

NORTHERN TERRITORY OF AUSTRALIA

MAINTENANCE ACT

As in force at 17 March 2004

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 17 March 2004

MAINTENANCE ACT

An Act relating to the maintenance of wives, husbands and children

Part I Preliminary

1 Short title

This Act may be cited as the *Maintenance Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice published in the *Gazette*.

4 Repeal and savings

(1) The Ordinances specified in Schedule 1 are repealed.

(2) A maintenance order:

(a) registered, immediately before the commencing day, in accordance with section 6 of the *Maintenance Orders (Facilities for Enforcement) Ordinance 1956*; or

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

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

(3) Where a maintenance order to which subsection (2) applies was, immediately before the commencing day, registered in the Supreme Court, the officer in charge of the records of the Supreme Court shall transmit to the Clerk for Courts of Summary Jurisdiction in the district in which the Local Court of Darwin is established all the papers held by him in relation to that order, whether they are of record in the Supreme Court or not.

- (4) The repeal of an Ordinance specified in Schedule 1 does not affect anything duly done under that Ordinance in relation to a maintenance order made in the Territory for the purpose of enforcing the maintenance order in a State or in a place outside Australia and, if immediately before the commencing day the maintenance order is registered in a State, in a Territory other than the Northern Territory of Australia or in a place that is a reciprocating country within the meaning of Part IV, that Part applies to and in relation to the maintenance order, subject to this section, as if the maintenance order had been so registered under that Part at the time when the thing was duly done.
- (5) Where a provisional order has been confirmed under an Ordinance specified in Schedule 1, the order, in so far as it is in force immediately before the commencing day and, if it has been varied before that day, as so varied, has the same force and effect on and after that day as it would have had if it had been confirmed under Part IV and, in the case of an order that had been varied, if the variation had also been made or given effect to under that Part.
- (6) An order made by a Court of Summary Jurisdiction under an Ordinance specified in Schedule 1, being an order that was in force immediately before the commencing day, continues in force, subject to subsection (7), as if it had been made under Part IV.
- (7) Where:
- (a) an appeal has been instituted before the commencing day in relation to an order made under an Ordinance specified in Schedule 1 but had not been determined or withdrawn before that day; or
 - (b) an appeal could be instituted against an order made under an Ordinance specified in Schedule 1 but for the repeal of that Ordinance by this Act,
- the appeal may be instituted or continued and heard and determined as if this Act had not been made.
- (8) An order made upon an appeal referred to in subsection (7) operates and has effect as if the order appealed from had been made under and the appeal had been instituted under this Act.
- (9) The Collector for the purposes of the *Maintenance Recovery (Reciprocity with States) Ordinance 1963* shall, notwithstanding the repeal of that Ordinance, continue in office on and after the commencing day but only for the purpose of delivering to the person appointed to be the Collector under this Act all documents and other papers held by him in relation to an order to which that

Ordinance applied immediately before that day.

5 Repeal of Ordinances and South Australian Acts

- (1) The *Married Women's Protection Ordinance 1939* and the *Married Women's Protection Ordinance 1959* are repealed.
- (2) The laws of the State of South Australia specified in Schedule 2 cease to apply in the Territory as laws of the Territory.
- (3) Section 8 of the *Acts Interpretation Act 1901* of the Commonwealth in its application to Acts by virtue of section 4 of the *Interpretation Act* has effect as if the laws specified in Schedule 2 were Acts and had been repealed by this Act.
- (4) An order in force immediately before the commencing day under the *Married Women's Protection Ordinance* continues in force, subject to this section, as if this Act had been in force on the day on which the order is made and the order had been made under the provisions of this Act that corresponds with the provisions of that Act under which the order was made.
- (5) Subject to subsections (6), (7) and (8), this Act applies to and in relation to an order continued in force by virtue of subsection (4).
- (6) Proceedings under the *Married Women's Protection Ordinance*, including proceedings to enforce an order continued in force by subsection (4), instituted before the commencing day may be continued as if this Act had not come into operation.
- (7) An appeal may be instituted against a decision of a Court made before the commencing day in proceedings under the *Married Women's Protection Ordinance* and the appeal may be heard and determined as if this Act had not come into operation.
- (8) Where an order is made on or after the commencing day in proceedings instituted before the commencing day to which subsection (6) applies, an appeal may be brought against the order under subsection (7) and, subject to any appeal so brought, an order made on the determination of the proceedings has effect on and after it is made as if it had been made in proceedings instituted under the provisions of this Act that correspond with the provisions of the Act under which the proceedings were instituted.

6 Interpretation

(1) In this Act, unless the contrary intention appears:

adopted, in relation to a child, means:

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

application means an application in accordance with section 106.

complaint means a complaint made to a Justice under Part II.

complainant means:

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

Court means a Court of Summary Jurisdiction.

Court of Summary Jurisdiction has the same meaning as in the *Justices Act*.

defendant means:

- (a) in relation to a complaint instituting proceedings seeking the making of a maintenance order or separation order or to any such proceedings – the person against whom the maintenance order or separation order was or is being sought; and
- (b) in relation to a maintenance order or separation order or to proceedings in connection with a maintenance order or separation order – the person against whom the maintenance order or separation order was made.

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

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

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

- (a) the expense of maintaining the woman for a period of 2 months immediately before her confinement or expected confinement;
- (b) reasonable medical, surgical, hospital and nursing expenses of her confinement or expected confinement; and
- (c) the expense of maintaining the woman, and any child or children born to her during her confinement or expected confinement, for a period of 3 months immediately following the birth of that child or those children.

separation order means an order under this Act that a complainant is relieved from any obligation to cohabit with her husband.

the Collector means the Collector of Maintenance holding office under this Act, and includes a Deputy Collector of Maintenance exercising the powers or performing the functions of the Collector of Maintenance under this Act.

the commencing day means the day fixed under section 2.

the repealed Ordinances means any of the Ordinances repealed by section 4 or 5, and includes the Acts that have ceased to apply in the Territory by virtue of section 5.

woman includes a girl who has not attained the age of 18 years.

- (2) For the purposes of this Act:
 - (a) a child adopted since the marriage of 2 persons by those persons or by either of them with the consent of the other; or
 - (b) a child of a party to a marriage (including a child adopted by a party to a marriage otherwise than with the consent of the other party to the marriage) if the child has at any time ordinarily been a member of the household of the parties to the marriage,

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

- (3) In the application of this Act in relation to a child, where a child is to be deemed to be the child of a marriage, the husband shall be deemed to be the father of the child and the wife shall be deemed to be the mother of the child.
- (4) A union in the nature of marriage entered into outside Australia or under Division 3 of Part IV of the *Marriage Act 1961* of the Commonwealth, or of that Act as amended at any time, that was, when entered into, potentially polygamous or polygamous is a marriage for the purposes of this Act if the law that was applicable to local marriages in the country where the union was entered into permitted polygamy on the part of the male party, and the man and the woman who entered into the union shall be regarded as husband and wife.
- (5) This section applies in relation to a purported marriage that is void as if the purported marriage were a marriage.
- (6) For the purposes of this Act, a person shall be taken to have been adjudged by a court to be the father of a child:
 - (a) if the court has made an order in such circumstances that it was not entitled to make the order unless it found as a fact that the person was the father of the child; or
 - (b) if, at any time within 6 months before the birth of the child, a court made an order in such circumstances that it was not entitled to make the order unless it found as a fact that the child's mother was at that time with child by the person.
- (7) In this Act, a reference to a child whose parents were not married to each other at the time of its conception and have not since married each other shall be read as not including a reference to a child that, although its parents were not married to each other at the time of its conception or at its birth or any time in between, is an adopted child, unless express provision to the contrary is made in relation to the reference.

7 Operation of other laws not limited by this Act

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

the maintenance or support of another person.

8 Collector and Deputy Collector

- (1) For the purposes of this Act, there shall be a Collector of Maintenance, who shall be appointed by the Minister.
- (2) The Minister may appoint a person to be a Deputy Collector of Maintenance.
- (3) The Minister may appoint a person to act in the office of Collector of Maintenance or Deputy Collector of Maintenance during any vacancy in the office or in the event of any illness or absence of the Collector of Maintenance or a Deputy Collector of Maintenance, as the case may be.
- (4) A person appointed under subsection (3) to act in the office of Collector of Maintenance has all the powers, and shall perform all the duties and functions, of the Collector of Maintenance under this Act during any vacancy in the office, or in the event of any illness or absence, of the Collector of Maintenance.
- (5) A Deputy Collector of Maintenance may, subject to any directions of the Collector, exercise any power or perform any duty or function of the Collector.
- (6) A person appointed under subsection (3) to act in the office of Deputy Collector of Maintenance may, subject to any directions of the Collector, exercise any power or perform any duty or function of the Collector during the vacancy in the office or in the event of any illness or absence of the Deputy Collector.
- (7) The Collector shall:
 - (a) keep proper accounts of all moneys received, remitted or paid by him under this Act; and
 - (b) subject to this Act, pay moneys received by him under this Act to the persons entitled to those moneys,

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

Part II Maintenance orders and other orders

Division 1 General

10 Jurisdiction of Court

- (1) A Court has jurisdiction to make a maintenance order or separation order upon the hearing of a complaint if the complainant or the defendant is ordinarily resident in the Territory.
- (2) A Court has jurisdiction to make an order under section 23:
 - (a) if the child in respect of whom the order is sought is present in the Territory at the time when the order is made; and
 - (b) if the mother or father of the child is ordinarily resident in the Territory.
- (3) An order may be made, or refused, under a section included in this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencing day or outside the Territory.

11 Defence to a complaint

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

12 Matters affecting amount of order

- (1) Where, in proceedings instituted by a complaint, a Court is required to be satisfied that a defendant is not adequately maintaining the complainant or has not made adequate provision for the maintenance of the complainant, the Court shall have regard to the accustomed condition in life, but not the means (other than means provided by the defendant) or earning capacity, of the complainant.
- (2) Where, after a complaint is made to a Court, payments are made by the defendant for or towards the maintenance of the complainant, the Court may disregard the payments for the purposes of determining whether, at the time of the hearing of the complaint, the defendant is providing adequate maintenance for the complainant or has made adequate provision for the maintenance

of the complainant unless the Court is satisfied that the defendant is providing, and intends to continue to provide, adequate maintenance for the complainant.

- (3) Where, upon the hearing of a complaint, a Court makes an order for the maintenance of the complainant, the Court, in determining the amount that the defendant is to be ordered to pay for the maintenance of the complainant, may, if it deems it appropriate to do so, disregard:
 - (a) the earnings or savings from earnings from an occupation engaged in by the complainant, or any part of those earnings or savings, if it is satisfied that the complainant engaged in that occupation solely or mainly because the complainant was not being, or reasonably expected not to be, adequately maintained by the defendant; and
 - (b) the earning capacity of the complainant, if it is satisfied that the complainant would engage in an occupation solely or mainly because the complainant is not being, or reasonably expects not to be, adequately maintained by the defendant.
- (4) In the application of subsection (3) in relation to an order for the benefit of a child, references in subsection (3)(a) and (b) to the defendant shall be read as including references to the parents of the child.
- (5) Where the Commonwealth is making an allowance for the support of a person, a Court shall disregard, in determining the amount that a defendant is to be ordered to pay under this Part for the maintenance of the person, the fact that the allowance is being paid for the person.

12A Constructive desertion

A husband whose conduct constitutes just cause or excuse for his wife to live separately or apart, and occasions his wife to live separately or apart, shall be deemed to have wilfully deserted her without just cause or excuse, notwithstanding that he may not in fact have intended the conduct to occasion her to live separately and apart.

12B Condonation or connivance to be an absolute barrier to a separation order

A Court shall not make a separation order if:

- (a) the complainant has condoned the ground upon which the order is sought and the ground has not been revived; or

- (b) the complainant has connived at the ground upon which the order is sought.

12C Presumption as to condonation to be rebuttable

For the purposes of any provision of this Part referring to condonation, any presumption of condonation that arises from the continuance or resumption of sexual intercourse may be rebutted on the part of a husband, as well as on the part of a wife, by evidence sufficient to negative intent to condone.

12D Grounds upon which court may refuse a separation order

A Court may, in its discretion, refuse to make a separation order if, since the marriage:

- (a) the complainant has committed adultery that has not been condoned by the defendant or, having been so condoned, has been revived;
- (b) the complainant has been guilty of cruelty to the defendant;
- (c) the complainant has wilfully deserted the defendant before the happening of the matters constituting the ground upon which the order is sought; or
- (d) the habits of the complainant have, or the conduct of the complainant has, conduced or contributed to the existence of the ground upon which the order is sought.

12E Effect of cohabitation with a view to reconciliation

- (1) For the purposes of section 12B, a ground shall not be deemed to have been condoned, and, for the purposes of section 12D, adultery of the complainant shall not be deemed to have been condoned, by reason only of a continuation or resumption of cohabitation between the parties (whether with or without acts of sexual intercourse between them) for one period not exceeding 3 months if the Court is satisfied that:
 - (a) the cohabitation was continued or resumed, as the case may be, with a view, on the part of the party to whom condonation might otherwise be attributed, to effecting a reconciliation; and
 - (b) a reconciliation was not effected during that period.
- (2) For the purposes of subsection (1) a period of cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the Court, was not substantial.

12F Joinder of adulterer, &c.

Where a complainant is seeking a maintenance order or a separation order on the ground that her husband has committed adultery with a specified person or has committed rape or sodomy on or with a specified person, that person shall, except as provided by the regulations, be served with notice that the allegation has been made and is thereupon entitled to intervene in the proceedings.

Division 2 Maintenance orders and separation orders

13 Maintenance orders and separation orders for wife

(1) Subject to this Part, where a Court, upon complaint made by or on behalf of a wife, is satisfied:

- (a) that her husband has wilfully neglected to provide reasonable maintenance for her;
- (b) that, since the marriage, her husband has committed adultery;
- (c) that her husband has deserted her;
- (d) that, since the marriage, her husband has been guilty of cruelty to her;
- (e) that, since the marriage, her husband has committed rape, sodomy or bestiality; or
- (f) that her husband is:
 - (i) a habitual drunkard; or
 - (ii) habitually intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation,

the Court may order the husband to pay for or towards her maintenance such an amount as it thinks reasonable and the Court may, in addition to or in lieu of such an order, order that the complainant is relieved from any obligation to cohabit with her husband.

(2) Where a Court, upon complaint made by or on behalf of a wife, is satisfied that her husband is about to depart from the Territory without making adequate provision for her maintenance, the Court may order the husband to pay for or towards her maintenance such an amount as it thinks reasonable.

- (3) Where a complainant is seeking a maintenance order or a separation order on the ground that her husband has wilfully neglected to provide reasonable maintenance for her, the Court may dismiss the complaint if it is satisfied that, at the date of the hearing, her husband is adequately maintaining her and that he will continue adequately to maintain her.
- (4) Where a complainant is seeking a maintenance order or a separation order on the ground that her husband has wilfully neglected to provide reasonable maintenance for her, evidence that her husband has not provided reasonable maintenance for her is evidence that he has wilfully neglected to provide reasonable maintenance for her.
- (5) A Court may refuse to make a separation order or a maintenance order under subsection (1) or it may refuse to make a maintenance order under that subsection for other than a nominal amount if it is of the opinion that the complainant, with full knowledge of the facts constituting the ground upon which she is seeking the order, has unreasonably delayed making the complaint.

14 Order for maintenance of child

Where a Court, upon complaint made by or on behalf of a child, is satisfied:

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

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

15 Order for maintenance of husband

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

- (a) that, on a date specified in the complaint, his wife was not adequately maintaining him and that, when the complaint is heard by the Court, his wife is still not adequately maintaining him; or

- (b) that his wife is about to depart from the Territory without making adequate provision for his maintenance,

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

16 Order for payment of preliminary expenses

- (1) Where a Court, upon complaint made by or on behalf of a woman, is satisfied:

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

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

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

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

- (a) the woman is not delivered of a child before a date specified in the order for the purposes of this subsection, being a date not later than 6 months after the order is made; or
- (b) the woman is delivered of a still-born child before the date so specified,

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

- (4) Where an order ceases to have effect on the date specified in it for the purposes of subsection (3), any moneys paid under it and not disbursed shall be repaid to the defendant.

- (5) Where an order ceases to have effect on the delivery of a still-born child, any moneys paid under it and not disbursed shall, as directed by a Court upon application made by the complainant or the defendant:
- (a) be paid to the woman;
 - (b) be paid to the defendant; or
 - (c) be divided between the woman and the defendant in such proportions as the Court thinks fit.
- (6) Where a Court, upon application made by the complainant in respect of an order that has ceased to have effect on the delivery of a still-born child, is satisfied that the defendant did not, before the order ceased to have effect, pay a sufficient sum under the order to meet the expenses to which the order relates, the Court may order the defendant to pay to the complainant such sum as it considers reasonable to meet those expenses less any sum already paid under the first-mentioned order.
- (7) Where an order is made under subsection (1) in the case of a woman who has not been delivered of the child to whom it relates, the Collector may disburse any amounts paid under the order in such manner as he thinks proper, but not so as to disburse, before the woman is delivered of a child, amounts aggregating more than one-half of the amount required to be paid under the order.
- (8) Where a Court is hearing and determining a complaint under section 14 in respect of a child whose parents were not married to each other at the time of its conception and have not since married each other of whom the defendant is the father, the Court may, if a claim for preliminary expenses for the mother of the child is made at the hearing of the complaint, make an order under subsection (1) for the payment of preliminary expenses notwithstanding that a complaint has not been made under this section.
- (9) Where a claim for preliminary expenses is made under subsection (8), the Court shall adjourn the hearing of the claim:
- (a) if the defendant, being before the Court, applies for an adjournment and the Court is of opinion that the defendant will be prejudiced unless the hearing is adjourned – for such period as the Court thinks fit; or
 - (b) if the defendant is not before the Court – for such period as the Court thinks necessary to enable notice of the claim and of the date of the adjourned hearing to be given to the defendant.

- (10) A Court may make an order for preliminary expenses notwithstanding that the child to whom an order relates died or was adopted before the commencement of this Part or before the making of the order.
- (11) A complaint under subsection (1), or a claim under subsection (8), made after the expiration of 12 months from the birth of the child to whom it relates is of no force or effect.
- (12) In this section, unless the contrary intention appears, **child** includes a still-born child.

17 Order for maintenance of unborn child

- (1) Where a complaint has been or is made to a Justice under section 16 before the birth of the child to whom the complaint relates, a further complaint may be made to a Justice for an order that the defendant pay a reasonable amount for or towards the maintenance of the child.
- (2) Where a Court, upon complaint made under subsection (1), is satisfied that:
 - (a) the defendant has been ordered by a Court to pay an amount for or towards the preliminary expenses of the mother of the child;
 - (b) it is unlikely that the defendant will adequately maintain the child after the expiration of 3 months from the child's birth; and
 - (c) the defendant has been given notice of the complaint,the Court may order the defendant to pay for or towards the maintenance of the child such amount as it thinks reasonable.
- (3) Subject to subsection (4), the first period in respect of which a payment is to be payable under an order made under subsection (2) is the period commencing on:
 - (a) if a certified copy of the registration of the birth of the child is produced to the Collector before the expiration of a period of 3 months from the birth of the child – the Monday last preceding the expiration of that period; or
 - (b) in any other case – the day on which that certified copy is produced to the Collector.

- (4) Where the child to whom an order made under subsection (2) relates is still-born, dies or is adopted before the commencement of the first period in respect of which a payment under the order is to be payable, the order does not have any force or effect.
- (5) Where a certified copy of the registration of the birth of the child to whom an order under subsection (2) relates is produced to the Collector, the Collector shall forthwith send by post to the defendant, at his place of residence last known to the Collector, a notice stating the name of the child (if stated in the certified copy), the date and place of birth of the child and the date on which and place at which the first payment under the order is to be made.

18 Order for funeral expenses of child

- (1) Where a Court, upon a complaint made by or on behalf of a parent of a child, is satisfied:
 - (a) that the defendant is the other parent of the child;
 - (b) that the child has died on or after the commencing day and before attaining the age of 21 years or the birth of the child (being a still-born child) occurred on or after that day; and
 - (c) that the defendant has not made adequate provision for the funeral expenses of the child,

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

- (2) Where a Court, upon complaint made by or on behalf of the person who has paid or is liable to pay the funeral expenses of a child (not being a person who is a parent of the child), is satisfied:
 - (a) that the defendant is a parent of the child;
 - (b) that the child has died on or after the commencing day and before attaining the age of 21 years, or the birth of the child (being a still-born child) occurred on or after that day; and
 - (c) that the defendant has not made adequate provision for the funeral expenses of the child,

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

- (3) Where a complaint is made under subsection (1) or (2) in relation to a child whose parents were not married to each other at the time of

its conception and have not since married each other, a Court shall not order the defendant (not being the mother of the child) to pay an amount for or towards the funeral expenses of the child unless it is satisfied that the defendant is the father of the child or that the defendant has been adjudged by a court in Australia to be the father of the child.

- (4) An order shall not be made under this section in relation to a still-born child unless a Court is satisfied by the evidence or the certificate of a medical practitioner that the mother of the child had been quick with the child.
- (5) A complaint under this section made after the expiration of 12 months from the still-birth or death of the child to whom it relates is of no force or effect.

19 Order for funeral expenses of mother of child

- (1) Where a Court, upon complaint made by a person, is satisfied:
 - (a) that the defendant is the father of a child to whose mother he was not married at the time of its conception and whose mother he has not since married or he has been adjudged by a court in Australia to be the father of such a child;
 - (b) that the mother of the child has, after the commencement of this section, died during, and in consequence of, her pregnancy or in consequence of the birth of the child;
 - (c) that the defendant has not made adequate provision for the funeral expenses of the mother; and
 - (d) that the complainant has paid or is liable to pay the funeral expenses of the mother,

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

- (2) Where the child in relation to whom a complaint is made for the purposes of this section was still-born, an order shall not be made under this section unless a Court is satisfied by the evidence or a certificate of a medical practitioner that the mother of the child had been quick with the child.
- (3) A complaint for the purposes of this section made after the expiration of 12 months from the death of the mother is of no force or effect.

- (4) A Court may make an order under subsection (1) if the child's parents were not married to each other at the time of its conception or its birth or at any time in between whether or not the child is, when the order is made, an adopted child.
- (5) In this section, **child** includes a still-born child.

20 Order for payment of medical and like expenses

- (1) Where a Court, upon complaint made by or on behalf of:
- (a) a person for whose maintenance an order under section 13, 14, 15 or 17 is in force; or
 - (b) a person in respect of whom an order under section 21 is in force,
- is satisfied that:
- (c) the person reasonably required and has received, or reasonably requires, medical, surgical, psychiatric, dental, hospital or nursing care or treatment, including physiotherapy directed by a medical practitioner;
 - (d) the amount payable by the defendant under the order for the maintenance of the person is not sufficient to enable the person to make adequate provision for the expenses of that care or treatment;
 - (e) the defendant has not made adequate provision for or towards those expenses; and
 - (f) it is just and equitable in all the circumstances of the case that the defendant pay, or contribute towards, those expenses,

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

- (2) Where a Court, upon complaint made by or on behalf of a child in relation to whom an order under section 16 is or has been in force, is satisfied:
- (a) if the child has not attained the age of 3 months – that the child reasonably requires care or treatment of a kind referred to in subsection (1)(c); or
 - (b) in any other case – that the child reasonably required, and has received, care or treatment of such a kind before attaining that age,

and is also satisfied:

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

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

- (3) Where an order is made under subsection (1) or (2), moneys payable under the order shall not be disbursed by the Collector before the care or treatment to which the moneys relate has been rendered.
- (4) Where a Court, upon complaint made by or on behalf of a person who has paid or is liable to pay the expenses of care or treatment of a kind referred to in subsection (1)(c) that has been received by a person referred to in subsection (1)(a) or (b) or a child referred to in subsection (2), is satisfied:
 - (a) that the second-mentioned person or the mother of the child, as the case may be, died after the provision of that care or treatment; and
 - (b) that the Court would, if the second-mentioned person or the mother were still alive, make an order against the defendant under subsection (1) or (2), as the case may be,

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

- (5) For the purposes of this section, references to the expenses of any care or treatment received or required by a person shall be read as including references to any expenses reasonably incurred in connection with the person travelling to or from the place where the person has received or will receive the care or treatment.
- (6) A complaint for the purposes of this section made in respect of care or treatment rendered before the commencement of this section is of no force or effect.

21 Nominal orders

- (1) Where a Court is satisfied, upon the hearing of a complaint under section 13, 14, 15 or 17 for the maintenance of a person, that it would make an order for the maintenance of that person except for the fact:
- (a) that the defendant is at the time of the hearing adequately maintaining the person; or
 - (b) that the defendant is not at the time of the hearing able to contribute towards the support of the person,
- the Court may make an order setting out its findings on the complaint and directing the payment by the defendant of a nominal amount towards the maintenance of the person.
- (2) Proceedings shall not be taken under this Act to enforce payment of the nominal amount directed to be paid by an order made under subsection (1).
- (3) Section 34 applies to and in relation to an order made under subsection (1) in like manner as it applies to a maintenance order.
- (4) Where an order made under subsection (1) is varied to provide for the payment of a greater amount than the nominal amount directed to be paid by that order:
- (a) this Act applies to and in relation to the order when so varied as if it were a maintenance order made under whichever of sections 13, 14, 15 or 17 is appropriate; and
 - (b) the order ceases to be a nominal order for the purposes of this Act.

Division 3 Ancillary Orders

22 Definition

In this Division, **child** does not include a child whose parents were not married to each other at the time of its conception and have not since married each other where no person is recognized under the *Guardianship of Infants Act* as the father of that child.

23 Orders for custody of child

- (1) Subject to this section, upon application made by or on behalf of a parent of a child, a Court may make an order committing the custody of the child to that parent and may, by the same or a subsequent order, make such provision as it thinks fit with respect to access to the child by the other parent during the currency of the order.
- (2) An order committing the custody of a child to a parent of the child shall not be made under subsection (1):
 - (a) unless an order for the maintenance of the child is in force and the moneys ordered to be paid under the order are payable to that parent;
 - (b) if the Director of Child Welfare is the guardian of the child by virtue of section 7 of the *Child Welfare Act*; or
 - (c) if there is in force in respect of the child an order made by the Supreme Court of the Northern Territory of Australia or the Supreme Court of a State or other Territory of the Commonwealth granting the custody of the child to a person.
- (3) Where a parent of a child makes a complaint under section 13 or 15, the parent may state in the complaint that he intends to make application at the hearing of the complaint for the following additional orders, namely, an order committing the custody of the child to the parent and an order for the maintenance of the child.
- (4) Where a complaint contains the statement referred to in subsection (3), the summons issued in pursuance of the complaint shall contain notice of the proposed applications and a Court may, upon the hearing of the complaint, if it makes an order for the maintenance of the parent, also make either or both of the additional orders so sought.
- (5) In proceedings with respect to the custody of a child or access to a child under this section, a Court shall regard the interests of the child as the paramount consideration.
- (6) Where an order for the maintenance of a child in respect of whom an order under subsection (1) is in force is discharged by a Court, that last-mentioned order ceases to have effect.

24 Ex parte order for maintenance of child

(1) In this section:

complaint means a complaint for the purposes of section 14 seeking an order for the payment of maintenance in respect of a child.

ex parte order means an order made under subsection (2) for the payment of maintenance in respect of a child pending the disposal of a complaint.

(2) At any time after a complaint has been made to a Justice, a Court may, upon application made ex parte, order the defendant to pay for the maintenance of the child, pending the disposal of the complaint, such amount per week (not being more than \$5 per week) as the Court thinks reasonable.

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

(a) upon a Court making or refusing to make an order for the maintenance of the child under section 14 or 25; or

(b) upon the expiration of 3 months after the making of the ex parte order,

whichever first occurs.

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

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

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

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

25 Interim order for payment of maintenance

- (1) In this section, *interim order* means an order made under subsection (2) for the payment of maintenance in respect of a person.
- (2) Where a Court adjourns the hearing of a complaint made for the purposes of section 13, 14 or 15 for a period of not less than 7 days (whether or not the hearing has previously been adjourned), the Court may order the defendant to pay for or towards the maintenance of the complainant such amount as it thinks reasonable.
- (3) Moneys cease to be payable for the maintenance of a complainant under an interim order:
 - (a) upon a Court making or refusing to make an order for the maintenance of the complainant under section 13, 14 or 15, as the case requires;
 - (b) upon a Court commencing the hearing of the complaint or next continuing the hearing of the complaint after the making of the interim order; or
 - (c) upon the expiration of 3 months after the making of the order, whichever first occurs.
- (4) Where, upon the hearing of a complaint, a Court makes an order for the maintenance of a person (in this subsection referred to as *the maintenance order*) in respect of whom an interim order has been made and the maintenance order is to take effect from a date before the date upon which moneys cease to be payable for the maintenance of the complainant under the interim order, an amount equal to the sum of any payments made under the interim order for the maintenance of the person in respect of a period after the date as from which the maintenance order is to take effect shall be deemed to have been made under the maintenance order.
- (5) Division 5 does not apply to or in relation to an interim order.
- (6) An appeal does not lie from an interim order made under this section.

25A Interim separation order

- (1) In this section, *interim separation order* means a separation order made under subsection (2).

- (2) Where a Court adjourns the hearing of a complaint made for the purpose of obtaining a separation order (whether or not the hearing has previously been adjourned), the Court may order that the complainant is for the time being relieved from any obligation to cohabit with her husband.
- (3) An interim separation order ceases to have any force or effect:
 - (a) upon a Court making or refusing to make a separation order under section 13;
 - (b) upon a Court making a further interim separation order; or
 - (c) upon the expiration of 6 months after the making of the order, whichever first occurs.
- (4) Division 4A does not apply to or in relation to an interim separation order.
- (5) An appeal does not lie from an interim separation order made under this section.

Division 4 General provisions relating to orders

26 Duration of orders

- (1) Subject to section 27, an order shall not be made under this Part:
 - (a) for the maintenance of; or
 - (b) in respect of the custody of,

a child who has attained the age of 16 years.
- (2) Subject to section 27, maintenance ceases to be payable under an order for the maintenance of a child:
 - (a) upon the child attaining the age of 16 years or being adopted;
or
 - (b) upon the death of the child or the defendant,

whichever first occurs.
- (3) An order with respect to the custody of a child ceases to have effect when the child attains the age of 16 years or is adopted, whichever first occurs.

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

27 Maintenance for child over 16

- (1) Where, upon application made on behalf of a child who has not attained the age of 16 years, being a child for whose maintenance a maintenance order is in force under this Act, a Court is satisfied that the child will be engaged in a course of education or training after he attains that age and that maintenance should continue to be payable by the defendant after the child attains that age for the purpose of making provision for or towards the maintenance of the child while he is so engaged and of meeting the expenses of the course, the Court may order that maintenance continue to be payable under the order after the child attains the age of 16 years for such period, not exceeding 2 years, from the date on which he attains that age as is specified in the order.

- (2) Where, upon application made on behalf of a child who has attained the age of 16 years, being a child for whose maintenance a prescribed order was in force immediately before the child attained that age, a Court is satisfied:

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

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

- (3) Where complaint is made to a Justice under section 14 on behalf of a child who has attained the age of 16 years, being a child for whose maintenance a prescribed order under which the defendant was required to pay maintenance for the child was not in force immediately before the child attained that age, a Court may make an order under that section notwithstanding the fact that the child has attained the age of 16 years if it is satisfied that the child is engaged or will engage in a course of education or training and that maintenance should be payable by the defendant for the purpose of making provision for or towards the maintenance of the child while he is so engaged and of meeting the expenses of the course.

- (4) Where a Court makes an order under subsection (2) or section 14 in pursuance of the power conferred by this section, the Court shall specify in the order a period, being a period commencing not earlier than the date on which the order is made and ending not later than 2 years after that date, during which maintenance shall, subject to this Act, be payable under the order.
- (5) In subsections (2) and (3), a **prescribed order**, in relation to a child, means an order, whether made under this Act or under the repealed Ordinances, by virtue of which maintenance was payable for the child, other than such an order that has been set aside upon appeal or that has been annulled.
- (6) A Court may, from time to time, upon application made on behalf of a child in respect of whom an order is in force under this section, make a further order extending the period for which maintenance is to be payable in respect of the child for such further period, not exceeding 2 years, as is specified in the further order, being a period commencing upon the expiration of the period for which maintenance is then payable.
- (7) An order under this section shall not provide for the payment of maintenance for a child in respect of any period after the child attains the age of 21 years.
- (8) Where a Court makes an order under subsection (1) or (6) in relation to a maintenance order, it may, by the same order, vary the amount payable under the maintenance order in such manner as it thinks fit.

28 Provision for past maintenance

- (1) Subject to this Act, a Court may, in an order under this Part for the maintenance of a person, order the payment of maintenance in respect of a period immediately preceding the date on which the order is made, being a period commencing not earlier than 3 months before that date.
- (2) A Court may exercise its power under subsection (1) whether or not the complaint to which the order relates sought maintenance in respect of a period immediately preceding the making of the order.
- (3) Where a Court exercises, in an order, the power conferred by subsection (1), the Court may direct that the maintenance in respect of the immediately preceding period be paid in one sum or by such instalments as it thinks fit.

29 Recovery of arrears

- (1) Subject to subsections (2) and (3), the fact that maintenance ceases to be payable upon the occurrence of a particular event does not prevent the recovery of maintenance in respect of any period before the occurrence of that event.
- (2) Subject to subsection (3), where maintenance ceases to be payable upon the death of a person, any maintenance in respect of any period before the death of the person is not recoverable under this Act or otherwise.
- (3) Where a child in respect of whom maintenance is payable dies, any maintenance payable in respect of a period before the death of the child is recoverable from the person ordered to pay the maintenance, but only during the life of that person, by the person who was maintaining the child immediately before the child's death.

30 Offer to provide home

Where:

- (a) the conduct of a person constitutes just cause or excuse for the spouse of the person to live separately and apart from the person and does in fact:
 - (i) cause the spouse so to live; or
 - (ii) cause the spouse so to live and to take a child of the marriage to live with the spouse; or
- (b) the conduct of a person constitutes just cause or excuse for a child of the person to live separately and apart from the person and does in fact cause the child so to live,

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

30A Effect of separation order

- (1) A separation order relieves the complainant from the obligation to cohabit with her husband while the order remains in operation, but, except as provided by this section, does not otherwise affect the marriage or the status, rights and obligations of the parties to the marriage.

- (2) While a separation order is in operation either party to the marriage may bring proceedings in contract or in tort against the other party.
- (3) Nothing in this Part prevents a wife, during separation under a separation order, from joining in the exercise of any power given to herself and her husband jointly.

30B Enforcement of separation order

A husband shall not molest or interfere with or attempt to molest or interfere with his wife in her manner of living contrary to an order relieving her from the obligation to cohabit with him.

Penalty: \$200 or imprisonment for 6 months.

31 Order relating to illegitimate child

- (1) Where, upon the hearing of a complaint made for the purposes of this Part, the mother of a child to whose father she was not married at the time of its conception or whom she has not since married gives evidence that the defendant is the father of the child and no person is recognized under the *Guardianship of Infants Act* or the *Status of Children Act* as the parent of the child, an order shall not be made upon the complaint unless the evidence of the mother is corroborated in a material particular.
- (2) Nothing in subsection (1) shall be taken to require the mother of a child to whose father she was not married at the time of its conception or whom she has not since married to give evidence upon the hearing of a complaint in order that a Court may be satisfied that the defendant is the father of the child.
- (3) In Divisions 2 and 3 of Part II, a reference to a Court being satisfied that a person is the father of a child shall, in a case where the child is a child whose parents were not married to each other at the time of its conception and who have not since married each other and no person is recognized under the *Guardianship of Infants Act* as the father of the child, be read as a reference to a Court being so satisfied beyond reasonable doubt.
- (4) Where, upon the hearing of a complaint made for the purposes of this Part, evidence is given that the defendant is recognized under the *Guardianship of Infants Act* or the *Status of Children Act* as the father of a child to whose mother he was not married at the time of its conception or whom he has not since married, the defendant shall be deemed to be the father of the child.

Division 4A Discharge of separation orders

31A Discharge of separation order on resumption of cohabitation

- (1) Where, after a separation order has been made, the parties have voluntarily resumed cohabitation, either party may apply for an order discharging the separation order.
- (2) Upon such an application, the Court shall, if both parties consent to the order, or if the Court is otherwise satisfied that the parties have voluntarily resumed cohabitation, make an order discharging the separation order.

Division 5 Discharge, suspension, variation and annulment of maintenance orders

32 Interpretation

- (1) In this Division, unless the contrary intention appears, **original order** means an order made under section 13, 14, 15, 16, 17, 18, 19, 20 or 21, other than an order dismissing a complaint.
- (2) In this Division, a reference to a maintenance order shall, in the case of a maintenance order that has been varied, be read as a reference to that order as so varied.

33 Application of this Division

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

34 Discharge, suspension or variation of orders

- (1) Subject to this Division, a Court, upon application made by or on behalf of a party to a maintenance order, may at any time make a further order:
 - (a) discharging the maintenance order;
 - (b) varying the maintenance order in any manner the Court thinks fit; or
 - (c) suspending the payment of maintenance under the maintenance order in respect of a period specified in the further order or until the Court otherwise orders.

- (2) An order shall not be made discharging or varying a maintenance order, or suspending the payment of maintenance under a maintenance order, unless the Court is satisfied:
- (a) that the original order, or, if the original order has been varied, the original order or any order varying the original order, was obtained by fraud or upon the basis that 2 persons were married to each other who were, in fact, not so married;
 - (b) that new facts or circumstances have arisen that have not previously been disclosed to a Court in proceedings under the repealed Ordinances or under this Act and, by reason of those facts or circumstances, it is reasonable to make the first-mentioned order; or
 - (c) the facts or circumstances in existence at the time of the making of the original order, or, if the original order has been varied, at the time of the making of the original order or any order varying the original order, have not previously been disclosed to a Court in proceedings under the repealed Ordinances or under this Act and were not known, and could not by the exercise of reasonable diligence have previously been known, to the applicant and, by reason of those facts and circumstances, it is reasonable to make the first-mentioned order.
- (3) An order under subsection (1):
- (a) may discharge or vary a maintenance order as from a date specified in the first-mentioned order, which may be a date before the date of the first-mentioned order;
 - (b) may discharge or vary a maintenance order notwithstanding that maintenance has ceased to be payable under the order or that the defendant has made default in complying with the maintenance order; and
 - (c) may suspend the payment of maintenance under a maintenance order during a period specified in the first-mentioned order (which may be a period commencing before the date of the first-mentioned order) or as from a date specified in the first-mentioned order (which may be a date before the date of the first-mentioned order) until the further order of a Court.

35 Effect of suspension order

- (1) Where an order is made under section 34 suspending the payment of maintenance under a maintenance order in respect of a specified period, maintenance again becomes payable under the order,

unless the order is earlier revived under section 36, upon the expiration of that period.

- (2) Where the payment of maintenance is suspended under section 34 until the further order of a Court, maintenance does not become payable under the maintenance order except in accordance with an order under section 36 reviving the maintenance order.
- (3) Subject to subsection (4), the suspension of the payment of maintenance under a maintenance order does not prevent the recovery of any maintenance payable under the maintenance order in respect of any period ending before the date as from which the payment is suspended.
- (4) Where a Court suspends the payment of maintenance under a maintenance order, the Court may further order that the whole or any part of the moneys owing under the order at the date as from which the payment of maintenance is suspended shall not be recoverable under this Act during the period of the suspension, and that further order prevents the taking of any proceeding under this Act for the purpose of recovering, during the period of the suspension, the moneys so payable.

36 Court may revive order

- (1) Where payment of maintenance under a maintenance order has been suspended under section 34, a Court may, upon application made by or on behalf of a person for whose benefit the maintenance is payable, make an order reviving the suspended order in whole or in part as it thinks fit.
- (2) An order under subsection (1) may revive a maintenance order as from a date specified in the first-mentioned order, which may be a date before the date of the first-mentioned order, and the maintenance order, when so revived, has effect as if maintenance had been or is payable under the order as from the date as from which it was or is revived.
- (3) Where a Court revives a maintenance order as from a past day, it may make a further order directing the manner in which moneys payable in respect of the period from and including that day to and including the day immediately before the day on which it revives the order are to be paid.
- (4) Where a Court revives a maintenance order, it may make a further order varying the maintenance order as from the day as from which it was or is revived.

37 Application to annul order

- (1) Where a Court has made an order under this Part on the basis that the defendant is the father of a child to whose mother he was not married at its conception or whom he has not since married, the defendant may, at any time, file an application to annul the order.
- (2) An application filed under subsection (1) shall not be heard and determined by a Court unless a Justice has granted leave, under subsection (3), for the application to be set down for hearing.
- (3) At any time after an application has been filed under subsection (1), a Justice may, upon application made *ex parte*, grant the applicant leave to set the application down for hearing.
- (4) A Justice shall not grant leave to set an application down for hearing under subsection (3) unless:
 - (a) evidence on oath is furnished to him, either orally or by affidavit, stating the nature of the evidence that the applicant intends to submit to a Court if the application is heard and the names and addresses of the witnesses who will give that evidence; and
 - (b) the Justice is satisfied that that evidence is material to the paternity of the child and was not produced to a Court when the maintenance order was made.
- (5) Where a Justice grants leave for an application to be set down for hearing, the Justice shall fix a date and time for the hearing and summon the mother of the child, or such other person as the Justice thinks appropriate in the circumstances, to appear before a Court upon the hearing.
- (6) Where the mother of the child, or other person to be summoned, as the case may be, is living out of the Territory, the date fixed for the hearing of the application shall be a date that will allow the mother or that other person, as the case may be, reasonable time to come to the Territory for the hearing of the application.

38 Annulment of order

- (1) Upon the hearing of an application under section 37 to annul a maintenance order, a Court shall have regard to the evidence that was given when the original order was made and to the further evidence given upon the hearing of the application.
- (2) The applicant shall first furnish the evidence that he wishes to be considered in support of the application and if, upon the completion of that evidence, the Court is satisfied that no evidence material to

the paternity of the child that has not previously been produced to a Court in proceedings under the repealed Ordinances or under this Act has now been furnished to the Court, the Court shall dismiss the application.

- (3) A Court shall not annul a maintenance order unless it is satisfied that the applicant is not the father of the child.
- (4) A Court shall hear and determine an application under section 37 whether or not the applicant has made default in complying with the maintenance order.
- (5) Where a Court annuls a maintenance order, the defendant is not liable to pay any amounts due and unpaid under the order and is not entitled to recover from any person any amounts actually paid under the order.
- (6) Where a maintenance order is annulled, the annulment of the order does not, except as provided in subsection (5), affect the previous operation of the order or anything duly done or suffered under it.

39 Maintenance for twins, &c.

- (1) Where an order for the payment of maintenance for the child of whom a woman is expected to be delivered is made under section 17 and the woman is in fact delivered of 2 or more children, application may be made under this Division for orders under subsection (2).
- (2) Upon the hearing of an application under subsection (1), a Court may discharge the maintenance order in respect of the child expected to be born to the woman and make an order for the maintenance of each child born to the woman.

Part III Enforcement of maintenance orders made in the Territory

Division 1 Interpretation

40 Interpretation

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

- (2) In this Part, a reference to a maintenance order shall, in the case of a maintenance order that has been varied, be read as a reference to that order as so varied.
- (3) Where a maintenance order, or a maintenance order as varied, has been discharged but arrears are recoverable under the order or the order as varied, this Part applies to and in relation to the order or the order as varied, for the purpose of the recovery of the arrears, notwithstanding its discharge.

Division 2 Imprisonment, recognizances, &c.

41 Imprisonment for disobedience of order for payment of money

- (1) Where the defendant, being a male person, has disobeyed or failed to comply with a maintenance order and a sum of money (in this section referred to as **arrears**) due under the order is unpaid, application to commit the defendant to prison may be made by or on behalf of the person for whose benefit the order was made.
- (2) Subject to section 105, a Court may, upon application made under subsection (1), order that the defendant be committed to prison for such period, not exceeding 12 months, as the Court thinks proper.
- (3) For the purpose of subsection (2), the arrears shall be taken to include an amount that the defendant is ordered to pay in respect of the costs of the application.
- (4) The defendant is not liable to be committed to prison in respect of his failure to pay any arrears:
 - (a) if he has previously served a term of imprisonment in respect of his failure to pay those arrears; or
 - (b) if he is, by virtue of an order made under section 43, to be deemed to have served a term of imprisonment in respect of his failure to pay those arrears.
- (5) The fact that a defendant is not liable to be committed to prison in respect of his failure to pay any arrears does not affect the recovery of those arrears under any other section of this Act.
- (6) The period of detention in prison of a person under an order under subsection (2) is subject to section 94 of the *Justices Act*.
- (7) Where the arrears in respect of which an application has been made under subsection (1) are paid after the service of a copy of the application on the defendant and before a Court makes an order for the issue of a warrant committing the defendant to prison,

a Court may order the defendant to pay the costs of and incidental to the application.

- (8) Section 92(2) of the *Justices Act* applies to and in relation to an order under subsection (7) as if it were an order to which section 92(1) applies.
- (9) Where a person is entitled to receive payments under each of 2 or more maintenance orders against the same defendant, one application may be made under subsection (1) in respect of the arrears due and unpaid under each of those orders.
- (10) Where a person makes one application in respect of the arrears due and unpaid under each of 2 or more maintenance orders, a Court shall, in determining the period for which the defendant is to be committed to prison, have regard to the amount ascertained by aggregating those arrears and subtracting from the total sum the amount of any arrears, or the sum of the amounts of any arrears, in respect of which the defendant is not liable to be committed to prison as if that amount was the amount of the arrears due under one maintenance order.

42 Court not to commit defendant to prison in certain cases

- (1) A Court shall not commit a defendant to prison under section 41 if it is satisfied:
 - (a) that the defendant:
 - (i) does not have the means and ability to comply with the order under which the moneys are due and unpaid;
 - (ii) has not had, since the order was made, that means and ability; and
 - (iii) could not by reasonable effort have had that means and ability; or
 - (b) that for any other reason the order ought not to be enforced by imprisonment.
- (2) Where a Court becomes aware, upon the hearing of an application under section 41 to commit a defendant to prison for the non-payment of a particular sum of money due under a maintenance order, that a Court had previously refused to commit the defendant to prison for the non-payment of that sum of money (in this subsection referred to as **the original sum**) or of a sum of money (in this subsection referred to as **the part of the original sum**) included in the original sum, the Court shall have regard only to the amount by which the sum due and unpaid exceeds the

original sum or the part of the original sum, as the case may be, unless it is satisfied that since that previous refusal the means and ability of the defendant to pay the original sum or the part of the original sum has so altered as to make it reasonable for him to be committed to prison for its non-payment.

43 Provision for postponing issue of warrant

- (1) Where a Court makes an order under section 41 committing a person to prison, the Court may upon making the order, or a Justice may at any time after the Court has made the order, upon such conditions as it or he thinks fit:
 - (a) postpone the issue or execution of a warrant of commitment under the order for a specified period;
 - (b) order that a warrant of commitment be issued, or, if a warrant of commitment has been issued but the person has not been imprisoned under the warrant, revoke the warrant and order that another warrant of commitment be issued, committing the person to prison for a period specified in the order, being a period less than the period for which the person has been ordered under section 41 to be committed to prison; or
 - (c) order that the defendant pay the amount found to be due and unpaid together with any costs of the application that the defendant is ordered to pay by instalments specified in the order,

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

- (2) Where a Justice issuing a warrant, or directing the execution of a warrant, under subsection (1), is satisfied that the defendant has paid part of the amount (in this subsection referred to as **the amount due**) in respect of which the warrant is being or was issued, the Justice shall, by virtue of this subsection, issue the warrant, or amend the warrant already issued, so as to provide for the commitment of the defendant to prison for a number of days that bears as nearly as possible the same proportion to the number of days that the defendant was ordered to serve in prison as the balance of the amount due bears to the amount due.

- (3) Where a Court orders, under subsection (1)(b), that a warrant of commitment be issued committing a person to prison for a period:
 - (a) the Court shall specify the arrears of maintenance in respect of which the person is, if he is imprisoned under the warrant, to be deemed to have served a term of imprisonment for the purposes of section 41(4); and
 - (b) if the order was made on conditions to be complied with by the person – a Court may at any time after the person has failed to comply with such a condition further order that a warrant of commitment be issued committing the person to prison for the balance of the period for which the person has been ordered under section 41 to be committed to prison.

44 Recovery of arrears in Supreme Court

- (1) Where the Clerk of a Court that made a maintenance order is satisfied that a sum of money due and payable under the maintenance order is unpaid, he may issue a certificate stating the amount due and payable under the maintenance order at the date of the certificate.
- (2) A certificate under subsection (1) shall not be issued stating that an amount is due and payable under a maintenance order unless evidence that the amount is due and payable and has not been paid is given to the Clerk by affidavit.
- (3) A certificate under subsection (1) may be filed in the Supreme Court.
- (4) Where a certificate is filed under subsection (3), the Master of the Supreme Court shall enter judgment in that Court in favour of the person for whose benefit the sum is payable and against the person by whom the sum is payable for an amount equal to the sum of the amount stated in the certificate and the fees paid for the certificate, for filing it in the Supreme Court and for entering the judgment.
- (5) Where the Master of the Supreme Court enters judgment under subsection (4), he shall forthwith send notice in writing of the entry of the judgment to the Clerk of the Court that made the maintenance order and to the person to whom payments under the maintenance order are required to be made.
- (6) A judgment entered in the Supreme Court under subsection (4) has, for all purposes, the same force and effect as a judgment entered in that Court upon the hearing and determination of an action by that Court.

- (7) A judgment entered in pursuance of the filing of a certificate under subsection (1) in respect of a maintenance order shall not be enforced:
- (a) unless an affidavit is filed stating the amount due and unpaid under the judgment when the affidavit is sworn;
 - (b) unless that affidavit, or another affidavit that has been filed, states that, when the affidavit is sworn, no proceedings are pending in any other court for the recovery of any of the arrears of maintenance included in the amount of the judgment and that, since the date of the certificate, the liability of the defendant to pay any of those arrears of maintenance has not been affected by the discharge, suspension or variation of the maintenance order; and
 - (c) unless that affidavit or each of those affidavits was sworn on, or as nearly as practicable before, the day on which it is so filed.
- (8) A certificate may be granted under this section stating the sum of the amounts due and unpaid under 2 or more maintenance orders if:
- (a) the person entitled to receive payment under each of the maintenance orders is the same person; and
 - (b) the person required to make payments under each of the orders is the same person.

45 Court may direct defendant to enter into recognizance

- (1) Where a Court makes a maintenance order, the Court may upon making the maintenance order, or that Court or any other Court may at any time while the maintenance order is in force, upon application made by or on behalf of the person for whose benefit the maintenance order was made, order the defendant to enter into a recognizance, with or without sureties, to the satisfaction of the Clerk of the Court by which the last-mentioned order is made for the due performance of his obligations under the maintenance order during a specified period, being a period not exceeding 12 months.
- (2) An order shall not be made under this section unless a Court is satisfied:
- (a) that the defendant has, by his conduct, shown that he is likely to make default in complying with the maintenance order; or
 - (b) that the defendant has persistently failed to comply with the maintenance order.

- (3) Where a Court makes an order under this section, the Court may also, unless the defendant personally enters into the recognizance immediately after the order is made, commit the defendant to prison until:
- (a) the expiration of the term, not exceeding 12 months, specified by the Court;
 - (b) he enters into the recognizance; or
 - (c) he performs his obligations under the maintenance order in respect of the period for which he would be required to perform those obligations under the proposed recognizance,
- whichever first happens.
- (4) Where a defendant fails to comply with his obligations under a recognizance entered into under this section, the recognizance may be forfeited by a Justice and any moneys recovered as a result of the forfeiture of the recognizance shall be applied, first, for or towards payment of any costs ordered to be paid by the defendant in the proceedings for the order under subsection (1), to the extent to which those costs have not already been paid, secondly, for or towards the cost incurred in having the recognizance forfeited and moneys recovered as a result of the forfeiture and, thirdly, for or towards the payment of maintenance due or to become due under the maintenance order.

46 Release on recognizance of persons in prison

- (1) Where a defendant has, under this Act or under any of the repealed Ordinances, been committed to prison for disobeying or failing to comply with a maintenance order, the Administrator may, by order in writing, direct the release of the defendant from prison upon his entering into a recognizance:
- (a) in such an amount, and with or without sureties, as is specified in the order;
 - (b) conditioned for his complying with the maintenance order and paying, weekly, fortnightly or otherwise periodically as specified in the order, an amount specified in the order in respect of the arrears of maintenance due under the maintenance order; and
 - (c) containing such other conditions as the Administrator thinks fit.
- (2) Where a person who has been released in pursuance of this section fails to comply with a condition of the recognizance entered into under this section, a Court may order that the recognizance of

the person and of his surety or sureties (if any) be forfeited and may further order that the defendant be committed to prison for the unexpired portion of the term for which he was originally committed to prison.

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

47 Execution against property, &c.

- (1) Where an order for the payment of moneys has been made under Part II, a Court may, upon application made by or on behalf of the person for whose benefit the moneys are payable, by order, direct a specified person, during a period specified in the order, to seize and sell any goods, chattels and securities belonging to the defendant, to the extent necessary to satisfy the order, and to demand and receive any annuity, rents or other income (not being earnings of the defendant for the purposes of Division 3) payable to the defendant or credited to the defendant in an account with the Territory Insurance Office or an ADI, to the extent necessary to satisfy the order, and to apply any moneys so received, first, towards the payment of his costs and charges and, secondly, towards payment of the amount payable under the maintenance order.
- (2) A person so directed has full power and authority to do all acts and things incidental to the matters that he is authorized and directed to do.
- (3) A person shall not refuse to comply with a demand made upon him under this section by a person directed to make that demand.

Penalty: \$200.

- (4) One application may be made under subsection (1) in respect of 2 or more maintenance orders if:
 - (a) the person entitled to receive payment under each of those maintenance orders is the one person; and
 - (b) the person required to make payments under each of those maintenance orders is the one person.

Division 3 Attachment of earnings

48 Interpretation

- (1) In this Division, unless the contrary intention appears:

attachment of earnings order means an order under section 49.

earnings, in relation to a defendant, means any moneys payable to the defendant:

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

but not including any pay or allowances as a member of the Defence Force or any moneys payable to the defendant under the *Social Services Act 1947-1970* of the Commonwealth, the *Repatriation Act 1920-1970* of the Commonwealth, the *Repatriation (Far East Strategic Reserve) Act 1956-1967* of the Commonwealth, the *Repatriation (Special Overseas Service) Act 1962-1968* of the Commonwealth or the *Seamen's War Pensions and Allowances Act 1940-1970* of the Commonwealth.

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

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

- (a) any sum deducted from those earnings under Division 2 of Part VI of the *Income Tax Assessment Act 1936-1970* of the Commonwealth;
- (b) any sum of a kind referred to in section 82H of that Act deducted from those earnings, not being a sum deducted in

respect of a life insurance premium other than a life insurance premium payable under a superannuation or retirement benefit scheme; and

- (c) any sum of a kind referred to in section 82HA of that Act deducted from those earnings.

normal deduction, in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order, or at the normal deduction rate so specified that is applicable to that pay-day, as the case may be, in respect of the period between that pay-day and either the last preceding pay-day, or, where there is no last preceding pay-day, the date on which the employer became, or last became, the defendant's employer.

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

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

- (2) In this Division:
- (a) a reference to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive payments under the maintenance order either directly or through another person or for transmission to another person; and
- (b) a reference to proceedings relating to an order includes a reference to proceedings in which the order may be made.

49 Attachment of earnings order

- (1) Subject to this Division, a person entitled to receive payments under a maintenance order may make application for an attachment of earnings order.
- (2) An application under subsection (1) may be made *ex parte* and without specifying the name of any employer of the defendant.

- (3) If a Court is satisfied that the defendant is a person to whom earnings are payable or are likely to become payable and:
- (a) that, at the time when the application was made:
 - (i) there was due under the maintenance order and unpaid an amount equal to not less than, in the case of an order for weekly payments, 4 payments or, in the case of any other order for periodical payments, 2 payments; or
 - (ii) there was due under the maintenance order, and unpaid for not less than 4 weeks, an amount in respect of costs or an amount payable otherwise than by way of periodical payments; or
 - (b) that the defendant has persistently failed to comply with the requirements of the order,

the Court may, in its discretion, by an order require a person who appears to the Court to be the defendant's employer in respect of those earnings or a part of those earnings to make out of those earnings or that part of those earnings payments in accordance with section 50.

- (4) A Court shall not make an attachment of earnings order if it appears to the Court that the failure of the defendant to make payments under the maintenance order was not due to his wilful refusal or culpable neglect.
- (5) An attachment of earnings order shall specify a normal deduction rate or normal deduction rates and, where it specifies 2 or more such rates, it shall also specify the pay-day or pay-days to which each of those rates is applicable.
- (6) The rate to be specified as a normal deduction rate shall be the rate at which the Court making the attachment of earnings order considers it to be reasonable that the earnings to which the order relates should, or should on the pay-day or pay-days to which the rate is to be applicable, as the case may be, be applied in satisfying the requirements of the maintenance order but not exceeding the rate that appears to that Court to be necessary for the purpose of:
- (a) securing payment of the sums from time to time falling due under the maintenance order; and
 - (b) securing payment within a reasonable time of any sums already due and unpaid under the maintenance order and any costs incurred in proceedings relating to the maintenance order that are payable by the defendant.

- (7) An attachment of earnings order shall also specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the defendant and of any person for whom he must or reasonably may provide, the Court making the attachment of earnings order considers it to be reasonable that the net earnings of the defendant on any pay-day should not be reduced by a payment under the order.
- (8) An attachment of earnings order shall provide that payments under the order are to be made to the Collector.
- (9) An attachment of earnings order shall contain such particulars as the Court making the order thinks proper for the purpose of enabling the person to whom the order is directed to identify the defendant.
- (10) An attachment of earnings order does not come into force until the expiration of 7 days after the day on which a copy of the order is served on the person to whom the order is directed.

50 Employer to make payments under order

- (1) An employer to whom an attachment of earnings order is directed, being an attachment of earnings order that is in force, shall, in respect of each pay-day, if the net earnings of the defendant exceed the sum of:
 - (a) the protected earnings of the defendant; and
 - (b) so much of any amount by which the net earnings that became payable on any previous pay-day were less than the protected earnings in relation to that pay-day as has not been made good on any other previous pay-day,pay, so far as that excess permits, to the Collector:
 - (c) the normal deduction in relation to that pay-day; and
 - (d) so much of the normal deduction in relation to any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.
- (2) A payment made by the employer under subsection (1) is a valid discharge to him as against the defendant to the extent of the amount paid.

51 Enforcement of maintenance orders

- (1) Where proceedings are brought in a Court to enforce a maintenance order, the Court may, instead of making any other order, make an attachment of earnings order.
- (2) Where an attachment of earnings order is in force, no writ, order or warrant of commitment or attachment shall be issued or made in proceedings for the enforcement of the maintenance order that were begun before the making of the attachment of earnings order, unless a Court otherwise orders.

52 Discharge, suspension or variation of order

- (1) A Court may, in its discretion, on the application of the defendant or a person entitled to receive payments under a maintenance order, make an order discharging, suspending or varying the attachment of earnings order previously made by a Court in relation to that maintenance order.
- (2) An order suspending or varying an attachment of earnings order shall not come into force until the expiration of 7 days after the date on which a copy of the order is served on the person to whom the attachment of earnings order is directed.

53 Cessation of order

- (1) An attachment of earnings order shall cease to have effect:
 - (a) upon the issuing of a writ or other process, or upon the making of an order, for the enforcement of the maintenance order in relation to which the attachment of earnings order applies;
 - (b) upon the discharge of the attachment of earnings order; or
 - (c) subject to subsection (2), upon the discharge or variation of that maintenance order.
- (2) Where a Court discharges a maintenance order and it appears to the Court that arrears under the order will remain to be recovered under the order, the Court may, in its discretion, in addition to discharging the order, direct that the attachment of earnings order shall not cease to have effect until those arrears have been paid.
- (3) Where an attachment of earnings order ceases to have effect, the Clerk of the Court that made the order shall forthwith serve notice in writing accordingly on the person to whom the order was directed.

- (4) Where an attachment of earnings order ceases to have effect, the person to whom the attachment of earnings order is directed does not incur any liability in consequence of his treating the order as still in force at any time before the expiration of 7 days after the date on which the notice required by subsection (3) is served on him.

54 Employer to comply with order

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

55 Procedure where 2 or more orders in force

- (1) Subject to subsections (2) and (3), where, on any occasion on which earnings become payable to a defendant, there are in force 2 or more attachment of earnings orders in relation to those earnings, the person to whom the orders are directed:
- (a) shall comply with those orders according to the respective dates on which they came into force and shall disregard any order until an earlier order has been complied with in relation to those earnings; and
 - (b) shall comply with any order as if the earnings to which the order relates were the residue of the defendant's earnings after the making of any payment under any earlier order.
- (2) Where, on any occasion on which earnings become payable to a defendant, there is in force, in addition to an attachment of earnings order under this Act directed to the employer in respect of the defendant, an attachment of earnings order under the *Matrimonial Causes Act 1959-1966* of the Commonwealth directed to the employer in respect of the defendant, the manner in which the employer shall comply with the order under this Act shall be as directed in the Third Schedule to that Act.
- (3) For the purposes of subsections (1) and (2), where a variation of an order has come into force, the order shall be deemed to have come into force as so varied on the day upon which the order came into force.

56 Notice to be given to defendant

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

57 Employer to notify collector if he ceases to be defendant's employer

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

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

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

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

58 Determination as to what payments are earnings

- (1) A Court shall, upon application by the person to whom an attachment of earnings order is directed, of the defendant or of the person in whose favour an attachment of earnings order was made, determine whether payments to the defendant of a particular class or description specified in the application are earnings for the purposes of that order.
- (2) A person to whom an attachment of earnings order is directed who makes an application under 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 by him 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 any appeal from a determination made on the application has been abandoned.

59 Service of documents

- (1) A copy of an order or other document that is required or permitted to be served on a person other than an incorporated company, society or association under this Division may be served on the person:
 - (a) by delivering the document to the person personally;

- (b) by leaving the document at the usual place of residence or business of the person, or at the last place of residence or business of the person known to the person on whose behalf the document is being served, with a person who apparently resides in, or is employed at, that place and is apparently over the age of 16 years; or
 - (c) by properly addressing and posting (under prepaid postage) the document as a registered letter to the person at any place referred to in paragraph (b).
- (2) A copy of an order or other document that is required or permitted to be served on an incorporated company, society or association under this Division may be served on the company, society or association:
- (a) by leaving the document at any place of business of the company, society or association, or at any place that is the registered office of the company, society or association under the law of the Northern Territory of Australia, of any State or of another Territory, with a person who is apparently employed at that place and is apparently over the age of 16 years; or
 - (b) by properly addressing and posting (under prepaid postage) the document as a registered letter to the company, society or association at any place referred to in paragraph (a).
- (3) Service of a document in accordance with subsection (1)(c) or (2)(b), shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

60 Offences

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

is guilty of an offence punishable by a fine not exceeding \$200.

- (2) It is a defence if a person charged with an offence arising under subsection (1)(a) proves that he took all reasonable steps to comply with the requirement or order.

61 Defendant not to be dismissed

- (1) A person who dismisses an employee, or injures him in his employment, or alters his position to his prejudice, by reason of the circumstance that an attachment of earnings order has been made in relation to the employee or that the person is required to make payments under such an order in relation to the employee is guilty of an offence punishable by a fine not exceeding \$200.
- (2) In any proceedings for an offence arising under subsection (1), if all the facts and circumstances constituting the offence, other than the reason for the action of the person charged with having committed the offence, are proved, the burden lies upon that person to prove that he was not actuated by the reason alleged in the charge.
- (3) Where a person is found guilty by a Court of an offence arising under subsection (1), the Court may order that the employee be reimbursed an amount determined by the Court to be the amount of any wages lost by him and may also direct that the employee be reinstated in his old position or in a similar position.
- (4) Where a Court has made an order under subsection (3), a certificate under the hand of the Clerk of the Court specifying the amount ordered to be reimbursed and the persons by whom and to whom the amount is payable may be filed in a Court having civil jurisdiction to the extent of that amount and is thereupon enforceable in all respects as a final judgment of that last-mentioned court.

62 Application of this Division

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

Division 4 Miscellaneous

63 Defence to proceedings to enforce maintenance order

Where proceedings are taken in a Court under this Part in respect of the failure of the defendant to make payments under a maintenance order during a specified period in accordance with the maintenance order, the Court shall not make an order (other than an order dismissing the proceedings) or issue a warrant or other

process to enforce the maintenance order if the defendant satisfies the Court that during that period he adequately supported the person for whose benefit the maintenance order was made.

64 Penalty for molesting child

- (1) Where, by virtue of an order under section 23, the custody of a child is committed to a parent of the child:
 - (a) a person shall not remove the child from the care and control of that parent contrary to the order or interfere with the exercise by that parent of his rights under the order to the care and control of the child; and
 - (b) a person who has the care and control of the child shall not, upon demand by the parent entitled to the custody of the child under the order, refuse or fail to deliver the child to that parent.
- (2) Where an order under section 23 makes provision with respect to access to a child by a parent of the child, a person shall not, without just cause or excuse, refuse to afford, prevent or interfere with access to the child by that parent in accordance with the order.
- (3) Where the custody of a child is committed to a parent of the child by an order made by a court in a State or a Territory other than the Northern Territory of Australia under an Act that makes like provision as is made by section 23:
 - (a) a person shall not remove the child from the care and control of that parent contrary to the order or interfere with the exercise by that parent of his rights under the order to the care and control of the child; and
 - (b) a person who has the care and control of the child shall not, upon demand by the parent entitled to the custody of the child under the order, refuse or fail to deliver the child to that parent.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (3) if the defendant proves that he did not know, and could not reasonably be expected to have known, of the order committing the custody of the child to the parent of the child.
- (5) A person who contravenes or fails to comply with subsection (1), (2), (3) or (4) commits an offence punishable by a fine not exceeding \$200 or by imprisonment for a period not exceeding 6 months.
- (6) Where a person is found guilty by a Court of an offence against subsection (5), the Court may, either in place of imposing a penalty under that subsection or in addition to any penalty imposed under

that subsection, require the person to enter into a recognizance, with or without sureties, in such reasonable amount as the Court thinks fit to comply with this section and, if the person does not enter into the recognizance forthwith, may order him to be imprisoned until he enters into the recognizance or until the expiration of a period of 3 months, whichever first occurs.

Part IV Reciprocal enforcement of maintenance orders made outside the Territory

Division 1 Interpretation and administration

65 Interpretation

(1) In this Part, unless the contrary intention appears:

certified copy:

- (a) in relation to a maintenance order or other order of a court (not being an order made under the *Matrimonial Causes Act 1959* 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 or, in the case of an overseas order, by the Solicitor for the Northern Territory;
- (b) in relation to a maintenance order or other order made under the *Matrimonial Causes Act 1959* of the Commonwealth means:
 - (i) a certificate of the order issued under the rules made under that Act;
 - (ii) if the order is included in a decree nisi – a copy of the decree nisi; or
 - (iii) a copy of such a certificate or of the decree nisi in which the order is included certified to be a true copy by an officer of a court in which the order has been registered under that Act; and
- (c) in relation to a record of the evidence of a witness in proceedings before a court – means a copy of the record certified to be a true copy by an officer of that court.

Collector:

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

collector's certificate:

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

country includes a State, Province or other part of a country outside Australia, or a Territory of such a country.

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

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

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

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

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

maintenance order means an order (whether made before or after the commencement of this Act and whether made in the Territory or elsewhere), being:

- (a) an order whereby a person is ordered to pay money, whether in a lump sum or by instalments, or to pay sums of money periodically, for or towards the maintenance of another person or by way of recoupment of moneys spent in, or provided for, the maintenance of another person; or
- (b) an order made under, or of a kind similar to an order made under, section 16, 18, 19 or 20,

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

officer, in relation to a court, includes a person, or one of the persons, constituting the court.

overseas order, in relation to a reciprocating country, means:

- (a) in the case where the regulations provide that maintenance orders made in that country are enforceable in the Territory in accordance with the provisions of Division 3 on or after a date specified in the regulations – a maintenance order made on or after that date in that country by a court of competent jurisdiction; and
- (b) in any other case – a maintenance order made in that country by a court of competent jurisdiction, whether before or after the country is so specified.

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

State means:

- (a) a State of the Commonwealth; or
- (b) a Territory of the Commonwealth other than the Northern Territory of Australia.

State order means a maintenance order:

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

Territory order means a maintenance order:

- (a) made in the Territory by a Court; or
 - (b) made by the Supreme Court and registered, for the purposes of enforcement, in a Court under the *Matrimonial Causes Act 1959* of the Commonwealth.
- (2) A reference in this Part to a certified copy of an order shall, where the order has been varied or otherwise affected by a provisional order of one court that has effect by virtue of its being confirmed (whether with or without modification) by another court, be read as including a reference to both a certified copy of the provisional order and a certified copy of the confirming order.
- (3) A reference in this Part to an order made by a court shall be deemed to include a reference to an order made by another court on an appeal in connection with proceedings that originated in the first-mentioned court.
- (4) For the purposes of this Part, a person working in a place, whether temporarily or permanently, shall be deemed to be resident in that place as well as in the place where he is in fact resident.
- (5) A reference in this Part to the depositions of a witness shall be read as a reference:
- (a) in a case where the witness gave evidence in the Territory:
 - (i) if a record of the evidence was made in accordance with section 5(1) of the *Records of Depositions Act* – to a transcript of the record certified in accordance with section 5(5) of that Act; or
 - (ii) if the depositions were taken down in writing and signed in accordance with section 5(2) of the *Records of Depositions Act* – to the depositions as so taken down and signed; or

- (b) in any other case – to a record of the depositions certified as required by the law in force in the place where the evidence was given or to the depositions taken down when the evidence was given or a certified copy of the depositions so taken down.

66 Powers, &c., of Collector

- (1) The Collector may do all things necessary or convenient to be done for the enforcement in the Territory of maintenance orders enforceable in the Territory by virtue of this Part.
- (2) The Collector shall:
 - (a) receive moneys payable to him in pursuance of orders enforceable under this Part and moneys remitted to him by Collectors for States and authorities in reciprocating countries, and give receipts for moneys so received;
 - (b) remit to Collectors for States and to the proper authorities in reciprocating countries moneys received by him in respect of maintenance orders made for the benefit of persons residing in those States or in those countries and payable to or for the benefit of those persons, together with proper accounts in respect of those moneys; and
 - (c) pay other moneys received by him to the persons entitled to those other moneys.
- (3) In all proceedings under this Part, the Collector is entitled to appear, to be heard, to give evidence and to call, examine and cross-examine witnesses.

Division 2 State maintenance orders

67 Transmission of Territory orders for enforcement in a State

- (1) Where a Territory order is presently in operation in the Territory but is not presently enforceable under the law of a State, and it appears to the Collector that the defendant is resident in, or proceeding to, a State, the Collector may send to the Collector for that State:
 - (a) three certified copies of the order;
 - (b) a collector's certificate relating to the order;
 - (c) such information and material (if any) as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and

- (d) a request in writing that the order be made enforceable in that State.
- (2) Where:
- (a) a Territory order is, under the law of a State, enforceable in that State; and
 - (b) the Collector is satisfied that there are reasonable grounds for believing that the defendant is not resident in, or proceeding to, that State or it appears to the Collector that there is some other good reason why the order should no longer be enforceable in that State,
- he may send to the Collector for that State a request in writing that the order be made no longer enforceable in that State and, for the purposes of this Act, the order shall, upon the sending of the request, be deemed to cease to be enforceable in that State.
- (3) The fact that a Territory order has ceased to be enforceable in a State by reason of action taken in the State as a result of a request made under subsection (2) does not prevent a further request under subsection (1) that the order be again made enforceable in that State.
- (4) Where a Territory order is, in pursuance of a request under subsection (1), made enforceable in a State:
- (a) the order ceases to be enforceable in the Territory;
 - (b) the order remains unenforceable in the Territory unless and until it ceases to be enforceable in that State; and
 - (c) every warrant or other process under this Act arising out of the order previously issued in the Territory and not executed ceases to have effect.

68 Enforcement in Territory of orders made in States

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

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

- (2) Where a request is so made to the Clerk of a Court, the Clerk shall (whether or not the order is of such a kind as could be made in the Territory) register the order by filing with the records of a Court a certified copy of the order and the collector's certificate and noting the fact and date of the registration on that certified copy.
- (3) A State order so registered is, until the registration is cancelled, enforceable in the Territory, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.
- (4) Upon registration of the order, the Collector shall notify the Collector for the State accordingly and shall cause a certified copy of the order to be served upon the defendant, together with a notice of registration of the order in the Territory:
 - (a) specifying the amount (if any) of the arrears due under the order;
 - (b) stating that payments under the order are to be made to the Collector; and
 - (c) giving an address at which payments may be made.
- (5) Where:
 - (a) a State order is registered in the Territory under this section; and
 - (b) the Collector receives from the Collector for the State a request in writing that the order be made no longer enforceable in the Territory,

the Collector shall request the Clerk of the appropriate Court to cancel the registration of the order, and the Clerk shall thereupon cancel the registration by noting the fact and date of the cancellation on the certified copy of the order filed in accordance with subsection (2).

- (6) Where the registration of an order is so cancelled:
 - (a) the order ceases to be enforceable in the Territory;
 - (b) the order remains unenforceable in the Territory unless and until it is again registered in the Territory; and

- (c) every warrant or other process under this Act arising out of the order previously issued in the Territory and not executed ceases to have effect.

69 Collector to notify original State when defendant leaves Territory

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

70 Application for provisional order of variation, &c.

- (1) Where a State order made by a court of summary jurisdiction is enforceable in the Territory by virtue of this Division, an application in writing may be made by or on behalf of the complainant or the defendant for an order discharging, suspending, varying or reviving the order, and a Court has jurisdiction to hear and determine the application.
- (2) Where a Territory order is enforceable in a State by virtue of provisions corresponding with this Division, an application in writing may be made by or on behalf of the complainant or the defendant for an order discharging, suspending, varying or reviving the Territory order, and a Court has jurisdiction to hear and determine the application.
- (3) The applicant shall cause a copy of an application under this section to be served, not less than 14 days before the hearing of the application, upon the Collector personally or by post and the Collector shall, forthwith upon receipt by him of the notice, notify the Collector for the State in which the order was made or the Territory order is enforceable, as the case may be.
- (4) While a Territory order is enforceable in a State under the law of that State, no application for the discharge, suspension, variation or revival of the order shall be made in the Territory except in accordance with this section.

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

Where:

- (a) an application is made under section 70(1) by a defendant for the discharge, suspension or variation of a State order;

- (b) the defendant either did not appear at the hearing of the complaint upon which the original State order was made or was not served personally in the State or Territory in which that order was made with a summons issued in pursuance of the complaint upon which that order was made; and
- (c) the application is made within 6 months after service on the defendant of notice of registration of the order in the Territory,

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

72 Law to be applied

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

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

- (1) Except as provided in subsection (2), an order made on an application under section 70 discharging, suspending, varying or reviving a maintenance order is provisional only and has no effect unless and until confirmed by a competent court of the State in which the maintenance order was made or is enforceable, and shall be expressed accordingly.
- (2) Where the respondent to the application has been served personally in the Territory with a copy of the application or appears on the hearing of the application, any order made on the application shall recite that fact, and the order has effect forthwith in the Territory.
- (3) Where an order made on an application under section 70 is expressed to be provisional, the Clerk of the Court that made the order shall send a certified copy of the order, together with the depositions of the witnesses, to the Collector for transmission to the Collector for the State.
- (4) Where an order referred to in subsection (3) has been confirmed (whether with or without modification) by a court of the State, the order has effect in the Territory as so confirmed.

74 Procedure where provisional order remitted by Court of a State

- (1) Where a provisional order made under sections 70, 71, 72 and 73 is remitted by a court in a State to a Court for the purpose of taking further evidence, a Court shall, after notice has been given to the Collector and to such persons in such manner as a Court thinks fit,

proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in that State.

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

75 Confirmation in Territory of provisional orders made in States

- (1) Where the Collector receives:

- (a) a certified copy of:
- (i) a provisional order made by a court in a State discharging, suspending, varying or reviving a Territory order enforceable in that State; or
 - (ii) a provisional order made by a court of a State discharging, suspending, varying or reviving an order made in that State and enforceable in the Territory by virtue of this Division; and
- (b) the depositions of the witnesses who gave evidence at the hearing of the application upon which the provisional order was made,

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

- (2) The Collector shall cause a copy of the application under this section to be served on the respondent to the application not less than 7 days before the hearing of the application.
- (3) Upon the hearing of the application, a Court may:
- (a) confirm the provisional order (either with or without modification);
 - (b) discharge the provisional order; or
 - (c) adjourn the proceedings and remit the provisional order to the court that made it with a request that that court take further evidence and further consider its provisional order.
- (4) Where a provisional order is confirmed under this section (whether with or without modification) the order as so confirmed has effect in the Territory as if it were an order to the like effect made by a Court in the Territory.

76 Proceedings for enforcement

- (1) Where a State order is enforceable in the Territory by virtue of this Division:
 - (a) proceedings for the enforcement of the order may be taken under Part III; and
 - (b) this Act, other than Part II, applies to and in relation to proceedings for the enforcement of the order,as if the State order were a maintenance order within the meaning of Part III.
- (2) The Collector may take any proceedings that are authorized by subsection (1).
- (3) Where proceedings are so taken by the Collector for the enforcement of an order (being an order of the kind referred to in paragraph (a) of the definition of ***maintenance order*** in section 65(1)), the Court before which the proceedings are heard and determined shall, unless it is satisfied by evidence to the contrary, presume:
 - (a) that the moneys due and payable under the order:
 - (i) if the order has ceased to be in force – were, when the moneys became due and payable, required for the maintenance of the person for whose benefit the order was made; or
 - (ii) in any other case – are required for the maintenance of that person; and
 - (b) that no moneys have been paid under the order since its registration in the Territory other than any moneys that have been paid to the Collector.

Division 3 Overseas maintenance orders

77 Transmission of maintenance orders made in Territory for enforcement in reciprocating countries

- (1) Where a Territory order is presently enforceable in the Territory but not under the law of a State and it appears to the Collector that the defendant is resident in, or proceeding to, a reciprocating country, the Collector may send to the Solicitor for the Northern Territory:
 - (a) three certified copies of the Territory order;

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

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

- (2) Where a Territory order is, in pursuance of a request under subsection (1), made enforceable in a reciprocating country:
 - (a) the order ceases to be enforceable in the Territory;
 - (b) the order remains unenforceable in the Territory unless and until it ceases to be enforceable in that reciprocating country; and
 - (c) every warrant or other process under this Act arising out of the order previously issued in the Territory and not executed ceases to have effect.
- (3) This section does not apply in relation to an order under section 16, 17, 18, 19 or 20, or under any corresponding previous enactment, where the order relates to a child whose parents were not married to each other at the time of its conception or have not since married each other, or to the mother of such a child, unless the defendant appeared in the proceedings in which a Court adjudged him to be the father of the child, or was duly served with a summons to appear in those proceedings or consented to the making of the order made in those proceedings.

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

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

- (2) An order made under subsection (1) is provisional only and has no effect unless and until confirmed (either with or without modification) by a competent court in a reciprocating country in which the defendant is resident at the time of that confirmation, and shall be expressed accordingly.
- (3) Where a Court makes an order under subsection (1), the Clerk of the Court shall send to the Collector:
 - (a) the depositions of the witnesses;
 - (b) three certified copies of the order; and
 - (c) a statement of the grounds on which the making of the order could have been opposed if the defendant had appeared at the hearing.
- (4) Upon receiving the documents, the Collector shall send the documents, together with any information and material the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant to the Solicitor for the Northern Territory for transmission to the reciprocating country referred to in subsection (1).
- (5) Where such a provisional order has come before a court in a reciprocating country for confirmation and the order has by that court been remitted to a Court for the taking of further evidence, a Court shall, after notice has been given to such persons and in such manner as a Court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the reciprocating country.
- (6) If, upon the taking of the further evidence, it appears to a Court that the order ought not to have been made, the Court may rescind the order and may, if it thinks fit, make a fresh provisional order under subsection (1).
- (7) Where a Court takes evidence in pursuance of a request of another court made under subsection (5), the Court may, for the purposes of subsection (6), have regard to the evidence given at the hearing in that other court.
- (8) Where a court in a reciprocating country in which the defendant is for the time being resident confirms (either with or without modification) a provisional order made under this section, the order has effect in the Territory as so confirmed.
- (9) Where a court in a reciprocating country confirms (either with or without modification) a provisional order made under this section, then, in any proceedings arising out of or relating to the order, it

shall be presumed, unless the contrary is proved, that the defendant was resident in that reciprocating country at the time when the order was confirmed.

79 Cancellation of registration

Where:

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

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

80 Registration of overseas orders

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

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

- (2) In the case of an overseas order in the nature of an affiliation order or an overseas order consequent upon such an order, the Solicitor for the Northern Territory shall not send the documents relating to the order to the Collector if it appears to him from those documents that the defendant did not appear in the proceedings in which the

order was made or consent to the making of the order.

- (3) In the case of an overseas order originating in a country having restricted reciprocity, the Solicitor for the Northern Territory shall not send the documents relating to the order to the Collector unless the Solicitor for the Northern Territory is satisfied that the order is a maintenance order of such a kind as can be made under Part II.
- (4) Where the Collector receives from the Solicitor for the Northern Territory the documents referred to in subsection (1), he shall transmit the documents to the Clerk of a Court with a request that the order be registered in a Court.
- (5) Where a request is so made, the Clerk shall register the order by filing with the records of a Court a certified copy of the order and the certificate relating to the order and by noting the fact and date of the registration on that certified copy.
- (6) An overseas order so registered shall, until the registration is cancelled, be enforceable in the Territory, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.
- (7) Upon registration of an overseas order, the Collector shall notify an officer of the Court or other authority in the reciprocating country accordingly and cause a certified copy of the order to be served upon the defendant, together with a notice of registration of the order in the Territory:
 - (a) specifying the amount (if any) of the arrears due under the order;
 - (b) stating that payments under the order are to be made to the Collector; and
 - (c) giving an address at which such a payment may be made.

81 Confirmation of provisional orders made overseas

- (1) Where:
 - (a) an overseas order (other than an order in the nature of an affiliation order or an order consequent upon such an order) has no effect under the law of the reciprocating country in which it is made unless and until confirmed by a court outside that reciprocating country (whether or not it appears from the order that it may be confirmed by a Court of Summary Jurisdiction in the Territory);

- (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 Solicitor for the Northern Territory ; and
- (c) it appears to the Solicitor for the Northern Territory that:
 - (i) there are reasonable grounds for believing the defendant is resident in, or proceeding to, the Territory; and
 - (ii) the order will have effect under the law of a reciprocating country if it is confirmed by a Court,

the Solicitor for the Northern Territory shall send the documents received by him to the Collector.

- (2) In the case of a provisional order made in a country having restricted reciprocity, the Solicitor for the Northern Territory shall not send the documents relating to the order to the Collector unless the Solicitor for the Northern Territory is satisfied that the order is of such a kind as could be made (otherwise than as a provisional order) under Part II.
- (3) After receipt of the documents by the Collector, a summons may, on the application of the Collector, be issued by a Justice calling upon the defendant to appear before a Court to show cause why that order should not be confirmed.
- (4) At the hearing it shall be open to the defendant to raise any ground of opposition that he could have raised in the original proceedings or any ground of opposition that he could have raised had the proceedings on which the provisional overseas order was made been heard in the Territory, and the statement referred to in subsection (1) shall be conclusive evidence that the grounds referred to in that statement are the grounds of opposition that could have been raised in the original proceedings.
- (5) If the defendant, having been served in the Territory with the summons, does not appear at the hearing, or if the defendant appears at the hearing but fails to satisfy the Court before which the proceedings are heard that the order ought not to be confirmed, the Court may:
 - (a) confirm the provisional order (either with or without modification);
 - (b) discharge the provisional order; or

- (c) adjourn the proceedings and remit the provisional order to the court that made it, with a request that that court take further evidence and further consider its provisional order.
- (6) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed has effect in the Territory as if it were an order to the like effect made by a Court.
- (7) If, at the hearing, a Court is of opinion that it is necessary to remit the case to the court that made the provisional order for the taking of further evidence, the case may be so remitted.

82 Order enforceable in Territory may be sent to a State

- (1) Where an overseas order is enforceable in the Territory under this Division, and it appears to the Collector that there are reasonable grounds for believing that the defendant has ceased to reside in the Territory and is resident in, or proceeding to, a State, the Collector may send to the Collector for that State:
 - (a) three certified copies of the overseas order;
 - (b) a collector's certificate relating to the order;
 - (c) such information and material as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
 - (d) a request in writing that the order be made enforceable in that State,and if he does so, shall forthwith notify an appropriate officer in the reciprocating country of the fact that he has so sent the documents.
- (2) Where a request is made under subsection (1):
 - (a) the order ceases to be enforceable in the Territory and, if the order has been registered in a Court, that registration shall be deemed to be cancelled;
 - (b) the order remains unenforceable in the Territory unless and until it is registered, or again registered, in the Territory; and
 - (c) every warrant or other process under this Act arising out of the order previously issued in the Territory and not executed ceases to have effect.

83 Registration of overseas orders registered or confirmed in a State

- (1) Where:
- (a) the Collector receives from the Collector for a State:
 - (i) three certified copies of an overseas order;
 - (ii) a collector's certificate signed by the Collector for that State relating to the order; and
 - (iii) a request in writing that the order be made enforceable in the Territory; and
 - (b) it appears from the collector's certificate that:
 - (i) the order has been registered in, or confirmed by, a court in that State under a law of that State corresponding with this Division; and
 - (ii) the order was, at the date of the certificate, presently enforceable in that State in accordance with that law,

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

- (2) Where a request is so made, the Clerk shall (whether or not the order is of such kind as could be made under Part II) register the order by filing with the records of a Court a certified copy of the order and the collector's certificate and noting the fact and date of the registration on that certified copy.
- (3) An overseas order so registered shall, until the registration is cancelled, be enforceable in the Territory, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.
- (4) Upon registration of an overseas order, the Collector shall notify the officer of a court or other authority in the reciprocating country accordingly, and shall cause a certified copy of the order to be served upon the defendant, together with a notice of registration of the order in the Territory:
- (a) specifying the amount (if any) of the arrears due under the order;

- (b) stating that payments under the order are to be made to the Collector; and
- (c) giving an address at which such payments may be made.

84 Transmission of documents where defendant not in Territory

Where the Solicitor for the Northern Territory receives documents relating to an overseas order (including a provisional order) that have been transmitted to the Territory for the purpose of having the order made enforceable or confirmed in the Territory and it appears to him that the defendant is not resident in, or proceeding to, the Territory but is resident in, or proceeding to, a State or a reciprocating country other than that in which the order was made, the Solicitor for the Northern Territory may, instead of taking steps with a view to the registration or confirmation of the order in the Territory:

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

85 Cancellation of registration

(1) Where:

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

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

(2) Where such a request has been so filed:

- (a) the overseas order ceases to be enforceable in the Territory;

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

86 Proceedings for enforcement

- (1) Where an overseas order is enforceable in the Territory by virtue of this Division:
 - (a) all proceedings may be taken for the enforcement of the order; and
 - (b) this Act shall, so far as it is applicable and with such modifications as are necessary, apply to and in relation to proceedings for the enforcement of the order,

as if it were a maintenance order made under Part II.
- (2) The Collector may take any proceedings that are authorized by subsection (1).
- (3) Where proceedings are so taken by the Collector for the enforcement of an order (being an order of the kind referred to in paragraph (a) of the definition of ***maintenance order*** in section 65(1)), the Court before which the proceedings are taken shall, unless it is satisfied by evidence to the contrary, presume:
 - (a) that the moneys due and payable under the order:
 - (i) if the order has ceased to be in force – were, when the moneys became due and payable, required for the maintenance of the person for whose benefit the order was made; or
 - (ii) in any other case – are required for the maintenance of that person; and
 - (b) that no moneys have been paid under the order since its registration in the Territory other than any moneys that have been paid to the Collector.

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

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

- (2) Where a Territory order is enforceable under the law of a reciprocating country in which the defendant is for the time being resident, the complainant may make an application in writing for an order varying, or, if the order has been suspended, reviving, the order.
- (3) The applicant shall cause a copy of an application under this section to be served upon the Collector personally or by post not less than 14 days before the hearing of the application.
- (4) A Court shall, as far as practicable, hear and determine an application under this section as if it were similar to an application under Division 5 of Part II.

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

Where:

- (a) an application is made under section 87 by a defendant for the discharge, suspension or variation of an overseas order;
- (b) the defendant either did not appear at the hearing of the proceedings upon which the overseas order was made or was not served in the manner referred to in section 101(3) in the country in which that order was made with a summons issued in pursuance of the complaint upon which that order was made; and
- (c) the application is made within 6 months after service on the defendant of notice of registration of the order in the Territory,

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

89 Law to be applied

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

90 Certain orders to be provisional only

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

- (2) Where a provisional order is made in accordance with this section, the Collector shall send a certified copy of the provisional order, together with the depositions of the witnesses, to an officer of a court in the reciprocating country having jurisdiction to confirm the provisional order.
- (3) Where a court in the reciprocating country confirms (with or without modification) a provisional order made on an application under section 87, the order has effect in the Territory as so confirmed.
- (4) Notwithstanding anything contained in this section, if a provisional order made on an application under section 87(2) is confirmed (with or without modification) by a court of a reciprocating country (not being the country specified in the order) in which the defendant is resident at the time of the confirmation, the order has effect in the Territory as so confirmed.

91 Procedure where provisional order remitted by Court in reciprocating country

- (1) Where a provisional order made in accordance with section 90 is remitted by a court in a reciprocating country to a Court for the taking of further evidence, a Court shall, after notice has been given to such persons and in such manner as a Court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the reciprocating country.
- (2) If, upon the taking of the further evidence, it appears to a Court that the order ought not to have been made, the Court may rescind the order and may, if it thinks fit, make a fresh provisional order on the application under section 87.

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

- (1) Where the Collector receives:
 - (a) a certified copy of:
 - (i) a provisional order made by a court of a reciprocating country discharging, suspending, varying or reviving a Territory order enforceable in that reciprocating country; or
 - (ii) a provisional order made by a court in a reciprocating country discharging, suspending, varying or reviving an overseas order made in that reciprocating country and enforceable in the Territory by virtue of this Division; and

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

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

- (2) The Collector shall cause a copy of the application under this section to be served on the respondent to the application not less than 7 days before the hearing of the application.
- (3) Upon the hearing of the application, a Court may:
 - (a) confirm the provisional order (with or without modification);
 - (b) discharge the provisional order; or
 - (c) adjourn the proceedings and remit the provisional order to the court that made it with a request that the court take further evidence and further consider its provisional order.
- (4) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed has effect in the Territory as if it were an order to the like effect made by a Court in the Territory.

93 Reciprocating countries

- (1) Where the Minister is satisfied that the law of a country makes provision for the enforcement in that country of maintenance orders made in another country and that under that law Territory orders may be made enforceable in that country, regulations may be made under this Act declaring that country to be a reciprocating country for the purposes of this Part.
- (2) If it appears to the Minister that the jurisdiction of the courts of a country so declared, or to be so declared, to make maintenance orders extends to the making of orders that are not of the same kind as orders that may be made in the Territory under Part II, the regulations may provide that that country has restricted reciprocity with the Territory.
- (3) The regulations may specify, in relation to the country declared by the regulations to be a reciprocating country, a date, which may be before or after or the same day as the date on which the regulations come into operation, and provide that maintenance orders made in that country on or after that date are enforceable in the Territory in accordance with this Division.

- (4) Where a country that has been a reciprocating country ceases to be a reciprocating country:
- (a) a maintenance order made in that country and enforceable in the Territory by virtue of this Division ceases to be so enforceable; and
 - (b) every warrant or other process under this Act arising out of any such order previously issued in the Territory 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.

Division 4 Miscellaneous

94 Payments to be made to Collector

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

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

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

96 Collector to note changes in orders made or enforceable in Territory

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

country, or of a State order or overseas order enforceable in the Territory under this Part, the Collector shall:

- (a) file the certified copy or notice with the records of the Court with the records of which the Territory order, State order or overseas order is filed; and
 - (b) if the complainant or defendant is resident in the Territory, cause a copy of the certified copy or notice to be served on the complainant or defendant, as the case may be.
- (2) Where a certified copy or notice is so filed in relation to a maintenance order, the order, event or matter has the like effect in the Territory as it appears from the certified copy or notice to have in the State or reciprocating country.
- (3) Subsections (1) and (2) do not apply in relation to an order made in a reciprocating country affecting a maintenance order in a manner adverse to the defendant unless it appears from the documents received by the Collector that the defendant appeared on the hearing of the proceedings.

97 Conversion of currency

- (1) For the purposes of this Part, an overseas order (including a provisional order) or a certificate or notice originating in a reciprocating country that refers to an amount of money (including an amount of arrears) expressed in the currency of a reciprocating country shall be deemed to refer to the amount that was the equivalent amount in Australian currency on the prescribed date on the basis of the telegraphic transfer rate of exchange prevailing on that date.
- (2) For the purposes of this section, a certificate signed by the Collector, or the Collector for a State, and purporting to be based on information obtained by him from the Reserve Bank of Australia, that a specified amount in Australian currency was, on a specified date, the equivalent of a specified amount in another currency on the basis of the telegraphic transfer rate of exchange prevailing on that date is evidence of the matter stated in the certificate.
- (3) Where a certificate in accordance with subsection (2) has been filed with the records of a Court in relation to an order, certificate or notice, every copy of that order, certificate or notice served on any person shall be accompanied by a copy of the first-mentioned certificate.

- (4) Where, under section 66, the Collector is required to remit an amount of money to a country outside the Commonwealth, he shall remit such amount in the currency of that country as he is able to remit by the expenditure of that first-mentioned amount.
- (5) In this section ***the prescribed date*** means:
- (a) in relation to a maintenance order registered under this Part or a certificate with respect to the arrears payable under a maintenance order sought to be so registered – the day upon which the order is registered;
 - (b) in relation to a provisional order confirmed under this Part – the day upon which the order is confirmed; or
 - (c) in relation to an order or notice referred to in section 96(1) – the day upon which the certified copy of the order or the notice is filed with the records of a Court in accordance with that section.

98 Translation of orders, records, &c.

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

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

99 Certificate of payments

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

maintenance order is evidence of the facts stated in the certificate.

100 Evidentiary

- (1) For the purposes of this Part and in proceedings under or arising out of this Part, a document purporting to be:
 - (a) a certified copy of an order (including a provisional order) of a court;
 - (b) the record, or a certified copy of the record, of the evidence of a witness in proceedings before a court; or
 - (c) a certificate or notice of a kind referred to in this Part,

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

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

101 Service of documents under Part IV

- (1) A document required or permitted by this Part to be served on a person shall, unless the contrary appears in this Part, be served on that person personally.
- (2) A document required by section 68(4), 80(7), 83(4) or 96 to be served on a person may be served on him:
 - (a) personally; or
 - (b) by post at his usual or last-known place of residence or business.
- (3) A reference in this Part to a document being served on a person personally shall be read as a reference to that document being served by:
 - (a) delivering a copy of the document to that person; or
 - (b) leaving a copy of the document at the usual or last-known place of residence or business of that person with some other person who apparently resides in or is employed at that place, and is apparently over the age of 16 years.

Part IVA Evidence

101A Standard of proof

- (1) Subject to this Act, a matter of fact shall, for the purposes of this Act, be taken to be proved if it is established to the reasonable satisfaction of the Court.
- (2) Subject to this Act, where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it is sufficient if the Court is reasonably satisfied of the existence of that ground or fact or as to that other matter.

101B Evidence of husbands and wives

- (1) Subject to this Act, all parties and the wives and husbands of all parties are competent and compellable witnesses in proceedings under this Act.
- (2) Subject to subsection (3), in proceedings under this Act, a husband is competent, but not compellable, to disclose communications made between him and his wife during the marriage, and a wife is competent, but not compellable, to disclose communications made between her and her husband during the marriage.
- (3) Where a husband and wife are both parties to proceedings under this Act, each of them is competent and compellable to disclose communications made between them during the marriage.

101C Evidence of non-access

In proceedings under this Act, either party to a marriage may give evidence proving or tending to prove that the parties to the marriage did not have sexual relations with each other at any particular time, but is not compellable to give such evidence if it would show or tend to show that a child born to the wife during the marriage was not the child of the husband.

101D Evidence as to adultery

- (1) A witness in proceedings under this Act who, being a party, voluntarily gives evidence on his own behalf or, whether he is a party or not, is called by a party may be asked, and is bound to answer, a question the answer to which may show, or tend to show, adultery by or with the witness where proof of that adultery would be material to the decision of the case.

- (2) Except as provided by subsection (1), a witness in proceedings under this Act (whether a party to the proceedings or not) is not liable to be asked, or bound to answer, a question the answer to which may show, or tend to show, that the witness has committed adultery.

101E Convictions for crimes to be evidence

In any proceedings under this Act, evidence that a party to a marriage has been found guilty whether in Australia or elsewhere, of a crime is evidence that the party did the acts or things constituting the crime.

Part V Appeals

102 Appeals

- (1) Division 1 of Part VI of the *Justices Act* applies to and in relation to proceedings before a Court under this Act as if those proceedings were the hearing or determination of an information or complaint under the *Justices Act*.
- (2) A person aggrieved by an order of a court under this Act may, within the prescribed period after the order is made, appeal to the Supreme Court against the order in the manner provided, subject to this Part, in and under Division 2 of Part VI of the *Justices Act*.
- (3) An appellant shall serve notice of the appeal on the Clerk of the Court by which the order was made within the prescribed period after the order was made and on all other parties directly affected by the appeal before or as soon as practicable after the expiration of that period.
- (4) Where it appears to a Court that notice of appeal cannot be served personally on a person to whom it is required to be served by subsection (3), the Court may order that the notice be given or served in a manner specified by the Court.
- (5) An appeal to the Supreme Court under this section shall be in the nature of a re-hearing.
- (6) Subject to this Part, Division 2 of Part VI of the *Justices Act* applies to and in relation to an appeal against an order made under this Act in like manner as that Division applies to and in relation to an order made under the *Justices Act*.

- (7) In this section, ***the prescribed period***, in relation to an order, means:
- (a) the period of one calendar month; or
 - (b) if a Judge of the Supreme Court has fixed a longer period, being a period of 3 months or less, by reason of the remoteness from the seat of the Supreme Court from the place at which the order was made – that longer period.
- (8) Where a defendant appeals to the Supreme Court against an order made under section 16 before the birth of the child to whom the order relates, the defendant may, in his notice of appeal, request that the appeal be not heard before the birth of the child.
- (9) Where a notice of appeal contains the request mentioned in subsection (8), the Supreme Court shall not hear the appeal until evidence of the birth of the child is furnished to the Master of the Supreme Court.
- (10) Where a person appeals to the Supreme Court against an order made in proceedings instituted by a complaint made on behalf of a child, the Supreme Court may, at the request of a party to the appeal, make an order directing the person who has the custody of the child to produce the child before the Supreme Court upon the hearing of the appeal.

103 Orders pending appeals

- (1) Where a person appeals to the Supreme Court under section 102 against an order for the payment of moneys or against an order varying an order for the payment of moneys, the Supreme Court may order that the order appealed from be stayed pending the hearing and determination of the appeal and, if it thinks fit, also make an order for the payment of maintenance in respect of a person pending the hearing and determination of the appeal.
- (2) Where a person appeals to the Supreme Court under section 102, against an order made under section 23, the Supreme Court may order that the order appealed from be stayed pending the hearing and determination of the appeal and, if it thinks fit, by the same or a subsequent order, make such provision as it thinks fit with respect to the custody of, or to access to, the child by a parent of the child pending the hearing and determination of the appeal.
- (3) Where the Supreme Court makes an order for the payment of maintenance under subsection (1), moneys cease to be payable under the order upon the determination of the appeal by the Supreme Court.

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- (4) Where, after the Supreme Court has made an order (in this subsection referred to as the *interim order*) under subsection (1) for the payment of maintenance in respect of a person, the Supreme Court makes an order on the determination of the appeal (in this subsection referred to as the *final order*) that results in maintenance becoming payable in respect of that person from a specified date, being a date before the date upon which moneys cease to be payable under the interim order, an amount equal to the sum of the payments made under the interim order for the maintenance of the person in respect of a period after the specified date shall be deemed to have been made in respect of the maintenance payable as a result of the final order.

Part VI Miscellaneous

104 Complaints

- (1) A complaint shall be taken not to have been duly made for the purposes of this Act unless it is made to a Justice in writing and upon oath.
- (2) Where a complaint for the purposes of this Act is made to a Justice, the Justice:
- (a) may issue a summons requiring the defendant to attend before a Court on a date, and at a time and place, specified in the summons; or
 - (b) may, subject to subsection (3), issue a warrant for the apprehension of the defendant and for bringing him before a Court to answer the complaint.
- (3) A Justice shall not issue a warrant for the apprehension of a defendant under subsection (2) unless he is satisfied, by evidence furnished to him upon oath, that the whereabouts of the defendant are unknown to the complainant or that the defendant is about to move, or has moved, out of the Territory without having made adequate provision for the maintenance of the complainant.
- (4) Two or more complaints made against a defendant by a complainant, whether on the complainant's own behalf, on behalf of other persons or both on the complainant's own behalf and on behalf of other persons, may be joined in the one form of complaint.
- (5) Where, in pursuance of subsection (4), 2 or more complaints are joined in the one form of complaint:
- (a) one summons may be issued in respect of those complaints;

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- (b) those complaints shall, unless a Court otherwise orders, be heard and determined by a Court at the same time; and
 - (c) two or more orders in respect of those complaints may be joined in the one form of order but the order in respect of each complaint shall, for the purposes of this Act, be deemed to be a separate order.
- (6) Where:
- (a) complaints for the maintenance of a child of a marriage are made by the same complainant against the father as well as against the mother of that child; or
 - (b) complaints for the maintenance of a child whose parents were not married to each other at the time of its conception or have not since married each other are made by the same complainant against a person alleged to be the father of that child as well as against the mother of that child,

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

105 Court may proceed in absence of defendant in certain cases

- (1) Where the defendant does not appear before a Court:
- (a) at the time and place specified in a summons issued in relation to a complaint; or
 - (b) at the time and place specified in an application made under section 41(1) to commit the defendant to prison,
- or on any day to which the hearing of the complaint or application is adjourned, a Court may, subject to subsection (2), issue a warrant for the apprehension of the defendant or proceed to hear and determine the complaint or application in the absence of the defendant.
- (2) A Court shall not proceed as provided by subsection (1), unless the Court is satisfied:
- (a) that the summons, or a copy of the application, as the case may be, was duly served on the defendant; or
 - (b) that the complainant, or person making the application, as the case may be, has, after strict inquiry and search for the purpose of ascertaining the whereabouts of the defendant, been unable to effect service of the summons or of a copy of the application, as the case may be, on the defendant.

- (3) Where, under subsection (1), a Court issues a warrant for the apprehension of the defendant, the Court shall adjourn the hearing of the complaint until the defendant is brought before a Court.
- (4) Where a warrant has been issued for the apprehension of the defendant (whether in the first instance or upon the defendant so failing to appear) and a Court is satisfied that after strict inquiry and search the defendant cannot be found, the Court may proceed to hear the complaint in the absence of the defendant.
- (5) The inquiry and search made for the defendant for the purposes of this section may be proved by evidence given orally by, or by the affidavit of, the person or persons who made the inquiry and search.

106 Form of application

An application for the purposes of this Act shall be in accordance with the prescribed form and shall be made in the prescribed manner.

107 Hearing of application

- (1) Subject to section 105 and to subsection (2), where a Court is satisfied that service of a copy of an application has been effected on each person, other than the applicant, who appears to the Court to be affected by the application, the Court may hear and determine the application whether or not every person on whom such a copy was served is present at the hearing.
- (2) Subsection (1) does not apply to an application of a kind that is permitted by this Act to be made ex parte.

108 Complaints or applications made on behalf of persons

- (1) A complaint or an application under this Act purporting to be made on behalf of a person shall, in the absence of evidence to the contrary, be deemed to be made on behalf of that person.
- (2) Where a complaint or an application under this Act may be made by a person on behalf of a child, that person may make the complaint or application whether or not he has been duly authorized to do so.

109 How payment to be made under maintenance order

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

- (2) A Court shall, in an order made under this Act directing the payment of moneys, direct that the moneys be paid:
- (a) if the moneys are payable for or towards the maintenance of a person – except where otherwise provided in this Act, weekly, fortnightly or otherwise periodically; and
 - (b) in the case of any other moneys payable under the order – in one sum or by instalments.

110 Clerk to notify defendant of terms of order

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

111 Payments under orders

- (1) Subject to any order made under this Act in relation to the appropriation of moneys, moneys received under an order for the payment of moneys made under this Act by the person entitled to receive those moneys shall be deemed to be a payment made by the defendant to that person so as to discharge, to the extent of the moneys received, first, any sums due and unpaid under the order (a sum due at an earlier date being discharged before a sum due at a later date) and, secondly, any costs incurred in proceedings relating to the order that were payable by the defendant in respect of any previous proceedings for the enforcement of the order.
- (2) In proceedings relating to an order for the payment of moneys enforceable under this Act, the production of books purporting to be the books of account kept by the Clerk of the Court that made the order or in which the order is registered, as the case may be, in relation to the order are evidence that the payments to which the entries in those books purport to refer have been made and that those payments are the only payments that have been made.
- (3) Where:
- (a) the Collector or other person to whom the payment of moneys is, by virtue of section 109(1), directed to be made under 2 or more orders made against the same defendant receives from the defendant an amount that is less than the total amount payable under those orders; and
 - (b) no order for the appropriation of that amount has been given by the defendant to the Collector or other person,

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

112 Further orders

- (1) Where an order (in this section referred to as an **original order**) under this Act contains a direction with respect to the payment of moneys payable under the order:
 - (a) a Court may, by a subsequent order, revoke those directions and give any other directions concerning the payment of moneys under the original order that it is authorized to give by section 109; and
 - (b) a Court may make such other orders as it thinks fit:
 - (i) for regulating the disbursement of moneys paid under the original order;
 - (ii) for regulating the investment and application of the proceeds of the sale of any goods, chattels or securities directed to be sold, or any annuity, rents or income directed to be collected, under an order made under section 47; or
 - (iii) for ensuring the proper appropriation of any such moneys.
- (2) An order may, at the discretion of a Court, be made under this section:
 - (a) either with or without an application for the order; and
 - (b) either upon notice of the application being given to the defendant against whom the original order was made or without notice being given.

113 Collector may enforce maintenance orders

- (1) Where moneys payable in accordance with an order under this Act are payable to the Collector, the Collector may, on behalf of the person entitled to those moneys, in his discretion, take proceedings under this Act for the purpose of enforcing payment of those moneys or of recovering those moneys.
- (2) In any proceedings under this Act for the purpose of enforcing payment of moneys ordered to be paid by an order under this Act or for the recovery of any such moneys, the Collector is entitled to

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

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

- (1) Where a Court proceeds in pursuance of section 105 to make an order against a defendant who was not served with a summons and who did not appear at the hearing, the defendant may, within a period of 21 days from the time when the order comes to his knowledge, proof of which time lies upon the defendant, make application to a Court to set aside the order and to re-hear the matter of the complaint in respect of which the order was made.
- (2) Upon proof of due service of a copy of the application on the complainant, a Court may, if it thinks it just in the circumstances of the case so to do, set aside the order made in the absence of the defendant on such terms as to costs as it thinks fit and proceed to hear and determine the matter of the complaint in respect of which the order was made in accordance with the provisions of Part III.
- (3) An order so made may be made to take effect from any date upon which the order set aside could have been made to take effect in pursuance of section 28.

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

- (1) This section applies to a complaint (in this section referred to as an **original complaint**):
 - (a) made under section 14 on behalf of a child whose parents were not married to each other at the time of its conception or have not since married each other; or
 - (b) made under section 16 or 18 in relation to a child whose parents were not married to each other at the time of its conception or have not since married each other.
- (2) Where:
 - (a) an original complaint to which this section applies has been dismissed;
 - (b) a court has, on an appeal against the order made on an original complaint to which this section applies (not being an order dismissing the complaint), reversed, quashed or set aside that order;

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

on the ground that it had not been proved that the defendant was the father of the child referred to in subsection (1), a further complaint may be made against the defendant against whom the original complaint was made and in respect of the same child if the further complaint contains an allegation that facts or circumstances were in existence at the time of the making of the original complaint that have not previously been disclosed to a Court in proceedings arising out of, or relating to, the original complaint and that were not and could not by the exercise of reasonable diligence have previously been known to the complainant who made the original complaint.

- (3) The Court hearing the further complaint shall receive and consider the evidence recorded at the original hearing and on any appeal as well as any fresh evidence submitted.
- (4) If at the conclusion of the evidence submitted by the complainant no fresh evidence material to the question of paternity has been produced, the complaint shall be dismissed.
- (5) The reference in subsection (1)(b) to a child whose parents were not married to each other at the time of its conception and have not since married each other shall be read as including a reference to a child whose parents were not married to each other at the time of its conception or at its birth or any time in between whether or not the child was, when the original complaint was dismissed or when the further complaint is determined by a court, an adopted child.

116 Closed Courts

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

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- (2) A Court or the Supreme Court may order a child to leave the Court or the Supreme Court at any time during the hearing of a proceeding under this Act if it is of opinion that it would not be in the interests of the child to be present during that hearing.
 - (3) Where, in proceedings under this Act, the Court is satisfied that there are special 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 parties to the proceedings or their counsel or solicitors shall be excluded during the hearing of the proceedings or the part of the proceedings, as the case may be.
 - (4) Except to the extent to which the regulations make provision for proceedings, or part of proceedings, to be heard in chambers, the jurisdiction of a Court under this Act shall, subject to this Act, be exercised in open court.

117 Restrictions on publication of evidence

- (1) Except as provided by subsection (3) a person shall not, in relation to any proceedings under this Act, print or publish, or cause to be printed or published, any account of evidence in the proceedings or any other account or particulars of the proceedings.

Penalty: \$500.

- (2) Proceedings for an offence against subsection (1) shall not be commenced except by, or with the written consent of, the Director of Public Prosecutions.
- (3) Subsection (1) does not apply to or in relation to:
 - (a) the printing of a transcript of evidence or other document for use in connection with proceedings in any court or the communication of any such document to persons concerned in the proceedings;
 - (b) the printing or publishing of a notice or report in pursuance of the direction of a court; or
 - (c) the printing or publishing of any publication bona fide intended primarily for the use of members of the legal or medical profession, being:
 - (i) a separate volume or part of a series of law reports; or
 - (ii) any other publication of a technical character.

118 Proof of marriage, &c.

- (1) A marriage shall not be taken to be proved in proceedings under this Act unless:
 - (a) evidence has been given on oath of the time, place and circumstances of the marriage; or
 - (b) evidence of the marriage has been given by means of a document that is receivable as evidence of the marriage by virtue of subsection (2).
- (2) In proceedings under this Act, a Court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place, whether in the Territory or elsewhere.

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

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

- (2) A document purporting to be a statement referred to in subsection (1) is admissible in evidence in proceedings under this Act and shall, unless the contrary is shown, be deemed without further proof to be such a statement.
- (3) A person shall not:
- (a) without reasonable cause or excuse, refuse or fail to comply with a direction under this section that is applicable to him; or
 - (b) in any statement furnished to a Court under the provisions of this section, make a statement that he knows to be false or misleading in a material particular or does not believe on reasonable grounds to be true.

Penalty: \$200.

120 Service of documents

- (1) Unless otherwise provided in this Act:
- (a) a summons, copy of an application, notice or other document may be served on any person in the manner provided for the service of summonses by section 27 of the *Justices Act*; and
 - (b) a notice may be served by post addressed to the person to whom it is directed at his last known place of residence or business.
- (2) Where a Court is satisfied that, for any reason, service of a summons, copy of an application, notice or other document cannot be effected in a manner provided for under subsection (1), the Court may order that the summons, notice or other document be served in a manner specified by the Court.
- (3) If in any proceedings in connection with which a notice has been served in accordance with subsection (1) or (2) it appears to a Court that the person to whom the notice is directed has not or may not have received it, the Court may direct that the notice be again served on him in such manner as it thinks fit.
- (4) Service of a copy of an application or of another document on a complainant who is an infant shall be effected by serving the copy or other document on:
- (a) the person who is entitled to receive, on behalf of the infant, the moneys payable under the maintenance order in relation to which the infant is the complainant; or
 - (b) such other person as a Justice specifies under subsection (5),

but not otherwise.

- (5) Where a Justice is satisfied that, for any reason, the person who is required to effect service of a copy of an application or another document on a complainant who is an infant would otherwise be unable to serve the copy or document on the person referred to in subsection (4)(a), the Justice may, by writing under his hand, specify a person who, in the opinion of the Justice, is a proper person to advise the infant in connection with the proceedings to which the application or document relates as the person on whom a copy of the application or the other document may be served for the purpose of effecting service of the copy or document on the infant.
- (6) Service of a summons or of a copy of an application under this Act shall be effected on a person to be served with the summons or copy at least 10 clear days before the day fixed for the hearing of the complaint to which the summons relates or of the application, as the case may be.
- (7) Failure to serve a summons or copy of an application on a person as required by subsection (6) does not invalidate the proceedings to which the summons or application relates but a Court may, upon application by the person, adjourn the hearing of the complaint or application for such period as it thinks necessary having regard to the day on which the summons or copy was served.
- (8) Where service of a document is effected on a person by posting the document to the person, service of the document shall, unless the contrary is proved, be deemed to have been effected on the person at the time when the letter containing the document would, in the ordinary course of post, be delivered at the address to which it is posted.
- (9) Service of a summons, copy of an application, notice or other document in a manner authorized by this Act may be proved by the oath of the person who served it, or by affidavit, or otherwise.

121 Costs

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

122 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or in relation to:

- (a) the prescribing of forms to be used for the purposes of this Act; and
- (b) the practice and procedure of Courts of Summary Jurisdiction in proceedings under this Act.

Schedule 1

section 4

Ordinances of the Northern Territory of Australia

Maintenance Orders (Facilities for Enforcement) Ordinance 1956

Maintenance Recovery (Reciprocity with States) Ordinance 1963

Schedule 2

section 5

Laws of the State of South Australia that cease to apply in the Northern Territory of Australia

Ordinance No. 12 of 1844

The Destitute Persons Act, 1881 (Act No. 210 of 1881)

The Destitute Persons Act Amendment Act, 1886 (Act No. 387 of 1886)

The Inter-State Destitute Persons Relief Act, 1910 (Act No. 1008 of 1910)

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Maintenance Ordinance 1971 (Act No. 26, 1971)***

Assent date	24 May 1971
Commenced	30 June 1971 (<i>Gaz</i> No. 24, 16 June 1971, p 206)

Maintenance Ordinance 1973 (Act No. 5, 1973)

Assent date	13 March 1973
Commenced	13 March 1973

Maintenance Ordinance (No. 2) 1973 (Act No. 29, 1973)

Assent date	21 June 1973
Commenced	21 June 1973

Ordinances Revision Ordinance 1973 (Act No. 87, 1973)

Assent date	11 December 1973
Commenced	11 December 1973 (s 12(2))

Amending Legislation***Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

Assent date	26 August 1974
Commenced	11 December 1973 (s 3(2))

Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)

Assent date	24 October 1974
Commenced	11 December 1973 (s 3)

Ordinances Revision Ordinance 1976 (Act No. 27, 1976)

Assent date	28 June 1976
Commenced	ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974

Age of Majority Ordinance 1974 (Act No. 37, 1974)

Assent date 23 September 1974
 Commenced 1 November 1974 (Gaz No. 42, 17 October 1974, p 475)

Transfer of Powers (Further Provisions) Ordinance 1977 (Act No. 51, 1977)

Assent date 9 December 1977
 Commenced 1 January 1978 (s 6)

Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)

Assent date 1 July 1978
 Commenced 1 July 1978 (s 8)

Law Officers Ordinance 1978 (Act No. 61, 1978)

Assent date 1 July 1978
 Commenced 1 July 1978

Statute Law Revision Act 1978 (Act No. 95, 1978)

Assent date 5 September 1978
 Commenced 5 September 1978

Status of Children Act 1978 (Act No. 16, 1979)

Assent date 26 January 1979
 Commenced 21 September 1979 (Gaz G38, 21 September 1979, p 1)

Statute Law Revision Act (No. 3) 1979 (Act No. 37, 1980)

Assent date 24 April 1980
 Commenced 24 April 1980

Statute Law Revision Act (No. 2) 1981 (Act No. 63, 1981)

Assent date 20 July 1981
 Commenced 20 July 1981

Statute Law Revision Act (No. 4) 1981 (Act No. 4, 1982)

Assent date 12 February 1982
 Commenced 12 February 1982

Law Officers Amendment Act (No. 2) 1986 (Act No. 48, 1986)

Assent date 10 December 1986
 Commenced 19 December 1986 (Gaz S87, 17 December 1986)

Director of Public Prosecutions (Consequential Amendments) Act 1990 (Act No. 29, 1990)

Assent date 11 June 1990
 Commenced 21 January (s 2, s 2 *Director of Public Prosecutions Act 1990* (Act No. 35, 1990) and Gaz G2, 16 January 1991, p 9)

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
 Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

Financial Institutions (Miscellaneous Amendments) Act 1997 (Act No. 23, 1997)

Assent date 2 June 1997
 Commenced 2 June 1997

Territory Insurance Office (Miscellaneous Amendments) Act 1998 (Act No. 37, 1998)

Assent date 27 May 1998
Commenced 27 May 1998

Statute Law Revision Act (No. 2) 2001 (Act No. 62, 2001)

Assent date 11 December 2001
Commenced 11 December 2001

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

Assent date 13 September 2002
Commenced 30 October 2002 (*Gaz G43*, 30 October 2002, p 3)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
Commenced 17 March 2004 (*Gaz G11*, 17 March 2004, p 8)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (Act No. 87, 1973) (as amended) to: ss 4, 5, 6, 8, 10, 12, 12E, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 25A, 26, 27, 28, 29, 30B, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 55, 57, 58, 59, 60, 61, 64, 65, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 86, 87, 88, 89, 90, 91, 92, 93, 96, 97, 101, 101B, 101D, 102, 103, 104, 105, 107, 111, 112, 114, 115, 117, 118, 119 and 120

4 LIST OF AMENDMENTS

It	amd No. 63, 1981, s 2
ss 1 –2	amd No. 63, 1981, s 2
s 3	amd No. 29, 1973, s 3 rep No. 63, 1981, s 2
s 4	amd No. 87, 1973, s 12; No. 63, 1981, s 2
s 5	amd No. 63, 1981, s 2; No. 4, 1982, s 3
s 6	amd No. 29, 1973, s 4; No. 87, 1973, s 12; No. 37, 1974, s 10; No. 16, 1979, s 19; No. 63, 1981, s 2
s 7	amd No. 63, 1981, s 2
s 8	amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 63, 1981, s 2
s 9	rep No. 51, 1977, s 3
s 10	amd No. 29, 1973, s 5
ss 11 – 12	amd No. 63, 1981, s 2
ss 12A – 12B	ins No. 29, 1973, s 6
s 12C	ins No. 29, 1973, s 6 amd No. 63, 1981, s 2; No. 4, 1982, s 3
ss 12D – 12F	ins No. 29, 1973, s 6
pt II	
div 2 hdg	sub No. 29, 1973, s 7
s 13	sub No. 29, 1973, s 8 amd No. 63, 1981, s 2
s 16	amd No. 16, 1979, s 19
ss 18 – 19	amd No. 16, 1979, s 19
s 20	amd No. 63, 1981, s 2; No. 4, 1982, s 3
s 21	amd No. 63, 1981, s 2
s 22	amd No. 5, 1973, s 3; No. 16, 1979, s 19; No. 63, 1981, s 2
ss 23 – 24	amd No. 63, 1981, s 2

ENDNOTES

s 25A	ins No. 29, 1973, s 9
ss 27 – 28	amd No. 63, 1981, s 2
s 29	amd No. 63, 1981, s 2; No. 4, 1982, s 3
s 30A	ins No. 29, 1973, s 10
s 30B	ins No. 29, 1973, s 10 amd No. 63, 1981, s 2
s 31	amd No. 5, 1973, s 4; No. 16, 1979, s 19; No. 63, 1981, s 2; No. 1, 2004, s 62
pt II	
div 4A hdg	ins No. 29, 1973, s 11
s 31A	ins No. 29, 1973, s 11
ss 34 – 35	amd No. 63, 1981, s 2
pt II	
div 5 hdg	sub No. 29, 1973, s 12
s 37	amd No. 16, 1979, s 19
s 38	amd No. 63, 1981, s 2
pt III hdg	sub No. 29, 1973, s 13
ss 40 – 41	amd No. 63, 1981, s 2
s 43	amd No. 63, 1981, s 2
s 46	amd No. 51, 1977, s 3; No. 63, 1981, s 2; No. 4, 1982, s 3; No. 62, 2001, s 15
s 47	amd No. 63, 1981, s 2; No. 23, 1997, s 6; No. 37, 1998, s 4; No. 38, 2002, s 6
s 48	amd No. 63, 1981, s 2
s 55	amd No. 63, 1981, s 2; No. 4, 1982, s 3
s 59	amd No. 87, 1973, s 12; No. 63, 1981, s 2
ss 60 – 61	amd No. 63, 1981, s 2; No. 17, 1996, s 6
s 64	amd No. 87, 1973, s 12; No. 63, 1981, s 2; No. 17, 1996, s 6
pt IV hdg	sub No. 29, 1973, s 14
s 65	amd No. 61, 1973, s 4; No. 63, 1981, s 2; No. 4, 1982, s 3; No. 48, 1986, s 9
ss 67 – 68	amd No. 63, 1981, s 2
s 71	amd No. 87, 1973, s 12; No. 63, 1981, s 2
s 72	amd No. 63, 1981, s 2
s 74	amd No. 63, 1981, s 2
s 76	amd No. 63, 1981, s 2
s 77	amd No. 61, 1978, s 4; No. 16, 1979, s 19; No. 37, 1980, s 26; No. 63, 1981, s 2; No. 48, 1986, s 9
ss 78 – 79	amd No. 61, 1978, s 4; No. 63, 1981, s 2; No. 48, 1986, s 9
ss 80 – 81	amd No. 61, 1978, s 4; No. 48, 1986, s 9
ss 82 – 83	amd No. 63, 1981, s 2
s 84	amd No. 87, 1973, s 12; No. 61, 1978, s 4; No. 48, 1986, s 9
s 85	amd No. 63, 1981, s 2
s 86	amd No. 63, 1981, s 2; No. 62, 2001, s 15
s 88	amd No. 63, 1981, s 2
s 90	amd No. 63, 1981, s 2
s 93	amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 63, 1981, s 2
s 97	amd No. 63, 1981, s 2
s 101	amd No. 63, 1981, s 2; No. 4, 1982, s 3
pt IVA hdg	ins No. 29, 1973, s 15
s 101A	ins No. 29, 1973, s 15 amd No. 63, 1981, s 2; No. 4, 1982, s 3
s 101B	ins No. 29, 1973, s 15 amd No. 63, 1981, s 2
s 101C	ins No. 29, 1973, s 15 amd No. 16, 1979, s 19; No. 63, 1981, s 2
s 101D	ins No. 29, 1973, s 15 amd No. 63, 1981, s 2
s 101E	ins No. 29, 1973, s 15 amd No. 63, 1981, s 2; No. 17, 1996, s 6
s 102	amd No. 63, 1981, s 2
s 104	amd No. 16, 1979, s 19; No. 63, 1981, s 2

ENDNOTES

ss 105 – 114	amd No. 63, 1981, s 2
s 115	amd No. 16, 1979, s 19; No. 63, 1981, s 2
s 116	amd No. 29, 1973, s 16; No. 63, 1981, s 2
s 117	amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 63, 1981, s 2; No. 29, 1990, s 7
ss 118 – 119	amd No. 63, 1981, s 2
s 120	amd by No. 63, 1981, s 2; No. 4, 1982, s 3
s 121	amd No. 63, 1981, s 2
s 122	amd No. 95, 1978, s 14; No. 63, 1981, s 2
sch hdg	om No. 63, 1981, s 2
sch 1 – 2	amd No. 63, 1981, s 2