

(Reprint No. 1)

SOUTH AUSTRALIA

COMMUNITY WELFARE ACT, 1972

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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COMMUNITY WELFARE ACT, 1972

being

Community Welfare Act, 1972, No. 51 of 1972 Assented to 27 April 1972¹

as amended by

Community Welfare Act Amendment Act, 1973, No. 68 of 1973 [Assented to 6 December 1973]²
Community Welfare Act Amendment Act, 1975, No. 43 of 1975 [Assented to 10 April 1975]³
Statute Law Revision Act (No. 3), 1975, No. 88 of 1975 [Assented to 20 November 1975]
Community Welfare Act Amendment Act (No. 2), 1975, No. 104 of 1975 [Assented to 20 November 1975]⁴
Community Welfare Act Amendment Act, 1976, No. 111 of 1976 [Assented to 16 December 1976]⁵
Community Welfare Act Amendment Act, 1979, No. 43 of 1979 [Assented to 15 March 1979]⁶
Community Welfare Act Amendment Act, 1981, No. 67 of 1981 [Assented to 15 October 1981]⁷
Tobacco Sales to Children (Prohibition) Act, 1984, No. 79 of 1984 [Assented to 15 November 1984]
Family Relationships Act Amendment Act, 1984, No. 102 of 1984 [Assented to 20 December 1984]⁸
Children's Services Act, 1985, No. 21 of 1985 [Assented to 28 March 1985]⁹
Statute Law Revision Act, 1986, No. 14 of 1986 [Assented to 20 March 1986]¹⁰
Community Welfare Act Amendment Act, 1988, No. 30 of 1988 [Assented to 21 April 1988]¹¹

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

¹ Came into operation (except Part IV, Div. II, Subdiv. 6 and s. 112) 1 July 1972: *Gaz.* 29 June 1972, p. 2689; Part IV, Div. II, Subdiv. 6 was repealed by the Community Welfare Act Amendment Act, 1981; s. 112 came into operation 15 January 1987: *Gaz.* 15 January 1987, p. 55.

² Came into operation 20 December 1973: *Gaz.* 20 December 1973, p. 3337.

³ Came into operation 12 June 1975: *Gaz.* 12 June 1975, p. 2260.

⁴ Came into operation 29 January 1976: *Gaz.* 29 January 1976, p. 356.

⁵ Came into operation 7 April 1977: *Gaz.* 7 April 1977, p. 1070.

⁶ Came into operation 5 July 1979: *Gaz.* 5 July 1979, p. 4.

⁷ Came into operation (except s. 21 and the part of s. 34 inserting s. 250b) 2 May 1983: *Gaz.* 28 April 1983, p. 944; s. 21 came into operation 2 July 1984: *Gaz.* 7 June 1984, p. 1526; the remaining suspended provision had not been brought into operation at the date of, and the amendment effected by that provision has not been included in, this reprint.

⁸ Came into operation 14 February 1985: *Gaz.* 14 February 1985, p. 366.

⁹ Came into operation (except Divs. I, II, III and VI of Part III and 2nd Sched.) 1 July 1985: *Gaz.* 27 June 1985, p. 2244; Divs. I and VI of Part III and part 2nd Sched. came into operation 5 September 1985: *Gaz.* 5 September 1985, p. 700; Div. II of Part III and further part 2nd Sched. came into operation 12 September 1985: *Gaz.* 12 September 1985, p. 796; Div. III of Part III and remainder of 2nd Sched. came into operation 1 October 1985: *Gaz.* 26 September 1985, p. 944.

¹⁰ Came into operation (except Schedules 3, 4 and 6) 31 July 1986: *Gaz.* 17 July 1986, p. 269; Sched. 6 came into operation 1 September 1986: *Gaz.* 7 August 1986, p. 474; Sched. 3 came into operation 24 July 1989: *Gaz.* 29 June 1989, p. 1756; Sched. 4 came into operation 1 January 1990: *Gaz.* 14 December 1989, p. 1768.

¹¹ Came into operation 1 September 1988: *Gaz.* 25 August 1988, p. 794.

An Act to promote various aspects of community welfare in this State; to repeal the Social Welfare Act, 1926-1971; the Aboriginal Affairs Act, 1962-1968; and the Children's Protection Act, 1936-1969; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Community Welfare Act, 1972*.

Commencement

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

(2) Notwithstanding the provisions of subsection (1) of this section, the Governor may in the proclamation made for the purposes of that subsection suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

* * * * *
* * * * *

Transitional provisions

5. (1) The Minister is the successor to the Minister administering the repealed Social Welfare Act and the repealed Aboriginal Affairs Act, and any rights that were at law or in equity vested in, or enforceable by or against, that Minister immediately before the commencement of this Act under, or as a result of action taken under, the repealed Social Welfare Act or the repealed Aboriginal Affairs Act shall be vested in, or enforceable by or against, the Minister.

(2) Any decision, order or adjudication of a court made, or having effect, under the provisions of any of the repealed Acts, shall be deemed to be a decision, order or adjudication made pursuant to, or having effect under, this Act in all respects as if this Act had been in force when the decision, order or adjudication was made.

(3) Any proceeding under, or act done in pursuance of, any of the repealed Acts in connection with the enforcement of an order or adjudication (whether made pursuant to the law of this State, any other State or Territory of the Commonwealth, or any other country) shall be valid and effective in all respects as if this Act had been in force when the proceeding or act was taken or done, and it had then been taken or done in pursuance of this Act.

(4) Any legal proceedings commenced under any of the repealed Acts shall be deemed to be proceedings commenced under the corresponding provisions of this Act, and may, subject to this Act, be dealt with and disposed of, accordingly.

(5) Any application made to the Minister administering the repealed Social Welfare Act, and the repealed Aboriginal Affairs Act, the Department constituted under the repealed Social Welfare Act, or any officer of that Department, and not finally disposed of at the commencement of this Act, shall be deemed to be an application to the Minister of Community Welfare, the Department for Community Welfare, or any officer of that Department, as the case may require, and may be dealt with and disposed of in accordance with the provisions of this Act.

(6) A person who was, immediately before the commencement of this Act, a State child, within the meaning of the repealed Social Welfare Act shall be deemed to be a child under the care and control of the Minister in all respects as if the decision, order or adjudication by virtue of which the child became a State child were a decision, order or adjudication placing the child under the care and control of the Minister, and any such child shall be dealt with accordingly pursuant to the provisions of this Act.

(7) Any home established or set apart by proclamation under the repealed Social Welfare Act shall be deemed to be a home established by the Minister pursuant to the provisions of this Act.

(8) The proprietor of a children's home in respect of which a licence was in force under the repealed Social Welfare Act immediately before the commencement of this Act shall, for the unexpired portion of the term of the licence, be deemed to be the holder of a licence under this Act in respect of the children's home.

(9) A person licensed as a foster-parent under the repealed Social Welfare Act immediately before the commencement of this Act, shall, for the unexpired portion of the term of the licence, be deemed to be a foster-parent approved under the provisions of this Act.

(10) Any authority or permit issued, given or made under the repealed Social Welfare Act, or the repealed Aboriginal Affairs Act and in force immediately before the commencement of this Act shall be deemed to be an authority or permit under the provisions of this Act.

(11) Any lands declared pursuant to the repealed Aboriginal Affairs Act to be reserved for Aborigines shall be deemed to be an Aboriginal reserve under the provisions of this Act.

(12) Any agreement or arrangement made pursuant to the repealed Social Welfare Act, or the repealed Aboriginal Affairs Act, and in force immediately before the commencement of this Act, shall, subject to this Act, remain effective under the provisions of this Act.

(13) Except as otherwise provided in this Act, any officer of the Department constituted under the repealed Social Welfare Act, or the Department constituted under the repealed Aboriginal Affairs Act, who was in office immediately before the commencement of this Act, shall, subject to this Act, and the *Public Service Act, 1967*, as amended, be deemed to have been appointed to a corresponding office in the Department for Community Welfare established under this Act.

(14) Any reference in any contract, instrument, document, proclamation, regulation, rule or by-law, to any of the repealed Acts or to a provision of any of those Acts shall, unless the contrary intention appears, be deemed to be a reference to this Act, or the corresponding provision (if any) of this Act.

(15) Subject to this Act, the provisions of the *Acts Interpretation Act, 1915*, as amended, shall apply in respect of the repeals effected by this Act.

(16) Where a child was, immediately prior to the commencement of the *Community Welfare Act Amendment Act, 1979*, under the care and control of the Minister pursuant to Part IV of this Act, he shall, upon the commencement of that amending Act, be deemed to be under the guardianship of the Minister pursuant to this Act.

Transitional provision relating to the Community Welfare Act Amendment Act, 1980

5a. (1) An executive act in force under the repealed provisions immediately before the commencement of the Amending Act shall, if it is such as could be done in pursuance of the substituted provisions, remain in force for the purposes of, and subject to, the substituted provisions.

(2) In this section—

“the Amending Act” means the *Community Welfare Act Amendment Act, 1981*:

“executive act” means an appointment, licence, approval, order, direction, notice, placement or other administrative act or decision, and an includes a judgment or order of a court:

“the repealed provisions” means the provisions repealed by the Amending Act:

“the substituted provisions” means the provisions substituted for the repealed provisions by the Amending Act.

Interpretation

6. (1) In this Act, unless the contrary intention appears—

* * * * *
* * * * *

“adopted child” means a child—

(a) adopted in accordance with the law of this State, or the law of another State or of a Territory of the Commonwealth;

or

(b) adopted in accordance with the law of any other country or State, if the adoption is recognized under the law of this State as being effective in this State,

and “adoptive parent” has a correlative meaning:

“affiliation case” means proceedings for assistance, maintenance, or preliminary expenses in which it is necessary to establish the paternity of a child born outside marriage:

“assessment panel” means an assessment panel constituted by the Director-General under Part IV of this Act:

* * * * *

“child” means a person who has not attained the age of eighteen years:

“child born outside marriage” includes a child born to a married woman of which a man other than her lawful spouse is the father:

“child care centre” has the same meaning as in the *Children’s Services Act, 1985*:

“Children’s Court” means the *Children’s Court of South Australia* established under the *Children’s Protection and Young Offenders Act, 1979*:

* * * * *

“children’s home” means any premises or place in which more than three children are, for monetary or other consideration, maintained and cared for on a residential basis apart from their guardians and relatives:

* * * * *

“complainant” means a person by, or on whose behalf, or for whose benefit, a complaint is laid under this Act:

“Department” means the Department for Community Welfare:

“Deputy Director-General” means the person for the time being holding or acting in, the office of Deputy Director-General of Community Welfare:

“Director-General” means the person for the time being holding or acting in, the office of Director-General of Community Welfare:

* * * * *

“foster care agency” means the business of placing children in the care and control of foster parents:

“foster-parent” means a person, not being a parent or relative of a child or a person to whom the custody or guardianship of a child has been committed by order of a court, who has received the child into his custody or charge for the purpose of maintaining and caring for the child, but does not include the licensee of a licensed children’s home, or child care centre:

“guardian”, in relation to a child, means a parent of the child and any person (other than the Minister) who is the legal guardian of the child, or who has the immediate custody and control of the child:

“home” means any premises or place established as a home or centre under this Act for the reception, care, maintenance, or support of persons in need or distress or for the reception, detention, care, correction, maintenance, support or training of children:

* * * * *

* * * * *

“maintenance” includes the cost of clothing, support, training and education:

“maintenance order” means an order of a court (made before or after the commencement of this Act either in this State or elsewhere) whereby a person is ordered to pay money in a lump sum, or by instalment or periodic payment for or towards the maintenance of another person, or by way of recoupment of moneys expended in, or provided for, the maintenance of another person and includes any order for the payment of money under Part VI of this Act:

“Minister” means the Minister of Community Welfare:

“near relative” in relation to a child means a parent or step-parent of the child:

* * * * *

“parent” includes an adoptive parent:

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

“relative” in relation to a child, means a step-parent, brother, sister, uncle, aunt, grandfather or grandmother of the child:

“review panel” means a review panel established by the Minister pursuant to Part IV:

* * * * *
* * * * *

“step-parent” in relation to a child means a person (not being a parent of the child)—

(a) who—

(i) is married to a parent of the child;

or

(ii) was married to a deceased parent of the child at the date of death of the parent;

and

(b) who at any time during that marriage accepted the child as a member of a household formed with the parent:

“the repealed Aboriginal Affairs Act” means the *Aboriginal Affairs Act, 1962-1968*, repealed by this Act:

“the repealed Acts” means the *Aboriginal Affairs Act, 1962-1968*, the *Children’s Protection Act, 1936-1969*, and the *Social Welfare Act, 1926-1971*, repealed by this Act:

“the repealed Social Welfare Act” means the *Social Welfare Act, 1926-1971*, repealed by this Act:

* * * * *

“woman” means any female person:

“youth project centre” means a non-residential centre established by the Minister under Part IV of this Act for the treatment and training of children.

(2) For the purposes of this Act, where a marriage exists between a man and a woman, whether the marriage is monogamous or polygamous, the man and woman shall, if the marriage is lawful and valid in the place in which it was solemnized, be regarded as husband and wife.

(3) A person shall not be recognized under this Act as the father of a child born outside marriage unless—

(a) he is so recognized under the *Family Relationships Act, 1975*;

or

(b) he is adjudged in proceedings under this Act to be the father of the child.

(4) Any references in this Act to an order shall be read and construed, where the order has been varied under this Act or any other Act, by a subsequent order having effect in this State, as a reference to the order as so varied.

PART II

THE PROMOTION OF COMMUNITY WELFARE

DIVISION I—ADMINISTRATION

Incorporation of the Minister

7. (1) The Minister of Community Welfare and his successors in office shall continue to be a corporation sole.

(2) The Minister shall, in his corporate name and capacity, be capable of—

(a) suing and being sued;

(b) acquiring, holding, dealing with and disposing of real and personal property of any kind;

and

(c) acquiring or incurring any other rights or liabilities.

(3) In any legal proceedings, where a document purports to bear the signature or the common seal of the Minister, the document shall, in the absence of evidence to the contrary, be deemed to have been duly executed by the Minister.

Delegation

8. (1) The Minister may, from time to time, by instrument in writing, delegate to the Director-General such of his powers, duties, responsibilities and functions under this Act as the Minister thinks fit, and may at any time revoke any such delegation.

(2) The Director-General may delegate to the Deputy Director-General, or to any officer of the Department, any of the powers, duties, responsibilities and functions vested in, or delegated to, the Director-General under this Act.

(3) A delegation under this section shall be revocable at will, and shall not prevent the exercise or performance of any power, duty, responsibility or function by the Minister or Director-General.

(4) Any power, duty, responsibility or function vested in, or delegated to, the Director-General may, if the Director-General is absent or otherwise unable to perform the duties of his office, be exercised or discharged by the Deputy Director-General.

Report

9. (1) The Director-General shall, on or before the thirty-first day of October in each year, submit to the Minister a report on the administration of this Act and of the work of the Department during the year ending on the preceding thirtieth day of June and shall include in the report information upon such other matters as the Minister may direct.

(2) The Minister shall, as soon as practicable after his receipt of a report submitted to him under subsection (1), cause a copy of the report to be laid before each House of Parliament.

DIVISION II—OBJECTIVES AND POWERS OF THE MINISTER
AND THE DEPARTMENT

Objectives of the Minister and the Department

10. (1) The objectives of the Minister and the Department under this Act are—

(a) to promote the welfare of the community generally and of individuals, families and groups within the community;

and

(b) to promote the dignity of the individual and the welfare of the family as the bases of the welfare of the community,

in the following manner:

(c) by providing, assisting in the provision of or promoting services designed to assist individuals or groups to overcome the personal or social problems with which they are confronted;

(d) by providing, assisting in the provision of or promoting services designed to reduce the incidence of disruption of family relationships, to mitigate the adverse effects of such disruption, to support and assist families under stress and to enhance the quality of family life;

(e) by providing, assisting in the provision of or promoting services designed to assist migrants, members of ethnic communities, aboriginals, children, youth, aged persons, unemployed persons, women, mentally or physically handicapped persons, single parents, persons who live in isolated areas or any other section of the community to overcome the disadvantages suffered by them, and to participate to the greatest possible extent in the life of the community;

(f) by providing individuals or families in need or distress with assistance by way of grants or loans of money or commodities, accommodation, financial counselling or any other form of assistance;

(g) by providing, assisting in the provision of or promoting services designed to assist people to enrich their lives, or to develop their personalities and capabilities;

(h) by encouraging or assisting in the provision of welfare services by volunteers and non-government groups or organizations;

(i) by encouraging or assisting any section of the community to develop its own welfare services;

(j) by providing, or assisting in the provision of, training or instruction for persons working, or proposing to work, in the field of community welfare services;

(k) by keeping the public informed as to all the community welfare services, whether government or non-government, that are available and how they may be obtained;

(l) by promoting a better understanding throughout the community of the problems or disadvantages faced by various sections of the community;

(m) by instituting, assisting in or promoting research in the field of community welfare;

- (n) by collecting, or assisting in the collection of, data and statistics in relation to the problems and disadvantages faced by the various sections of the community, and to the provision of community welfare services;
- (o) by promoting the co-ordination of all community welfare services, whether government or non-government, and the efficient use of resources for the provision of those services;
- (p) by collaborating and consulting with other government departments of this State, with non-government organizations that provide, or support or promote the provision of, community welfare services, and with those government departments of the Commonwealth and the other States and Territories of the Commonwealth that are involved in the provision of community welfare services;
- (q) by keeping the services provided by the Department and the policies of the Department under constant review and evaluation;
- (r) by doing such other things as may be necessary or desirable for the purposes of achieving those objectives.

(2) The Minister and the Department, in providing any service, shall endeavour to preserve and foster the dignity, self-respect and independence of the persons to whom the service is being provided.

(3) The Minister and the Department, in providing any service, shall not discriminate against or in favour of any person on the ground of his sex, marital status, mental or physical impairment, religion, race or nationality, except so far as it is necessary to do so for the purpose of assisting a person to overcome any social or other disadvantage arising out of his sex, marital status, mental or physical impairment, religion, race or nationality.

(4) In recognition of the fact that this State has a multi-cultural community, the Minister and the Department shall, in administering this Act, take into consideration the different customs, attitudes and religious beliefs of the ethnic groups within the community.

(5) The Minister, for the purpose of giving effect to the provisions and objects of this Act, may—

- (a) employ the resources of the Department in such manner as he thinks fit;
 - (b) establish any facility;
 - (c) acquire land in accordance with the provisions of the *Land Acquisition Act, 1969-1972*;
- and
- (d) perform any other action that may be necessary or expedient for that purpose.

DIVISION III—COMMUNITY WELFARE ADVISORY COMMITTEES AND PROGRAMME ADVISORY PANELS

Appointment of advisory committees

11. (1) The Minister may appoint community welfare advisory committees to advise him upon matters pertaining to community welfare.

(2) A committee so appointed shall consist of a chairman and such other members as the Minister thinks fit.

(3) A community welfare advisory committee must consist of persons with special knowledge of or experience in the matters to be referred to the committee for advice.

(4) At least one of the members of a community welfare advisory committee must be an officer of the Department.

(5) The Director-General shall provide such secretarial and other services and facilities as may be reasonably required for the purposes of the committee.

Terms of office of members of advisory committees

12. (1) A member of a community welfare advisory committee shall, subject to subsection (2), hold office upon terms and conditions fixed by the Minister.

(2) The term of office of any such member shall not exceed two years.

(3) Upon the expiration of his first term of office, a member shall be eligible for re-appointment for one further term.

(4) The Minister may pay to the members of such a committee such allowances and expenses as he thinks fit.

Procedure, etc.

13. (1) Subject to this Act, and any direction of the Minister, the procedure of a community welfare advisory committee shall be such as is determined by the committee.

(2) The chairman shall make such reports to the Minister on the deliberations of and conclusions reached by the committee as the Minister may require.

Programme advisory panels

14. (1) The Director-General may appoint programme advisory panels to advise him on matters pertaining to the services provided by the Department.

(2) The Director-General shall, upon appointing a programme advisory panel, advise the Minister of the appointment and the purposes for which he has appointed the panel.

(3) A panel so appointed shall consist of a chairman and such other members as the Director-General thinks fit.

(4) At least one of the members of a programme advisory panel must be a client of the Department.

(5) A member of a programme advisory panel shall hold office on such terms and conditions as the Director-General thinks fit.

(6) The Director-General may re-imburse a member of a programme advisory panel such of the expenses incurred by the member in carrying out his duties of office as the Director-General thinks fit.

(7) The Director-General shall provide such secretarial and other services and facilities as may be reasonably required by a programme advisory panel.

Procedure of programme advisory panels

15. (1) Subject to any direction of the Director-General, the procedure of a programme advisory panel shall be such as is determined by the panel.

(2) The chairman shall make such reports to the Director-General on the deliberations of and conclusions reached by the panel as the Director-General may require.

(3) The Director-General shall forward to the Minister a copy of any report he receives from a programme advisory panel.

DIVISION IV—COMMUNITY AIDES

Appointment of community aides

16. (1) The Director-General may appoint such persons as he thinks fit to act in a voluntary capacity as community aides.

(2) Subject to subsection (3), a community aide shall be appointed upon such terms and conditions as the Director-General thinks fit and specifies in the instrument of his appointment.

(3) The term of office for which a person may be appointed as a community aide shall not exceed one year in respect of his first term of office, and two years in respect of subsequent terms of office.

(4) Upon the expiration of his term of office, a community aide shall be eligible for re-appointment.

(5) The Director-General may, at any time, by instrument in writing addressed to a person appointed as a community aide under this section, remove him from his position as a community aide.

Duties and functions

17. A community aide shall have the following duties and functions:

(a) to act subject to the direction and supervision of an officer of the Department in the establishment and furtherance of programmes designed to promote any aspect of community welfare;

and

(b) any other duties and functions that the Director-General may determine to be appropriate to a community aide.

Allowances in respect of expenses

18. The Director-General may, with the approval of the Minister, pay to a community aide such allowances to reimburse the community aide for expenses incurred or to be incurred in the course of his duties as the Director-General thinks fit.

Training of community aides

19. The Director-General shall arrange for a community aide to receive such orientation, education, training, support and supervision as the Director-General thinks fit.

Register

20. (1) The Director-General shall cause a register of community aides to be kept.

(2) The name of any person who has ceased to be a community aide by reason of the expiration of the term for which he was appointed to act as such, the resignation or removal of the community aide from his position as such, or any other reason, shall be removed from the register.

DIVISION V—COMMUNITY WELFARE CONSUMER FORUMS

The Minister shall cause community welfare forums to be held

21. (1) The Minister shall, at such intervals as he thinks fit, cause a community welfare consumer forum to be held in each locality served by a community welfare centre of the Department.

(2) The Minister shall invite to a forum held under this section the residents of the locality in respect of which the forum is to be held to whom services have been, or are being, provided by the Department or who have applied for the provision of a service by the Department.

(3) The Minister may invite to a forum held under this section representatives from any government department or instrumentality, any non-government organization that provides community welfare services within the locality and from any other appropriate organization.

(4) The function of a forum held under this section is to provide the persons invited to the forum with an opportunity to make known to the Department—

(a) any comments relating to the services provided by the Department, or the manner in which those services are provided;

(b) any areas of unmet needs;

(c) any recommendations for the withdrawal, improvement, extension, variation or rationalization of any service provided by the Department;

and

(d) any other matters relevant to the provision of community welfare services by the Department.

(5) The Minister shall cause a record to be kept of the proceedings of a forum held under this section, and a copy of that record to be made available for perusal by any person who attended the forum.

(6) The Minister shall ensure that due consideration is given by the appropriate officers of the Department to any views expressed or recommendations made by a forum held under this section.

PART III

THE PROVISION OF COMMUNITY WELFARE SERVICES

DIVISION I—PROVISION OF LOCAL SERVICES

Provision of services from community welfare centres and other places

22. (1) The Minister shall endeavour, as far as is practicable, to make the services provided by the Department available to members of the public within the localities in which they live, and at, or near to places where people congregate, whether for the purposes of employment, recreation, education, medical treatment or any other purpose.

(2) A community welfare centre established by the Minister may be used, with the approval of the Minister, by any other department, person, agency or organization, for the furtherance of community welfare within the locality in which the centre is established.

DIVISION II—COMMUNITY WELFARE GRANTS

Community Welfare Grants

23. (1) The Minister—

(a) shall continue to maintain the fund entitled the “Community Welfare Grants Fund”;

and

(b) shall establish a fund entitled the “Community Welfare Residential Care and Support Grants Fund”.

(2) Each fund shall consist of such moneys as are, from time to time, provided by Parliament for the purpose of the fund and moneys appropriated to the fund by the Minister from any other sources.

(3) The Minister may apply any portion of the Community Welfare Grants Fund towards the costs incurred, or to be incurred, by any person or group of persons in establishing, operating, maintaining, promoting or extending any service, project or facility that will advance the welfare of children, youth or any other section of the community.

(4) The Minister may apply any portion of the Community Welfare Residential Care and Support Grants Fund towards the costs incurred, or to be incurred, by any person or group of persons in establishing, operating, maintaining, extending or advancing—

(a) any children’s home licensed, or to be licensed, under this Act;

or

(b) any service, project or facility designed for the purposes of reducing the occurrence, or mitigating the adverse effects, of the placement of children in children’s homes.

(5) An application for a grant of moneys under this section shall be made to the Minister in a manner and form determined by the Minister.

(6) A grant of moneys under this section may be made by the Minister subject to such conditions as he thinks fit.

DIVISION III—CONTRACTS FOR COMMUNITY WELFARE SERVICES

The Minister may enter into agreements for services

24. (1) The Minister may enter into agreements for the provision or promotion of community welfare services or other related services.

(2) Subject to subsection (3), the Minister may enter into such an agreement with—

(a) a person or group of persons with appropriate experience, qualifications or expertise in the provision or promotion of the relevant services;

(b) an organization, established for the purpose of providing or promoting community welfare services, or other related services, that employs staff with appropriate experience, qualifications or expertise in the provision or promotion of the relevant services;

or

(c) a local government authority.

(3) The Minister should avoid, so far as practicable, entering into agreements providing for long-term care of persons in need of such care unless he is satisfied that the other parties to the agreement do not enter into those agreements with the object of making a profit.

PART IV

SUPPORT SERVICES FOR CHILDREN

DIVISION I—PRINCIPLES TO BE OBSERVED

Persons dealing with children must observe certain principles

25. A person dealing with a child under or by virtue of any of the provisions of this Part—

- (a) shall regard the interests of the child as the paramount consideration;
- (b) shall seek to secure for the child care, guidance and support within a healthy and balanced family environment;
- (c) shall deal with the child in a caring and sensitive manner;
- (d) shall have regard to the rights of the child, and to the needs and wishes expressed by him;

and

- (e) shall promote, where practicable, a satisfactory relationship between the child and other members of, or persons within, his family or domestic environment.

The Children's Interests Bureau

26. (1) The Minister shall establish a body entitled the "Children's Interests Bureau".

(2) The Bureau shall be comprised of such persons, appointed upon such terms and conditions, as the Minister thinks fit.

(3) The functions of the Bureau shall be—

- (a) to increase public awareness of the rights of children, and of matters relating to the welfare of children, by the dissemination of information, or by any other means the Bureau thinks appropriate;
- (b) to carry out research or conduct inquiries into such matters affecting the welfare of children as the Bureau thinks fit or the Minister directs;
- (c) to develop within the Department such services for the promotion of the welfare of children as the Minister directs;
- (ca) to provide the Minister, on request, with independent and objective advice on the rights and interests of any child who is, has been, or is likely to be, the subject of proceedings under this Act or any other Act dealing with the care and protection of children;
- (d) to monitor, review and evaluate the policies of the Department in relation to children;

- (e) to carry out such other functions as the Minister may assign to the Bureau;

and

- (f) to report in writing to the Minister, in accordance with his directions, on the work carried out by the Bureau.

(4) The Minister shall establish a community welfare advisory committee for the purposes of providing the Bureau with consultative, supportive and advisory services.

DIVISION II—THE CARE AND PROTECTION OF CHILDREN

*Subdivision 1—Placing a Child under the Guardianship of the Minister***Guardianship orders**

27. (1) A guardian of a child may apply in the prescribed form to the Minister for an order that the child be placed under the guardianship of the Minister.

(2) A child of or above the age of fifteen years may apply to the Minister in the prescribed form for an order that he be placed under the guardianship of the Minister.

(3) Where the Minister is satisfied that the child the subject of an application is in need of care or protection by reason that—

(a) a guardian of or a person residing with the child has maltreated or neglected the child to the extent that the child has suffered, or is likely to suffer, physical or mental injury, or to the extent that his physical, mental or emotional development is in jeopardy;

(b) the guardians of the child are unable or unwilling to exercise adequate supervision and control over the child;

or

(c) the guardians of the child are unable or unwilling to maintain the child,

the Minister may, by order in writing, place the child under his guardianship for such period of time as the Minister thinks fit, but not extending beyond the time at which the child attains the age of eighteen years nor, in the case of an application by a child, exceeding a period of one year.

(4) Except as provided in subsection (5), no such order shall be made in respect of a child under the age of fifteen years unless the parents of the child have consented to the making of the order.

(5) If the whereabouts of a parent whose consent is required under subsection (4) cannot after reasonable inquiry by the Minister be ascertained, an order may be made under subsection (3) without the consent of that parent.

(6) The Minister shall not place a child of or above the age of fifteen years under his guardianship under this section pursuant to an application by a guardian unless the child consents to the making of the order.

(7) Subject to subsection (8), the Minister shall not place a child under his guardianship under this section pursuant to an application by the child unless the Minister has consulted with the guardians of the child.

(8) If the whereabouts of any guardian of the child cannot after reasonable inquiry by the Minister be ascertained, an order under subsection (2) may be made without consulting that guardian.

Temporary guardianship of a child

28. (1) The Minister, upon receipt of a request by a guardian of a child, or by a child of or above the age of fifteen years, may place the child under his guardianship for such period of time, not exceeding four weeks, as the Minister thinks fit, where the Minister is of the opinion that it is in the interests of the child to do so.

(2) The Minister shall not place a child of or above the age of fifteen years under his guardianship under this section pursuant to a request of a guardian unless the child consents to the placement.

(3) Where the Minister has placed a child under his guardianship under this section pursuant to a request of the child, the Minister shall give written notice of the placement to the guardians of the child, personally or by post, at their addresses last known to him.

Guardianship of children from other States

29. (1) The Minister may, on request by or on behalf of an authority having the guardianship in any other State or Territory of the Commonwealth of a child who has entered or is about to enter this State, by order in writing, place the child under his guardianship for so long as the child remains in this State.

(2) The Minister may make financial or other arrangements with an authority in any other State or Territory of the Commonwealth for the guardianship of a child while in this State and may, subject to those arrangements, cause the child at any time while he remains under the guardianship of the Minister under this section to be removed from this State and returned to the guardianship of the authority in that other State or Territory.

(3) The child shall not remain under the guardianship of the Minister under this section for a period in excess of that for which he would, if he had not been placed under the guardianship of the Minister, have remained subject to the guardianship of the authority from which he was received.

Minister may place child in the custody of an interstate authority

30. (1) The Minister may request the appropriate authority in any other State or Territory of the Commonwealth to have the guardianship of a child who is under the guardianship of the Minister for so long as the child is in that State or Territory.

(2) The Minister may make financial or other arrangements with the appropriate authority in any other State or Territory of the Commonwealth for the return to this State of any child who has been in the guardianship of that authority pursuant to a request under subsection (1).

Minister is lawful guardian

31. While a child is under the guardianship of the Minister, the Minister shall be entitled to the custody and guardianship of the child to the exclusion of the rights of any other person.

Powers of Director-General

32. (1) Subject to this Act, the Director-General may from time to time make provision for the care or protection of a child who is under the guardianship of the Minister pursuant to this Act in any of the following ways:

- (a) he may place the child, or permit the child to remain, in the care or protection of any guardian or relative of the child;
- (b) he may place the child in the care or protection of an approved foster parent, or any other suitable person;
- (c) he may place the child in any home established or licensed under this Act (not being a training centre or any other home used for the detention of children charged with, or convicted of, offences), or in any other suitable place, and give such directions as to the care or protection and keeping of the child in that home as he thinks fit;

- (d) he may, if he is of the opinion that the behaviour of the child is such that he is likely to cause serious injury to himself, to others or to property, and that he cannot properly be controlled in any other manner, place the child in a training centre, or any other home used for the detention of children charged with, or convicted of, offences, for such period of time, not exceeding seven days, as may be necessary or desirable for the purpose of preventing the child from causing such injury;
- (e) he may, if it is necessary or desirable for the sake of the physical or mental health of the child, place him in a hospital;
- or
- (f) he may make such other provision for the care or protection of the child as the circumstances of the case may require.

(2) Whenever a child is dealt with by the Director-General pursuant to subsection (1), the Director-General shall advise the guardians of the child, in writing, at their last address known to him, of the manner in which the child has been dealt with under that subsection.

(3) Where a child under the guardianship of the Minister has been placed in the care of any person or in any home or hospital under subsection (1), the child may be removed from the custody of that person, or from that home or hospital, by any officer of the Department authorized for the purpose by the Minister.

(4) For the purpose of removing a child under subsection (3), the authorized officer may, without any warrant, enter or break into any place or premises in which he knows or reasonably suspects the child to be and use such force as is reasonably necessary.

(5) A person who hinders an authorized officer in the exercise of his powers under this section shall be guilty of an offence.

Removal of child from any place

33. (1) Where the Director-General has directed that any child under the guardianship of the Minister be placed in a home, any member of the police force, or an officer of the Department authorized in writing by the Minister, may, without any warrant, remove the child from any place and bring him to the home specified in the direction, and for the purposes of removing the child, may enter or break into any place or premises in which he knows or reasonably suspects the child to be and use such force as may be reasonably necessary.

(2) A person who hinders a member of the police force or an officer of the Department in the exercise of his powers under this section shall be guilty of an offence.

Review of guardianship of child

34. Where a child is under the guardianship of the Minister pursuant to this Act, the Minister shall cause a review to be made of the progress and circumstances of the child at least once in each year that the child is under the guardianship of the Minister.

Discharge of child from guardianship of Minister and appeals

35. (1) The Minister may order that a child who has been placed under the guardianship of the Minister pursuant to this Act be discharged from guardianship.

(2) A guardian of a child who has been placed under the guardianship of the Minister pursuant to this Act may apply to the Minister in the prescribed manner for an order that the child be discharged from guardianship.

(3) A child of or above the age of fifteen years may apply to the Minister in the prescribed manner for an order that he be discharged from guardianship.

(4) Where the Minister refuses an application that has been duly made under this section, the applicant may appeal to a Judge of the Children's Court against that refusal.

(5) In any appeal under this section the Children's Court shall not be bound by the rules of evidence, but may inform itself upon any matter in such manner as the Court thinks fit.

(6) Where an appeal has been instituted under this section, the Director-General shall furnish the Court with a report on the personal circumstances and social background of the child.

(7) Where on any appeal the Court is not fully satisfied as to whether the child should or should not be discharged from the guardianship of the Minister, the Court may adjourn the proceedings for a period of time not exceeding six months.

(8) The Court shall not exercise its powers under subsection (7) more than once in respect of the one appeal.

(9) Upon the hearing of an appeal under this section, the Court may order—

(a) that the appeal be dismissed;

(b) that the child be discharged from guardianship;

or

(c) that the child remain under the guardianship of the Minister but subject to, for the period specified in the order, such conditions relating to his care or control as the Court may specify in the order.

(10) Where the Court has made an order under subsection (9)(c), the Minister, a guardian of the child or, where the child is of or above the age of fifteen years, the child may apply to the Court for the termination or variation of any of the conditions specified in the order.

*Subdivision 2—Establishment by the Minister and the Director-General
of Certain Facilities for Children*

Establishment of facilities for young offenders and children in need of care

36. (1) The Minister shall establish such homes as are necessary for the care, correction, detention, training or treatment of children who are charged with offences, or who have committed offences for which they are sentenced to detention.

(2) The Director-General shall constitute such assessment panels as are necessary for the examination of children who are alleged to have committed offences or to be in need of care, the evaluation of their personal circumstances and social background, and the assessment of the most appropriate form of care, treatment or rehabilitative correction or education for each child.

(3) The Minister shall establish such youth project centres as he thinks fit in which children who have committed offences may, without going into residence, receive training and treatment.

(4) The Minister shall establish a programme whereby families are approved by the Director-General for the purpose of placing within those families children who—

(a) are declared by the Children's Court to be in need of care and are directed by the Court to reside with a member of such a family;

- (b) are under the guardianship of the Minister and are to be placed by the Director-General in the care of a member of such a family;
 - (c) are charged with an offence and are released by a court into the custody of a member of such a family;
- or
- (d) are found guilty of an offence and are required by a condition of a recognizance to reside with a member of such a family.

Establishment of children's homes and child care centres

37. (1) The Minister may establish such homes as he thinks necessary or desirable for the residential care of children.

(2) The Minister may establish such child care centres as he thinks necessary or desirable for the care of children on a non-residential basis.

Management and control of home and centres

38. A home, youth project centre or child care centre established under this Subdivision shall be under the control of the Minister, and the Director-General shall, subject to any instructions of the Minister, manage every such home, youth project centre or child care centre, and shall ensure that proper standards of administration are observed.

***Ex officio* visitors to homes**

39. All members of the Executive Council and members of the Legislature, any Judge, and any person authorized in writing for the purpose by the Minister shall be entitled to visit every home established under this Subdivision and the persons detained or resident in such homes.

Subdivision 3—Foster Care and Licensed Foster Care Agencies

The purpose of foster care

40. The purpose of foster care is to provide a means by which children whose parents or relatives are for any period unable or unwilling to care for them may receive care, support and guidance within another family.

Foster parents to be approved

41. A person shall not, for any monetary or other consideration, be a foster parent to any child unless he is approved as a foster parent under this Subdivision.

Application for approval as foster parents

42. In considering any application for approval as a foster parent the Director-General shall attempt to assess the capacity and willingness of the applicant to care for a child according to adequate principles and standards of child care, and shall, in such manner as he thinks fit, satisfy himself as far as reasonably possible—

- (a) that the applicant will have adequate interest in, and affection and respect for, a child placed in his care;
- (b) that the applicant will treat the child in a consistent manner and will provide a stable family environment for the child;
- (c) that the applicant will understand adequately the developing personality of the child, and will provide opportunities to develop the abilities of the child;

- (d) that the applicant will provide adequate accommodation for the child and any other material provision necessary for the welfare of the child;
 - (e) that, where appropriate, the applicant will provide opportunities for the child to maintain or recover his identity as a member of his own family and will allow the child reasonable access to his own family;
 - (f) that, where appropriate, the applicant will assist the child to return to his own family;
 - (g) that the applicant is in sound health and is able to withstand the demands of providing foster care;
- and
- (h) on any other matters that the Director-General may consider relevant.

Approval of foster parents

43. (1) A person is an approved foster parent for the purposes of this Part, if he is so approved in writing under the hand of the Director-General.

(2) The written approval of a person as a foster parent must state the number of foster children that the foster parent is permitted to have in his custody.

(3) A foster parent shall not be permitted to have more than three foster children in his custody unless the children are all of the same family, or unless the Director-General is of the opinion that special reasons exist for permitting a greater number.

(4) A foster parent shall not have in his custody more foster children than the number permitted under the approval.

(5) The Director-General may give approval under this section subject to such conditions as he thinks fit and specifies in the approval.

(6) A foster parent shall not fail to comply with the conditions to which his approval is subject.

Duty of the Director-General in relation to foster children

44. (1) It shall be the duty of the Director-General to satisfy himself as to the welfare of all foster children in the custody of approved foster parents, and, subject to any directions given by the Minister in a particular case, to review at regular intervals the circumstances of each foster child and the possibility of the child being returned to his own family.

(2) In determining whether a child is to be placed in the custody of a foster parent, and, if so, the foster parent in whose custody the child is to be placed, the Director-General shall consider the views of the guardians of the child so far as they are known to, or readily ascertainable by, the Director-General.

The Powers of entry

45. (1) The Director-General, or any person authorized in writing by the Director-General, may, at any reasonable time, enter any place or premises for the purpose of providing an approved foster parent with support and guidance in relation to the care of a foster child and of ascertaining whether a foster child is being adequately cared for, and whether the provisions of this Part are being complied with.

(2) A person shall not hinder the Director-General, or any such authorized person, in the exercise of his powers under this section.

Cancellation of approval

46. (1) Where, in the opinion of the Director-General, a foster child is not being adequately cared for, or the provisions of this Part are not being complied with by the foster parent, the Director-General may cancel the approval of the foster parent.

(2) Where the Director-General exercises his powers under this section to cancel the approval of a foster parent, the person in respect of whom the approval was given shall thereupon cease to be an approved foster parent.

(3) The Director-General shall give the foster parent notice in writing of his intention to cancel the approval under this section at least twenty-eight days before he does so.

Information to be furnished

47. An approved foster parent—

(a) shall advise the Director-General as soon as practicable of any change in his address;

and

(b) shall furnish the Director-General with such information in relation to the foster child as he may require.

Licensing of foster care agencies

48. (1) On and after a day to be fixed by proclamation for the purposes of this section, no person shall—

(a) carry on the business of a foster care agency;

or

(b) hold himself out to the public as a foster care agency,

unless he is licensed as a foster care agency under this section.

(2) The Director-General shall grant a licence under this section to any person who applies in the prescribed manner, if he is satisfied—

(a) that the person is a fit and proper person to hold such a licence;

or

(b) that the person was carrying on business as a foster care agency immediately prior to the commencement of the *Community Welfare Act Amendment Act, 1981*.

(3) In determining whether or not a person is a fit and proper person to hold a licence under this section the Director-General shall have regard to—

(a) the qualifications and experience in the field of foster care, or any other related field, of the person, or persons, who will be carrying on or managing the business, and of any employees, or proposed employees, of the agency;

(b) the system of management within the agency;

(c) the procedures proposed by the agency for the selection, approval, training and support of foster parents;

(d) the procedures proposed by the agency for the placement and supervision of foster children;

and

(e) such other matters as may be relevant.

(4) The Director-General may grant a licence under this section subject to such terms and conditions as he thinks fit and specifies in the licence.

(5) A licence shall, subject to this Subdivision, remain in force for a period of twelve months from the day on which it was issued, and may be renewed for successive periods of twelve months.

(6) A person shall not contravene any condition upon which a licence is granted under this section.

Cancellation of licence

49. (1) Where the Director-General is satisfied that proper cause for cancellation of a licence under section 48 exists, he may, by notice in writing served personally or by post upon the licensee, cancel the licence.

(2) The Director-General shall not cancel a licence pursuant to this section unless, at least twenty-eight days before he does so, he has informed the licensee by notice in writing served personally or by post upon him, of his intention to cancel the licence.

Records

50. (1) A licensed foster care agency shall maintain such records as may be prescribed.

(2) A licensed foster care agency shall, if so required by the Director-General, produce for inspection the records the agency is required to maintain under this section and shall furnish the Director-General with such other information relating to the activities of the agency as he may require.

Subdivision 4—Licensed Children's Homes

Licensed children's homes

51. (1) No person shall have the conduct or control of any children's home unless that person is the holder of a valid licence granted under this section in respect of the children's home.

(2) In determining whether or not to grant a licence under this section to a person, the Director-General shall have regard to—

(a) the qualifications and experience of the person, or persons, who will be conducting or managing the home and of any persons who will be employed in the home;

(b) the system of management within the home;

(c) the suitability of the premises proposed to be used as the home;

and

(d) such other matters as may be relevant.

(3) The Director-General may grant a licence under this section subject to such terms and conditions (which shall include conditions as to the standards to be observed in the management and operation of the children's home) as the Director-General thinks fit and specifies in the licence.

(4) A licence granted under this section shall, subject to this Subdivision, have effect for a period of twelve months from the day on which it was granted and may be renewed from time to time for successive periods of twelve months.

(5) A person who contravenes subsection (1), or any condition upon which a licence under this section was granted, shall be guilty of an offence and liable, for a first offence, to a penalty not exceeding five hundred dollars, and for a subsequent offence, to a penalty not exceeding one thousand dollars or imprisonment for a term not exceeding twelve months.

(6) This section does not apply in respect of—

(a) a home established by the Minister under this Act;

(b) any premises or place in which foster children are cared for by an approved foster parent;

or

(c) residential premises that are attached to a school or a tertiary education institution, or that are used solely for the purposes of caring for tertiary students.

Cancellation of licence

52. (1) Where the Director-General is satisfied that proper cause for the cancellation of a licence under this Subdivision exists, he may, by notice in writing served personally or by post upon the licensee, cancel the licence.

(2) The Director-General shall not cancel a licence under this Subdivision unless he has given notice in writing to the licensee of his intention to cancel the licence at least twenty-eight days before he does so.

Register

53. A person licensed under this Subdivision to have the conduct or control of a children's home shall keep a register containing the following particulars with respect to every child received by him, so far as those particulars are reasonably ascertainable by him—

(a) the name, age, place of birth and religion (if any) of the child;

(b) the names and addresses of the guardians of the child;

(c) the names and addresses of any persons other than the guardians from whom the child was received and their relationship to the child;

(d) the date on which the child was received, and the date on which the child left the children's home;

and

(e) such other particulars as may be prescribed.

Inspection of children's homes

54. (1) The Director-General or any person authorized in writing by him, may at any reasonable time enter and inspect any licensed children's home.

(2) The licensee of a children's home shall, if so required by the Director-General or any such authorized person, produce for his inspection the register that he is required to keep under this Subdivision, and shall furnish the Director-General, or the authorized person, with such information in relation to any child as he may require.

(3) A person shall not hinder the Director-General or an authorized person in the exercise of powers conferred upon him under subsection (1) or fail to comply with a requirement made of him pursuant to subsection (2).

Agreement

55. (1) A person licensed under this Subdivision shall not receive a child into a children's home to be cared for in the home unless—

(a) in the case of a child under the age of fifteen years, a guardian of the child has signed an agreement in the prescribed form relating to the period for which the child will remain in the home and to the care and control of the child while he remains in the home;

or

(b) in the case of a child of or above the age of fifteen years—

(i) the licensee has, where it is reasonably practicable to do so, consulted with the guardians of the child;

and

(ii) the child has consented to be cared for in the home.

(2) The licensee shall, at the request of the Director-General, or an officer of the Department, produce any such agreement for inspection.

Duty of Director-General to hear complaints of child in a home

56. (1) A child being cared for in a licensed children's home or a guardian of any such child may request the Director-General to investigate any complaint the child or the guardian may have with respect to the care or control the child is receiving in the home.

(2) The Director-General shall investigate any complaint made under this section.

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*Subdivision 8—Miscellaneous***Interpretation**

73. In this Subdivision—

“child to whom this section applies” means—

(a) a child who is under the guardianship of the Minister pursuant to this Act or to Part III of the *Children's Protection and Young Offenders Act, 1979-1980*;

or

(b) a person who is detained in any place pursuant to the *Children's Protection and Young Offenders Act, 1979-1980*.

Assistance to persons caring for children

74. (1) The Director-General may grant to the foster parent, or any other person in charge, of—

(a) a child to whom this section applies;

(b) a child who has been placed in the care or custody of a member of an approved family or any other person pursuant to an order or direction of the Children's Court;

or

- (c) a child who is under the guardianship of the Director-General pursuant to the *Adoption of Children Act, 1966-1978*,

such financial or other assistance in relation to the care and maintenance of the child as may be determined by the Minister.

(2) For the purposes of this section, the governing authority or person in charge of any home or place in which any such child is cared for shall be deemed to be the person in charge of the child.

Unlawful absence from training centre, etc.

75. Where a child to whom this section applies is absent without lawful excuse from any place in which he is being detained, or has been placed by the Director-General, an officer of the Department authorized for the purpose or a member of the police force may, without any warrant, apprehend the child, and for that purpose may enter or break into any premises in which he knows or reasonably suspects the child to be and use such force as is reasonably necessary.

Unlawful taking of child

76. A person who—

- (a) induces a child to whom this section applies unlawfully to leave, or without lawful excuse takes such a child from, any place in which the child is being detained, or has been placed by the Director-General;

or

- (b) harbours or conceals any such child,

shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars or imprisonment for a term not exceeding three months.

Unlawful communication with child, etc.

77. A person who—

- (a) having entered any home, or the grounds thereof, does not depart from the home or the grounds when required to do so by an officer of the Department;

or

- (b) having been forbidden to do so by the Director-General, holds any communication with any child to whom this section applies,

shall be guilty of an offence and liable to a penalty not exceeding one hundred dollars.

Power of Director-General to enter certain places

78. (1) The Director-General, or any person authorized by him in writing, may, where the Director-General suspects on reasonable grounds that a child is being cared for in any place in contravention of this Act, enter that place for the purpose of investigating the matter.

(2) A person shall not hinder the Director-General or any authorized person in the exercise of powers conferred on him under subsection (1).

* * * * *

Minister may in certain circumstances grant greater degree of control over child under his guardianship to foster parent

80. (1) Where a child who is under the guardianship of the Minister pursuant to this Act or to Part III of the *Children's Protection and Young Offenders Act, 1979-1980*, has been placed by the Director-General in the care of an approved foster parent and has been in the care of that parent for a period of not less than three years, the Minister may, by instrument in writing, upon the application of the foster parent, delegate to him such of the powers, functions or duties vested in or imposed upon the Minister as guardian of the child as the Minister thinks fit.

(2) An application under subsection (1) may not be made in respect of a child who is of or above the age of fifteen years unless the child has consented to the making of the application.

(3) The Minister shall cause the guardians of the child the subject of an application under subsection (1) to be notified of the application, and shall consider any submissions made by a guardian in respect of the application.

(4) If the whereabouts of a guardian of the child cannot after reasonable inquiry by the Minister be ascertained, the Minister may determine the application without notifying that guardian.

(5) A delegation under this section—

(a) may be varied or revoked at any time by the Minister;

and

(b) does not prevent the exercise or performance by the Minister of any power, function or duty so delegated.

(6) Where the Minister exercises his powers under subsection (5)(a) or (b), he shall give written notice personally or by post of that exercise of powers—

(a) to the foster parent;

(b) where the child is of or above the age of fifteen years—to the child;

and

(c) to the guardians of the child,

at their addresses last known to him.

Review panels

81. (1) The Minister shall establish such number of review panels as may be necessary for the following purposes:

(a) reviewing the progress and circumstances of children under the guardianship of the Minister pursuant to this Act or any other Act;

(b) reviewing the progress and circumstances of children under the control of the Director-General pursuant to an order of the Children's Court;

(c) reviewing the progress and circumstances of persons found guilty of offences and discharged upon recognizance subject to the supervision of an officer of the Department or other person nominated by the Director-General;

and

(d) carrying out any other functions assigned by the Minister.

(2) A review panel shall consist of an officer of the Department and a person (not being an officer of the Department) who has experience in the field of community welfare.

(3) The Minister may pay to the members of a review panel such allowances and expenses as he thinks fit.

Power of entry

82. (1) The Director-General, or any officer of the Department authorized in writing by the Director-General, may, where he suspects on reasonable grounds that there is a child in need of care or protection in any place or premises, enter and remain in that place or premises for the purpose of inquiring into the circumstances of the child.

(2) A person shall not hinder the Director-General or any such officer in the exercise of powers under subsection (1).

Prescribed substances or articles not to be sold, etc., to child under sixteen years of age

83. * * * * *

(2) Any person who sells, lends or gives, or offers to sell, lend or give, to any child under the age of sixteen years any prescribed substance or article shall be guilty of an offence and liable to the penalty prescribed, which shall not exceed two hundred dollars in any case, in relation to the substance or article involved in the offence.

Payment of moneys to the Director-General

84. (1) The Director-General may receive moneys on behalf of a child.

(2) The Director-General shall cause any moneys received on behalf of a child to be deposited in the Treasury in the name of the Director-General on account of the child or in any banking account in the name of the child.

(3) All such moneys deposited in the Treasury shall bear interest at a rate determined by the Treasurer.

(4) The whole, or any portion, of the money deposited in the Treasury on behalf of a child pursuant to this section, and any interest on that money, may be expended for the benefit of the child by the Director-General at such times, and for such purposes, as the Director-General thinks fit.

(5) All moneys deposited in the Treasury, and not expended as provided by this section, shall be payable to the child upon his ceasing to be a child to whom this section applies and the Director-General shall notify the child accordingly, but if the moneys are not claimed by the child, or any person lawfully claiming under him, before the expiration of seven years after that date, they may be appropriated by the Director-General and shall not thereafter be recoverable unless the Minister directs otherwise in any particular case.

Director-General may in certain circumstances consent to medical or dental treatment of child in detention or placed under his control by order of the Children's Court

85. (1) Where, pursuant to Part III of the *Children's Protection and Young Offenders Act, 1979-1980*, a child has been declared to be in need of care and placed under the control of the Director-General, or is detained in a training centre or other place pursuant to Part IV of that Act, and the Director-General believes on reasonable grounds that the child requires medical or dental treatment for which the consent of a guardian of the child must be obtained, the Director-General may give that consent if—

(a) the whereabouts of the guardians of the child has not, after reasonable inquiries, been ascertained;

or

(b) it would be detrimental to the health of the child to delay the treatment while the consent of a guardian is obtained.

(2) The consent of the Director-General given in accordance with subsection (1) shall be as valid and effectual as if it had been given by a guardian of the child.

DIVISION III—THE PROTECTION OF CHILDREN AGAINST MALTREATMENT

Subdivision 1—Establishment of Regional and Local Child Protection Panels

Establishment of regional panels

86. (1) For the purposes of this Division, the Minister may divide the State into such regions as he thinks expedient.

(2) In relation to each region, the Minister shall establish a regional child protection panel with a distinctive name.

(3) A regional panel shall consist of the following members:

(a) one person nominated by the Director-General;

(b) one person who is experienced in the field of early childhood health, nominated by the Chairman of the Health Commission;

(c) one person who is a child psychiatrist or who is experienced in child psychology, nominated by the Chairman of the Health Commission;

(d) one person nominated by the Commissioner of Police;

(e) one person nominated by the Director-General of Education;

and

(f) one legally qualified medical practitioner.

(4) A member of a regional panel shall be appointed for a term of office not exceeding two years and, at the expiration of his term of office, shall be eligible for re-appointment.

(5) A member of a regional panel shall be appointed by the Minister to be chairman of the panel.

(6) A member of a regional panel shall be entitled to such allowances and expenses as may be determined by the Minister.

Procedure of the panels

87. (1) A decision in which a majority of members of a regional panel concur shall be a decision of the panel.

(2) Subject to any direction of the Minister, the procedure of a regional panel shall be as determined by the panel.

Functions of regional panel

88. The functions of a regional panel are as follows:

- (a) to receive and consider notifications of maltreatment of children;
 - (b) to make such recommendations as to remedial treatment or action to the persons involved in a case of maltreatment and to any appropriate health or welfare agency as the panel thinks appropriate, and to facilitate the carrying into effect of that remedial treatment or action;
 - (c) to keep all cases under regular review;
 - (d) to carry out, or assist in, research in relation to the maltreatment of children;
 - (e) to compile and maintain statistical data in relation to the maltreatment of children;
 - (f) to identify the services within its region that are involved in the prevention, treatment or management of cases of maltreatment of children, and to promote effective use of those services in appropriate cases;
 - (g) to promote the development of those services and such new services as the panel considers desirable;
 - (h) to disseminate information amongst the community relating to the maltreatment of children;
 - (i) to encourage persons who are maltreating a child, or who believe they are about to maltreat a child, to consult with the panel of their own volition;
 - (j) to assign to any local panel within the region such functions as may be necessary or incidental to the functions of the regional panel;
- and
- (k) such other functions as may be prescribed.

Establishment of local panels

89. (1) The Minister may establish such number of local child protection panels as he thinks fit within each region constituted under section 86.

(2) A local panel shall have a distinctive name and shall consist of three members of whom—

- (a) one shall be an officer of the Department;
 - (b) one shall be a person nominated by the regional panel from the following:
 - (i) a legally qualified medical practitioner;
 - (ii) a registered or enrolled nurse;
 - (iii) a psychiatrist or a registered psychologist;
- and
- (c) one shall be a person nominated by the regional panel from the following:
 - (i) a member of the police force;
 - (ii) a registered teacher;
 - (iii) a social worker employed in a hospital or a medical practice;
 - (iv) a person who is qualified, or has experience, in the field of child welfare.

(3) A member of a local panel shall hold office at the pleasure of the Minister.

(4) A member of a local panel shall be entitled to such allowances and expenses as may be determined by the Minister.

(5) Subject to any direction of the Minister, the procedure of a local panel shall be as determined by the panel.

Functions of local panels

90. The functions of a local panel are as follows:

- (a) to provide guidance, assistance and support to persons involved in the prevention, treatment or management of cases of maltreatment of children;
- (b) to provide guidance, assistance and support to persons who seek help in relation to the maltreatment of children;
- (c) to report at regular intervals of no more than six months to the regional panel for the region in relation to which the local panel was established, on the work being done by the local panel;

and

- (d) such other functions as may be assigned to it by the regional panel.

Subdivision 2—Notification of Maltreatment

Notification of maltreatment

91. (1) Where a person suspects on reasonable grounds that a child has been maltreated or neglected, that person—

- (a) if he is not obliged to comply with this section—may notify an officer of the Department of his suspicion;

or

- (b) if he is obliged to comply with this section—shall notify an officer of the Department of his suspicion,

as soon as practicable after he forms the suspicion.

(2) The following persons are obliged to comply with this section:

- (a) a legally qualified medical practitioner;
- (b) a registered dentist;
- (c) a registered or enrolled nurse;
- (d) a registered psychologist;
- (e) a pharmaceutical chemist;
- (f) a member of the police force;
- (g) a probation officer;
- (h) a social worker employed in a hospital, health centre or medical practice;
- (i) a registered teacher;
- (j) a person employed in a school as a teacher aide;
- (k) a person employed in a kindergarten;

(l) an employee of, or voluntary worker in, an agency that provides health, welfare, educational, child care or residential services for children;

(m) a person of a class declared by regulation to be a class of persons to which this section applies.

(3) Any such notification must be accompanied by a statement of the observations and opinions upon which the suspicion is based.

(4) An officer of the Department who has received any such notification shall forthwith report the matter to the regional panel constituted for the region in which the offence is alleged to have been committed.

(5) Where a person acts in good faith and in compliance with the provisions of this section, he incurs no civil liability in respect of that action.

Subdivision 3—Offences against Children

Offences against children

92. (1) Any person having the care, custody, control or charge of a child, who maltreats or neglects the child, or causes the child to be maltreated or neglected, in a manner likely to subject the child to physical or mental injury, shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars or imprisonment for a period not exceeding twelve months.

(2) Proceedings for an offence against this section shall not be commenced except upon the authorization of a regional panel.

(3) An apparently genuine document purporting to be under the hand of a member of a regional panel, and to certify that the commencement of specified proceedings has been authorized by the panel, shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.

Subdivision 4—Medical Examination and Treatment and Temporary Custody of Children

Medical examination and treatment of children suspected to be victims of maltreatment

93. (1) Where an officer of the Department or a member of the police force suspects on reasonable grounds that an offence against this Division has been committed in relation to a child, he may, if the Director-General authorizes him to do so, cause the child to be taken to a hospital or legally qualified medical practitioner for medical examination, if—

(a) the whereabouts of the guardians of the child has not, after reasonable enquiries, been ascertained;

(b) it would be detrimental to the interests of the child to delay the medical examination while the consent of a guardian is obtained;

or

(c) the guardians of the child refuse or fail to take the child for such medical examination.

(2) Where a child is taken for medical examination under subsection (1), the person who carries out the examination may do so without the consent of a guardian of the child, and—

(a) shall report in writing as soon as reasonably practicable the results of the examination to the regional child protection panel for the region in which the offence is alleged to have been committed;

and

- (b) may, without seeking the consent of any guardian of the child, or contrary to the wishes of any guardian of the child, admit the child to hospital, or give the child, or cause the child to be given, such medical treatment as he thinks necessary or desirable.

Temporary custody of children

94. Where—

- (a) a child has been admitted into a hospital;

and

- (b) the person in charge of that hospital suspects upon reasonable grounds that an offence against this Division has been committed in relation to the child,

it shall be lawful for the child to be detained against the will of any guardian of the child in the hospital for a period not exceeding ninety-six hours and, while so detained, to receive such medical treatment as the person in charge thinks necessary or desirable.

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PART VI

MAINTENANCE OBLIGATION

DIVISION I—MAINTENANCE ORDERS

Subdivision 1—Orders with respect to Children

* * * * *

Liability of near relatives for maintenance of child

98. (1) The near relatives of any child (including a child under the guardianship of the Minister) shall be liable to pay for, or contribute towards, the cost of maintenance of the child according to their respective financial capacities.

(2) The parents of a child shall be primarily liable under subsection (1) to pay for the maintenance of the child and any step-parent of the child shall be liable to pay for, or contribute towards, its maintenance only in the event of the death, disappearance (reasonable inquiries having been made) or financial incapacity of the parents or any combination of those circumstances applying in relation to the parents.

Issue of summons for maintenance

99. (1) Upon complaint that any persons are near relatives of any child, and are able to pay for or contribute towards the maintenance or past maintenance of the child, any justice may summon those persons or any of them to appear before a court of summary jurisdiction, at a time and place to be specified in the summons, to show cause why they or he should not pay for or contribute towards, the past or future maintenance of the child.

(2) A complaint under this section in respect of a child under the guardianship of the Minister shall be made by, or on behalf of, the Minister.

(3) A justice may, instead of issuing a summons issue a warrant under his hand for the apprehension of any person against whom a complaint has been made under this section, and for his detention until the hearing of the complaint, unless that person enters into a recognizance with or without sureties, in such sum or sums as the justice directs, conditioned upon his appearance at the hearing of the complaint.

Order for payment of maintenance

100. (1) At the time and place appointed for the hearing of the complaint the court may adjourn the hearing, and may summon any other persons alleged to be near relatives to appear at the time appointed for the adjourned hearing; and may, at the original or any adjourned hearing, if it is satisfied that the persons summoned, or any of them, are near relatives of the child, and are able to pay for, or contribute towards, the past or future maintenance of the child, order payment to be made by those near relatives, or one or more of them—

(a) of such sum (which the court may order to be paid by instalments) for past maintenance of the child as the court considers sufficient;

and

(b) of such weekly or other periodical sum for the future maintenance of the child, and for such period, as the court considers sufficient.

(2) If an order is made against two or more near relatives, the sums or proportions payable by each shall be fixed by the court.

(3) Notwithstanding any provision in any other Act to the contrary an order for the payment of money for past maintenance under this section shall not be limited to payment of money for maintenance in respect of the period of six months prior to the making of the complaint, but may also relate to the payment of money for maintenance in respect of any period prior to that period of six months.

Complaints in respect of maintenance of two or more children

101. (1) Where a person is a near relative of two or more children, a complaint under this Division may be made against that person in relation to the maintenance of all or any of the children; and the court may, upon that complaint, make orders in accordance with this Division for the payment of money for the maintenance of all or any of the children.

(2) A separate order shall be made in respect of each child for whose maintenance a payment is ordered.

(3) A complaint under this Division may be made against any number of persons alleged to be liable for the maintenance of the same children.

Subdivision 2—Orders, etc., in Affiliation Cases

Court may adjudge defendant to be father of child in affiliation cases

102. Upon the hearing of an affiliation case, the court may, if satisfied upon the evidence that the defendant is the father of the child, adjudge him to be the father of the child.

Warrant may issue in lieu of summons

103. Upon complaint made in an affiliation case, a justice may, instead of issuing a summons issue a warrant under his hand for the apprehension of any person against whom a complaint has been made under this subdivision, and for his detention until the hearing of the complaint unless that person enters into a recognizance, with or without sureties, in such sums as the justice directs, conditioned upon his appearance at the hearing of the complaint.

Order for payment of preliminary expenses

104. (1) Where a court of summary jurisdiction, 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 or a stillborn child of whom the defendant (not being her husband) is the father;

and

(b) that he has not made adequate provision for the payment of the preliminary expenses in respect of the confinement,

the court may order the defendant to pay to the Director-General such amount as it thinks reasonable for or towards those preliminary expenses.

(2) A complaint under this section may be made at any time during the pregnancy of the woman, or within two years after the birth of the child, but the court shall not make an order under this section before the birth of the child unless it is satisfied by the evidence, or by the certificate, of a legally qualified medical practitioner that the woman is pregnant.

(3) The court shall not receive in evidence the certificate of a legally qualified medical practitioner unless the defendant consents to the admission of that certificate.

(4) The adoption of a child does not prevent a court from making an order for preliminary expenses under this section nor does it affect the validity or operation of any order for preliminary expenses in respect of the child.

Where order made during pregnancy

105. (1) Where an order is made for payment of, or contribution towards, preliminary expenses during the pregnancy of the woman, the order shall—

(a) specify a date on which the order will cease to have effect if the woman has not then been delivered of a child;

and

(b) direct that all moneys payable for preliminary expenses shall be paid to the Director-General.

(2) Where—

(a) the woman is not delivered of a child before the date specified in the order;

or

(b) the woman is delivered of a stillborn child before the date so specified, and there is no other surviving child born to the woman during the same confinement,

the order ceases to have effect on the date specified in the order, or at the end of the third month after the delivery of the stillborn child, as the case may require.

(3) Where an order ceases to have effect on a date specified in it pursuant to the provisions of subsection (1) of this section, any moneys paid under the order and not disbursed shall be repaid to the defendant.

(4) Where an order ceases to have effect at the end of the third month after the delivery of a stillborn child any moneys paid under the order and not disbursed shall, as directed by the court—

(a) be paid to the woman;

(b) be repaid to the defendant;

or

(c) be divided between the woman and the defendant in such proportions as the court thinks fit.

(5) Where an order is made for payment of, or contribution towards, preliminary expenses during the pregnancy of a woman, the court or any justice may, at any time while the order is in force, give such directions in writing as it or he thinks proper with respect to the disbursement of any amounts paid under the order, but not so as to direct the disbursement, before the woman is delivered of a child or a stillborn child, of amounts that exceed in aggregate one-half of the amount to be paid under the order.

Order may be made, without complaint, in proceedings against father

106. Notwithstanding any other provision of this Act, an order for preliminary expenses may be made by a court of summary jurisdiction, without a separate complaint having been made, in any proceedings against the father for the maintenance of the child and the order may be made separately, or may be included in any other order against the father.

Power of court to make order for future maintenance of child upon complaint for preliminary expenses

107. (1) Where an order for payment of, or contribution towards, preliminary expenses is made before the birth of the child to which it relates and it appears desirable to the court making the order to provide the child with adequate means of support, the court may order the father to pay such amount as it thinks reasonable for or towards the maintenance of the child from the expiration of three months after its birth.

(2) An order made under subsection (1) of this section shall not be enforceable under this Act and shall have no force or effect unless a certified copy of the registration of the birth of the child is produced to the clerk of the court by which the order is made.

(3) An order made under subsection (1) of this section shall not take effect if the child to whom it relates is stillborn, or dies, or is adopted before the order would otherwise take effect.

(4) An order under subsection (1) of this section shall not be made requiring a person to make payments for or towards the maintenance of a child unless—

(a) the person has consented to the making of the order;

or

(b) the person has been given notice of the complainant's intention to apply for the order.

(5) Where a certified copy of the registration of the birth of the child in relation to whom an order has been made under subsection (1) of this section is produced to the clerk of the court, the clerk shall forthwith send by post to the defendant at his usual or last-known place of residence or business notice in writing of the name of the child (if shown in the certified copy of the registration of the birth of the child) and of the date and place of birth of the child and the date on which and the place at which the first payment under the order is required to be made.

Compellability of defendant as witness in affiliation cases

108. (1) On the hearing of any affiliation case, the defendant shall be compellable to give evidence, and may be summoned as a witness for that purpose.

(2) The defendant shall not be excused from giving evidence relevant to the matter of the complaint on the ground that the evidence might prove or tend to prove him guilty of the matter alleged against him.

Liability of persons admitting sexual intercourse with mother of child

109. (1) If on the hearing of any complaint in respect of any affiliation case it is proved to the satisfaction of the court that the defendant, or any other male person over the age, or apparently over the age, of eighteen years had sexual intercourse with the mother of the child at any time so that, in the opinion of the court, the defendant or other male person may possibly be the father of the child, the court may, upon the hearing (and, in the case of a male person other than the defendant, without the necessity of any complaint against that person) make an order against the defendant or other male person for contribution towards the preliminary expenses in respect of the mother's confinement and also, if the court thinks fit, towards the maintenance of the child.

(2) No order shall be made under subsection (1) of this section unless the male person has been given the opportunity of being heard by the court in respect of the making of the order.

(3) An order or orders may be made under subsection (1) of this section against any number of male persons as provided in that subsection.

(4) An order made pursuant to this section may be enforced and all further proceedings in relation to the order may be taken as if it were an order made against a near relative of the child for the payment of money for the maintenance of the child.

(5) In every case where a complaint is made to the court for the making of an order under this section and the complaint is dismissed by the court, a memorandum of dismissal shall then be made by the court.

(6) The court shall not make an order under this section if it is satisfied that at the time of the conception of the child, the mother was a common prostitute.

Power to lay complaint for support of child born outside marriage against one or more persons

110. (1) A complaint may be made under this Act by or on behalf of the Minister or by any officer of the Department against one or more male persons over the age of eighteen years at the time of the making of the complaint alleging that the male person or persons have had sexual intercourse with the mother of a child born outside marriage at a time or times such that the male person or any one of the male persons may possibly be the father of the child.

(2) Upon complaint under this section, any justice may summon the male person or persons or any of them to appear before a court of summary jurisdiction, at a time and place to be specified in the summons, to show cause why he or they should not contribute towards or pay for the past or future maintenance of the child and the preliminary expenses in respect of the confinement of the mother.

(3) A justice may, instead of issuing a summons, issue a warrant under his hand for the apprehension of any person against whom a complaint has been made under this section and for his detention until the hearing of the complaint, unless that person enters into a recognizance with or without sureties, in such sums as the justice directs, conditioned upon his appearance at the hearing of the complaint.

(4) At the hearing of the complaint, if the court is satisfied that any one or more of the male persons had sexual intercourse with the mother of the child at a time such that he or any of them may possibly be the father of the child, the court may make an order against him or them for contribution towards the maintenance of the child and also, if the court thinks fit, towards the preliminary expenses in respect of the confinement of the mother.

(5) An order made pursuant to this section may be enforced and all further proceedings in relation to the order may be taken as if it were an order made against a near relative of the child for the payment of money for the maintenance of the child.

(6) In any proceedings under this section, an allegation in the complaint that any specified person was at the time of the making of the complaint over the age of eighteen years shall be deemed proved in the absence of proof to the contrary.

Power of Director-General to accept settlement in full

111. (1) Where a person is liable or, without a complaint being made against him under this Act, admits liability to pay for or contribute towards the preliminary expenses in respect of the confinement of the mother of a child born outside marriage or the maintenance of the child, the Director-General may, with the approval of the Minister, accept from that person a sum of money in full settlement of all such liability.

(2) On payment of that sum no proceedings shall be commenced or proceeded with by or on behalf of the mother or any other person in respect of the liability or expenses.

(3) Where the Director-General accepts a sum of money in settlement of liability under this section, that sum shall be retained by the Director-General and applied at his discretion for the maintenance of the child or for the preliminary expenses in respect of the confinement, or both.

Provision for blood tests

112. (1) This section shall come into operation on a day to be fixed by proclamation.

(2) In this section "blood test" means a test for the purpose of ascertaining the inheritable characteristics of blood.

(3) A court of summary jurisdiction may, at the request of the complainant or the defendant in an affiliation case, direct that the child in respect of whom the complaint was made, the mother of the child (if the mother is alive) and the defendant submit to blood tests.

(4) No direction shall be given unless the child is at least six months old.

(5) In any such direction, the court shall nominate a medical practitioner or an analyst to take such blood samples as may be necessary for the purpose of the blood tests, and to make the tests, and shall also fix a period within which the child, the mother and the defendant, or the child and the defendant, as the case may be, shall attend upon the medical practitioner or analyst so nominated to enable him to take the samples.

(6) Any period so fixed may be extended by the court from time to time as the court thinks fit.

(7) The medical practitioner or analyst so nominated must be a person whose name is on a panel of names prepared by the Minister on the recommendation of the Chairman of the South Australian Health Commission and published in the *Gazette*.

(8) Subject to subsection (10) of this section, the fees of the medical practitioner or the analyst nominated in the direction and the costs and expenses in connection with the blood tests shall, in the first instance, be paid by the Minister.

(9) Where a direction has been given by a court pursuant to this section—

(a) the proceedings in connection with the affiliation case shall be stayed until the expiration of the period or extended period fixed under subsection (5) or subsection (6) of this section;

(b) if the mother and child referred to in the direction do not, or either of them does not, or, where the mother is dead, the child referred to in the direction does not within that period or extended period, attend upon the medical practitioner or analyst nominated in the direction and permit him to take the necessary blood samples for the purposes of the blood tests, the complaint, if made by or on behalf of the mother, shall be dismissed, but otherwise shall be set down for hearing;

and

(c) if the defendant does not within that period or extended period attend upon the medical practitioner or analyst so nominated and permit him to take the necessary blood samples for the purposes of the blood tests, the complaint shall be set down for hearing.

(9a) Where a direction has been given by a court pursuant to this section and the defendant refuses or without reasonable excuse fails to attend within the period or extended period fixed under subsection (5) or subsection (6) upon the medical practitioner or analyst nominated in the direction and to permit him to take the necessary blood samples for the purposes of the blood tests, the court may draw such inferences from that refusal or failure as it thinks fit.

(10) If, at the hearing, the court is satisfied that the facts alleged against the defendant are proved, the defendant shall reimburse the Minister to the extent of all moneys paid by the Minister under subsection (8) of this section in connection with the blood tests referred to in the direction, including the amount of the fees so paid to the medical practitioner or the analyst, and those moneys may be recovered by the Minister by complaint to a court of summary jurisdiction as a debt due to him by the defendant.

(11) The medical practitioner or analyst nominated in the direction shall, within such period as may be prescribed, carry out the blood tests and embody the results of the tests in a certificate in the prescribed form signed by him.

(12) The medical practitioner or analyst shall forward the certificate to the clerk of the court that made the direction who, within seven days after the receipt by him of the certificate, shall furnish a copy thereof to the complainant and to the defendant.

(13) The certificate shall be admissible as evidence in any proceedings under this Part and shall be evidence of the facts and conclusions stated therein, but the court shall on the application of the complainant or the defendant, or may of its own motion, order the medical practitioner or the analyst to attend as a witness in the proceedings to be examined on such issues relating to the blood test and in such manner as the court thinks necessary and proper in the interests of justice.

*Subdivision 3—Orders for Payment of Medical and Hospital Expenses in
Connection with Lawful Termination of Pregnancy*

Orders re payment of medical expenses, etc., where pregnancy terminated

113. (1) Where a court of summary jurisdiction is satisfied on complaint made by or on behalf of a female person—

(a) that the complainant has been pregnant but her pregnancy has been lawfully terminated otherwise than by the birth of a child;

and

(b) that the defendant has had sexual intercourse with the complainant at such a time that the act of intercourse may have resulted in the pregnancy of the complainant,

the court may order the defendant to pay such amount as it considers reasonable for or towards the medical and hospital expenses incurred by the complainant in connection with the termination of the pregnancy.

(2) The court shall not make an order under this section if it is satisfied that at the time of the act of sexual intercourse, the complainant was a common prostitute.

Subdivision 4—Orders for Medical and Other Expenses

* * * * *

Order for payment of medical and like expenses

117. (1) Where a court of summary jurisdiction, upon application made by or on behalf of any person for whose maintenance an order is for the time being in existence, is satisfied—

- (a) that any medical, surgical, psychiatric, dental, hospital or nursing care or treatment by way of physiotherapy or chiropractic is or was reasonably required in respect of that person;
- (b) that the financial position of that person is and has been such as to preclude the person from making provision for or towards the cost of that care or treatment;

and

- (c) that the person against whom the order was made has not made adequate provision for or towards that cost and it is just and equitable in all the circumstances of the case that he pay, or contribute towards, that cost,

the court may order the person against whom the order was made to pay to the applicant or to the Director-General for or towards that cost such amount as it thinks reasonable.

(2) For the purposes of subsection (1) of this section, “medical care” includes—

- (a) the supply of medicines, skiagrams, artificial limbs, eyes or teeth, crutches, splints, spectacles and other medical and surgical aids and curative appliances or apparatus including necessary renewals or replacements thereof;

and

- (b) transport by a vehicle to a hospital or other place for medical examination or medical treatment and where necessary, transport from the hospital or place on the return journey.

(3) For the purposes of this section, but without limiting the generality of its application—

- (a) a child under the age of three months in respect of whose birth an order for the payment of preliminary expenses has been made under this Act and is in existence;

and

- (b) a person in respect of whom an order for the payment of a merely nominal amount is in existence,

shall be deemed to be persons for whose maintenance an order is in existence.

(4) Where an order is made under this section for the payment of moneys for or towards the cost of any care or treatment referred to in subsection (1) of this section, the court or a justice may, at any time, give such directions in writing as the court or justice thinks proper for the disbursement of the amount ordered to be paid but so that no moneys are disbursed before the care or treatment to which the payment relates has been rendered.

* * * * *

DIVISION III—JURISDICTION AND POWERS OF COURTS OF SUMMARY JURISDICTION

General jurisdiction of courts of summary jurisdiction in respect of orders under this Part

130. (1) Subject to this Act, but without limiting the jurisdiction of any court, a court of summary jurisdiction shall have jurisdiction to hear and determine any complaint and to make and to discharge, suspend or vary any order of a kind provided for in this Part.

(2) Subject to this Act, the court shall have jurisdiction to make an order under this Part by reason of facts and circumstances, whether or not those facts or circumstances, or some of them, took place before the commencement of this Act or outside this State—

(a) if the person against whom the order is sought is resident in this State;

or

(b) if the person for whose benefit the order is sought is resident in this State.

(3) Nothing in this Act shall limit or affect the operation of any provision of any other Act by which any person is or may be required to make contribution to, or payment on account of, the maintenance or support of any other person.

Orders directing payment of nominal sum only

131. (1) Where, upon the hearing of a complaint under Division I of this Part upon which an order for maintenance may be made, a court of summary jurisdiction is satisfied that it would make an order for the maintenance of the complainant but for the fact—

* * * * *

(b) that the defendant is not presently able to contribute to the support of that person,

the court may nevertheless make an order setting out its findings on the complaint and directing the payment by the defendant of a merely nominal amount in respect of that person.

(2) Proceedings shall not be taken under this Act to enforce payment of the nominal amount directed to be paid by an order where the sum due under the order is less than ten dollars but, if that amount is varied under any provision of this Part, proceedings may be taken to enforce payment of any amount payable under the order as varied.

* * * * *

Interim orders for payment of maintenance

133. (1) Where the hearing of a complaint under Division I of this Part is adjourned for a period of not less than seven days the court may order the defendant to pay for or towards the maintenance of the person to whom the complaint relates such amount as it thinks reasonable.

(2) An order under this section shall not be subject to suspension, variation or appeal and shall remain in force until the expiration of a period of three months from the date on which the order is made or until the complaint again comes before the court (whichever first occurs).

DIVISION IV—PROVISIONS RELATING TO THE COMMENCEMENT AND DURATION OF ORDERS AND TO EVIDENTIARY MATTERS

Subdivision 1—Commencement and Duration of Orders

Orders for maintenance of children, etc.

134. Except as otherwise provided in this Division—

(a) an order shall not be made under this Part in respect of a child who has attained the age of eighteen years;

and

(b) except where arrears are due thereunder and to the extent of those arrears, an order for the maintenance of a child shall cease to have effect when the child attains the age of eighteen years, marries, dies or is adopted or the person against whom the order was made dies, whichever first occurs.

Maintenance after child's eighteenth year

135. (1) Upon complaint or application to a court of summary jurisdiction made by or on behalf of a child (including a child who has attained the age of eighteen years), if the court is satisfied that it is necessary to make an order under this section—

(a) for the purposes of enabling the child to undertake or complete a course of education or training that will fit him for a profession, trade or occupation in which to earn his livelihood;

or

(b) if the child is unable to earn his livelihood by reason of physical or mental incapacity—for the purposes of maintaining him,

the court may make an order against a near relative for maintenance in respect of the child that will be in force, or vary an existing order for maintenance in respect of the child so that it will be in force, for an amount specified in the order and for a period specified in the order that commences after or continues beyond the date at which the child attained or will attain the age of eighteen years.

(2) This section does not apply—

(a) in respect of a course of education or training commenced after a child attains the age of twenty-one years;

or

(b) in respect of any physical or mental incapacity occurring after a child attains the age of eighteen years.

(3) An application under this section to vary an existing maintenance order shall be heard by a court at the place where the maintenance order was made unless—

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

or

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

(4) The amount specified in an order under this section may include such allowance for or towards the expenses incurred or to be incurred in undertaking or completing a course of education or training as the court thinks proper.

Orders for support of wife, husband or child may include provision for past maintenance

136. Unless otherwise provided by this Act an order under this Part for the maintenance of a person may, whether or not an application for that purpose has been made, be made to take effect from a past date not being earlier than a date that the court thinks reasonable, and where an order takes effect from a past date the court may direct the past maintenance to be paid in one sum or by such instalments as the court directs.

* * * * *

Recovery of arrears after cessation of order

138. (1) The fact that an order under this Act for the maintenance of a person ceases to have effect by virtue of this Act shall not prevent the enforcement of the order or the recovery of any moneys due under the order, so far as it relates to any period, or to past maintenance of a person during any period, before it ceased to have effect.

(2) Subsection (1) of this section shall not apply where the order ceased to have effect by reason of the death of the defendant.

Subdivision 2—Evidentiary Provisions

* * * * *

Evidence of mother as to paternity of child born outside marriage, etc., not to be accepted without corroboration except in certain cases

140. Upon the hearing of a complaint under this Part with respect to a child born outside marriage the evidence of a woman that the defendant (not being her husband) is the father of her child or that she is pregnant by the defendant (not being her husband) shall not be accepted without corroboration in a material particular except in the following cases—

- (a) where the defendant is present in court during the hearing of the complaint and does not give evidence on oath denying that he is the father of the child or that the woman is pregnant by him;
- (b) where the defendant is not present in court during the hearing of the complaint and the court is satisfied that he was duly served personally with a summons to attend the court;
- (c) where a direction has been given by the court pursuant to section 112 of this Act and the defendant refuses or without reasonable excuse fails to attend within the period or extended period fixed under that section upon the medical practitioner or analyst nominated in the direction and to permit him to take the necessary blood samples for the purposes of the blood tests directed by the court,

and in any of those cases the court may, subject to this Act in its discretion accept the uncorroborated evidence of the woman as sufficient evidence of the fact that the defendant is the father of the child or that she is pregnant by him.

Proof of marriage

141. Subject to section 142 of this Act, upon the hearing of a complaint under this Part by one party to a marriage against the other party to the marriage, the person making the complaint shall—

- (a) produce direct evidence of the marriage with the person against whom the complaint is made;

or

(b) give evidence on oath of the time, place and circumstances of the marriage.

Evidentiary provision

142. Upon the hearing of any complaint made by or on behalf of the Minister, the Director-General or an officer of the Department an allegation in the complaint—

- (a) that the person complained against is a near relative of a child and liable to maintain the child;
- (b) that the person complained against is able to contribute to the maintenance of the child;
- (c) that any sum has been expended upon, or is due or owing for, or in respect of, the maintenance of a child;

* * * * *

or

(e) that a child is under the guardianship of the Minister pursuant to this Act or any other Act,

shall be deemed to be proved in the absence of proof to the contrary.

DIVISION V—PROVISIONS RELATING TO THE DISCHARGE, SUSPENSION, VARIATION AND REVIVAL OF ORDERS

Application of Division

143. This Division shall apply and have effect subject to any other provision of this Act relating to the discharge, suspension or variation of any order made under this Part.

General power to discharge, suspend or vary order

144. (1) Upon application made by an officer of the Department or by or on behalf of a person in whose favour or against whom an order (including an order as varied) has been made or is deemed to have been made (being an order of a kind provided for in this Part), a court of summary jurisdiction may, subject to this Division, at any time make an order discharging the order, suspending the order in whole or in part until a specified day or until further order, or varying the order.

(2) An application under subsection (1) of this section shall be heard by a court at the place where the order, the subject of the application, was made—

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

or

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

(3) An order shall not be discharged, suspended or varied under this Division unless the court is satisfied—

(a) that the order or, if the order has been varied, the original order or any order varying the original order was obtained by fraud or upon the basis of the existence of a marriage that did not in fact exist;

- (b) that the means of the person for whose benefit the order was made or the means and ability to pay of the person against whom the order was made have so altered as to justify the discharge, suspension or variation of the order;
- (c) that new facts or circumstances have arisen that have not previously been disclosed to a court in any proceedings in connection with the order and that by reason of those facts or circumstances it is reasonable to discharge, vary or suspend the order;

or

- (d) that facts or circumstances were in existence at the time of the making of the order or, if the order has been varied, the original order or any order varying the original order, that have not previously been disclosed to a court in any proceedings in connection with the order and that were not and could not by the exercise of reasonable diligence have previously been known to the party by whom or on whose behalf the discharge, suspension or variation of the order is presently sought and that by reason of those facts or circumstances it is reasonable to discharge, vary or suspend the order.

(4) An order provided for under this Part that is in force may be discharged or varied from any past or future day or may be suspended from any past or future day or in respect of any past or future period.

(5) An order that has ceased to have effect may be discharged or varied from any past day or may be suspended from any past day or in respect of any past period.

(6) The fact that the defendant is in default in complying with an order shall not preclude the discharge, suspension or variation of that order.

Variation of order against near relative of child

145. (1) Any justice, on the complaint of a near relative liable upon an order for the maintenance of a child made under this Part, may summon all or any of the persons alleged in the complaint to be near relatives of the child named in the order to appear before a court of summary jurisdiction at a time and place to be appointed in the summons, and shall give notice of the summons to the Director-General.

(2) At the time and place so appointed, or at any adjourned hearing of the complaint, the court may make further inquiry as to the relationship to the child of the complainant and the persons summoned and as to their respective financial capacity to maintain or contribute to the maintenance of the child, and may make such order as appears just—

(a) increasing, reducing, or varying the periodical sum to be paid by the complainant;

(b) suspending for a specified time, or annulling, the previous order;

or

(c) directing that the persons so summoned, or any one or more of them, shall pay for or contribute towards the maintenance of the child,

or may make such other order not inconsistent with this Act as appears just.

(3) Subsection (2) of this section shall not authorize any court of summary jurisdiction to annul an adjudication of paternity made in affiliation proceedings.

Effect of suspension order

146. (1) Where an order provided for under this Part is suspended until a specified day, the order, unless earlier revived pursuant to this Division shall without any further or other order revive and again take effect upon the specified day.

(2) Where an order is suspended until further order, it shall not again take effect unless and until an order reviving it is made under this Division.

(3) Subject to subsection (4) of this section, the fact that an order provided for under this Part is suspended shall not prevent the enforcement of the order so far as it relates to any period before the day as from which the suspension took or takes effect.

(4) Where an order provided for under this Part is suspended, the court may order that the whole or any part of any moneys owing under the order as at the day from which the suspension took or takes effect shall not be recoverable under this Act during the period of the suspension.

Plural births

147. Where an order under this Part for the maintenance of a child is made before the birth of the child and two or more children are born, an application may be made under this Part for variation of the order to provide for the maintenance of the additional child or children.

Power of court to revive suspended order

148. (1) Where an order under this Part has been made and has been suspended under this Division until a specified day or until further order, a court of summary jurisdiction may, upon application made by an officer of the Department or by or on behalf of any person for whose benefit the order was made, make an order reviving the suspended order in whole or in part, with or without variation, as the court thinks fit.

(2) An application under subsection (1) of this section shall be heard by a court at the place where the suspending order was made unless—

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

or

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

(3) A suspended order may be revived from any past day or any future day (not being a day subsequent to the expiration of the period of the suspension) specified in the reviving order and shall from that day have and (where necessary) be deemed to have effect accordingly.

(4) Where the court revives an order from a past day it may direct that payment in respect of any period before the date of the reviving order be made in one sum or by such instalments as the court specifies in the reviving order.

DIVISION VI—PROCEDURAL**Complaints**

149. (1) Where a complaint is made under this Act and unless express provision is otherwise made by this Act, a justice—

(a) may issue a summons addressed to the defendant commanding him to attend the court upon the hearing of the complaint;

or

- (b) if satisfied by oath that the whereabouts of the defendant is unknown to the complainant or that the defendant has moved or is about to move out of the State or to a distant part of the State, may issue a warrant for the apprehension of the defendant and for his being brought before a court pursuant to this Act.

(2) 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 the behalf of other persons, may be joined in the one form of complaint.

(3) Where two or more complaints are joined in the one form of complaint—

- (a) one summons or warrant 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) the court may make one order in respect of those complaints but the order shall be deemed to be a separate order in respect of each of the complaints in respect of which it was made.

(4) Where complaints for maintenance of a child are made against a number of different persons, the complaints may, if the court thinks fit, be heard and determined by the court at the same time.

Complaints in affiliation cases

150. No complaint in an affiliation case shall be made except—

- (a) by or on behalf of the mother of the child in relation to whom the complaint is made;
(b) by or on behalf of the child itself;

or

- (c) by an officer of the Department.

Orders may direct mode of payment

151. Except as otherwise provided by this Act, an order made by a court under this Act for the payment of moneys may direct that—

- (a) the moneys be paid to the Director-General or to some other person at a place specified in the order;

or

- (b) the moneys payable under the order be paid in a lump sum, or periodically or by instalments or partly in a lump sum and partly periodically or by instalments in accordance with the direction of the court.

Non-appearance of defendant

152. (1) If a defendant to whom a summons has been issued does not appear in accordance with the summons or on any day to which the hearing of the summons is adjourned, the court, upon proof of the service of the summons, may issue a warrant for the apprehension of the defendant and for his being brought before the court, or may proceed with the hearing of the complaint in the absence of the defendant.

(2) Where a warrant has been issued for the apprehension of the defendant (whether in the first instance or upon the defendant failing to appear in accordance with a summons) 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.

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

Court may set aside order made in the absence of the defendant

153. (1) Where the court proceeds pursuant to the provisions of this Division to make an order against the defendant in his absence, the defendant may, within twenty-eight days after the order comes to his knowledge, make application to the court that made the order to set aside the order and to re-hear the matter of the complaint in respect of which the order was made.

(2) Notice in writing of intention to make any such application shall be lodged with the clerk of the court and a copy thereof shall be served on the complainant either personally or by registered post a reasonable time in the circumstances before the day specified in the notice for the making of the application.

(3) Upon proof of service of the notice 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 may proceed to hear and determine the matter of the complaint or, in the absence of the complainant, may adjourn the matter of the application to some other time or place and may direct such notice as the court thinks fit of the adjourned hearing to be given to the complainant.

Court may require defendant to state his employer, etc.

154. (1) In any proceedings in which maintenance is sought, or in which the enforcement of an order for maintenance is sought, the court may—

- (a) direct the defendant to attend before the court at a time fixed by the court to be examined concerning his means and ability to comply with the order;
- (b) direct the defendant to state to the court or to furnish to the court within any time fixed by the court a statement signed by the defendant setting out—
 - (i) the name and address of his employer or, if he has more than one employer, of each of his employers;
 - (ii) particulars as to the defendant's earnings;and
 - (iii) such other particulars as the court thinks necessary for the enforcement of the order;

or

- (c) direct any person who appears to the court to be indebted to the defendant or to be the employer of the defendant to give to the court, within any 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.

(2) If the defendant fails to comply with the direction, the court may upon proof that the direction was duly served upon the defendant, issue a warrant for the apprehension of the defendant.

(2a) A direction under this section may be served upon a person—

- (a) by delivering a copy of it to that person;
- (b) by leaving a copy of it at the usual or last known place of residence or business of that person with some person, apparently over the age of 16 years, who apparently resides in that place of residence or is employed at that place of business;

or

- (c) by sending a copy of it, by post, to that person's usual or last known place of residence or business.

(3) A document purporting to be a statement referred to in subsection (1) of this section shall be admissible in evidence in any proceedings under this Act relating to maintenance.

(4) Every person who—

- (a) without reasonable cause or excuse refuses or fails to comply with a direction under this section that is applicable to him and was duly served upon him;

or

- (b) in any statement made or notice furnished to a court pursuant to the provisions of this section, makes a statement that he knows to be false or misleading in a material particular or does not believe on reasonable grounds to be true,

shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

DIVISION VII—ENFORCEMENT OF ORDERS AND SUPPLEMENTARY PROVISIONS

Subdivision 1—Attachment of Property, Caveats, Warrants, Disobedience of Orders, etc.

Attachment of property of persons against whom order is sought

155. (1) Where proceedings have been commenced by complaint under this Act in which—

- (a) an order for maintenance;

or

- (b) an order for the enforcement of an order for maintenance,

* * * * *

is, or will be sought, notice may be given to—

- (d) any banker or other person having, or supposed to have, the care, custody, or control of any money or property, belonging or payable to, or standing to the credit of, any person complained against;

or

- (e) any person against whom the person complained against has any civil or statutory right to the payment of money,

not to pay or part with the possession of that money or property until the complaint has been heard and determined, and the money or property shall, upon the giving of the notice, be attached in the hands of the person who has the care, custody and control of it, who shall be compellable to give evidence on the hearing of the complaint as to all matters relating to or concerning the money or property.

(2) Money deposited by or on behalf of the person complained against in an account with a banker or other person shall, for the purposes of this section, be deemed to be standing to the credit of the person complained against, notwithstanding that any condition relating to the account or payment under the account is unsatisfied.

Order for delivery of attached property

156. (1) The court, on hearing a complaint in respect of which notice has been given to a banker or other person under this Subdivision may, by order, direct that the money or property attached, or such portion thereof as it orders, be paid or handed over to the Director-General, or to the person entitled to receive the money under a maintenance order.

(2) The person having the care, custody, or control of the money or property attached shall pay or hand it over accordingly, and shall be thereby discharged from all liability to the owner thereof, or any person claiming under him in respect of the money or property so paid or handed over, and, except as to such portion of the money or property attached as the court may, within one month from the service of the notice of attachment, order to be so paid or handed over, the attachment shall be determined.

Attachment may be pleaded

157. (1) Any person who has received any notice attaching money or property in his care, custody, or control may, before the hearing of the complaint, after giving notice in writing of the application to the person by whom notice was given apply to a court of summary jurisdiction for an order setting aside the notice with respect to the whole or any part of the property or money subject to the notice.

(2) Any such person may plead the notice in bar to any action, suit, or other proceeding that may be instituted against him for the recovery of any such money or property by the owner or any person claiming under him.

Liability of persons contravening order

158. Any person who, after receipt of a notice attaching money or property in his care, custody or control—

(a) pays or hands over any such money or property otherwise than in accordance with the order made by the court;

or

(b) neglects or refuses to comply with the order made,

shall be personally liable to pay to the Director-General or the payee mentioned in the maintenance order the amount of money or an amount equal to the value of the property ordered to be paid or handed over, and such an amount may be recovered before a court in a summary way.

Collection by police of moneys due to Director-General

159. (1) Subject to the provisions of a maintenance order, any member of the police force shall, when so directed in writing signed by the Director-General and countersigned by the Commissioner of Police, demand, collect, and receive from any person all sums of money due to the Director-General for which that person is liable under any maintenance order.

(2) The receipt in writing of any such member of the police force shall be a sufficient discharge for the person from whom the moneys were received of his liability to pay those moneys to the Director-General.

Caveats

160. (1) If any person against whom a maintenance order has been made is the registered proprietor of any land, estate, or interest in land subject to the *Real Property Act, 1886*, as amended, the Director-General may lodge with the Registrar-General a caveat signed by the Director-General against any dealings with that land, estate or interest.

(2) Particulars of the order shall be set out in the caveat and the Registrar-General shall forthwith register the caveat, and it shall not be lawful for the Registrar-General without the consent of the Director-General to remove or discharge the caveat—

(a) unless and until he is satisfied that all moneys due under the order have been fully paid and satisfied;

or

(b) unless he is ordered by the Supreme Court, or a Judge thereof, to remove the caveat.

Warrant to enforce payments under orders

161. (1) If any money payable under a maintenance order is in arrear for one month, a court of summary jurisdiction may, upon the application of the Director-General or any person to whom money is payable under the maintenance order, issue a warrant authorizing the Director-General or that person to receive the whole or any part of the rents, profits, and income of the real and personal estate of the person against whom the order was made, or to take or sell the estate and interest of that person in the real or personal estate, or in such part thereof as the court may direct.

(2) A person upon whom a warrant under this section is served shall pay any moneys to which the warrant relates to the Director-General or some other person named in the warrant and shall thereby be discharged from all liability to pay those moneys to the person against whom the maintenance order was made.

Registration of warrant and effect thereof

162. A warrant issued under section 161 may be registered in the same manner as a writ of fieri facias, and shall, from the time of registration, bind the estate or interest of the person liable under the order for maintenance in his real estate and chattel real property.

Sale under warrant

163. A sale under a warrant issued under section 161 may be by public auction or private contract for cash or on credit, or partly for cash and partly on credit, and subject to any conditions that the Director-General thinks expedient.

Assurances to purchaser

164. (1) The Director-General or person authorized by the warrant to sell, may execute to the purchaser all such conveyances, assignments, memoranda of transfer, or other assurances of the property sold as the person against whom the order was made might have executed but for this Act, and the property so conveyed or assured shall vest in the purchaser accordingly.

(2) The Registrar-General shall forthwith register every such memorandum of transfer, and cause such entries to be made and acts to be done, as may be necessary for giving effect to the sale.

Issue of warrant without previous demand

165. (1) No notice or demand shall be necessary before a warrant is issued in respect of the real or personal estate of a person against whom a maintenance order has been made, or before any powers conferred by the warrant are exercised, but the court of summary jurisdiction may before issuing any such warrant, require such notice (whether by post, advertisement, or otherwise) to be given to the person against whom the maintenance order is made as the court considers just.

(2) Upon any application for the issue of a warrant, the person against whom the maintenance order was made shall be entitled to appear and be heard.

(3) The warrant shall be conclusive evidence that the power to sell is vested in the Director-General or in the person named in the warrant.

Effect of payment under warrant

166. The payment to the Director-General or to the person named in any such warrant, shall be a good discharge to any tenant, purchaser, or other person for all moneys paid by him pursuant to the warrant.

Application of moneys received under warrant

167. The rents, profits, and income, and the proceeds of any sale, received under any such warrant and the estate or interest in any real or personal estate taken under any such warrant shall be applied firstly in payment of the costs of collection or sale; secondly, in payment of the costs of obtaining the warrant; thirdly, in paying any money due under the original order; and the balance shall be applied in or towards future maintenance, or in such other manner as a court of summary jurisdiction may direct.

Recognizance or security for compliance with maintenance order

168. (1) A court may—

(a) upon making a maintenance order, if it thinks fit, by the same or a separate order;

or

(b) upon complaint made by or on behalf of any person for whose benefit a maintenance order has been made, if it is satisfied that arrears of maintenance under the order are payable by the defendant or that the defendant intends to evade compliance with the order, by a subsequent order,

require the defendant to enter into a recognizance with or without sureties, in such sum as it thinks fit, or to give such security as it thinks fit, conditioned upon the defendant complying with the maintenance order and, where arrears of maintenance are payable, making such payments in respect of the arrears as are specified by the court.

(2) The court may, in default of a recognizance or security being entered into, or given, commit the defendant to prison for any period not exceeding three months, but, in that event, a justice may at any time take such recognizance or security from the defendant as he thinks sufficient and order that the defendant be discharged from prison.

(3) No order shall be made requiring the defendant to enter into or give a recognizance or security or forfeiting a recognizance or security if the court is satisfied that the defendant has not and has not had and could not by reasonable effort have had the means and ability to comply with the maintenance order.

Power to commit for failure to pay maintenance

169. (1) Where a court of summary jurisdiction is satisfied, upon complaint made by or on behalf of any person for whose benefit a maintenance order has been made, that arrears of maintenance under the order are payable by the defendant, the court may order that the defendant be committed to prison in default of payment of the arrears for such term, not exceeding six months, as the court thinks proper in the circumstances.

(1a) Upon the hearing of a complaint specifying a certain sum of money as arrears of maintenance, a court of summary jurisdiction shall, upon being satisfied by the complainant that a further sum of money has accrued under the order since the date of the complaint, amend the sum specified in the complaint as arrears of maintenance to include that further sum.

(2) The defendant shall not be liable to serve a term of imprisonment because of his failure to pay an amount of arrears of maintenance in respect of which he has already served a term of imprisonment pursuant to an order made under this section, but the liability to pay any such arrears shall not be discharged by imprisonment in respect thereof and the amount of any such arrears shall, until paid, remain a sum that may be recovered under any other provision of this Act.

(3) Where the court orders a person to be committed to prison under subsection (1) of this section, the court or a justice may, upon the making of the order or at any time thereafter, order that the issue of the warrant of commitment shall be suspended upon the condition that the defendant makes such payments in respect of the arrears of maintenance as are specified by the court, and duly pays all sums becoming payable under the maintenance order or the order for costs after the order for commitment.

(4) Where—

(a) the issue of a warrant of commitment has been suspended under this section;

and

(b) a court of summary jurisdiction, upon complaint made by or on behalf of the person for whose benefit the maintenance order was made, is satisfied that payment by the defendant of the maintenance is in arrears in breach of the condition of the suspension,

the court may issue the warrant of commitment or may order that the issue of the warrant be further suspended upon the condition that the defendant make such payments in respect of the arrears of maintenance that have accrued up to the time of the hearing as are specified by the court, and duly pays all sums becoming payable under the maintenance order or the order for costs after the order for further suspension.

(5) Notwithstanding anything to the contrary in any Act where an order has been made under this section committing the defendant to prison in respect of arrears of maintenance and it appears to the clerk of the court of summary jurisdiction to which application is made for the issue of a warrant of commitment that the amount of the arrears of maintenance in respect of which the commitment order was made has been

reduced, the fact of such reduction shall be stated in the warrant of commitment, and the term of imprisonment for which the defendant may be committed shall be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days in the term of imprisonment as the amount paid bears to the whole arrears of maintenance.

(6) Notwithstanding anything to the contrary in any Act or in any warrant of commitment, where any person is imprisoned for non-payment of arrears of maintenance, he may pay or cause to be paid to the manager of the prison in which he is imprisoned—

(a) the whole of the arrears of maintenance or, having regard to subsection (5) of this section, the amount of those arrears remaining to be paid;

or

(b) any lesser amount,

and in either case the manager shall receive the payment.

(7) Where the amount mentioned in paragraph (a) of subsection (6) of this section is paid to the manager, the manager shall thereupon discharge that person if he is in custody for no other cause.

(8) Where an amount mentioned in paragraph (b) of subsection (6) of this section is paid to the manager, the term of imprisonment fixed by the commitment order shall be reduced by the number of days bearing to the total number of days in the term of imprisonment a proportion that is the same as, or most nearly approximates to, the proportion that the amount paid bears to the whole of the arrears of maintenance and on the expiration of the term as so reduced the person imprisoned shall, if in custody for no other cause, be discharged.

(9) A court shall not make an order committing the defendant to prison or issue a warrant of commitment if it is satisfied—

(a) that the defendant has not and has not had and could not by reasonable effort have had the means and ability to pay the amount of the arrears of maintenance;

or

(b) that for any other reason payment of the arrears of maintenance should not be enforced by imprisonment.

(10) Where a court referred to in this section is aware that a court has previously refused to make an order committing the defendant to prison or to issue a warrant of commitment under this section for non-payment of a sum (in this subsection referred to as "the original sum") included in the amount of arrears of maintenance in respect of which the complaint is made, the court shall only have regard to the amount by which the sum still due and unpaid exceeds the original sum unless it is satisfied that, since that refusal, the means and ability of the defendant to pay the original sum have so altered as to make it reasonable for him now to be committed to prison for non-payment of the original sum.

Warrant may be issued upon complaint enforcing maintenance order

170. Upon a complaint made in connection with the enforcement of any maintenance order, a justice may, instead of issuing a summons, issue a warrant under his hand for the apprehension of the person against whom the complaint is made, and for

the detention of that person until the hearing of the complaint, unless he enters into a recognizance, with or without sureties, in such sum as the justice directs, conditioned upon his appearance at the hearing of the complaint.

Registration of arrears in Local Court of Adelaide

171. (1) Where a maintenance order has been made and it appears to a court of summary jurisdiction, after consideration of evidence given on oath, that default has been made by the defendant in making the payments directed by the maintenance order, the court may, upon application by or on behalf of the Director-General or any person for whose maintenance, or benefit, the order was made, and subject to subsection (5) of this section, grant a certificate stating the amount due under the maintenance order at the date thereof without requiring notice of the application to be given to the defendant.

(2) The Director-General or person for whose maintenance, or benefit, the maintenance order was made, may file the certificate or cause the certificate to be filed in the Local Court of Adelaide and the clerk of the court shall enter judgment for that person in the Record Book of the court for the amount stated in the certificate to be due together with the fees paid for the certificate and for filing and entering the judgment and shall forthwith send notice in writing of the entry of the judgment to the clerk of the court of summary jurisdiction at the place where payments under the maintenance order are for the time being required to be made.

(3) Subject to this section, the judgment may be enforced in any manner in which a final judgment in an action in the local court may be enforced.

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

(5) Where a court has suspended a maintenance order and ordered that any moneys owing under the maintenance order shall not be recoverable during a period for which the order is suspended, no certificate shall be issued in respect of those moneys under this section.

(6) Subject to this Act, rules of court may be made under the *Local and District Criminal Courts Act, 1926-1971*, prescribing the practice and procedure to be observed in connection with the filing of certificates and the entering and enforcement of judgments in pursuance of this section.

Disobedience of order and quitting State

172. Every person who disobeys or neglects to comply with any maintenance order made against him under this Act and goes to reside beyond the State, either permanently or temporarily, shall be guilty of a misdemeanour, punishable by imprisonment for any period not exceeding twelve months.

Desertion of child under certain circumstances a misdemeanour

173. Every near relative liable to maintain any child who leaves the child without, or fails to provide the child with, adequate means of support, and goes to reside either temporarily or permanently, outside the State, shall be guilty of a misdemeanour, punishable by imprisonment for any period not exceeding twelve months.

Warrant for arrest of deserter

174. (1) Upon complaint on oath by any officer of the Department, that he has reasonable grounds for believing that any person is about to commit a misdemeanour under this Subdivision any justice, if satisfied that there are reasonable grounds for believing that the misdemeanour has been or is about to be committed, may issue his warrant for the apprehension of the person complained against.

(2) Upon the hearing of a complaint made under this section a court of summary jurisdiction may hear and determine the matter in a summary way, and, if satisfied that the defendant was about to commit the offence mentioned in the complaint may order the defendant to find an adequate surety or security to the satisfaction of the court that he will comply with the maintenance order, or that he will not leave the child without, or will provide the child with adequate means of support.

(3) The court, in default of such a surety or security being found, may commit the defendant to prison for any term not exceeding six months.

(4) A justice may at any time determine the sufficiency of any proposed sureties, or security, and in what manner the security is to be given, and upon being satisfied that security has been duly made and perfected, order the discharge of that person from prison.

*Subdivision 2—Attachment of Earnings***Interpretation**

175. (1) In this Subdivision, except where the context or subject matter or some other provision requires a different construction—

“attachment of earnings order” means an order made under section 176 of this Act or such an order as varied from time to time:

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

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

(a) by way of wages or salary (including any fees bonus, commission, overtime pay, any payment in lieu of leave or other emolument 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 does not include any pension, benefit or sum payable to the defendant under the *Social Security Act 1947*, the *Repatriation Act 1920* or the *Seamen's War Pensions and Allowances Act 1940* of the Commonwealth:

“employer”, in relation to a defendant, means a person (including the Crown whether in right of the Commonwealth or in right of the State, a Minister of the Crown, whether in right of the Commonwealth or in right of the State and any statutory authority representing the Crown whether in right of the

Commonwealth or in right of the State) by whom, as a principal and not as a servant or agent, earnings are payable or likely to become payable to the defendant:

“net earnings”, in relation to a pay-day, means the amount of the earnings becoming payable by a particular employer on that pay-day, after deduction from those earnings of any sum deducted by that employer, being a deduction of a prescribed class:

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

“pay-day” means a day 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 subdivision—

(a) a reference to a person entitled to receive payments under a maintenance order shall be read as 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 shall be read as including a reference to proceedings in which the order may be made.

Application for attachment of earnings order

176. (1) An officer of the Department or a person entitled to receive payments under a maintenance order may apply in writing—

(a) to the court that made the order;

or

(b) to any court in which the order is for the time being enforceable or in which further proceedings in relation to the order may be brought under this Act,

for an attachment of earnings order.

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

(3) If the court is satisfied that the defendant is a person to whom earnings are payable or are likely to become payable and that the defendant has persistently failed to comply with the requirements of the order, or that, at the time when the application was made, there was due under the maintenance order and unpaid an amount equal to not less than—

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

or

(b) in any other case—two payments,

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

(4) An attachment of earnings order shall specify, either generally or in relation to any particular pay-day or pay-days, the normal deduction rate, that is to say, the rate at which the court considers it to be reasonable that the earnings to which the order relates should be applied in satisfying the requirements of the maintenance order but not exceeding the rate that appears to the court to be necessary for the purpose of—

(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.

(5) An attachment of earnings order may specify a higher normal deduction rate to apply for a specified number of pay-days after the order comes into force and a lower normal deduction rate to apply to any other pay-days.

(6) 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 earnings to which the order relates should not be reduced by a payment under the order.

(7) An attachment of earnings order shall provide that payments under the order are to be made to the Director-General at his office at Adelaide.

(8) 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:

(9) Upon the making of an attachment of earnings order by a court, the clerk of the court shall cause a copy of the order to be served on—

(a) the defendant;

(b) the person to whom the attachment of earnings order is directed;

and

(c) if an officer of the Department is not a party to the application for the order, the Director-General,

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

Employer to make payments under order

177. (1) An employer to whom an attachment of earnings order is directed shall, so long as the order is in force and the net earnings of the defendant in relation to each pay-day after the making of the order exceed the amount of the protected earnings of the defendant in relation to that pay-day, pay to the Director-General, so far as the amount of the excess permits, the normal deduction in relation to that pay-day, but where—

(a) on any such pay-day, the amount of that excess is insufficient to permit the payment of the normal deduction in relation to that pay-day;

or

(b) in respect of any such pay-days the net earnings of the defendant were less than the protected earnings of the defendant and the amount by which those net earnings were less than those protected earnings has not been paid to the defendant,

the employer shall, so long as the order is in force, and if on any subsequent pay-day the net earnings of the defendant are sufficient after providing, if necessary, for the making good of any deficiency in the protected earnings referred to in paragraph (b) of this subsection, pay to the Director-General the normal deduction in relation to that subsequent pay-day and, so far as the balance of the defendant's net earnings permits, all the arrears of the normal deductions.

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

Power to make attachment of earnings order instead of other order

178. (1) Where any proceedings in relation to, or for the enforcement of, a maintenance order already made are brought in a court of summary jurisdiction the court may, instead of making any other order, make an attachment of earnings order.

(2) Unless the court otherwise orders, where an attachment of earnings order is in force, no warrant or other process shall be issued or order made in proceedings for the enforcement of the maintenance order that were begun before the making of the attachment of earnings order.

Discharge, suspension or variation of order

179. (1) The court by which an attachment of earnings order has been made may, in its discretion, on the application of the defendant, an officer of the Department or a person entitled to receive payments under the maintenance order, make an order discharging, suspending or varying the attachment of earnings order.

(2) Upon the court making an order discharging, suspending or varying an attachment of earnings order, the clerk of the court shall cause a copy of the order to be served on—

(a) the respondent to the application;

(b) the person to whom the attachment of earnings order is directed;

and

(c) if an officer of the Department is not a party to the application, the Director-General,

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

Cessation of attachment of earnings order

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

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

or

- (c) unless the court otherwise orders, upon the making of any other order for the enforcement of the maintenance order in relation to which the attachment of earnings order was made.

(2) Where it appears to the court discharging or varying a maintenance order that arrears under the order will remain to be recovered under the order, the court may 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 of the court that made the order by virtue of which the attachment of earnings order ceases to have effect shall forthwith give notice accordingly to the Director-General and to 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 shall 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 subsection (3) of this section or a copy of the discharging order, as the case may be, is served on him.

Compliance with order

181. An attachment of earnings order made under this Subdivision shall have priority over any other order directed to the defendant's employer with respect to any earnings payable, or likely to become payable, to the defendant, and the defendant's employer shall, notwithstanding anything in any other law, but subject to this Subdivision comply with the order.

Where two or more orders are in force

182. (1) Where, on any occasion on which earnings become payable to a defendant, there are in force two or more orders for the attachment of those earnings (whether made under this Act or otherwise) the person to whom the orders are directed—

- (a) shall comply with those orders according to the respective dates on which they took effect and shall disregard any order until each earlier order has been complied with;

and

- (b) shall comply with any order as if the earnings to which the order relates were the residue of the defendant's earnings after the making of any payment under any earlier order.

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

Notice to defendants of payments made

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

(2) Where a person served with an attachment of earnings order directed to him—

(a) is not the defendant's employer at the time of service of the order;

or

(b) is the defendant's employer at that time but subsequently ceases to be the defendant's employer,

that person shall give notice in writing accordingly to the Director-General and the clerk of the court that made the order, and shall give that notice—

(i) where paragraph (a) of this subsection applies forthwith after service on that person of the order;

and

(ii) where paragraph (b) of this subsection applies forthwith after that person ceases to be the defendant's employer.

Determination as to what payments are earnings

184. (1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed, determine whether payments to the defendant of a particular class or description specified in the application are earnings for the purpose of that order.

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

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

Service

185. Any order or document that is required or permitted to be served on a person under this Subdivision may be served on that person—

(a) by delivering a copy of it to that person;

(b) by leaving a copy of it at the usual or last known place of residence or business of that person with some person, apparently over the age of 16 years, who apparently resides in that place of residence or is employed at that place of business;

or

(c) by sending a copy of it, by registered post, to that person's last known place of residence or business.

Offence

186. (1) Any person who fails to comply with a requirement of this Subdivision or of any attachment of earnings order under this Subdivision that is applicable to him shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(2) It shall be a defence to a prosecution for an offence arising under subsection (1) of this section if the defendant proves that he took all reasonable steps to comply with the requirement or order.

(3) Subsection (1) of this section does not apply to the Crown in right of the Commonwealth or in right of the State.

Dismissing an employee, etc., by reason of the making of an attachment of earnings order

187. (1) Any 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 shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(2) Subsection (1) of this section does not apply to the Crown in right of the Commonwealth or in right of the State.

(3) Where any person is convicted of an offence arising under this section, the court by which he is convicted may order that the employee be reimbursed any wages lost by him and may also direct that the employee be reinstated in his old position or in a similar position.

(4) Any amount ordered to be reimbursed under subsection (1) of this section may be recovered from the person convicted as if it were a penalty to which that person is liable under this section.

Application of Subdivision

188. This Subdivision shall have effect in relation to a defendant notwithstanding any Act or law that would otherwise prevent the attachment of his earnings.

Payments by Crown, etc.

189. The provisions of this Subdivision shall have effect in relation to deductions from earnings falling to be paid by the Crown whether in right of the Commonwealth or in right of the State a Minister of the Crown whether in right of the Commonwealth or in right of the State or a statutory authority representing the Crown whether in right of the Commonwealth or in right of the State, and those earnings shall be treated as falling to be paid by the permanent head or principal officer of the Department, office or other body concerned.

Subdivision 3—General

Provision where defendant supported wife, husband or child during any period

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

Duties of clerk of court in relation to orders

191. Upon application made to him by or on behalf of any person for whose maintenance or for whose benefit a maintenance order is enforceable in the State, the clerk of the court of summary jurisdiction by which the order was made or in which it is enforceable or in which further proceedings in relation to the order may be brought shall, subject to this Act, take all steps necessary or expedient to assist in the enforcement of the order on behalf of that person.

Penalty for molesting child contrary to interstate custody order

192. (1) Where an order made in any other State or a Territory of the Commonwealth under any Act or ordinance corresponding with this Act commits the legal custody of a child to the father or mother of the child, any person who in this State, without just cause or excuse, molests or interferes with or attempts to molest or interfere with, the child contrary to the order for custody or, having the care or control of the child in this State, without just cause or excuse, refuses or fails on demand to deliver the child to the person entitled to such custody under the order shall be guilty of an offence against this section.

(2) Any person guilty of an offence against this section shall be liable to a penalty not exceeding two hundred dollars or to imprisonment for a term not exceeding six months.

(3) It shall be a defence to a prosecution for an offence against this section if the defendant satisfies the court that he did not know and could not reasonably be expected to have known of the making of the order in respect of which the offence is alleged to have occurred.

(4) A person who is convicted of an offence against this section may (in addition to, or in lieu of, a penalty under this section) be required forthwith to enter into a recognizance, with or without sureties, in such reasonable amount as the court thinks fit, to abide by the provision of the order and in default of entering into the recognizance, that person may be imprisoned for a term not exceeding three months unless the recognizance is sooner entered into.

Recovery of penalties

193. Proceedings for an offence against this Division may be taken by any member of the police force or any officer of the Department.

Compellability of defendant as witness at hearing of complaint for non-compliance

194. (1) On the hearing of any complaint in which the defendant is charged with non-compliance with any maintenance order, the defendant shall be compellable to give evidence and may be summoned as a witness for that purpose.

(2) The defendant shall not be excused from giving evidence relevant to the matter of the complaint on the ground that the evidence might prove or tend to prove him guilty of the matter alleged or charged against him.

Proof of payment or non-payment under maintenance order

195. Whenever in any proceedings under this Act it is material to inquire whether any, or how much, money has been paid or is owing to the Director-General by any person liable under a maintenance order to make any such payment to the Director-General, any officer of the Department may on oath state his information and belief as to whether any, and how much, money has been paid, or is owing, and the court shall accept that statement as evidence of the facts stated.

DIVISION VIII—RECIPROCAL ENFORCEMENT OF ORDERS

*Subdivision 1—Interpretation and Administration***Interpretation**

196. (1) In this Division unless the contrary intention appears—

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

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

“certified copy”—

(a) in relation to a maintenance order or other order of a court (not being an order made under the *Family Law Act 1975*, as amended, of the Commonwealth)—means a copy of the order certified to be a true copy by an officer of the court that made the order or a copy of such a copy certified to be a true copy by an officer of a court in or by which the order has been registered or confirmed;

(b) in relation to a maintenance order or other order made under the *Family Law Act 1975*, as amended, of the Commonwealth—means a certificate of the order or a copy of the decree nisi issued under the rules made under that Act, or a copy of such a certificate certified to be a true copy by an officer of a court in which the order has been registered under that Act;

and

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

“Collector”—

(a) in relation to this State—means the Collector of Maintenance or the Deputy Collector of Maintenance or an Assistant Collector of Maintenance appointed under this Act;

and

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

“Collector’s certificate”—

(a) in relation to a South Australian order, or an overseas order enforceable in this State—means a certificate in or to the effect of the prescribed form signed by the Collector;

and

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

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

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

“country having restricted reciprocity” means a reciprocating country that is for the time being declared by a proclamation in force under this Division to have restricted reciprocity with this State:

“court” means a court, or a magistrate, justices or any other person or persons exercising judicial power, whether constituted or acting under the law of this State, any other Australian State, the Commonwealth, or a reciprocating country:

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

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

“interstate order” means a maintenance order—

(a) made in another Australian State by a court of summary jurisdiction or by a magistrate or justices;

or

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

“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 any case where in a proclamation under this Division declaring that country to be a reciprocating country it is declared that maintenance orders made in that country shall be enforceable in this State in accordance with the provisions of this Act from a date specified in the proclamation—a maintenance order made on or after that date in that country by a court of competent jurisdiction;

and

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

“reciprocating country” means a country that is for the time being a country declared by a proclamation in force under this Division to be a reciprocating country for the purposes of this Act:

“South Australian order” means a maintenance order—

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

or

(b) made by the Supreme Court of South Australia (whether under the law of this State or under the law of the Commonwealth) and registered, for the purposes of enforcement in a court of summary jurisdiction in this State (whether under the law of this State or under the law of the Commonwealth).

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

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

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

Collector of Maintenance, Deputy Collector of Maintenance and Assistant Collectors of Maintenance

197. (1) For the purposes of this Division—

(a) the Director-General shall be the Collector of Maintenance;

and

(b) the Minister may appoint, from officers of the Department, a Deputy Collector of Maintenance and as many Assistant Collectors of Maintenance as shall be necessary.

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

Powers of Collector

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

(2) The Collector shall—

(a) receive moneys payable to him pursuant to orders enforceable under this Division and moneys remitted to him by Collectors for other Australian States and authorities in reciprocating countries, and give receipts for moneys so received;

(b) keep proper accounts of all moneys received, remitted or paid by him;

(c) remit to Collectors for other Australian States and to the proper authorities in reciprocating countries moneys received by him in respect of maintenance orders made for the maintenance or benefit of persons residing in those Australian States or in those countries and payable to or for the benefit of those persons, together with proper accounts in respect of those moneys;

and

(d) pay other moneys received by him to the persons entitled thereto,

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

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

Protection of Collector

199. The provisions of sections 190 to 199 (inclusive) of the *Justices Act, 1921*, as amended, shall, so far as those provisions are applicable and with such modifications as are necessary, extend and apply to and in relation to acts done by a person in the exercise of the powers and the performance of the duties of the Collector, the Deputy Collector or an Assistant Collector, in pursuance of this or any other Act.

(2) No order for costs shall be made against the Collector in proceedings for the enforcement of an interstate or overseas order.

Subdivision 2—Interstate Maintenance

Transmission of South Australian orders for enforcement in other States

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

- (a) three certified copies of the 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 other Australian State.

(2) Where—

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

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

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

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

- (a) the order becomes unenforceable in this State;
 - (b) the order remains unenforceable in this State, and no proceedings for the enforcement thereof shall lie, unless and until it ceases to be enforceable in that other Australian State;
- and
- (c) every warrant or other process under this Act arising out of the order previously issued in this State and not executed ceases to have effect.

Enforcement in this State of orders made in other Australian States

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

- (a) three certified copies of an interstate 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 this State,

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

(2) Where a request is so made to the clerk, the clerk shall (whether or not the order is of such a kind as could be made in this State) register the order and file in the court a certified copy of the order and the Collector's certificate.

(3) An interstate order so registered, shall until the registration is cancelled and subject to any order for the suspension thereof, be enforceable in this State both in respect of any arrears payable under the order and of amounts becoming due under the order after it is so registered and the provisions of section 209 of this Act shall apply to and in relation to such order accordingly.

(4) Upon registration of the interstate order, the Collector shall notify the Collector for the other Australian 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 this State—

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

(5) Where—

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

the Collector shall request the clerk of the court of summary jurisdiction at Adelaide known as the Adelaide Magistrates' Court to cancel the registration of the order, and the clerk shall thereupon cancel the registration.

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

(a) the order shall become unenforceable in this State;

(b) the order shall remain unenforceable in this State and no proceedings for the enforcement thereof shall lie, unless and until it is again registered in this State;

and

(c) every warrant or other process under this Act arising out of the order previously issued in this State, and not executed shall cease to have effect.

Collector to notify original State when defendant leaves this State

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

Application for provisional order of variation

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

(2) Where a South Australian order made by a court of summary jurisdiction is enforceable in another Australian State by virtue of any enactment in that State corresponding with this Subdivision, application in writing in accordance with the prescribed form may be made by or on behalf of the complainant or the defendant to any court of summary jurisdiction in this State constituted of a magistrate (being a court that would have jurisdiction to make an order under this Act in relation to the South Australian order) for an order discharging, suspending, varying or reviving the South Australian order.

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

(4) Except where the complainant and the defendant both appear upon the hearing, the evidence of any witness who is examined at the hearing of any such application shall be put into writing and shall be read over to and signed by him.

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

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

204. Where—

- (a) an application is made under subsection (1) of section 203 of this Act by a defendant for the discharge, suspension or variation of an interstate order;
- (b) the defendant did not appear at the hearing of the complaint upon which the original interstate order was made and was not served personally in the Australian State in which the order was made with the summons upon that complaint;

and

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

the defendant may, in addition to raising any matter that could have been raised on an application under section 144 of this Act, raise any ground of opposition that he could have raised in the original proceedings.

Law to be applied

205. In an application under section 203 of this Act, the law to be applied shall, except in matters of practice or procedure, be the law of the Australian State in which the original order was made.

Order of variation to be provisional only

206. (1) Except as provided in subsection (2) of this section, an order made on an application under section 203 of this Act discharging, suspending, varying or reviving a maintenance order shall be provisional only and shall have no effect unless and until confirmed by a competent court of the appropriate Australian State in which the maintenance order was made or is enforceable, and shall be expressed accordingly.

(2) Where the respondent to an application under section 203 of this Act has been served personally in this State with notice of the application or appears on the hearing of the application, any order made on the application shall recite that fact, and the order shall, subject to subsection (4) of section 200 of this Act, be enforceable and have effect forthwith in this State according to the tenor thereof.

(3) Where an order made on an application under section 203 of this Act is expressed to be provisional, the clerk of the court making the provisional order shall send a certified copy of the order, together with the depositions of the witnesses, to the Collector for the other Australian State.

(4) Where an order referred to in subsection (3) of this section has been confirmed (whether with or without modification) by a competent court of the other Australian State, the order shall, subject to subsection (4) of section 200 of this Act, be enforceable and have effect in this State as so confirmed.

Procedure where provisional order remitted by court of other Australian State

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

(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 in its stead.

Confirmation in this State of provisional orders made in other Australian States

208. (1) Where the Collector receives—

(a) a certified copy of—

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

or

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

and

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

the Collector shall, on behalf of the party on whose application the provisional order was made in the other Australian State, apply to the court in this State by or in which the maintenance order was made or is registered for an order confirming the provisional order.

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

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

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

(b) discharge the provisional order;

or

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

(4) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed shall, subject to subsection (4) of section 200 of this Act, be enforceable and have effect in this State as if it were an order validly made by the court in this State.

(5) Each party to an application for confirmation of a provisional order under this section shall have the same right of appeal against an order confirming or discharging the provisional order as he would have had on the making of, or the refusal to make, the original order.

Proceedings for enforcement

209. (1) Where an interstate order is enforceable in this State by virtue of this Subdivision—

(a) all proceedings may be taken for the enforcement of the order;

and

- (b) the provisions of this Part shall, so far as they are applicable and with such modifications as are necessary, apply and have effect,

as if it were a maintenance order made under this Part by the court of summary jurisdiction in which it is registered or by which it was confirmed, as the case may be.

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

(3) Where proceedings are so taken by the Collector, the court shall, unless it is satisfied by evidence to the contrary, presume that the enforcement of the order is required for the actual support of the person for whose benefit the order was made and that since the order became enforceable in this State no moneys have been paid under the order otherwise than to the Collector.

Subdivision 3—Overseas Maintenance

Transmission of maintenance orders made in this State for enforcement in reciprocating countries

210. Where a South Australian order is enforceable in this State but not in any other Australian State and it appears to the Collector that the defendant is resident in, or proceeding to, a reciprocating country, the Collector may send to an appropriate authority in that reciprocating country—

- (a) three certified copies of the South Australian order;
- (b) a Collector's certificate relating to the South Australian 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 South Australian order be made enforceable in that reciprocating country.

Power to make provisional order against person resident in reciprocating country

211. (1) This section applies to an application for a maintenance order under this Act—

- (a) against a husband for the maintenance of his wife;
- (b) against a wife for the maintenance of her husband;

or

- (c) against a near relative of a child for the maintenance of that child.

(2) Upon application made in writing in accordance with the prescribed form to a court of summary jurisdiction constituted of a magistrate for a maintenance order to which this section applies and upon proof that the person against whom the order is sought is resident in, or proceeding to, a reciprocating country, the court may, in the absence of that person, make any order it could have made if a summons had been duly served on that person and he had failed to appear at the hearing.

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

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

(5) Where a court makes an order under subsection (2) of this section, the clerk of the court shall send to the Collector for transmission to the reciprocating country—

(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.

(6) Where any provisional order made under this section has come before a court in a reciprocating country for confirmation and the order has by that court been remitted to the court in this State that made the order for taking of further evidence the court in this State, or, if requested by that court, another court in this State 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 send the depositions of the witnesses to the Collector for transmission to the court in the reciprocating country.

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

(8) Where a court takes evidence in pursuance of a request of another court made under subsection (6) of this section, the first-mentioned court may, for the purposes of subsection (7) of this section have regard to the evidence given at the hearing in the second-mentioned court.

(9) 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 shall be enforceable and have effect in this State as so confirmed as if it were an order validly made under this Part by the court of summary jurisdiction referred to in subsection (2) of this section.

(10) 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.

(11) The applicant shall have the same right of appeal (if any) against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought.

Cancellation of registration

212. Where—

(a) a South Australian order is, under the law of a reciprocating country, enforceable in that reciprocating country;

and

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

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

Registration of overseas orders

213. (1) Where the Collector receives—

(a) a certified copy of an overseas order;

and

(b) a certificate signed by an officer of a court or by an appropriate 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 Collector shall, subject to subsection (2) of this section, if it appears to him that there are reasonable grounds for believing that the defendant is resident in or proceeding to this State send those documents to the clerk of the court of summary jurisdiction at Adelaide known as the Adelaide Magistrates' Court with a request that the order be registered in that court.

(2) In the case of an overseas order originating in a country having restricted reciprocity, the Collector shall not send the documents as required by subsection (1) of this section unless the Collector is satisfied that the order is a maintenance order of such a kind as can be made under this Part.

(3) Upon a request made under subsection (1) of this section, the clerk shall register the order and file in the court a certified copy of the order and the certificate relating thereto.

(4) An overseas order so registered shall, until the registration is cancelled and subject to any order for the suspension thereof, be enforceable in this State, both in respect of any arrears payable under the order and of amounts becoming due under the order after it is so registered.

(5) Upon registration of an overseas order, the Collector shall notify the officer of the court or other appropriate 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 this State—

(a) specifying the amount, if any, of the arrears due under the order;

(b) stating that payments under the order are to be made to the Collector;

and

(c) giving an address at which such payments may be made.

Confirmation of provisional orders made overseas**214. (1) Where—**

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

and

(c) it appears to the Collector that—

- (i) there are reasonable grounds for believing that the defendant is resident in, or proceeding to, this State;

and

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

a summons may, subject to subsection (2) of this section, on the application of the Collector, be issued by any justice calling upon the defendant to appear before a convenient court of summary jurisdiction specified in the summons and constituted of a magistrate to show cause why the provisional order should not be confirmed.

(2) In the case of a provisional order made in a country having restricted reciprocity, the Collector shall not make an application as provided by subsection (1) of this section unless he is satisfied that the order is of such a kind (apart from its provisional nature) as could be made under this Part.

(3) At the hearing the defendant may raise any ground of opposition which he could have raised in the original proceedings or any ground of opposition which he could have raised if those proceedings had been heard in this State, and the statement referred to in subsection (1) of this section shall be conclusive evidence that the grounds referred to in that statement are grounds on which the making of the order might have been refused in the original proceedings.

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

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

or

- (b) 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,

but the court may, if it thinks it just to do so, discharge the provisional order.

(5) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed shall be enforceable and have effect in this State as if it were an order validly made by the court in this State.

(6) 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 this State may be sent to another Australian State

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

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

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

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

- (a) the order shall become unenforceable in this State, and, if the order has been registered in a court in this State, that registration shall be deemed to be cancelled;
- (b) the order shall remain unenforceable in this State and no proceedings for the enforcement thereof shall lie, unless and until it is registered, or again registered, in this State;

and

- (c) every warrant or other process under this Act arising out of the order previously issued in this State and not executed shall cease to have effect.

Registration of overseas orders registered or confirmed in another Australian State

216. (1) Where—

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

and

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

- (i) the order has been registered in, or confirmed by, a court in that Australian State under a law of that Australian State corresponding with this Subdivision;

and

- (ii) the order was, at the date of the certificate, presently enforceable in that Australian State in accordance with that law,

the Collector shall if it appears to him that there are reasonable grounds for believing that the defendant is residing in, or proceeding to, this State, send the documents to the clerk of the court of summary jurisdiction at Adelaide known as the Adelaide Magistrates' Court, with a request that the order be registered in that 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 this Part) register the order and file in the court a certified copy of the order and the Collector's certificate.

(3) An overseas order so registered shall, until the registration is cancelled, be enforceable in this State, both in respect of any arrears payable under the order and of 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 the appropriate court or the other appropriate 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 this State—

(a) specifying the amount, if any, of the arrears due under the order;

(b) stating that payments under the order are to be made to the Collector;

and

(c) giving an address at which such payments may be made.

Transmission of documents where defendant not in this State

217. Where the Collector receives documents relating to an overseas order (including a provisional order) that have been transmitted to this State for the purpose of having the order made enforceable or confirmed in this State and it appears to him that the defendant is not resident in, or proceeding to, this State but is resident in, or proceeding to another Australian State or a reciprocating country other than that in which the order was made, the Collector may, instead of taking steps with a view to the registration or confirmation of the order in this State—

(a) transmit the documents to the Collector for that other Australian State or an appropriate authority in that other reciprocating country together with such information as he possesses concerning the whereabouts and intended movements of the defendant;

and

(b) give to the officer of the appropriate court or other appropriate 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

218. (1) Where—

(a) an overseas order is registered or confirmed under this Subdivision;

and

(b) the Collector receives a request in writing made by an officer of the Court that made the order or some other appropriate authority in the reciprocating country that the order be made no longer enforceable in this State,

the Collector shall send the request to the clerk of the court of summary jurisdiction at Adelaide known as the Adelaide Magistrates' Court, who shall file the request and, if the order is registered under this Subdivision, cancel the registration of the order.

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

(a) the overseas order shall become unenforceable in this State;

(b) the order shall remain unenforceable in this State unless and until it is registered, or again registered, in this State;

and

(c) every warrant or other process under this Act arising out of the order previously issued in this State and not executed shall cease to have effect.

Proceedings for enforcement

219. (1) Where an overseas order is enforceable in this State by virtue of this Subdivision—

(a) all proceedings may be taken for the enforcement of the order;

and

(b) the provisions of this Part shall, so far as they are applicable and with such modifications as are necessary, apply and have effect,

as if it were a maintenance order made under this Part by the court in this State in which the order is registered or by which it was confirmed, as the case may be.

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

(3) Where proceedings are so taken by the Collector, the court shall, unless it is satisfied by evidence to the contrary, presume that the enforcement of the order is required for the actual support of the person for whose benefit the order was made and that since the order became enforceable in this State no moneys have been paid under the order otherwise than to the Collector.

Defendant in this State may apply for order of variation

220. (1) Where an overseas order is enforceable in this State by virtue of this Subdivision, the defendant may make an application in writing, in accordance with the prescribed form, to a prescribed court of summary jurisdiction constituted of a magistrate for an order discharging, suspending or varying the overseas order, and that court has jurisdiction to hear and determine the application.

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

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

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

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

Discharge, suspension or variation of order made in absence of defendant**221. Where—**

- (a) an application is made by a defendant for the discharge, suspension or variation of an overseas order;
 - (b) the defendant did not appear at the hearing of the proceedings upon which the overseas order was made and was not served personally in the reciprocating country with notice of those proceedings;
- and
- (c) the application is made within six months after service on the defendant, of notice of registration of the order in this State,

the defendant may, in addition to raising any matter that could have been raised on an application under section 144 of this Act, raise any ground of opposition that he could have raised had the proceedings on which the overseas order was made been heard in this State.

Law to be applied

222. In an application under section 220 of this Act the law to be applied shall be the law of this State.

Certain orders to be provisional only

223. (1) Where the court proposes to make an order on an application under section 220 of this Act and any court in the reciprocating country will, if the order is provisional only, have jurisdiction to confirm the order, the order shall be provisional only and shall have no effect unless and until confirmed (either with or without modification) by such a court, and shall be expressed accordingly.

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

(3) Where a court in the reciprocating country confirms (either with or without modification) a provisional order made on an application under section 220 of this Act, the order shall be enforceable and have effect in this State as so confirmed.

(4) Notwithstanding anything contained in this section, if a provisional order made on an application under subsection (2) of section 220 of this Act is confirmed (either with or without modification, by a court of a reciprocating country being a country other than the country specified in the order) in which the defendant is resident at the time of the confirmation, the order shall be enforceable and have effect in this State as so confirmed.

Procedure where provisional order remitted by court in reciprocating country

224. (1) Where a provisional order made in accordance with section 223 of this Act is remitted by a court in a reciprocating country to the court in this State that made the provisional order, for the taking of further evidence, the court in this State, or, if requested by that court, another court in this State, 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 send the depositions of the witnesses to the Collector for transmission 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, that court may rescind the order and may, if it thinks fit, make a fresh provisional order in its stead.

Confirmation in this State of provisional orders of variation made in reciprocating countries

225. (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 South Australian 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 this State by virtue of this Subdivision;

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 in this State by or in which the maintenance order was made, registered or confirmed for an order confirming the provisional order.

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

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

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

(b) discharge the provisional order;

or

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

(4) Where a provisional order is confirmed under this section (whether with or without modification) the order as so confirmed shall be enforceable and have effect in this State as if it were an order validly made by the court in this State.

Power of Governor to declare reciprocating countries

226. (1) Where the Governor 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 South Australian orders may be made enforceable in that country, the Governor may, by proclamation, declare that country to be a reciprocating country for the purposes of this Act.

(2) If it appears to the Governor that the jurisdiction of the courts of a country specified, or to be specified, in a proclamation under subsection (1) of this section to make maintenance orders extends to the making of orders that are not of the same kind

as orders that may be made in this State under this Part he may, by the same or a subsequent proclamation, declare that that country has restricted reciprocity with this State.

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

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

(5) Where, by virtue of any proclamation made pursuant to this section, 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 this State by virtue of this Subdivision shall cease to be so enforceable and no further proceedings for the enforcement thereof shall lie;

and

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

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

(6) At least once in every year the Collector shall cause to be published in the *Gazette* a list of the names of the reciprocating countries, showing the respective dates upon which they became reciprocating countries, the dates, if any, on or after which maintenance orders made in those countries are enforceable in this State and indicating which of those countries are countries having restricted reciprocity.

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

Subdivision 4—General

Payments to be made to Collector

227. While a maintenance order is enforceable in this State under Subdivision 2 or Subdivision 3 of this Division, all moneys directed by the order to be paid are payable and shall be paid by the person against whom the order is made to the Collector, and the receipt of the Collector for any such moneys shall be a sufficient discharge of the liability of the person to pay those moneys in accordance with the order.

Collector to notify changes in orders enforceable in other Australian States or reciprocating countries

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

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

(a) file the certified copy or notice in the court in which the order affected was made or confirmed or is registered;

and

(b) if the complainant or defendant is resident in this State, cause a copy of the certified copy or notice to be served on the complainant or defendant, as the case may require.

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

(3) This section shall 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 in connection with which the first-mentioned order was made.

Conversion of currency

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

(2) For the purposes of this section, a certificate signed by the Collector, or the Collector for another Australian State, and purporting to be based on information obtained by him from a bank, stating 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 shall be evidence of the matter stated in the certificate.

(3) Where a certificate of a Collector in accordance with subsection (2) of this section has been filed in a court in this State 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 this Division, 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 Division, 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 Division—the day upon which the order is confirmed;
- or
- (c) in relation to an order or notice referred to in section 229 (1)—the day upon which the certified copy of the order or the notice is filed in a court in accordance with that subsection.

Translation of orders and records

231. 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 Division or received in evidence in a court in this State in proceedings under this Division, unless it is accompanied by a translation of the document into the English language certified under the hand of an officer of the court outside the Commonwealth to be a correct translation, or bearing the seal of that court, and, where such a document is accompanied by such translation—

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

Certificate of payment of arrears

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

Evidentiary

233. (1) For the purposes of this Division and in proceedings under or arising out of this Division, 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 Division,

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

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

Service of documents

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

(2) A document required by subsection (4) of section 201, subsection (5) of section 213, subsection (4) of section 216 or subsection (1) of section 229 of this Act to be served on a person may be served on that person—

(a) personally;

or

(b) by sending a copy of it, by post, to that person's usual or last known place of residence or business.

(3) A document that is required or permitted to be served on a person personally under this Division may be served on that person—

(a) by delivering a copy of it to that person;

or

(b) by leaving a copy of it at the usual or last known place of residence or business of that person with some person, apparently over the age of 16 years, who apparently resides in that place of residence or is employed at that place of business.

Audit

235. The accounts of the Collector shall, once at least in every year be audited by the Auditor-General and, for the purposes of this section, the *Audit Act, 1921*, as amended, shall apply and have effect as if the moneys received or held by the Collector were public moneys as defined by that Act.

PART VII

PROVISIONS OF GENERAL APPLICATION

Immunity from liability of persons acting under this Act

235a. (1) A person shall not incur any civil liability for any act or omission done by him in good faith in the exercise or discharge of his powers, functions, duties or responsibilities under this Act.

(2) A liability that would, but for subsection (1), lie against a person shall lie against the Crown.

Limitation upon tortious liability for acts of certain children

236. No liability in tort shall attach to the Minister or any officer of the Department in respect of an act or omission on the part of a child under the guardianship of the Minister pursuant to this Act or any other Act, or a person who is being detained in a training centre or any other place pursuant to the *Children's Protection and Young Offenders Act, 1979* (whether or not the person is on the premises of the training centre or other place at the time he committed the tort), unless the act or omission occurs while the child or person is acting as the servant or agent of the Minister, or that officer and within the scope of his employment or authority as such.

Exclusion of persons from the hearing of certain cases

237. (1) Where in any proceedings there are circumstances that make it desirable, in the interests of the proper administration of justice, that the proceedings, or any part of the proceedings, should not be heard in open court, the court may order that any persons (not being party to the proceedings, their counsel or solicitors, or officers of the Department) be excluded during the hearing of those proceedings, or that part of the proceedings.

(2) At the hearing of a complaint in an affiliation case no person shall be permitted to be present in the court, except the following:—

- (a) the adjudicating judge, magistrate, or justices, and the officers of the court;
- (b) the complainant and the defendant and their respective counsel and solicitors, and the clerks of the counsel or solicitors;
- (c) the mother, sister, or friend of the complainant, if the complainant desires the presence of any such person;
- (d) any person while being examined as a witness;
- (e) the mother, sister, or female friend of any female witness if she desires the presence of any such person while she is being examined as a witness;

and

- (f) officers of the Department,

unless the court thinks fit to permit any other person to be present.

Restriction on publication of reports on affiliation proceedings, etc.

238. (1) Any person who prints or publishes or causes or procures to be printed or published any particulars whatsoever in relation to any complaint or proceedings under this Act arising from the birth of a child outside marriage or concerning an affiliation case, or in relation to any proceedings incidental to such a complaint or proceedings, shall be guilty of an offence against this section.

(2) Any person who sells, or distributes or causes or procures to be sold or distributed or who has in his possession for sale or distribution any newspaper or document containing or purporting to contain any matter or details or particulars the printing or publication of which would be a contravention of this section shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, in respect of each offence, be liable to a penalty not exceeding one thousand dollars or to imprisonment for a term not exceeding six months.

(4) This section does not apply to—

- (a) the printing, sale, distribution or possession of any pleading, transcript of evidence or other document for the purposes of the proceedings;
- (b) the printing or publishing of any notice or report in pursuance of the directions of the adjudicating court;
- (c) any matter that forms part of a genuine series of reports of proceedings in courts of law which reports do not form part of any other publication;

or

- (d) any publication of a technical character primarily intended for circulation amongst members of the legal or medical professions or amongst persons engaged in community welfare work.

(5) No prosecution for an offence against this section shall be commenced by any person without the authority in writing of the Minister.

Institution and conduct of proceedings

239. (1) Where a person is entitled to bring proceedings under this Act, the Director-General may, upon the request of that person, institute and conduct those proceedings in the name, and on behalf, of that person.

(1a) Where proceedings are brought for the discharge, variation or suspension of a maintenance order, the Director-General may, upon the request of the person against whom the proceedings are brought, defend those proceedings.

(2) Any proceedings under this Act that may be taken by or on behalf of the Minister, or the Director-General (including proceedings under subsection (1) of this section) may be taken by an officer of the Department who is authorized by the Director-General to take the proceedings, and any such proceedings may be conducted by that officer, or by any other officer of the Department.

(3) It shall be competent for the Crown Solicitor to represent any party in proceedings under this Act.

* * * * *

Evidentiary provision

240. (1) An apparently genuine document purporting to be an order, authorization or document under the hand or seal of the Minister, or under the hand of the Director-General, shall, in any legal proceedings, be deemed, in the absence of evidence to the contrary to be an order, authorization or document duly made or executed by the Minister or the Director-General, as the case may require.

(2) In any proceedings under this Act taken by an officer of the Department, an allegation that any premises or place referred to in the complaint were or was a home established or licensed under this Act shall, in the absence of evidence to the contrary, be deemed to be proved.

* * * * *

The Director-General may require report

242. (1) The Director-General may require any person whom he believes to be in a position to do so, to furnish him with a report as to the financial circumstances or transactions of—

- (a) any person who has applied for financial assistance under this Act, or on whose behalf such an application has been made;
- (b) any person who is in receipt of any such assistance;

* * * * *

- (d) any person from whom maintenance is sought under this Act;

or

- (e) any person who is pursuant to any provision of this Act, or the order of any court, required to pay any moneys to the Director-General.

(2) A person who fails to comply with a requirement under subsection (1) of this section or who furnishes a report that is false or misleading in any material particular shall be guilty of an offence and be liable to a penalty not exceeding two hundred dollars.

Ascertainment of earnings

243. (1) Where in any proceedings under this Act, it is material to ascertain the earnings of a person, the court may receive as evidence of those earnings a statement in writing signed by—

- (a) the employer of that person;
- (b) a person employed by that employer as manager, secretary, accountant, or in such other capacity as, in the opinion of the court, qualifies him to testify of his own knowledge to the earnings of the person whose earnings are in question;

or

- (c) a member of the police force of this State, any other State or Territory of the Commonwealth, or of the Commonwealth, who has ascertained, or claims in the statement to have ascertained, from a person referred to in paragraph (a) or (b) of this section, any information as to the earnings of that person.

(2) Where in any proceedings under this Act, it is material to ascertain the financial position of any person, the court may receive as evidence of his financial position a statement in writing signed by him.

(3) A document purporting to be a statement in writing under subsection (1) or subsection (2) of this section shall, in any proceedings under this Act, in the absence of evidence to the contrary, be accepted without further proof as a statement under this section.

Appropriation of maintenance payments

244. Any moneys paid in pursuance of an order for maintenance, (whether made in pursuance of this Act, or any other Act or law) shall, subject to any order of a court, or any direction of the defendant, as to the appropriation of the moneys, be deemed to have been paid towards the discharge—

(a) first, of any liability (apart from a liability to pay costs) arising under the order, a liability falling due at an earlier date being discharged before the moneys are applied towards the discharge of a liability falling due at a later date;

and

(b) secondly, towards the discharge of any liability to pay costs in the proceedings in which the order was made.

Evidence of husbands and wives

245. The wife or husband of any person shall be competent and compellable to give evidence for or against that person in any proceedings under this Act.

Officer of Department not to be compelled to give certain evidence, etc.

246. No officer of the Department, or other person holding any office or position under this Act, shall, in any proceedings before a court, be compelled to give evidence, or produce any document relating to any matter in connection with which any officer of the Department or other person has in the course of his duties given advice to, or been consulted by, any person, except—

(a) where the evidence or document relates specifically to the payment or non-payment of maintenance or financial assistance;

or

(b) where the evidence relates to, or the document constitutes, correspondence between an officer of the Department and a party to the proceedings who is not represented by an officer of the Department.

Application of Act to persons residing outside the State

247. (1) Subject to the *Service and Execution of Process Act, 1901*, as amended, of the Commonwealth, the obligations created by this Act may be enforced against defendants who reside outside the boundaries of this State.

(2) A summons or other process issued under this Act may be served either in this State or in any other State or Territory of the Commonwealth.

Continuity of order

248. Subject to this Act, an order made pursuant to this Act is not revoked by a subsequent order unless the subsequent order expressly or by necessary implication revokes or varies the former order.

Orders need not be served

249. Except as otherwise expressly provided by this Act, an order shall be valid notwithstanding that no copy or notice of the order has been served on the defendant.

Protection of property of the Minister

250. (1) Any person who obtains or attempts to obtain from the Minister, the Director-General, the Department or any officer of the Department any pecuniary or other assistance or benefit by means of any false pretence shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or imprisonment for a term not exceeding three months.

(2) Any person who wilfully wastes or damages any property of the Minister shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or imprisonment for a term not exceeding three months.

(3) The provisions of this section are in addition to, and do not derogate from, the provisions of any other Act or law.

Loans by the Director-General to persons in need or distress

250a. The Director-General shall not lend any moneys to a person who is in need or distress unless—

(a) he is of the opinion that the person will have the means to repay the amount of the loan within a reasonable period of time;

and

(b) he and the person enter into a written agreement for the repayment of the loan at such time or times and in such manner as may be specified in the agreement.

Regulations

251. The Governor may make such regulations as are contemplated by this Act or as he thinks necessary or expedient for the purposes of this Act and, without limiting the generality of the foregoing, regulations may be made with respect to the following matters—

(a) the duties, powers, authorities and privileges, of persons employed in the administration of this Act;

(b) the composition, and the meetings and proceedings of any community welfare advisory committee;

(c) the management, control and supervision of homes;

* * * * *

(e) the care, maintenance, education, employment and supervision of children under the guardianship of the Minister pursuant to this Act or any other Act;

(e1) the treatment, education, discipline and control of children detained in training centres or other places pursuant to the *Children's Protection and Young Offenders Act, 1979*;

(f) the visitation of children in homes, or in the custody of foster parents;

(g) communication and correspondence with children in homes or in the custody of foster parents;

(h) the manner in which children under the guardianship of the Minister pursuant to this Act or any other Act may be dealt with;

(i) the provision of wages and rewards for children under the guardianship of the Minister pursuant to this Act or any other Act;

- (j) the management and control of property vested in, or in the control of the Minister;
- (k) the issue of licences and approvals under Part IV;
- (k1) the fixing and collection of fees in relation to the issue and renewal of licences and approvals under Part IV;
- (l) the record to be kept in respect of homes;
- (m) the manner in which a person may apply for assistance under this Act;
- (n) the regulation of any matters relating to blood tests made for the purposes of affiliation cases;
- (o) the regulation of any matters or procedures relating to maintenance or the recovery of moneys in connection with maintenance;

* * * * *

* * * * *

- (r) prescribing penalties, not exceeding two hundred dollars for breach of, or non-compliance with, any regulation.

Offences

252. (1) Proceedings in respect of offences under this Act (not being misdemeanours) shall be disposed of summarily.

(2) A person who contravenes, or fails to comply with, a provision of this Act for which no penalty is prescribed shall, whether or not the contravention or failure to comply is declared to be an offence, be guilty of an offence and liable to a penalty not exceeding \$500.

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APPENDIX

Legislative History

The *Community Welfare Act, 1972*, repealed the following Acts:

Aboriginal Affairs Act, 1962
Aboriginal Affairs Act Amendment Act, 1967
Aboriginal Affairs Act Amendment Act, 1968
Children's Protection Act, 1936
Children's Protection Act Amendment Act, 1961
Children's Protection Act Amendment Act, 1969
Maintenance Act, 1926
Maintenance Act Amendment Act, 1930
Maintenance Act, 1937
Maintenance Act Amendment Act, 1937
Maintenance Act Amendment Act, 1941
Maintenance Act Amendment Act, 1946
Maintenance Act Amendment Act, 1948
Maintenance Act Amendment Act, 1950
Maintenance Act Amendment Act, 1952
Maintenance Act Amendment Act, 1957
Maintenance Act Amendment Act, 1958
Maintenance Act Amendment Act, 1963
Maintenance Act Amendment Act, 1965

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 2 of *The Public General Acts of South Australia 1837-1975* at page 275.

Section 3: repealed by 14, 1986, s. 3(1) (4th Sched.)
 Section 4: amended by 111, 1976, s. 3; 43, 1979, s. 3; 67, 1981, s. 3; repealed by 14, 1986, s. 3(1) (4th Sched.)
 Section 5: amended by 43, 1979, s. 4
 Section 5a: inserted by 67, 1981, s. 4
 Section 6(1): definition of "Aboriginal" repealed by 67, 1981, s. 5(a) definition of "Aboriginal Reserve" repealed by 67, 1981, s. 5(a)
 definition of "assessment centre" repealed and definition of "assessment panel" inserted in its place by 43, 1979, s. 5(a)
 definition of "baby-sitting agency" inserted by 111, 1976, s. 4(a); amended by 67, 1981, s. 5(b); repealed by 21, 1985, s. 4(2) (2nd Sched.)
 definition of "child" amended by 43, 1979, s. 5(b)
 definition of "child born outside marriage" substituted by 102, 1984, s. 8(2) (Sched. Pt. II)
 definition of "child care centre" substituted by 67, 1981, s. 5(c); 21, 1985, s. 4(2) (2nd Sched.)
 definition of "Children's Court" inserted by 43, 1979, s. 5(c)
 definition of "child under the care and control of the Minister" repealed by 43, 1979, s. 5(d)
 definition of "children's home" amended by 111, 1976, s. 4(b); substituted by 67, 1981, s. 5(d)
 definition of "community council" repealed by 14, 1986, s. 3(1) (4th Sched.)
 definition of "Deputy Director-General" amended by 67, 1981, s. 5(e)
 definition of "Director-General" amended by 67, 1981, s. 5(f)
 definition of "family day-care agency" inserted by 67, 1981, s. 5(g); repealed by 21, 1985, s. 4(2) (2nd Sched.)
 definition of "foster care agency" 67, 1981, s. 5(g)
 definition "foster-parent" amended by 67, 1981, s. 5(h)
 definition of "guardian" substituted by 43, 1979, s. 5(e)
 definition of "juvenile court" repealed by 43, 1979, s. 5(f)
 definition of "Juvenile Courts Act" repealed by 43, 1979, s. 5(f)
 definition of "near relative" substituted by 67, 1981, s. 5(i)
 definition of "neglected child" repealed by 43, 1979, s. 5(g)
 definition of "preliminary expenses" amended by 14, 1986, s. 3(1) (4th Sched.)
 definition of "relative" substituted by 67, 1981, s. 5(j)
 definition of "review board" repealed and definition of "review panel" inserted in its place by 14, 1986, s. 3(1) (4th Sched.)
 definition of "step-father" repealed by 67, 1981, s. 5(k)
 definition of "step-mother" repealed by 67, 1981, s. 5(k)
 definition of "step-parent" inserted by 67, 1981, s. 5(k)
 definition of "uncontrolled child" repealed by 43, 1979, s. 5(h)
 Part II comprising ss. 7 - 23 and headings amended by 111, 1976, s. 5; repealed and ss. 7 - 21 and headings inserted in its place by 67, 1981, s. 6

Section 9(1):	amended by 14, 1986, s. 3(1) (4th Sched.) Part III comprising ss. 24 - 36 and headings repealed and ss. 22 - 24 and headings inserted in its place by 67, 1981, s. 6 Part IV comprising ss. 37 - 82f and headings amended by 111, 1976, ss. 6 - 16; 43, 1979, ss. 6 - 30; repealed and ss. 25 - 94 and headings inserted in its place by 67, 1981, s. 6
Section 26(3):	amended by 30, 1988, s. 3
Div. heading preceding section 27:	amended by 30, 1988, s. 4
Section 27(3):	amended by 30, 1988, s. 5
Section 27(7):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 29(2) and (3):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 32(1):	amended by 30, 1988, s. 6
Section 48(4):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 51(3) - (5):	amended by 14, 1986, s. 3(1) (4th Sched.)
	Subdivision 5 of Division II of Part IV comprising ss. 57 - 61 and heading repealed by 21, 1985, s. 4(2) (2nd Sched.)
	Subdivision 6 of Division II of Part IV comprising ss. 62 - 64 and heading repealed by 21, 1985, s. 4(2) (2nd Sched.)
	Subdivision 7 of Division II of Part IV comprising ss. 65 - 72 and heading repealed by 21, 1985, s. 4(2) (2nd Sched.)
Sections 76 and 77:	amended by 14, 1986, s. 3(1) (4th Sched.) Section 79: repealed by 21, 1985, s. 4(2) (2nd Sched.) Section 82(1): amended by 30, 1988, s. 7 Section 83(1): repealed by 79, 1984, s. 6 Part V comprising ss. 84 - 89 and heading repealed by 67, 1981, s. 7
Section 84(4):	substituted by 14, 1986, s. 3(1) (4th Sched.)
Div. heading preceding section 86:	amended by 30, 1988, s. 8
Section 90:	inserted by 111, 1976, s. 17
Section 91(1):	amended by 30, 1988, s. 9(a)
Section 91(2):	substituted by 30, 1988, s. 9(b)
Headings preceding section 92:	substituted by 67, 1981, s. 8
Sections 92 - 97:	repealed by 67, 1981, s. 9
Section 98:	amended by 43, 1979, s. 31; substituted by 67, 1981, s. 9
Section 99(2):	amended by 43, 1979, s. 32; 14, 1986, s. 3(1) (4th Sched.)
Section 99(3):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 100(1):	amended by 67, 1981, s. 10
Section 101(3):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 106:	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 109(1):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 110(3):	amended by 67, 1981, s. 11
Section 112(3):	amended by 67, 1981, s. 12(a) - (c)
Section 112(4) and (5):	substituted by 67, 1981, s. 12(d)
Section 112(7):	amended by 67, 1981, s. 12(e), (f)
Section 112(8):	amended by 67, 1981, s. 12(g)
Section 112(9):	amended by 67, 1981, s. 12(h) - (j)
Section 112(9a):	inserted by 67, 1981, s. 12(k)
Section 112(10):	amended by 67, 1981, s. 12(l), (m)
Section 112(11):	substituted by 67, 1981, s. 12(n)
Section 112(12):	amended by 67, 1981, s. 12(o)
Heading preceding section 114:	amended by 67, 1981, s. 13
Sections 114 - 116:	repealed by 67, 1981, s. 14 Division II of Part VI comprising ss. 118 - 129 and heading amended by 43, 1979, s. 33; repealed by 67, 1981, s. 15
Section 131(1):	amended by 67, 1981, s. 16
Section 131(1)(a):	repealed by 67, 1981, s. 16(b)
Section 132:	repealed by 67, 1981, s. 17
Section 133(1):	amended by 67, 1981, s. 18
Section 134:	amended by 67, 1981, s. 19
Section 135:	substituted by 67, 1981, s. 20
Section 137:	repealed by 67, 1981, s. 21
Section 139:	repealed by 67, 1981, s. 22
Section 140:	amended by 67, 1981, s. 23; 14, 1986, s. 3(1) (4th Sched.)
Section 142:	amended by 43, 1979, s. 34
Section 145(1) and (2):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 151:	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 154(2):	substituted by 67, 1981, s. 24(a)
Section 154(2a):	inserted by 67, 1981, s. 24(a); amended by 14, 1986, s. 3(1) (4th Sched.)
Section 154(4):	amended by 67, 1981, s. 24(b)
Section 155:	amended and redesignated to read as s. 155(1) by 67, 1981, s. 25; amended by 14, 1986, s. 3(1) (4th Sched.)
Section 155(1)(c):	repealed by 67, 1981, s. 25(b)
Section 155(2):	inserted by 67, 1981, s. 25(d)

Section 156(1):	amended by 14, 1986, s. 3(1) (4th Sched.)
Sections 162 and 163:	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 165(1):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 168:	substituted by 67, 1981, s. 26
Section 168(2) and (3):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 169(1):	substituted by 67, 1981, s. 27(a); amended by 14, 1986, s. 3(1) (4th Sched.)
Section 169(3), (5) - (10):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 169(4):	substituted by 67, 1981, s. 27(b)
Section 169(9):	substituted by 67, 1981, s. 27(c)
Section 169(10):	amended by 67, 1981, s. 27(d)
Section 170:	amended by 67, 1981, s. 28
Section 171(1) - (3):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 172:	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 174(3) and (4):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 175(1):	definition of "earnings" amended by 14, 1986, s. 3(1) (4th Sched.) definition of "net earnings" substituted by 67, 1981, s. 29 definition of "pay-day" amended by 14, 1986, s. 3(1) (4th Sched.)
Section 183(2):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 185:	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 193:	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 196(1):	definition of "certified copy" amended by 67, 1981, s. 30
Section 200(1):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 201(3):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 203(1) and (2):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 207(1) and (2):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 208(4):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 210:	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 211(2), (5) - (7):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 213(4):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 214(1) and (5):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 216(3):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 220(1):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 224(2):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 225(4):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 226(4):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 229(3):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 230(5):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 234(2):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 234(3):	substituted by 14, 1986, s. 3(1) (4th Sched.)
Section 235a:	inserted by 67, 1981, s. 31
Section 236:	amended by 43, 1979, s. 35; 67, 1981, s. 32
Section 238(2):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 239(2):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 239(4):	repealed by 43, 1979, s. 36
Section 240(2):	amended by 43, 1979, s. 37; 14, 1986, s. 3(1) (4th Sched.)
Section 241:	repealed by 43, 1979, s. 38
Section 242(1)(c):	repealed by 67, 1981, s. 33
Section 249:	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 250(1) and (2):	amended by 14, 1986, s. 3(1) (4th Sched.)
Section 250a:	inserted by 67, 1981, s. 34
Section 251:	amended by 43, 1979, s. 39; 67, 1981, s. 35(a), (c), (d); 14, 1986, s. 3(1) (4th Sched.)
Section 251(d):	repealed by 67, 1981, s. 35(b)
Section 251(p):	repealed by 67, 1981, s. 35(e)
Section 252(2):	amended by 67, 1981, s. 36; substituted by 14, 1986, s. 3(1) (4th Sched.)
Schedule:	repealed by 14, 1986, s. 3(1) (4th Sched.)