

# **FAMILY AND COMMUNITY SERVICES ACT 1972**

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[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]



(Reprint No. 2)

SOUTH AUSTRALIA

**FAMILY AND COMMUNITY SERVICES ACT 1972**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 January 1994.*

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## FAMILY AND COMMUNITY SERVICES ACT 1972

being

Community Welfare Act 1972 No. 51 of 1972  
Assented to 27 April 1972<sup>1</sup>

as amended by

Community Welfare Act Amendment Act 1973 No. 68 of 1973 [Assented to 6 December 1973]<sup>2</sup>  
Community Welfare Act Amendment Act 1975 No. 43 of 1975 [Assented to 10 April 1975]<sup>3</sup>  
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]<sup>4</sup>  
Community Welfare Act Amendment Act 1976 No. 111 of 1976 [Assented to 16 December 1976]<sup>5</sup>  
Community Welfare Act Amendment Act 1979 No. 43 of 1979 [Assented to 15 March 1979]<sup>6</sup>  
Community Welfare Act Amendment Act 1981 No. 67 of 1981 [Assented to 15 October 1981]<sup>7</sup>  
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]<sup>8</sup>  
Children's Services Act 1985 No. 21 of 1985 [Assented to 28 March 1985]<sup>9</sup>  
Statute Law Revision Act 1986 No. 14 of 1986 [Assented to 20 March 1986]<sup>10</sup>  
Community Welfare Act Amendment Act 1988 No. 30 of 1988 [Assented to 21 April 1988]<sup>11</sup>  
Community Welfare (Children) Amendment Act 1993 No. 95 of 1993 [Assented to 4 November 1993]<sup>12</sup>

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

- <sup>1</sup> Came into operation (except Part 4, Div. 2, Subdiv. 6 and s. 112) 1 July 1972: *Gaz.* 29 June 1972, p. 2689; Part 4, Div. 2, Subdiv. 6 was repealed by the Community Welfare Act Amendment Act 1981; s. 112 came into operation 15 January 1987: *Gaz.* 15 January 1987, p. 55.
- <sup>2</sup> Came into operation 20 December 1973: *Gaz.* 20 December 1973, p. 3337.
- <sup>3</sup> Came into operation 12 June 1975: *Gaz.* 12 June 1975, p. 2260.
- <sup>4</sup> Came into operation 29 January 1976: *Gaz.* 29 January 1976, p. 356.
- <sup>5</sup> Came into operation 7 April 1977: *Gaz.* 7 April 1977, p. 1070.
- <sup>6</sup> Came into operation 5 July 1979: *Gaz.* 5 July 1979, p. 4.
- <sup>7</sup> 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.
- <sup>8</sup> Came into operation 14 February 1985: *Gaz.* 14 February 1985, p. 366.
- <sup>9</sup> Came into operation (except Divs. 1, 2, 3 and 6 of Part 3 and Sched. 2) 1 July 1985: *Gaz.* 27 June 1985, p. 2244; Divs. 1 and 6 of Part 3 and part of Sched. 2 came into operation 5 September 1985: *Gaz.* 5 September 1985, p. 700; Div. 2 of Part 3 and further part of Sched. 2 came into operation 12 September 1985: *Gaz.* 12 September 1985, p. 796; Div. 3 of Part 3 and remainder of Sched. 2 came into operation 1 October 1985: *Gaz.* 26 September 1985, p. 944.
- <sup>10</sup> Came into operation (except Scheds. 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.
- <sup>11</sup> Came into operation 1 September 1988: *Gaz.* 25 August 1988, p. 794.
- <sup>12</sup> Came into operation 1 January 1994: *Gaz.* 4 November 1993, p. 2166.

Family and Community Services Act 1972

An Act to promote the welfare of families and the community in this State; and for other purposes.

The Parliament of South Australia enacts as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the Family and Community Services Act 1972.

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Interpretation

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

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\* \* \* \* \*

"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;

\* \* \* \* \*

"authorised officer" means a person authorised by the Minister to exercise the powers of an authorised officer under the provision in which the expression appears;

\* \* \* \* \*

"Chief Executive Officer" means the person for the time being holding, or acting in, the office of Chief Executive Officer of the Department;

"child" means a person who has not attained the age of 18 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;

\* \* \* \* \*

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"**children's residential facility**" means any place where more than three children are, for monetary or other consideration, maintained and cared for on a residential basis apart from their guardians and relatives, but does not include a home maintained by a foster parent;

\* \* \* \* \*

"**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 Family and Community Services;

\* \* \* \* \*

\* \* \* \* \*

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"**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 guardian or relative of the child) who, for monetary or other consideration, maintains and cares for a child on a residential basis, but does not include the licensee of a children's residential facility;

"**guardian**", in relation to a child, means a parent of the child and any person (other than the Minister or the Chief Executive Officer) who is the legal guardian of the child;

\* \* \* \* \*

\* \* \* \* \*

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"**Magistrates Court**" means the Magistrates Court of South Australia;

"**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 money expended in, or provided for, the maintenance of another person and includes any order for the payment of money under Part 6;

"**Minister**" means the Minister for Family and Community Services;

"**near relative**" in relation to a child means a parent or step-parent of the child;

\* \* \* \* \*

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"parent" includes a person who has—

- (a) adopted a child in accordance with the law of this State, or the law of another State or Territory of the Commonwealth; or
- (b) adopted a child in accordance with the law of any other country or State, if the adoption is recognised under the law of this State;

"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;

\* \* \* \* \*

\* \* \* \* \*

\* \* \* \* \*

"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;

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\* \* \* \* \*

"woman" means any female person;

"Youth Court" means the *Youth Court of South Australia*;

\* \* \* \* \*

(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 will, if the marriage is lawful and valid in the place in which it was solemnised, be regarded as husband and wife.

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

- (a) he is so recognised 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 are to 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.

(5) A reference in any other Act or statutory instrument to the Director-General of Community Welfare will be taken to be a reference to the Chief Executive Officer.

*Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.*

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**PART 2  
THE PROMOTION OF FAMILY AND COMMUNITY WELFARE**

**DIVISION 1—ADMINISTRATION**

**Incorporation of the Minister**

7. (1) The Minister for Family and Community Services and his or her successors in office continue to be a corporation sole.

(2) The Minister is, as a corporation sole, capable of—

(a) suing and being sued; and

(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 will, in the absence of evidence to the contrary, be taken 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 Chief Executive Officer such of the Minister's powers, duties, responsibilities and functions under this Act as the Minister thinks fit, and may at any time revoke any such delegation.

(2) The Chief Executive Officer may delegate to the person for the time being holding or acting in the position in the Department of Executive Director, Operations, or to any employee of the Department, any of the powers, duties, responsibilities and functions vested in, or delegated to, the Chief Executive Officer under this Act.

(3) A delegation under this section is revocable at will, and does not prevent the exercise or performance of any power, duty, responsibility or function by the Minister or Chief Executive Officer.

(4) Any power, duty, responsibility or function vested in, or delegated to, the Chief Executive Officer may, if the Chief Executive Officer is absent or otherwise unable to perform the duties of office, be exercised or discharged by the person for the time being holding or acting in the position in the Department of Executive Director, Operations.

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**DIVISION 2—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 organisations;
- (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 welfare services;
- (k) by keeping the public informed as to all the 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 welfare services;
- (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 family and community services;
- (o) by promoting the co-ordination of all family and community services, whether government or non-government, and the efficient use of resources for the provision of those services;

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- (p) by collaborating and consulting with other government departments of this State, with non-government organisations that provide, or support or promote the provision of, family and community 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 family and community 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, must 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, must not discriminate against or in favour of any person on the ground of 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 or her sex, marital status, mental or physical impairment, religion, race or nationality.

(4) The Minister and the Department must, in administering this Act, take into consideration the different traditions, cultural values and religious beliefs of ethnic or racial 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 the Minister thinks fit; and
- (b) establish any facility; and
- (c) acquire land in accordance with the provisions of the *Land Acquisition Act 1969*; and
- (d) perform any other action that may be necessary or expedient for that purpose.

**DIVISION 3—ADVISORY COMMITTEES AND PROGRAMME ADVISORY PANELS**

**Appointment of advisory committees**

**11.** (1) The Minister may appoint advisory committees to advise the Minister on matters pertaining to the administration of this Act.

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

(3) An 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 an advisory committee must be an employee of the Department.

(5) The Chief Executive Officer will 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 an advisory committee will, subject to subsection (2), hold office upon terms and conditions fixed by the Minister.

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

(3) Upon the expiration of his or her first term of office, a member is 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 the Minister thinks fit.

**Procedure, etc.**

**13.** (1) Subject to this Act, and any direction of the Minister, the procedure of an advisory committee will be determined by the committee.

(2) The presiding member must 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 Chief Executive Officer may appoint programme advisory panels to advise him or her on matters pertaining to the services provided by the Department.

(2) The Chief Executive Officer must, on appointing a programme advisory panel, advise the Minister of the appointment and the purposes for which the panel has been appointed.

(3) A panel so appointed will consist of a presiding member and such other members as the Chief Executive Officer 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 holds office on such terms and conditions as the Chief Executive Officer thinks fit.

(6) The Chief Executive Officer may reimburse a member of a programme advisory panel such of the expenses incurred by the member in carrying out the duties of office as the Chief Executive Officer thinks fit.

(7) The Chief Executive Officer will 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 Chief Executive Officer, the procedure of a programme advisory panel will be determined by the panel.

(2) The presiding member must make such reports to the Chief Executive Officer on the deliberations of and conclusions reached by the panel as the Chief Executive Officer may require.

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(3) The Chief Executive Officer must forward to the Minister a copy of any report received from a programme advisory panel.

**DIVISION 4—COMMUNITY AIDES**

**Appointment of community aides**

**16.** (1) The Chief Executive Officer may appoint such persons as he or she thinks fit to act in a voluntary capacity as community aides.

(2) Subject to subsection (3), a community aide will be appointed upon such terms and conditions as the Chief Executive Officer thinks fit and specifies in the instrument of appointment.

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

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

(5) The Chief Executive Officer may, at any time, by instrument in writing addressed to a person appointed as a community aide under this section, remove the person from the office of community aide.

**Duties and functions**

**17.** A community aide has the following duties and functions:

- (a) to act subject to the direction and supervision of an employee of the Department in the establishment and furtherance of programmes designed to promote any aspect of family or community welfare; and
- (b) any other duties and functions that the Chief Executive Officer may determine to be appropriate to a community aide.

**Allowances in respect of expenses**

**18.** The Chief Executive Officer 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 or her duties as the Chief Executive Officer thinks fit.

**Training of community aides**

**19.** The Chief Executive Officer will arrange for a community aide to receive such orientation, education, training, support and supervision as the Chief Executive Officer thinks fit.

**Register**

**20.** (1) The Chief Executive Officer must 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 expiration of a term of office, resignation or removal from office, or any other reason, must be removed from the register.

**DIVISION V—CONSULTATION**

**Consultation**

**21.** (1) The Minister and the Department should, in providing services to the community, where appropriate—

- (a) consult with any Government department, agency or instrumentality and any non-Government organisation that provides similar services to the community; and
- (b) encourage members of the public and organisations to make known to the Department—
  - (i) any comments relating to the services provided by the Department, or the manner in which those services are provided; and
  - (ii) any areas of unmet needs; and
  - (iii) any recommendations for the withdrawal, improvement, extension, variation or rationalisation of any service provided by the Department; and
  - (iv) any other matters relevant to the provision of services by the Department.

(2) The Minister must ensure that appropriate procedures are available to allow the complaints of clients of the Department to be considered and, if appropriate, acted upon by the Department.

**PART 3**  
**THE PROVISION OF FAMILY AND COMMUNITY SERVICES**

**DIVISION 1—PROVISION OF LOCAL SERVICES**

**Provision of services from family and community services centres and other places**

**22.** (1) The Minister must 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 family and community services centre established by the Minister may be used, with the Minister's approval, by any other department, person or agency for the furtherance of the welfare of the local community.

**DIVISION 2—SPECIAL WELFARE FUNDS**

**Special welfare funds**

**23.** (1) The following funds will be maintained by the Minister:

- (a) a fund for the Family and Community Development Programme; and
- (b) a fund for the Early Intervention and Substitute Care Programme.

(2) Each fund will consist of such money as is, from time to time, provided by Parliament for the purpose of the fund and the money appropriated to the fund by the Minister from any other source.

(3) The Minister may apply any portion of the Family and Community Development Programme fund towards the costs incurred, or to be incurred, by any person or group of persons in establishing, operating, maintaining, supporting, 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 Early Intervention and Substitute Care Programme fund towards the costs incurred by any person or group of persons in establishing, operating, maintaining, supporting, promoting or extending—

- (a) a residential care facility for children; or
- (b) a foster care service for children; or
- (c) a service, project or facility designed for the purposes of reducing the occurrence, or mitigating the adverse effects, of the placement of children in residential, foster or similar care apart from their guardians and relatives.

(5) An application for the allocation of money under this section must be made to the Minister in a manner and form approved by the Minister.

(6) The Minister may allocate money under this section on such conditions as the Minister thinks fit.

**DIVISION 3—CONTRACTS FOR SERVICES**

**The Minister may enter into agreements for services**

**24.** (1) The Minister may enter into agreements for the provision or promotion of family or 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; or
- (b) an organisation, established for the purpose of providing or promoting family or 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 satisfied that the other parties to the agreement do not enter into those agreements with the object of making a profit.

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**PART 4  
SUPPORT SERVICES FOR CHILDREN**

**DIVISION 1—CHILDREN'S INTERESTS BUREAU**

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**The Children's Interests Bureau**

**26.** (1) The *Children's Interests Bureau* is established.

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

(3) The functions of the Bureau are—

- (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; and
- (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; and
- (c) to develop within the Department such services for the promotion of the welfare of children as the Minister directs; and
- (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 any Act dealing with the care and protection of children; and
- (d) to monitor, review and evaluate the policies of the Department in relation to children; and
- (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 the Minister's directions, on the work carried out by the Bureau.

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

**DIVISION 2—SERVICES AND FACILITIES FOR CHILDREN**

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*Subdivision 2—Establishment of Certain Facilities and Programmes for Children*

**Establishment of facilities and programmes for children**

**36.** (1) The Minister will establish—

- (a) such training centres and other facilities and programmes as the Minister thinks necessary or desirable for the care, correction, detention, training or treatment of young offenders; and

- (b) such residential care facilities and other facilities and programmes as the Minister thinks necessary or desirable for children who are in need of care and protection; and
- (c) such other facilities or programmes for the care, support, assistance or welfare of children as the Minister thinks fit.

(2) A training centre, residential care facility or other facility established under this section will be under the control of the Minister, and the Chief Executive Officer must ensure that proper standards of administration are observed in the management of every such facility.

(3) All members of Parliament, judges and any other person authorised in writing by the Minister are entitled to visit a training centre, residential care facility or other facility established under this section.

*Subdivision 3—Foster Care and Licensed Foster Care Agencies*

**The purpose of foster care**

**40.** The purpose of the foster care system is to provide for the care of a child in a safe and stable family environment during any period while the child cannot, for any reason, remain within the care of his or her own family.

**Foster parents must be approved**

**41.** A person must not act as a foster parent to a child unless he is or she is approved as a foster parent under this Subdivision.

Penalty: Division 6 fine.

**Application for approval as foster parents**

**42.** In considering any application for approval as a foster parent the Chief Executive Officer must 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 must, in such manner as the Chief Executive Officer thinks fit, satisfy himself or herself as far as reasonably possible—

- (a) that the applicant will have adequate interest in, and affection and respect for, a child placed in his or her care; and
- (b) that the applicant will treat the child in a consistent manner and will provide a safe and stable family environment for the child; and
- (c) that the applicant will understand adequately the developing personality of the child, and will provide opportunities to develop the abilities of the child; and
- (d) that the applicant will provide adequate accommodation for the child and any other material provision necessary for the welfare of the child; and
- (e) that, where appropriate, the applicant will provide opportunities for the child to maintain or recover his or her identity as a member of his or her own family and will allow the child reasonable access to his or her own family; and
- (f) that, where appropriate, the applicant will assist the child to return to his or her own family; and

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- (g) that the applicant is in sound health and is able to withstand the demands of providing foster care; and
- (ga) that the applicant is otherwise a fit and proper person to provide foster care; and
- (h) on any other matters that the Chief Executive Officer may consider relevant.

**Approval of foster parents**

**43.** (1) A person is an approved foster parent for the purposes of this Part, if the person is so approved in writing by the Chief Executive Officer.

(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 or her care.

(3) A foster parent is not permitted to have more than three foster children in his or her care unless the children are all of the same family, or unless the Chief Executive Officer is of the opinion that special reasons exist for permitting a greater number.

(4) A foster parent must not have in his or her care more foster children than the number permitted under the approval.

Penalty: Division 7 fine.

(5) The Chief Executive Officer may give approval under this section subject to such conditions as he or she thinks fit and specifies in the approval.

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

Penalty: Division 7 fine.

**Periodical review of foster parents**

**43a.** The Chief Executive Officer must, in relation to each approved foster parent, ensure—

- (a) that regular assessments are undertaken of the person's role as a foster parent under this Act; and
- (b) that courses of training are made available to the foster parent; and
- (c) that ongoing support and guidance are provided to the foster parent; and
- (d) that proper assessments are made of any requirement of the foster parent for financial or other assistance.

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**Powers of entry**

**45.** The Chief Executive Officer or an authorised officer, 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 child and of ascertaining whether a child is being adequately cared for, and whether the provisions of this Part are being complied with.

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**Cancellation of approval**

**46.** (1) Where, in the opinion of the Chief Executive Officer—

- (a) a child is not being adequately cared for by a foster parent; or
- (b) the provisions of this Part are not being complied with by a foster parent; or
- (c) a foster parent would no longer qualify for approval under section 42; or
- (d) any other proper cause exists for the cancellation of an approval under this Subdivision,

the Chief Executive Officer may cancel the approval of the foster parent.

(2) On the exercise of the Chief Executive Officer's powers under this section to cancel the approval of a foster parent, the person in respect of whom the approval was given ceases to be an approved foster parent.

(3) The Chief Executive Officer must give the foster parent at least 28 days' written notice of his or her intention to cancel the approval.

**Information to be furnished**

**47.** An approved foster parent—

- (a) must furnish the Chief Executive Officer with such information in relation to the foster parent or a child in his or her care as the Chief Executive Officer may require; and
- (b) must—
  - (i) advise the Chief Executive Officer as soon as practicable of a change in the foster parent's address; and
  - (ii) immediately advise the Chief Executive Officer if any person comes to reside with the foster parent; and
  - (iii) immediately advise the Chief Executive Officer if either foster parent, or any person residing with him or her, is charged with an offence punishable by imprisonment.

Penalty: Division 8 fine.

**Licensing of foster care agencies**

**48.** (1) A person must not—

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

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(b) hold himself or herself out to the public as a foster care agency,  
unless licensed as a foster care agency under this section.

Penalty: Division 6 fine.

(2) The Chief Executive Officer will grant a licence under this section to any person who applies in the prescribed manner, if satisfied that the person is a fit and proper person to hold such a licence.

(3) In determining whether or not a person is a fit and proper person to hold a licence under this section the Chief Executive Officer must 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; and
- (b) the system of management within the agency; and
- (c) the procedures proposed by the agency for the selection, approval, training and support of foster parents; and
- (d) the procedures proposed by the agency for the placement and supervision of children; and
- (e) such other matters as may be relevant.

(4) The Chief Executive Officer may grant a licence under this section subject to such terms and conditions as he or she thinks fit and specifies in the licence.

(5) A licence will, subject to this Subdivision, remain in force for a period of 12 months from the day on which it was issued, and may be renewed for successive periods of 12 months.

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

Penalty: Division 7 fine.

**Cancellation of licence**

**49.** (1) If satisfied that proper cause for cancellation of a licence under section 48 exists, the Chief Executive Officer may, by notice in writing served personally or by post upon the licensee, cancel the licence.

(2) The Chief Executive Officer must give a licensee at least 28 days' written notice of his or her intention to cancel the licence.

**Records**

**50.** (1) A licensed foster care agency must maintain the prescribed records.

Penalty: Division 7 fine.

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

Penalty: Division 7 fine.

**Periodical review of foster parents by agencies**

**50A.** A licensed foster care agency must, in relation to each foster parent supported by the agency—

- (a) undertake regular assessments of the person's role as a foster parent under this Act; and
- (b) assess any requirement of the foster parent for financial or other assistance.

Penalty: Division 8 fine.

**Delegation of powers by Chief Executive Officer**

**50B.** (1) The Chief Executive Officer may delegate any of his or her powers or functions under this Subdivision relating to foster parents to a licensed foster care agency.

(2) A delegation under this section—

- (a) may be absolute or conditional; and
- (b) does not derogate from the powers of the Chief Executive Officer to act himself or herself in any matter; and
- (c) is revocable at will by the Chief Executive Officer.

*Subdivision 4—Licensed Children's Residential Facilities*

**Children's residential facilities**

**51.** (1) A person must not maintain a children's residential facility unless the person is the holder of a licence granted under this section in respect of the facility.

Penalty: Division 6 fine.

(2) In determining whether or not to grant a licence under this section to a person, the Chief Executive Officer must have regard to—

- (a) the suitability, qualifications and experience of the person, or persons, who will be maintaining or managing the facility and of any persons who will be employed in the facility; and
- (b) the system of management within the facility; and
- (c) the suitability of the premises proposed to be used; and
- (d) such other matters as may be relevant.

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(3) The Chief Executive Officer may grant a licence under this section subject to such terms and conditions (which will include conditions as to the standards to be observed in the management and operation of the facility) as the Chief Executive Officer thinks fit and specifies in the licence.

(3a) A licensee must not contravene or fail to comply with a condition of the licence.

Penalty: Division 7 fine.

(4) A licence granted under this section will, subject to this Subdivision, have effect for a period of 12 months from the day on which it was granted and may be renewed from time to time for successive periods of 12 months.

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

- (a) a residential facility established by the Minister under this Act; or
- (b) any premises or place in which 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) If satisfied that proper cause for the cancellation of a licence under this Subdivision exists, the Chief Executive Officer may, by notice in writing served personally or by post upon the licensee, cancel the licence.

(2) The Chief Executive Officer must give a licensee at least 28 days' written notice of his or her intention to cancel the licence.

**Register**

**53.** A person licensed under this Subdivision to maintain a children's residential facility must keep a register containing the following particulars with respect to every child received into the facility, so far as those particulars are reasonably ascertainable by the licensee:

- (a) the name, age, place of birth and religion (if any) of the child; and
- (b) the names and addresses of the guardians of the child; and
- (c) the names and addresses of any persons other than the guardians from whom the child was received and their relationship to the child; and
- (d) the date on which the child was received, and the date on which the child left the facility; and
- (e) such other particulars as may be prescribed.

Penalty: Division 7 fine.

**Inspection of facilities**

**54.** (1) The Chief Executive Officer or an authorised officer may at any reasonable time enter and inspect a children’s residential facility.

(2) The licensee of a children’s residential facility must, if so required by the Chief Executive Officer or an authorised officer, produce for inspection the register that the licensee is required to keep under this Subdivision, and must furnish the Chief Executive Officer or an authorised officer with such information in relation to any child as may be required.

(3) A licensee must not fail to comply with a requirement made of him or her under subsection (2).

Penalty: Division 7 fine.

**Agreements**

**55.** (1) A person licensed under this Subdivision must not receive a child into a children’s residential facility to be cared for in that facility unless—

- (a) in the case of a child under the age of 15 years—a guardian of the child has signed an agreement in the prescribed form relating to the period for which the child will reside at the facility and to the care and control of the child during that period; or
- (b) in the case of a child of or above the age of 15 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 facility.

Penalty: Division 7 fine.

(2) The licensee must, at the request of the Chief Executive Officer or an authorised officer, produce any such agreement for inspection.

Penalty: Division 7 fine.

(3) Subsection (1) does not apply in relation to a child who is under the guardianship of the Minister or the Chief Executive Officer or of whom the Minister has the custody.

**Duty of Chief Executive Officer to hear complaints of child in a residential facility**

**56.** (1) A child being cared for in a licensed children’s residential facility or a guardian of any such child may request the Chief Executive Officer to investigate any complaint the child or the guardian may have with respect to the care or control the child is receiving in the residential facility.

(2) The Chief Executive Officer must investigate any complaint made under this section.

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*Subdivision 8—Miscellaneous*

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**Assistance to persons caring for children**

**74.** The Chief Executive Officer may grant to a foster parent or to any other person in whose care a child has been placed pursuant to an order of a court, an exercise of administrative powers under any Act or an agreement made by a family care meeting, such financial or other assistance in relation to the care and maintenance of the child as may be determined by the Chief Executive Officer.

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**Unlawful taking of child**

**76.** (1) 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,

is guilty of an offence.

Penalty: Division 7 fine or division 7 imprisonment.

(2) This section applies to a child detained in any place pursuant to an order of a court or placed in the care of any person pursuant to an order of a court or to the exercise of administrative powers under any Act.

**Unlawful communication with children in training centres or certain other facilities, etc.**

**77.** A person who—

- (a) having entered the premises of a training centre, a children’s residential facility established by the Minister or any other facility established by the Minister under this Part, does not depart from the premises when required to do so by an authorised officer; or
- (b) having been forbidden to do so by the Chief Executive Officer, communicates in any manner with a child who is being detained in or who resides in any such premises,

is guilty of an offence.

Penalty: Division 9 fine.

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**Minister may delegate powers to foster parent**

**80.** (1) Where a child who is under the guardianship of the Minister pursuant to any Act has been in the care of a foster parent for three or more years, the Minister may, by instrument in writing, delegate to the foster parent such of the Minister's powers as guardian of the child as the Minister thinks fit.

(2) A delegation under this section—

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

(b) does not prevent the exercise of the delegated power by the Minister.

(3) The Minister must keep the child, the child's guardians (if their whereabouts are known) and the foster parent informed of any exercise of powers under this section.

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**Payment of money to the Chief Executive Officer**

**84.** (1) The Chief Executive Officer may receive money on behalf of a child.

(2) The Chief Executive Officer must cause any money received on behalf of a child to be deposited in the Treasury in the name of the Chief Executive Officer on account of the child or in any banking account in the name of the child.

(3) All such money deposited in the Treasury will 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 Chief Executive Officer at such times, and for such purposes, as the Chief Executive Officer thinks fit.

(5) Any money held on behalf of a child pursuant to this section is payable to the child on the Chief Executive Officer ceasing to have any direct responsibility for the affairs of the child.

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**PART 6  
MAINTENANCE OBLIGATION**

**DIVISION 1—MAINTENANCE ORDERS**

*Subdivision 1—Orders with respect to Children*

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**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) are 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 are primarily liable under subsection (1) to pay for the maintenance of the child and any step-parent of the child is 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 person is a near relative of a child, and is able to pay for or contribute towards the maintenance or past maintenance of the child, any justice may summon that person to appear before the Magistrates Court, at a time and place to be specified in the summons, to show cause why the person 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 will be made by the Minister.

(3) A justice may, instead of issuing a summons, issue a warrant for the apprehension of any person against whom a complaint has been made under this section, and for the person's detention until the hearing of the complaint, unless that person enters into a bond with or without guarantors, in such sum or sums as the justice directs, conditioned upon the person's 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 will 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 is not 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 prior period.

**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 must 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 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 bond, with or without guarantors, 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 the Magistrates Court, upon complaint made by or on behalf of a woman, is satisfied—

- (a) that she is pregnant by the defendant (not being her husband) or has been delivered of a child 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 Chief Executive Officer 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 must 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 must not receive in evidence the certificate of a legally qualified medical practitioner unless the defendant consents to the admission of that certificate.

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(4) The adoption of a child does not prevent the 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 must—

- (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 money payable for preliminary expenses must be paid to the Chief Executive Officer.

(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), any money paid under the order and not disbursed must 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 money paid under the order and not disbursed must, as directed by the court—

- (a) be paid to the woman; or
- (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 may, at any time while the order is in force, give such directions in writing as it 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 the Magistrates Court, 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 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) is not enforceable under this Act and has no force or effect unless a certified copy of the registration of the birth of the child is produced to the court.

(3) An order made under subsection (1) does 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) must 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) is produced to the court, a Registrar must 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 is compellable to give evidence, and may be summoned as a witness for that purpose.

(2) The defendant is not 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 18 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 may be made under subsection (1) 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) against any number of male persons as provided in that subsection.

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(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 must then be made by the court.

(6) The court will 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 the Minister against one or more male persons over the age of 18 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 the Magistrates Court, 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 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 bond with or without guarantors, 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 18 years will be taken to be proved in the absence of proof to the contrary.

**Power of Chief Executive Officer 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 Chief Executive Officer 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 may 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 Chief Executive Officer accepts a sum of money in settlement of liability under this section, that sum will be retained by the Chief Executive Officer and applied at his or her discretion for the maintenance of the child or for the preliminary expenses in respect of the confinement, or both.

**Provision for blood tests**

**112.**

\* \* \* \* \*

(2) In this section—

"**blood test**" means a test for the purpose of ascertaining the inheritable characteristics of blood.

(3) The Magistrates Court 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) A direction must not be given unless the child is at least six months old.

(5) In any such direction, the court must 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 must also fix a period within which the child, the mother and the defendant, or the child and the defendant, as the case may be, are to attend upon the medical practitioner or analyst so nominated to enable the samples to be taken.

(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), the fees of the medical practitioner or the analyst nominated in the direction and the costs and expenses in connection with the blood tests will, in the first instance, be paid by the Minister.

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

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

(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 the necessary blood samples to be taken for the purposes of the blood tests, the complaint, if made by or on behalf of the mother, must be dismissed, but otherwise must be set down for hearing; and

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

(9a) Where a direction has been given by the 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 (6) upon the medical practitioner or analyst nominated in the direction and to permit the necessary blood samples to be taken 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 must reimburse the Minister to the extent of all money paid by the Minister under subsection (8) 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 that amount may be recovered by the Minister by complaint to the Magistrates Court as a debt due to the Minister by the defendant.

(11) The medical practitioner or analyst nominated in the direction must, 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 the practitioner or analyst.

(12) The medical practitioner or analyst must forward the certificate to the court and a Registrar of the court must, within seven days of the receipt of the certificate, furnish a copy of it to the complainant and to the defendant.

(13) The certificate is admissible as evidence in any proceedings under this Part and is evidence of the facts and conclusions stated in it, but the court must 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 the Magistrates Court 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 must 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

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**Order for payment of medical and like expenses**

117. (1) Where the Magistrates Court, 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; and
- (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 or she 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 Chief Executive Officer for or towards that cost such amount as it thinks reasonable.

(2) For the purposes of subsection (1)—

"**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 of them; 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,

will be taken to be persons for whose maintenance an order is in existence.

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

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**DIVISION 3—JURISDICTION AND POWERS OF MAGISTRATES COURT**

**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, the Magistrates Court has 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 has 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 limits or affects 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 1 upon which an order for maintenance may be made, the Magistrates Court is satisfied that it would make an order for the maintenance of the complainant but for the fact 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 cannot 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 1 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 is not subject to suspension, variation or appeal and remains 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 4—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 cannot be made under this Part in respect of a child who has attained the age of 18 years; and

- (b) except where arrears are due under the order and to the extent of those arrears, an order for the maintenance of a child ceases to have effect when the child attains the age of 18 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 the Magistrates Court made by or on behalf of a child (including a child who has attained the age of 18 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 the child for a profession, trade or occupation in which to earn a livelihood; or
- (b) if the child is unable to earn a livelihood by reason of physical or mental incapacity—for the purposes of maintaining him or her,

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 18 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 21 years; or
- (b) in respect of any physical or mental incapacity occurring after a child attains the age of 18 years.

\* \* \* \* \*

(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 does not prevent the enforcement of the order or the recovery of any money 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.

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(2) Subsection (1) does 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) must 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 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 the necessary blood samples to be taken 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, 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 must—

- (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 the Minister, an allegation in the complaint—

- (a) that the person complained against is a near relative of a child and liable to maintain the child; or
- (b) that the person complained against is able to contribute to the maintenance of the child; or
- (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 any Act, will be taken to be proved in the absence of proof to the contrary.

**DIVISION 5—PROVISIONS RELATING TO THE DISCHARGE, SUSPENSION, VARIATION AND REVIVAL OF ORDERS**

**Application of Division**

**143.** This Division applies and has 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 the Minister 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 taken to have been made (being an order of a kind provided for in this Part), the Magistrates Court 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.

\* \* \* \* \*

(3) An order must 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; or
- (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; or
- (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.

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(6) The fact that the defendant is in default in complying with an order does 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 to appear before the Magistrates Court at a time and place to be appointed in the summons, and must give notice of the summons to the Chief Executive Officer.

(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; or
- (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, must 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) does not authorise the Magistrates Court 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, will 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 does not again take effect unless and until an order reviving it is made under this Division.

(3) Subject to subsection (4), the fact that an order provided for under this Part is suspended does 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 money owing under the order as at the day from which the suspension took or takes effect is not 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, the Magistrates Court may, upon application made by or on behalf of the Minister or 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.

\* \* \* \* \*

(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 will from that day have and (where necessary) be taken 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 6—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 the defendant 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 bringing the defendant 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; and
- (b) those complaints will, 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 will be taken 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.

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**Complaints in affiliation cases**

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

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

**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 money may direct that—

- (a) the money be paid to the Chief Executive Officer or to some other person at a place specified in the order; or
- (b) the money 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 bringing the defendant 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 the defendant's absence, the defendant may, within 28 days after the order comes to the defendant's knowledge, make application to the court to set aside the order and to re-hear the matter of the complaint in respect of which the order was made.

(2) Notice in writing of intention to make any such application must be lodged with the court and a copy of it must 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 or her 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 or her means and ability to comply with the order; or
- (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 the defendant's employer or, if the defendant has more than one employer, of each of them; and
  - (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 or on behalf of the person containing such particulars as are specified in the direction of the person's 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; 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; 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) is admissible in evidence in any proceedings under this Act relating to maintenance.

(4) A person who—

- (a) without reasonable cause or excuse refuses or fails to comply with a direction duly served on him or her under this section; or
- (b) in any statement made or notice furnished to a court pursuant to the provisions of this section, makes a statement that he or she knows to be false or misleading in a material particular or does not believe on reasonable grounds to be true,

is guilty of an offence.

Penalty: Division 7 fine.

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DIVISION 7—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,

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

- (d) to 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) to 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 is, upon the giving of the notice, attached in the hands of the person who has the care, custody and control of it, who is 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 will, for the purposes of this section, be taken 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 of it as the court orders, be paid or handed over to the Chief Executive Officer, 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 must pay or hand it over accordingly, and on doing so, is discharged from all liability to its owner, or any person claiming under the owner 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 is determined.

Attachment may be pleaded

157. (1) Any person who has received any notice attaching money or property in the person's 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 the Magistrates Court 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 the person for the recovery of any such money or property by the owner or any person claiming under the owner.

**Liability of persons contravening order**

**158.** Any person who, after receipt of a notice attaching money or property in his or her 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,

is personally liable to pay to the Chief Executive Officer 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 money due to Chief Executive Officer**

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

(2) The receipt in writing of any such member of the police force is a sufficient discharge for the person from whom the money was received of his or her liability to pay that money to the Chief Executive Officer.

**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* the Chief Executive Officer may lodge with the Registrar-General a caveat signed by the Chief Executive Officer against any dealings with that land, estate or interest.

(2) Particulars of the order must be set out in the caveat and the Registrar-General must register the caveat, and it is not lawful for the Registrar-General without the consent of the Chief Executive Officer to remove or discharge the caveat—

- (a) unless and until satisfied that all money due under the order has been fully paid and satisfied; or
- (b) unless ordered by the Supreme Court, or a Judge of that court, 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, the Magistrates Court may, upon the application of the Chief Executive Officer or any person to whom money is payable under the maintenance order, issue a warrant authorizing the Chief Executive Officer 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 of that estate as the court may direct.

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(2) A person upon whom a warrant under this section is served must pay any money to which the warrant relates to the Chief Executive Officer or some other person named in the warrant and, on doing so, is discharged from all liability to pay that money 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 *feri facias*, and, from the time of registration, binds the estate or interest of the person liable under the order for maintenance in his or her 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 Chief Executive Officer thinks expedient.

**Assurances to purchaser**

**164.** (1) The Chief Executive Officer 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 vests in the purchaser accordingly.

(2) The Registrar-General must 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 is 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 Magistrates Court 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 is entitled to appear and be heard.

(3) The warrant is conclusive evidence that the power to sell is vested in the Chief Executive Officer or in the person named in the warrant.

**Effect of payment under warrant**

**166.** The payment to the Chief Executive Officer or to the person named in any such warrant, is a good discharge to any tenant, purchaser, or other person for all money paid by him or her pursuant to the warrant.

**Application of money 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 must 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 must be applied in or towards future maintenance, or in such other manner as the Magistrates Court may direct.

**Bond or security for compliance with maintenance order**

**168.** (1) The 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 bond with or without guarantors, 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 bond 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 bond or security from the defendant as the justice thinks sufficient and order that the defendant be discharged from prison.

(3) No order may be made requiring the defendant to enter into or give a bond or security or forfeiting a bond 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 the Magistrates Court 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, the Magistrates Court must, 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 is not liable to serve a term of imprisonment because of failure to pay an amount of arrears of maintenance in respect of which the defendant has already served a term of imprisonment pursuant to an order made under this section, but the liability to pay any such arrears is not discharged by imprisonment in respect of those arrears and the amount of any such arrears remains, until paid, 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), 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 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.

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(4) Where—

- (a) the issue of a warrant of commitment has been suspended under this section; and
- (b) the Magistrates Court, on 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 Magistrates Court that the amount of the arrears of maintenance in respect of which the commitment order was made has been reduced, the fact of that reduction must be stated in the warrant of commitment, and the term of imprisonment for which the defendant may be committed will 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 in prison for non-payment of arrears of maintenance, the person may pay or cause to be paid to the manager of the prison—

- (a) the whole of the arrears of maintenance or, having regard to subsection (5), the amount of those arrears remaining to be paid; or
- (b) any lesser amount.

(7) Where the amount referred to in subsection (6)(a) is paid to the manager, the manager must discharge that person if the person is in custody for no other cause.

(8) Where an amount referred to in subsection (6)(b) is paid to the manager, the term of imprisonment fixed by the commitment order will 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 must, if in custody for no other cause, be discharged.

(9) A court must 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 the court 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 must 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 the defendant 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 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 the person enters into a bond, with or without guarantors, in such sum as the justice directs, conditioned upon his or her appearance at the hearing of the complaint.

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**Disobedience of order and quitting State**

**172.** A person who disobeys or neglects to comply with any maintenance order made against him or her under this Act and goes to reside beyond the State, either permanently or temporarily, is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment.

**Desertion of child under certain circumstances an offence**

**173.** A 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, is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment.

**Warrant for arrest of deserter**

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

(2) Upon the hearing of a complaint made under this section the Magistrates Court may, if satisfied that the defendant was about to commit the offence mentioned in the complaint, order the defendant to find an adequate guarantor or security to the satisfaction of the court that the defendant will comply with the maintenance order, or that he or she will not leave the child without, or will provide the child with, adequate means of support.

(3) The court, in default of such a guarantor 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 guarantors, 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.

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*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 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 1991*, the *Veterans' Entitlements Act 1986* 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 is to 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 is to be read as including a reference to proceedings in which the order may be made.

**Application for attachment of earnings order**

**176.** (1) An employee of the Department or a person entitled to receive payments under a maintenance order may apply in writing to the Magistrates Court for an attachment of earnings order.

(2) An application under subsection (1) 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 must 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.

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(6) An attachment of earnings order must 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 the defendant 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 must provide that payments under the order are to be made to the main office of the Department in Adelaide.

(8) An attachment of earnings order must 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 the court must cause a copy of the order to be served on—

- (a) the defendant; and
- (b) the person to whom the attachment of earnings order is directed; and
- (c) if an employee of the Department is not a party to the application for the order, the Chief Executive Officer,

but the order will 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 must, 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 Chief Executive Officer, 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 must, 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), pay to the Chief Executive Officer 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) to the Chief Executive Officer is a valid discharge to the employer 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 the Magistrates Court 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 may 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 Magistrates Court may, in its discretion, on the application of the defendant, an employee of the Department or a person entitled to receive payments under the maintenance order, make an order discharging, suspending or varying an attachment of earnings order.

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

- (a) the respondent to the application; and
- (b) the person to whom the attachment of earnings order is directed; and
- (c) if an employee of the Department is not a party to the application, the Chief Executive Officer,

but the order will 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 ceases to have effect—

- (a) upon being discharged by an order under this Subdivision; or
- (b) subject to subsection (2), 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 will not cease to have effect until those arrears have been paid.

(3) On an attachment of earnings order ceasing to have effect, a Registrar of the court must give notice of that fact to the Chief Executive Officer 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 does not incur any liability in consequence of 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) or a copy of the discharging order, as the case may be, is served on him or her.

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**Compliance with order**

**181.** An attachment of earnings order made under this Subdivision has 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 must, notwithstanding anything in any other law, but subject to this Subdivision, comply with the order.

Penalty: Division 7 fine.

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

(2) For the purposes of this section, an attachment of earnings order that has been varied will be taken 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 must give to the defendant a notice specifying particulars of the payment.

Penalty: Division 9 fine.

- (2) Where a person served with an attachment of earnings order directed to him or her—
- (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 must give notice in writing accordingly to the Chief Executive Officer and to the Magistrates Court.

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Penalty: Division 9 fine.

**Determination as to what payments are earnings**

**184.** (1) The Magistrates Court must, on application by the person to whom an attachment of earnings 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) 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 to the defendant while the application, or any appeal from a determination made on the application, is pending.

(3) Subsection (2) 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; 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; or
- (c) by sending a copy of it, by registered post, to that person's last known place of residence or business.

### **Defence to prosecution under this Subdivision**

**186.** (1) It is a defence to a prosecution under this Subdivision if the defendant proves that he or she took all reasonable steps to comply with the requirement or order.

(2) Offences under this Subdivision do 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) A person who dismisses an employee or injures an employee in his or her employment, or alters an employee's position to his or her prejudice, by reason of the circumstance that an attachment of earnings order has been made in relation to the employee or that the person is required to make payments under such an order in relation to the employee is guilty of an offence.

Penalty: Division 7 fine.

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

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

(4) An amount ordered to be reimbursed under subsection (1) 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 has effect in relation to a defendant notwithstanding any Act or law that would otherwise prevent the attachment of earnings.

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**Payments by Crown, etc.**

**189.** The provisions of this Subdivision 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 will be treated as falling to be paid by the chief executive 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 is 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 Registrar of court in relation to orders**

**191.** Upon application made by or on behalf of any person for whose maintenance or for whose benefit a maintenance order is enforceable in the State, a Registrar of the Magistrates Court must, 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 is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment.

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(3) It is a defence to a prosecution for an offence against this section if the defendant satisfies the court that he or she 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 to enter into a bond, with or without guarantors, in such reasonable amount as the court thinks fit, to abide by the provision of the order and in default of entering into the bond, that person may be imprisoned for a term not exceeding three months unless the bond is sooner entered into.

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**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 is compellable to give evidence and may be summoned as a witness for that purpose.

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

**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 Chief Executive Officer by any person liable under a maintenance order to make any such payment to the Chief Executive Officer, any employee of the Department may on oath state his or her information and belief as to whether any, and how much, money has been paid, or is owing, and the court must accept that statement as evidence of the facts stated.

**DIVISION 8—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* 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* 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;
- (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;
- (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;

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**"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;
- (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 are 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;

- (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 made by a court in this State.

(2) A reference in this Division to a certified copy of an order is, 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, to 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 is to 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 or she will be taken to be resident in that place as well as in the place where he or she 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 Chief Executive Officer is the Collector of Maintenance; and
- (b) the Minister may appoint, from employees of the Department, a Deputy Collector of Maintenance and as many Assistant Collectors of Maintenance as are necessary.

(2) The Deputy Collector of Maintenance and every Assistant Collector of Maintenance 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 has power to do all things necessary or convenient to be done for the enforcement in this State of maintenance orders that are enforceable in this State by virtue of this Division.

(2) The Collector will—

- (a) receive money payable to the Collector pursuant to orders enforceable under this Division and money remitted by Collectors for other Australian States and authorities in reciprocating countries, and give receipts for money so received; and
- (b) keep proper accounts of all money received, remitted or paid by the Collector; and

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(c) remit to Collectors for other Australian States and to the proper authorities in reciprocating countries money received 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 that money; and

(d) pay other money received to the persons entitled to it,

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 is entitled to appear, to be heard, to give evidence and to call, examine and cross-examine witnesses.

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*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; and
- (b) a Collector's certificate relating to the order; and
- (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 or she 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 will, 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) does not prevent a further request under subsection (1) 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), made enforceable in another Australian State—

- (a) the order becomes unenforceable in this State; and
- (b) the order remains unenforceable in this State, and no proceedings for the enforcement of the order lie, unless and until it ceases to be enforceable in that other Australian State; and
- (c) a 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; and
- (b) a Collector's certificate relating to the order; and
- (c) a request in writing that the order be made enforceable in this State,

the Collector must, if it appears to him or her that there are reasonable grounds for believing that the defendant is resident in, or proceeding to, this State, send the documents to the Magistrates Court with a request that the order be registered in that court.

(2) On receiving such a request the court must (whether or not the order is of a kind that 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 is, until the registration is cancelled and subject to any order for its suspension, 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 apply to and in relation to such order accordingly.

(4) Upon registration of the interstate order, the Collector must notify the Collector for the other Australian State accordingly and must 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; and
- (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,

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the Collector must request the Magistrates Court to cancel the registration of the order, and that registration must be so cancelled.

- (6) Where the registration of an interstate order is so cancelled—
- (a) the order is unenforceable in this State; and
  - (b) the order remains unenforceable in this State and no proceedings for the enforcement of it lie, unless and until it is again registered in this State; and
  - (c) a warrant or other process under this Act arising out of the order previously issued in this State and not executed ceases 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, the Collector must notify the Collector in the State in which the order was made of the fact and give such information as he or she 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 the Magistrates Court 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 the Magistrates Court 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 the Magistrates Court for an order discharging, suspending, varying or reviving the South Australian order.

(3) The applicant must cause notice of an application under this section to be served personally or by post not less than 14 days before the hearing of the application, upon the Collector at the main office of the Department in Adelaide, and the Collector must, on receiving 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 must be put into writing and must be read over to and signed by him or her.

(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 may 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 section 203(1) by a defendant for the discharge, suspension or variation of an interstate order; and

- (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, raise any ground of opposition that he or she could have raised in the original proceedings.

#### **Law to be applied**

**205.** In an application under section 203, the law to be applied will, 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), an order made on an application under section 203 discharging, suspending, varying or reviving a maintenance order is provisional only and has no effect unless and until confirmed by a competent court of the appropriate Australian State in which the maintenance order was made or is enforceable, and must be expressed accordingly.

(2) Where the respondent to an application under section 203 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 must recite that fact, and the order is, subject to section 200(4), enforceable and has effect in this State according to its tenor.

(3) Where an order made on an application under section 203 is expressed to be provisional, a Registrar of the Magistrates Court must 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) has been confirmed (whether with or without modification) by a competent court of the other Australian State, the order is, subject to section 200(4), enforceable and has 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 Magistrates Court, the Magistrates Court must, after notice has been given to such persons in such manner as the court thinks fit, proceed to take the evidence, and must 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

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(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 must, on behalf of the party on whose application the provisional order was made in the other Australian State, apply to the Magistrates Court for an order confirming the provisional order.

(2) The Collector must 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; or

(b) discharge the provisional order.

\* \* \* \* \*

(4) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed is, subject to section 200(4), enforceable and has 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 has the same right of appeal against an order confirming or discharging the provisional order as he or she 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 will, 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 Magistrates Court.

(2) The Collector may take any proceedings that are authorized by or by virtue of subsection (1).

(3) Where proceedings are so taken by the Collector, the court will, 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 money has 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; and
- (b) a Collector's certificate relating to the South Australian order; and
- (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; or
- (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 the Magistrates Court 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 the person had failed to appear at the hearing.

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

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

(5) Where the court makes an order under subsection (2), a Registrar of the court must send to the Collector for transmission to the reciprocating country—

- (a) the depositions of the witnesses; and
- (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.

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(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 Magistrates Court, the Magistrates Court must, after notice has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence, and must 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.

\* \* \* \* \*

(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 is enforceable and has effect in this State as so confirmed as if it were an order validly made under this Part by the Magistrates Court.

(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 will 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 has the same right of appeal (if any) against a refusal to make a provisional order as he or she 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 will, 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 must, subject to subsection (2), if it appears to the Collector that there are reasonable grounds for believing that the defendant is resident in or proceeding to this State, send those documents to the 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 must not send the documents as required by subsection (1) 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 being made under subsection (1), the order must be registered and a certified copy of the order and the certificate must be filed in the court.

(4) An overseas order so registered is, until the registration is cancelled and subject to any order for its suspension, 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 must 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; and
- (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); and
- (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,

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a summons may, subject to subsection (2), on the application of the Collector, be issued by any justice calling upon the defendant to appear before the Magistrates Court 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 must not make an application as provided by subsection (1) unless 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 or she could have raised in the original proceedings or any ground of opposition which he or she could have raised if those proceedings had been heard in this State, and the statement referred to in subsection (1) is 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 confirm the provisional order (either with or without modification), 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 is enforceable and has effect in this State as if it were an order validly made by the court in this State.

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**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; and
- (b) a Collector's certificate relating to the order; and
- (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 the Collector does so, the Collector must notify the officer of the appropriate court or the appropriate authority in the reciprocating country of the fact that he or she has so sent the documents.

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

- (a) the order is unenforceable in this State, and, if the order has been registered in a court in this State, that registration will be taken to be cancelled; and
- (b) the order remains unenforceable in this State and no proceedings for its enforcement lie, unless and until it is registered, or again registered, in this State; and

- (c) a warrant or other process under this Act arising out of the order previously issued in this State and not executed ceases 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; and
  - (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 must if it appears to him or her that there are reasonable grounds for believing that the defendant is residing in, or proceeding to, this State, send the documents to the Magistrates Court, with a request that the order be registered in that court.

(2) Upon a request being made under subsection (1), the order must (whether or not it is of such a kind as could be made under this Part) be registered and a certified copy of the order and the certificate must be filed in the court.

(3) An overseas order so registered is, until the registration is cancelled, 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 must notify the officer of the appropriate court or the other appropriate authority in the reciprocating country accordingly, and must 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; and
- (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 or her 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—

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- (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 the Collector 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 the documents have been so transmitted.

**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 must send the request to the Magistrates Court, which must 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 is unenforceable in this State; and
- (b) the order remains unenforceable in this State unless and until it is registered, or again registered, in this State; and
- (c) a warrant or other process under this Act arising out of the order previously issued in this State and not executed ceases 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, 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.

(2) The Collector may take any proceedings that are authorized by or by virtue of subsection (1).

(3) Where proceedings are so taken by the Collector, the court will, 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 money has 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 the Magistrates Court 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 Magistrates Court for an order varying or (if the order has been suspended) reviving, the order.

(3) The applicant must cause notice of an application under this section to be served personally or by post upon the Collector at the main office of the Department in Adelaide not less than 14 days before the hearing of the application.

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

(5) The court must, as far as practicable, hear and determine an application under this section as if it were a similar application under Division V.

**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; and
- (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, raise any ground of opposition that he or she 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 the law to be applied is 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 and any court in the reciprocating country will, if the order is provisional only, have jurisdiction to confirm the order, the order is provisional only and has no effect unless and until confirmed (either with or without modification) by such a court, and must be expressed accordingly.

(2) Where a provisional order is made in accordance with this section, the Collector must 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.

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(3) Where a court in the reciprocating country confirms (either with or without modification) a provisional order made on an application under section 220, the order is enforceable and has effect in this State as so confirmed.

(4) Notwithstanding anything contained in this section, if a provisional order made on an application under section 220(2) 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 is enforceable and has 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 is remitted by a court in a reciprocating country to the Magistrates Court, the Magistrates Court must, after notice has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence, and must 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, 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 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 must, on behalf of the party on whose application the provisional order was made in the reciprocating country, apply to the Magistrates Court for an order confirming the provisional order.

(2) The Collector must 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); or
- (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 is enforceable and has 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) 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, the Governor 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 (2) 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 are 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 (2) 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 ceases to be so enforceable and no further proceedings for its enforcement may lie; and
- (b) a warrant or other process under this Act arising out of any such order previously issued in this State and not executed ceases to have effect,

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

(6) At least once in every year the Collector must 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 will 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, all money directed by the order to be paid is payable and must be paid by the person against whom the order is made to the Collector, and the receipt of the Collector for any such money is a sufficient discharge of the liability of the person to pay that money 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 must 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 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 must—

- (a) file the certified copy or notice in the Magistrates Court; 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) in relation to a maintenance order, the order, event or matter has the same 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 does 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 will be taken 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 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 is evidence of the matter stated in the certificate.

(3) Where a certificate of a Collector in accordance with subsection (2) has been filed in the Magistrates Court in relation to an order, certificate or notice, every copy of that order, certificate or notice served on any person must 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, the Collector must remit such amount in the currency of that country as he or she 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; or
- (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 the 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 must not be used for the purpose of registering an order under this Division or received in evidence in the Magistrates Court 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 a translation—

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

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**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 a similar officer of a reciprocating country in which a maintenance order was made or is enforceable, concerning amounts paid or unpaid under a maintenance order, is evidence of the facts stated in the certificate.

**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; or
- (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,

will, unless the contrary is proved, be taken to be such a certified copy, record, certificate or notice, and must be admitted in evidence without proof of the signature of the person purporting to have signed it or of his or her 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, are admissible in evidence in proceedings under this Act.

**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 must be served on that person personally.

(2) A document required by section 201(4), 213(5), 216(4) or 229(1) 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 must, at least once in every year, be audited by the Auditor-General.

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**PART 7**  
**PROVISIONS OF GENERAL APPLICATION**

**Immunity from liability of persons acting under this Act**

**235A.** (1) No personal liability attaches to a person engaged in the administration of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person lies against the Crown.

**Limitation upon tortious liability for acts of certain children**

**236.** No liability in tort attaches to the Minister or any employee of the Department in respect of an act or omission on the part of a child under the guardianship of the Minister or the Chief Executive Officer or of whom the Minister has custody under any Act, or a person who is being detained in a training centre or any other place pursuant to the *Young Offenders Act 1993* (whether or not the person is on the premises of the training centre or other place at the time he or she 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 employee and within the scope of his or her employment or authority as such.

**Hindering a person in execution of duty**

**236A.** A person who hinders the Chief Executive Officer, an authorised officer or any other person in the execution, performance or discharge of a power, function or duty under this Act is guilty of an offence.

Penalty: Division 7 fine or division 7 imprisonment.

**Impersonating an employee of the Department**

**236B.** A person who falsely represents himself or herself by word or conduct to be an employee of the Department and to be authorised by or pursuant to this Act or any other Act to exercise certain powers is guilty of an offence.

Penalty: Division 7 fine or division 7 imprisonment.

**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 employees 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 only the following persons are permitted to be present in the court:

- (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;
- (f) employees 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) A 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, is guilty of an offence.

Penalty: Division 5 fine.

(2) A person who sells, or distributes or causes or procures to be sold or distributed or who has in his or her 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 is guilty of an offence.

Penalty: Division 5 fine.

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- (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; or
  - (b) the printing or publishing of any notice or report in pursuance of the directions of the adjudicating court; or
  - (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 may 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 Minister 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 Minister may, upon the request of the person against whom the proceedings are brought, defend those proceedings.

(2) Any proceedings that may be taken under this Act may be taken by an employee of the Department.

(3) The Crown Solicitor may represent any party in proceedings under this Act.

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**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 Chief Executive Officer, will, in any legal proceedings, be taken, in the absence of evidence to the contrary, to be an order, authorization or document duly made or executed by the Minister or the Chief Executive Officer, as the case may require.

(2) In any proceedings under this Act taken by an employee of the Department, an allegation that any premises or place referred to in the complaint were or was a children's residential facility established or licensed under this Act will, in the absence of evidence to the contrary, be taken to be proved.

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**The Chief Executive Officer may require report**

**242.** (1) The Chief Executive Officer may require any person whom he or she believes to be in a position to do so, to furnish the Chief Executive Officer 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; or
- (b) any person who is in receipt of any such assistance; or

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- (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 money to the Chief Executive Officer.

(2) A person who fails to comply with a requirement under subsection (1) or who furnishes a report that is false or misleading in any material particular is guilty of an offence.

Penalty: Division 9 fine.

**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; or
- (b) a person employed by that employer as manager, secretary, accountant, or in such other capacity as, in the opinion of the court, qualifies the person to testify of his or her 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), 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 the person's financial position a statement in writing signed by him or her.

(3) A document purporting to be a statement in writing under subsection (1) or (2) will, 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 money paid in pursuance of an order for maintenance, (whether made in pursuance of this Act, or any other Act or law) will, subject to any order of a court, or any direction of the defendant, as to the appropriation of the money, be taken 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 money is applied towards the discharge of a liability falling due at a later date;
- (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 is 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 employee of the Department, or other person holding any office or position under this Act, may, in any proceedings before a court, be compelled to give evidence, or produce any document relating to any matter in connection with which any employee of the Department or other person has in the course of his or her 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 employee of the Department and a party to the proceedings who is not represented by an employee of the Department.

**Application of Act to persons residing outside the State**

**247.** (1) Subject to the *Service and Execution of Process Act 1901* 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 is valid notwithstanding that no copy or notice of the order has been served on the defendant.

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**Protection of property of the Minister**

**250.** (1) A person who obtains or attempts to obtain from the Minister, the Chief Executive Officer, the Department or an employee of the Department any pecuniary or other assistance or benefit by means of any false pretence is guilty of an offence.

Penalty: Division 7 fine or division 7 imprisonment.

(2) A person who intentionally wastes or damages any property of the Minister is guilty of an offence.

Penalty: Division 7 fine or division 7 imprisonment.

(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 Chief Executive Officer to persons in need or distress**

**250A.** The Chief Executive Officer must not lend any money to a person who is in need or distress unless—

- (a) the Chief Executive Officer 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) the Chief Executive Officer 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 are 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 advisory committee;
- (c) the management, control and supervision of training centres, children's residential facilities or other facilities established by the Minister;

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- (e1) the treatment, education, discipline and control of children detained in training centres or other places pursuant to the *Young Offenders Act 1993*;

\* \* \* \* \*

- (i) the provision of allowances for children under the guardianship of the Minister or the Chief Executive Officer or of whom the Minister has custody under any 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 4;

- (k1) the fixing and collection of fees in relation to the issue and renewal of licences and approvals under Part 4;

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- (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 money in connection with maintenance;

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- (r) prescribing fines, not exceeding a division 8 fine, for breach of, or non-compliance with, any regulation.

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**APPENDIX 1**

**LEGISLATIVE HISTORY**

**Repeals**

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*

**Transitional Provisions**

*(Transitional provisions from Community Welfare (Children) Amendment Act 1993, Schedule 1)*

1. In this Schedule—

"a guardianship order" means an order made by the Minister under the repealed provisions placing a child under the Minister's guardianship;

"the repealed provisions" means those provisions of the principal Act repealed by this Act.

2. A guardianship order in force immediately prior to the commencement of this Act remains in force, according to its terms, until discharged by the Minister or by an order of a court.

3. Section 35 of the principal Act (*Discharge of child from guardianship of Minister and appeals*) and any regulations made for the purpose of that section continue to apply (notwithstanding its repeal) in relation to a guardianship order, with the following modifications:

- (a) a reference to the Children's Court will be taken to be a reference to the Youth Court of South Australia;
- (b) a reference to the Director-General will be taken to be a reference to the Chief Executive Officer.

4. The Minister must ensure that the progress and circumstances of a child under a guardianship order are reviewed at least once in each year that the order remains in force.

5. The Minister and the Chief Executive Officer have, in relation to a child the subject of a guardianship order, all the powers and duties that they have in relation to a child under the Minister's guardianship pursuant to the *Children's Protection Act 1993*.

6. A child who was, immediately prior to the commencement of this Act, being detained in hospital pursuant to section 94 of the principal Act, may continue to be so detained in accordance with that section, notwithstanding its repeal.

### Legislative History

- 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.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

<b>Long title:</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 1:</b>	<b>substituted by 95, 1993, s. 3</b>
<b>Section 2:</b>	<b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
Section 3:	repealed by 14, 1986, s. 3(1) (Sched. 4)
Section 4:	amended by 111, 1976, s. 3; 43, 1979, s. 3; 67, 1981, s. 3; repealed by 14, 1986, s. 3(1) (Sched. 4)
<b>Section 5:</b>	amended by 43, 1979, s. 4; <b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 5A:</b>	inserted by 67, 1981, s. 4; <b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 6(1):</b>	definition of "Aboriginal" repealed by 67, 1981, s. 5(a) definition of "Aboriginal Reserve" repealed by 67, 1981, s. 5(a) <b>definition of "adopted child" repealed by 95, 1993, s. 4(a)</b> <b>definition of "assessment centre" repealed and definition of "assessment panel" inserted in its place by 43, 1979, s. 5(a); repealed by 95, 1993, s. 4(b)</b> <b>definition of "authorised officer" inserted by 95, 1993, s. 4(b)</b> <b>definition of "Chief Executive Officer" inserted by 95, 1993, s. 4(b)</b> 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) (Sched. 2) 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. 2) <b>definition of "child care centre" substituted by 67, 1981, s. 5(c); 21, 1985, s. 4(2) (Sched. 2); repealed by 95, 1993, s. 4(c)</b> <b>definition of "Children's Court" inserted by 43, 1979, s. 5(c); repealed by 95, 1993, s. 4(c)</b> definition of "child under the care and control of the Minister" repealed by 43, 1979, s. 5(d) <b>definition of "children's home" amended by 111, 1976, s. 4(b); substituted by 67, 1981, s. 5(d); repealed and definition of "children's residential facility" inserted in its place by 95, 1993, s. 4(c)</b> definition of "community council" repealed by 14, 1986, s. 3(1) (Sched. 4) <b>definition of "Department" substituted by 95, 1993, s. 4(d)</b>

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**definition of "Deputy Director-General"** amended by 67, 1981, s. 5(e); **repealed by 95, 1993, s. 4(d)**

**definition of "Director-General"** amended by 67, 1981, s. 5(f); **repealed by 95, 1993, s. 4(d)**

definition of "family day-care agency" inserted by 67, 1981, s. 5(g); repealed by 21, 1985, s. 4(2) (Sched. 2)

definition of "foster care agency" 67, 1981, s. 5(g)

**definition "foster parent"** amended by 67, 1981, s. 5(h); **substituted by 95, 1993, s. 4(e)**

**definition of "guardian" substituted by 43, 1979, s. 5(e); 95, 1993, s. 4(f)**

**definition of "home" repealed by 95, 1993, s. 4(g)**

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 "maintenance order" amended by 95, 1993, s. 36 (Sched. 3)**

**definition of "Magistrates Court" inserted by 95, 1993, s. 4(g)**

**definition of "Minister" amended by 95, 1993, s. 36 (Sched. 3)**

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) (Sched. 4)

**definition of "parent" substituted by 95, 1993, s. 4(h)**

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) (Sched. 4); repealed by 95, 1993, s. 36 (Sched. 3)**

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 "the repealed Aboriginal Affairs Act" repealed by 95, 1993, s. 36 (Sched. 3)**

**definition of "the repealed Acts" repealed by 95, 1993, s. 36 (Sched. 3)**

**definition of "the repealed Social Welfare Act" repealed by 95, 1993, s. 36 (Sched. 3)**

definition of "uncontrolled child" repealed by 43, 1979, s. 5(h)

**definition of "Youth Court" inserted by 95, 1993, s. 4(i)**

**definition of "youth project centre" repealed by 95, 1993, s. 36 (Sched. 3)**

**Section 6(2) - (4):**

**Section 6(5):**

**amended by 95, 1993, s. 36 (Sched. 3)**

**inserted by 95, 1993, s. 5**

Part 2 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

**Part 2 heading:**

**Section 7:**

**Section 8(1):**

**Section 8(2):**

**Section 8(3):**

**Section 8(4):**

**amended by 95, 1993, s. 36 (Sched. 3)**

**amended by 95, 1993, s. 36 (Sched. 3)**

**amended by 95, 1993, s. 36 (Sched. 3)**

**amended by 95, 1993, ss. 6, 36 (Sched. 3)**

**amended by 95, 1993, s. 36 (Sched. 3)**

**amended by 95, 1993, ss. 6, 36 (Sched. 3)**

<b>Section 9:</b>	amended by 14, 1986, s. 3(1) (Sched. 4); <b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 10(1) - (3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 10(4):</b>	<b>substituted by 95, 1993, s. 7</b>
<b>Section 10(5):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Part 2, Division 3 heading:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 11 - 13:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 14(1) - (3), (5) - (7):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 15 - 19:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 20(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 20(2):</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
	<b>Division 5 of Part 2 comprising s. 21 and heading repealed and s. 21 and heading inserted in its place by 95, 1993, s. 8</b>
	Part 3 comprising ss. 24 - 36 and headings repealed and ss. 22 - 24 and headings inserted in its place by 67, 1981, s. 6
<b>Part 3 heading:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 22(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 22(2):</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
	<b>Division 2 of Part 3 comprising s. 23 and heading repealed and s. 23 and heading inserted in its place by 95, 1993, s. 9</b>
<b>Part 3, Division 3 heading:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 24:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
	Part 4 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
<b>Part 4, Division 1 heading:</b>	<b>amended by 95, 1993, s. 10</b>
<b>Section 25:</b>	<b>repealed by 95, 1993, s. 11</b>
<b>Section 26(1):</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 26(2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 26(3):</b>	<b>amended by 30, 1988, s. 3; 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 26(4):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Part 4, Division 2 heading:</b>	<b>amended by 30, 1988, s. 4; 95, 1993, s. 36 (Sched. 3)</b>
	<b>Subdivision 1 of Division 2 of Part 4 comprising ss. 27 - 35 and heading amended by 14, 1986, s. 3(1) (Sched. 4); 30, 1988, ss. 5, 6; repealed by 95, 1993, s. 12</b>
	<b>Subdivision 2 of Division 2 of Part 4 comprising ss. 36 - 39 and heading repealed and s. 36 and heading inserted in its place by 95, 1993, s. 13</b>
<b>Section 40:</b>	<b>substituted by 95, 1993, s. 14</b>
<b>Section 41:</b>	<b>substituted by 95, 1993, s. 15</b>
<b>Section 42:</b>	<b>amended by 95, 1993, ss. 16, 36 (Sched. 3)</b>
<b>Section 43(1) - (3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>

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Section 43(4):	amended by 95, 1993, s. 36 (Scheds. 2 and 3)
Section 43(5):	amended by 95, 1993, s. 36 (Sched. 3)
Section 43(6):	amended by 95, 1993, s. 36 (Scheds. 2 and 3)
Section 43A:	inserted by 95, 1993, s. 17
Section 44:	repealed by 95, 1993, s. 18
Section 45:	amended by 95, 1993, s. 36 (Sched. 3)
Section 45(2):	repealed by 95, 1993, s. 19
Section 46(1):	substituted by 95, 1993, s. 20
Section 46(2):	amended by 95, 1993, s. 36 (Sched. 3)
Section 46(3):	substituted by 95, 1993, s. 36 (Sched. 3)
Section 47:	substituted by 95, 1993, s. 21
Section 48(1):	amended by 95, 1993, s. 36 (Scheds. 2 and 3)
Section 48(2):	substituted by 95, 1993, s. 36 (Sched. 3)
Section 48(3):	amended by 95, 1993, s. 36 (Sched. 3)
Section 48(4):	amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)
Section 48(5):	amended by 95, 1993, s. 36 (Sched. 3)
Section 48(6):	amended by 95, 1993, s. 36 (Scheds. 2 and 3)
Section 49(1):	amended by 95, 1993, s. 36 (Sched. 3)
Section 49(2):	substituted by 95, 1993, s. 36 (Sched. 3)
Section 50:	amended by 95, 1993, s. 36 (Scheds. 2 and 3)
Sections 50A and 50B:	inserted by 95, 1993, s. 22
Part 4, Division 2, Subdivision 4 heading:	amended by 95, 1993, s. 36 (Sched. 3)
Section 51(1) and (2):	substituted by 95, 1993, s. 23
Section 51(3):	amended by 14, 1986, s. 3(1) (Sched. 4); substituted by 95, 1993, s. 23
Section 51(3a):	inserted by 95, 1993, s. 23
Section 51(4):	amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)
Section 51(5):	amended by 14, 1986, s. 3(1) (Sched. 4); repealed by 95, 1993, s. 36 (Sched. 3)
Section 51(6):	amended by 95, 1993, s. 36 (Sched. 3)
Section 52(1):	amended by 95, 1993, s. 36 (Sched. 3)
Section 52(2):	substituted by 95, 1993, s. 36 (Sched. 3)
Section 53:	amended by 95, 1993, s. 36 (Scheds. 2 and 3)
Sections 54 and 55:	substituted by 95, 1993, s. 24
Section 56:	amended by 95, 1993, s. 36 (Sched. 3)
	Subdivision 5 of Division 2 of Part 4 comprising ss. 57 - 61 and heading repealed by 21, 1985, s. 4(2) (Sched. 2)
	Subdivision 6 of Division 2 of Part 4 comprising ss. 62 - 64 and heading repealed by 21, 1985, s. 4(2) (Sched. 2)
	Subdivision 7 of Division 2 of Part 4 comprising ss. 65 - 72 and heading repealed by 21, 1985, s. 4(2) (Sched. 2)
Section 73:	repealed by 95, 1993, s. 25
Section 74:	substituted by 95, 1993, s. 26
Section 75:	repealed by 95, 1993, s. 26
Section 76:	amended by 14, 1986, s. 3(1) (Sched. 4); amended and redesignated as s. 76(1) by 95, 1993, ss. 27, 36 (Sched. 2)
Section 76(2):	inserted by 95, 1993, s. 27
Section 77:	amended by 14, 1986, s. 3(1) (Sched. 4); substituted by 95, 1993, s. 28
Section 78:	repealed by 95, 1993, s. 28

Section 79:	repealed by 21, 1985, s. 4(2) (Sched. 2)
<b>Section 80:</b>	<b>substituted by 95, 1993, s. 29</b>
<b>Section 81:</b>	<b>repealed by 95, 1993, s. 30</b>
<b>Section 82:</b>	amended by 30, 1988, s. 7; <b>repealed by 95, 1993, s. 30</b>
<b>Section 83:</b>	amended by 79, 1984, s. 6; <b>repealed by 95, 1993, s. 30</b>
<b>Section 84(1) - (3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 84(4):</b>	substituted by 14, 1986, s. 3(1) (Sched. 4); <b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 84(5):</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 85:</b>	<b>repealed by 95, 1993, s. 31</b>
<b>Division 3 of Part 4 comprising ss. 86 - 94 and headings amended by 111, 1976, s. 17; 30, 1988, ss. 8, 9; repealed by 95, 1993, s. 32</b>	
Part 5 comprising ss. 84 - 89 and heading repealed by 67, 1981, s. 7	
Part 6, Division 1 and Subdivision 1 headings: Sections 92 - 97:	substituted by 67, 1981, s. 8
<b>Section 98:</b>	repealed by 67, 1981, s. 9 amended by 43, 1979, s. 31; substituted by 67, 1981, s. 9; <b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 99(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 99(2):</b>	<b>amended by 43, 1979, s. 32; 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 99(3):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
Section 100(1):	amended by 67, 1981, s. 10
<b>Section 100(2) and (3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 101(2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
Section 101(3):	amended by 14, 1986, s. 3(1) (Sched. 4)
<b>Sections 103 and 104:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 105(1), (3) - (5):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 106:</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 107 and 108:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
Section 109(1):	amended by 14, 1986, s. 3(1) (Sched. 4)
<b>Section 109(2), (3), (5) and (6):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 110(1) and (2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 110(3):</b>	<b>amended by 67, 1981, s. 11; 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 110(6):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 111:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 112(1):</b>	<b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 112(3):</b>	<b>amended by 67, 1981, s. 12(a)-(c); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 112(4) and (5):</b>	substituted by 67, 1981, s. 12(d); <b>amended by 95, 1993, s. 36 (Sched. 3)</b>
Section 112(7):	amended by 67, 1981, s. 12(e), (f)
<b>Section 112(8):</b>	<b>amended by 67, 1981, s. 12(g); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 112(9):</b>	<b>amended by 67, 1981, s. 12(h)-(j); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 112(9a):</b>	inserted by 67, 1981, s. 12(k); <b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 112(10):</b>	<b>amended by 67, 1981, s. 12(l), (m); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 112(11):</b>	substituted by 67, 1981, s. 12(n); <b>amended by 95, 1993, s. 36 (Sched. 3)</b>

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<b>Section 112(12):</b>	amended by 67, 1981, s. 12(o); <b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 112(13):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 113:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
Heading preceding section 114:	amended by 67, 1981, s. 13
Sections 114 - 116:	repealed by 67, 1981, s. 14
<b>Section 117:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
	Division 2 of Part 6 comprising ss. 118 - 129 and heading amended by 43, 1979, s. 33; repealed by 67, 1981, s. 15
<b>Part 6, Division 3 heading:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 130:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 131(1):</b>	<b>amended by 67, 1981, s. 16; 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 131(2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
Section 132:	repealed by 67, 1981, s. 17
<b>Section 133(1):</b>	<b>amended by 67, 1981, s. 18; 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 133(2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 134:</b>	<b>amended by 67, 1981, s. 19; 95, 1993, s. 36 (Sched. 3)</b>
Section 135:	substituted by 67, 1981, s. 20
<b>Section 135(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 135(3):</b>	<b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
Section 137:	repealed by 67, 1981, s. 21
<b>Section 138:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
Section 139:	repealed by 67, 1981, s. 22
<b>Section 140:</b>	<b>amended by 67, 1981, s. 23; 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 141:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 142:</b>	<b>amended by 43, 1979, s. 34; 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 143:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 144(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 144(2):</b>	<b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 144(3) and (6):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 145(1) and (2):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 145(3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 146:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 148(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 148(2):</b>	<b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 148(3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 149(1) and (3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 150:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 151:</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 152(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 153:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 154(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
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) (Sched. 4)
<b>Section 154(3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 154(4):</b>	<b>amended by 67, 1981, s. 24(b); 95, 1993, s. 36 (Scheds. 2 and 3)</b>
<b>Section 155:</b>	amended and redesignated to read as s. 155(1) by 67, 1981, s. 25; <b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
Section 155(1)(c):	repealed by 67, 1981, s. 25(b)

<b>Section 155(2):</b>	inserted by 67, 1981, s. 25(d); <b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 156(1):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 156(2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 157 - 161:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 162 and 163:</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 164:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 165(1):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 165(2) and (3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 166 and 167:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 168:</b>	substituted by 67, 1981, s. 26
<b>Section 168(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 168(2) and (3):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 169(1):</b>	substituted by 67, 1981, s. 27(a); <b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 169(1a) and (2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 169(3):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 169(4):</b>	<b>substituted by 67, 1981, s. 27(b); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 169(5) - (8):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 169(9):</b>	substituted by 67, 1981, s. 27(c); <b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 169(10):</b>	<b>amended by 67, 1981, s. 27(d); 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 170:</b>	<b>amended by 67, 1981, s. 28; 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 171:</b>	amended by 14, 1986, s. 3(1) (Sched. 4); <b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 172:</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Scheds. 2 and 3)</b>
<b>Section 173:</b>	<b>amended by 95, 1993, s. 36 (Scheds. 2 and 3)</b>
<b>Section 174(1) and (2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 174(3) and (4):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 175(1):</b>	<b>definition of "attachment of earnings order" amended by 95, 1993, s. 36 (Sched. 3)</b> <b>definition of "earnings" amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b> definition of "net earnings" substituted by 67, 1981, s. 29 definition of "pay-day" amended by 14, 1986, s. 3(1) (Sched. 4)
<b>Section 175(2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 176(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 176(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 176(2), (4), (6) - (9):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 177 - 179:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 180(1) and (2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 180(3):</b>	substituted by <b>95, 1993, s. 36 (Sched. 3)</b>
<b>Section 180(4):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 181:</b>	<b>amended by 95, 1993, s. 36 (Scheds. 2 and 3)</b>
<b>Section 182:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 183(1):</b>	<b>amended by 95, 1993, s. 36 (Scheds. 2 and 3)</b>

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<b>Section 183(2):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Scheds. 2 and 3)</b>
<b>Section 183(2)(i) and (ii):</b>	<b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 184:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 185:</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4)</b>
<b>Section 186:</b>	<b>substituted by 95, 1993, s. 36 (Sched. 2)</b>
<b>Section 187(1):</b>	<b>amended by 95, 1993, s. 36 (Scheds. 2 and 3)</b>
<b>Section 187(2) - (4):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 188 - 191:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 192(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 2)</b>
<b>Section 192(2):</b>	<b>repealed by 95, 1993, s. 36 (Sched. 2)</b>
<b>Section 192(3) and (4):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 193:</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 194 and 195:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 196(1):</b>	<b>definition of "certified copy" amended by 67, 1981, s. 30; 95, 1993, s. 36 (Sched. 3)</b> <b>definition of "overseas order" amended by 95, 1993, s. 36 (Sched. 3)</b> <b>definition of "South Australian Order" substituted by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 196(2) - (4):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 197 and 198:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 199:</b>	<b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 200(1):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4)</b>
<b>Section 200(2) - (4):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 201(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 201(2):</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 201(3):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 201(4) - (6):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 202:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 203(1) and (2):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 203(3) - (5):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 204 - 206:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 207(1):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 207(2):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4)</b>
<b>Section 208(1) - (3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 208(3)(c):</b>	<b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 208(4):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 208(5):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 209:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 210:</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4)</b>
<b>Section 211(2):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 211(3) and (4):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 211(5) and (6):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 211(7):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4)</b>
<b>Section 211(8):</b>	<b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 211(9) - (11):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 212:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 213(1) and (2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 213(3):</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>

<b>Section 213(4):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 213(5):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 214(1):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 214(2) - (4):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 214(5):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 214(6):</b>	<b>repealed by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 215:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 216(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 216(2):</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 216(3):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 216(4):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 217 - 219:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 220(1):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 220(2) - (5):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 221 - 223:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 224(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 224(2):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4)</b>
<b>Section 225(1) and (2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 225(4):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 226(2) and (3):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 226(4):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 226(5) - (7):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 227 and 228:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 229(1) and (2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 229(3):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 230(1) - (4):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 230(5):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 231 - 233:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 234(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 234(2):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 234(3):</b>	<b>substituted by 14, 1986, s. 3(1) (Sched. 4)</b>
<b>Section 235:</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 235a:</b>	<b>inserted by 67, 1981, s. 31</b>
<b>Section 235a(1):</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 235a(2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 236:</b>	<b>amended by 43, 1979, s. 35; 67, 1981, s. 32; 95, 1993, s. 36 (Sched. 3)</b>
<b>Sections 236a and 236b:</b>	<b>inserted by 95, 1993, s. 33</b>
<b>Section 237(1) and (2):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 238(1):</b>	<b>amended by 95, 1993, s. 36 (Scheds. 2 and 3)</b>
<b>Section 238(2):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Scheds. 2 and 3)</b>
<b>Section 238(3):</b>	<b>repealed by 95, 1993, s. 36 (Sched. 2)</b>
<b>Section 238(5):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 239(1) and (1a):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>

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<b>Section 239(2):</b>	amended by 14, 1986, s. 3(1) (Sched. 4); <b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 239(3):</b>	<b>substituted by 95, 1993, s. 36 (Sched. 3)</b>
Section 239(4):	repealed by 43, 1979, s. 36
<b>Section 240(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 240(2):</b>	<b>amended by 43, 1979, s. 37; 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
Section 241:	repealed by 43, 1979, s. 38
<b>Section 242(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
Section 242(1)(c):	repealed by 67, 1981, s. 33
<b>Section 242(2):</b>	<b>amended by 95, 1993, s. 36 (Scheds. 2 and 3)</b>
<b>Sections 243 - 246:</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 247(1):</b>	<b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 249:</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 250(1):</b>	<b>amended by 14, 1986, s. 3(1) (Sched. 4); 95, 1993, s. 36 (Scheds. 2 and 3)</b>
<b>Section 250(2):</b>	amended by 14, 1986, s. 3(1) (Sched. 4); <b>substituted by 95, 1993, s. 36 (Sched. 2)</b>
<b>Section 250a:</b>	inserted by 67, 1981, s. 34; <b>amended by 95, 1993, s. 36 (Sched. 3)</b>
<b>Section 251:</b>	<b>amended by 43, 1979, s. 39; 67, 1981, s. 35(a), (c), (d); 14, 1986, s. 3(1) (Sched. 4); 95, 1993, ss. 34(a), (d), 36 (Scheds. 2 and 3)</b>
Section 251(d):	repealed by 67, 1981, s. 35(b)
<b>Section 251(e):</b>	<b>repealed by 95, 1993, s. 34(b)</b>
<b>Section 251(f), (g) and (h):</b>	<b>repealed by 95, 1993, s. 34(c)</b>
<b>Section 251(l):</b>	<b>repealed by 95, 1993, s. 34(e)</b>
Section 251(p):	repealed by 67, 1981, s. 35(e)
<b>Section 252:</b>	amended by 67, 1981, s. 36; substituted by 14, 1986, s. 3(1) (Sched. 4); <b>repealed by 95, 1993, s. 35</b>
Schedule:	repealed by 14, 1986, s. 3(1) (Sched. 4)

**APPENDIX 2**

**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25