order under this Ordinance or for the recovery of any such moneys, the Collector is entitled to appear, to be heard, to give evidence and to call, examine and cross-examine witnesses.

114.—(1.) Where the Court proceeds in pursuance of section 105 of this Ordinance to make an order against a defendant who was not served with a summons and who did not appear at the hearing, the defendant may, within a period of twenty-one days from the time when

Court may set aside order made in the absence of the defendant or respondent.

the order comes to his knowledge, proof of which time lies upon the defendant, make application to the Court to set aside the order and to re-hear the matter of the complaint in respect of which the order was made.

(2.) Upon proof of due service of a copy of the application on the complainant, the Court may, if it thinks it just in the circumstances of the case so to do, set aside the order made in the absence of the defendant on such terms as to costs as it thinks fit and proceed to hear and determine the matter of the complaint in respect of which the order was made in accordance with the provisions of Part II. of this Ordinance.

(3.) An order so made may be made to take effect from any date upon which the order set aside could have been made to take effect in pursuance of the provisions of section 28 of this Ordinance.

Further
complaint
after dismissal
of earlier
complaint, &c.,
in affiliation
proceedings.

115.—(1.) This section applies to a complaint (in this section referred to as an “original complaint”)—

- (a) made under section 14 of this Ordinance on behalf of an illegitimate child; or
- (b) made under section 16 or 18 of this Ordinance in relation to an illegitimate child.

(2.) Where—

- (a) an original complaint to which this section applies has been dismissed;
- (b) a court has, on an appeal against the order made on an original complaint to which this section applies (not being an order dismissing the complaint), reversed, quashed or set aside that order;
- (c) a court has, on an appeal against an order dismissing an original complaint to which this section applies, affirmed or confirmed the dismissal of the complaint; or
- (d) the Court that made an order upon an original complaint to which this section applies (not being an order dismissing the complaint) has been restrained by another court from proceeding or further proceeding upon the order,

on the ground that it had not been proved that the defendant was the father of the illegitimate child, a further complaint may be made against the defendant against whom the original complaint was made and in respect of the same child if the further complaint contains an allegation that facts or circumstances were in existence at the time of the making of the original complaint that have not previously been disclosed to the Court and that were not and could not by the exercise of reasonable diligence have previously been known to the complainant who made the original complaint.

(3.) The Court shall receive and consider the evidence recorded at the original hearing and on any appeal as well as any fresh evidence submitted.

(4.) If at the conclusion of the evidence submitted by the complainant no fresh evidence material to the question of paternity has been produced, the complaint shall be dismissed.

(5.) The reference in paragraph (b) of sub-section (1.) of this section to an illegitimate child shall be read as including a reference to a child that was illegitimate at birth whether or not the child was, when the original complaint was dismissed or when the further complaint is determined by the court, an adopted child.

116.—(1.) Where a complaint is made to the Court under this Ordinance in relation to a child or an appeal is made to the Supreme Court against an order that relates to a child, the room or other place in which the Court or the Supreme Court sits upon the hearing of the complaint or appeal is not open to the public during that hearing and persons not directly interested in the complaint or appeal are not entitled, without the permission of the Court or the Supreme Court, as the case may be, to be present in that room or other place during that hearing. Closed courts.

(2.) The Court or the Supreme Court may order a child to leave the Court or the Supreme Court at any time during the hearing of a proceeding under this Ordinance if it is of opinion that it would not be in the interests of the child to be present during that hearing.

117.—(1.) Except as provided by sub-section (3.) of this section a person shall not, in relation to any proceedings under this Ordinance, print or publish, or cause to be printed or published, any account of evidence in the proceedings or any other account or particulars of the proceedings. Restrictions on publication of evidence.

Penalty: Five hundred dollars.

(2.) Proceedings for an offence against the last preceding sub-section shall not be commenced except by, or with the written consent of, the Attorney-General.

(3.) Sub-section (1.) of this section does not apply to or in relation to—

- (a) the printing of a transcript of evidence or other document for use in connexion with proceedings in any court or the communication of any such document to persons concerned in the proceedings;
- (b) the printing or publishing of a notice or report in pursuance of the direction of a court; or
- (c) the printing or publishing of any publication *bona fide* intended primarily for the use of members of the legal or medical profession, being—
 - (i) a separate volume or part of a series of law reports; or
 - (ii) any other publication of a technical character.

Proof of
marriage, &c.

118.—(1.) A marriage shall not be taken to be proved in proceedings under this Ordinance unless—

- (a) evidence has been given on oath of the time, place and circumstances of the marriage; or
- (b) evidence of the marriage has been given by means of a document that is receivable as evidence of the marriage by virtue of the next succeeding sub-section.

(2.) In proceedings under this Ordinance, the Court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place, whether in the Territory or elsewhere.

Court may
require
defendant to
state his
employer, &c.

119.—(1.) In proceedings under this Ordinance, the Court may—

- (a) direct the defendant to attend before the Court at a specified time to be examined concerning his means and ability to comply with any order made against him under this Ordinance;
- (b) direct the defendant to state to the Court or to furnish to the Court within a specified period a statement signed by the defendant specifying—
 - (i) the name and address of his employer or, if he has more employers than one, of each of his employers;
 - (ii) particulars as to the defendant's earnings; and
 - (iii) such other particulars, being particulars that the Court considers necessary to enable the defendant to be identified by any of his employers, as the Court thinks fit to direct; or
- (c) direct a person who appears to the Court to be indebted to the defendant or to be the employer of the defendant to furnish to the Court, within the time fixed by the Court, a statement signed by him or on his behalf containing such particulars as are specified in the direction of his indebtedness to the defendant or of all the earnings of the defendant that became payable by that person during a specified period, as the case may be.

(2.) A document purporting to be a statement referred to in sub-section (1.) of this section is admissible in evidence in proceedings under this Ordinance and shall, unless the contrary is shown, be deemed without further proof to be such a statement.

(3.) A person shall not—

- (a) without reasonable cause or excuse, refuse or fail to comply with a direction under this section that is applicable to him; or

- (b) in any statement furnished to the Court under the provisions of this section, make a statement that he knows to be false or misleading in a material particular or does not believe on reasonable grounds to be true.

Penalty: Two hundred dollars.

120.—(1.) Unless otherwise provided in this Ordinance—

Service of documents.

- (a) a summons, copy of an application, notice or other document may be served on any person in the manner provided for the service of summonses by sub-section (1.) of section 41 of the *Court of Petty Sessions Ordinance 1930-1967*; and
- (b) a notice may be served by post addressed to the person to whom it is directed at his last known place of residence or business.

(2.) Where the Court is satisfied that, for any reason, service of a summons, copy of an application, notice or other document cannot be effected in a manner provided for under the last preceding sub-section, the Court may order that the summons, notice or other document be served in a manner specified by the Court.

(3.) If in any proceedings in connexion with which a notice has been served in accordance with either of the last two preceding sub-sections it appears to the Court that the person to whom the notice is directed has not or may not have received it, the Court may direct that the notice be again served on him in such manner as it thinks fit.

(4.) Service of a copy of an application or of another document on a complainant who is an infant shall be effected by serving the copy or other document on—

- (a) the person who is entitled to receive, on behalf of the infant, the moneys payable under the maintenance order in relation to which the infant is the complainant; or
- (b) such other person as the Clerk specifies under the next succeeding sub-section,

but not otherwise.

(5.) Where the Clerk is satisfied that, for any reason, the person who is required to effect service of a copy of an application or another document on a complainant who is an infant would otherwise be unable to serve the copy or document on the person referred to in paragraph (a) of the last preceding sub-section, the Clerk may, by writing under his hand, specify a person who, in the opinion of the Clerk, is a proper person to advise the infant in connexion with the proceedings to which the application or document relates as the person on whom a copy of the application or the other document may be served for the purpose of effecting service of the copy or document on the infant.

(6.) Service of a summons or of a copy of an application to the Court under this Ordinance shall be effected on a person to be served with the summons or copy at least ten clear days before the day fixed for the hearing of the complaint to which the summons relates or of the application, as the case may be.

(7.) Failure to serve a summons or copy of an application on a person as required by the last preceding sub-section does not invalidate the proceedings to which the summons or application relates but the Court may, upon application by the person, adjourn the hearing of the complaint or application for such period as it thinks necessary having regard to the day on which the summons or copy was served.

(8.) Where service of a document is effected on a person by posting the document to the person, service of the document shall, unless the contrary is proved, be deemed to have been effected on the person at the time when the letter containing the document would, in the ordinary course of post, be delivered at the address to which it is posted.

(9.) Service of a summons, copy of an application, notice or other document in a manner authorized by this Ordinance may be proved by the oath of the person who served it, or by affidavit, or otherwise.

Costs.

121. In any proceedings under this Ordinance before a court, the court may order the payment of such costs by such persons, being parties to the proceedings, as it thinks fit.

Regulations.

122. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters required or permitted by this Ordinance to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance and, in particular, for or in relation to—

- (a) the prescribing of forms to be used for the purposes of this Ordinance; and
- (b) the practice and procedure of the Court in proceedings under this Ordinance.

THE SCHEDULE

Section 4.

Deserted Wives and Children Ordinance 1932. ✓
Deserted Wives and Children Ordinance 1941. ✓
Maintenance Orders (Facilities for Enforcement) Ordinance 1927. ✓
Maintenance Orders (Facilities for Enforcement) Ordinance 1938. ✓
Maintenance Orders (Facilities for Enforcement) Ordinance 1956. ✓
Maintenance Orders Ordinance 1952. ✓
Maintenance Recovery (Reciprocity with States) Ordinance 1963. ✓
Maintenance Recovery (Reciprocity with States) Ordinance 1966.
