No. 51 of 1972

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

[Assented to 27th April, 1972]

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

PART I

PRELIMINARY

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

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

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

3. The Acts referred to in the schedule to this Act are repealed.

4. This Act is arranged as follows:—

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PART II—THE PROMOTION OF COMMUNITY WELFARE—

DIVISION I—OBJECTIVES
DIVISION II—THE MINISTER AND DEPARTMENT
DIVISION III—COMMUNITY WELFARE ADVISORY COMMITTEES
DIVISION IV—COMMUNITY AIDES
DIVISION V—EDUCATION AND TRAINING IN RELATION TO COMMUNITY WELFARE
DIVISION VI—RESEARCH INTO MATTERS OF COMMUNITY WELFARE

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DIVISION III—JURISDICTION AND POWERS OF COURTS OF SUMMARY JURISDICTION

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

DIVISION VI—PROCEDURAL

DIVISION VII—ENFORCEMENT OF ORDERS AND SUPPLEMENTARY PROVISIONS

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

Subdivision 2—Attachment of Earnings

Subdivision 3—General

DIVISION VIII—RECIPROCAL ENFORCEMENT OF ORDERS

Subdivision 1—Interpretation and Administration

Subdivision 2—Interstate Maintenance

Subdivision 3—Overseas Maintenance

Subdivision 4—General

PART VII—PROVISIONS OF GENERAL APPLICATION.

5. (1) The Minister is the successor to the Minister administering the repealed Social Welfare Act and the repealed Aboriginal Affairs Act, and any rights that were at law or in equity vested in, or enforceable by or against, that Minister immediately before the commencement of this Act under, or as a result of action taken under, the repealed Social Welfare Act or the repealed Aboriginal Affairs Act shall be vested in, or enforceable by or against, the Minister.
(2) Any decision, order or adjudication of a court made, or having effect, under the provisions of any of the repealed Acts, shall be deemed to be a decision, order or adjudication made pursuant to, or having effect under, this Act in all respects as if this Act had been in force when the decision, order or adjudication was made.

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

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

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

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

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

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

(9) A person licensed as a foster-parent under the repealed Social Welfare Act immediately before the commencement of this Act, shall, for the unexpired portion of the term of the licence, be deemed to be a foster-parent approved under the provisions of this Act.
(10) Any authority or permit issued, given or made under the repealed Social Welfare Act, or the repealed Aboriginal Affairs Act and in force immediately before the commencement of this Act shall be deemed to be an authority or permit under the provisions of this Act.

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

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

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

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

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

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

"Aboriginal" means a person who is wholly or partly descended from those who inhabited Australia prior to European colonization:

"Aboriginal reserve" means an area declared to be an Aboriginal reserve pursuant to the provisions of this Act:

"adopted child" means a child—

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

or

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

and "adoptive parent" has a correlative meaning:
"affiliation case" means proceedings against the alleged father of an illegitimate child for assistance, maintenance, or preliminary expenses:

"assessment centre" means a centre established under this Act for the examination of children, the evaluation of their personal circumstances and social background and the assessment of the most appropriate treatment or rehabilitative correction or education for each child:

"child" means a person who has not attained the age of eighteen years and includes any person above that age who is under the care and control of the Minister:

"child care centre" means any premises or place in which children under the age of six years are cared for apart from their parents or relatives:

"child under the care and control of the Minister" means a child placed under, or received into, the care and control of the Minister pursuant to this Act, the Juvenile Courts Act, or any other Act and includes a child remanded in custody pursuant to the provisions of the Juvenile Courts Act:

"children's home" means any premises or place in which more than five children under the age of fifteen years are maintained and cared for apart from their parents and near relatives:

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

"Department" means the Department for Community Welfare:

"Deputy Director-General" means the person for the time being holding, or acting in, the office of Deputy Director-General of Community Welfare under this Act:

"Director-General" means the person for the time being holding or acting in, the office of Director-General of Community Welfare under this Act:

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

"guardian" means a parent of a child or any person having the immediate custody or control of a child;
“home” means any premises or place established as a home or centre under this Act for the reception, care, maintenance, or support of persons in need or distress or for the reception, detention, care, correction, maintenance, support or training of children:

“juvenile court” means any court exercising jurisdiction pursuant to the Juvenile Courts Act:

“Juvenile Courts Act” means the Juvenile Courts Act, 1971, as amended from time to time:

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

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

“Minister” means the Minister of Community Welfare:

“near relative”, in relation to a legitimate child, means the father, mother, step-father or step-mother of the child; and in relation to an illegitimate child means the mother, father, or husband of the mother of the child; and in relation to a person who is not a child, means the husband, wife, father, mother, or children of that person:

“neglected child” means a child who—

(a) is under the guardianship of any person whom the court considers unfit to have the guardianship of the child;

(b) has apparently no sufficient means of support, and whose guardians or near relatives are unable or unwilling to maintain him or are dead or unknown or cannot be found or are not in the State or are detained in a prison or home;

or

(c) has no guardian, or is not cared for or maintained adequately, or is ill-treated by his guardian and in need of care:

“parent” includes an adoptive parent:

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

“relative”, in relation to a legitimate child, means the father, mother, stepfather, stepmother, brother, sister, uncle, aunt, grandfather or grandmother of the child; and in relation to an illegitimate child, means the mother, father, husband of the mother, brother, sister, uncle or aunt, of the child; and in relation to a person who is not a child, means the husband, wife, father, grandfather, mother, grandmother, child or grandchild of that person:

“review board” means a board established by the Director-General pursuant to Part IV of this Act:

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


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

“uncontrolled child” means a child—

(a) whose parents or guardians appear to be unable or unwilling to exercise adequate supervision and control of the child;

and

(b) who is in need of care and control:

“woman” means any female person:

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

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

(3) The relationship of parent and child shall, for the purposes of this Act, be deemed to exist between a child and any person who is, or has been, a party to a marriage, if the child is a natural or adopted child of either party to the marriage and the child shall be deemed to be a child of any family of which any such person is for the time being a member.

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

DIVISION I—OBJECTIVES

7. Without limiting in any way the operation of this Act, it is declared that the objectives of the Minister and the Department, in the administration of this Act, include the following—

(a) to promote the well-being of the community by assisting individuals, families and sections of the community to overcome social problems with which they are confronted and to promote the effective use of human resources and the full realization of human potentialities;

(b) to promote the welfare of the family as the basis of community welfare, to reduce the incidence of disruption of family relationships and to mitigate the effects of such disruption where it occurs;

(c) to assist voluntary agencies engaged in the provision of services designed to promote the well-being of the community;

(d) to collaborate with other departments of Government whose activities directly affect the health or well-being of the community;

(e) to establish, promote and co-ordinate services and facilities within the community designed to advance the well-being of children and young persons;

(f) to collaborate with agencies engaged in the provision of assistance to those in need or distress and to promote rationalization and co-ordination of the assistance provided for those persons;

(g) to promote research into problems of community welfare and to promote education and training in matters of community welfare;

(h) to promote generally an interest in community welfare.

DIVISION II—THE MINISTER AND THE DEPARTMENT

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

(2) The Minister shall, in his corporate name, be capable of suing and being sued and of acquiring, holding and disposing of real and personal property of any kind and no limitation or deficiency of legal competence or capacity shall be imputed to the Minister.

(3) In any legal proceedings, where a document purports to bear the signature or the common seal of the Minister, the document shall, in the absence of evidence to the contrary, be deemed to have been duly executed by the Minister.
9. Without limiting in any way the powers conferred upon the Minister under any other provision of this Act, the Minister shall have and may exercise the following powers—

(a) to employ the resources of the Department in such manner as he thinks fit towards the promotion of community welfare;

(b) to establish any instrumentality or facility that will, in the opinion of the Minister, conduce to the well-being of the community, and to acquire and maintain land and premises that may be necessary for the purpose;

(c) to acquire land in accordance with the provisions of the Land Acquisition Act, 1969;

and

(d) to perform any action that may be necessary or expedient for the purpose of giving effect to the provisions or objects of this Act.

10. (1) There shall be a Department entitled the "Department for Community Welfare".

(2) There shall be a Director-General of Community Welfare and a Deputy Director-General of Community Welfare.

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

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

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

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

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

(2) The Minister shall cause the report to be laid before both houses of Parliament within fourteen days after the day on which
he receives it, if Parliament is then in session, but if Parliament is not then in session, within fourteen days after the commencement of the next session of Parliament.

DIVISION III—COMMUNITY WELFARE ADVISORY COMMITTEES

13. (1) The Minister may, at any time, appoint community welfare advisory committees to advise him upon any matters pertaining to community welfare.

(2) A committee so appointed shall consist of a chairman and not more than five other members.

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

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

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

14. (1) A member of a community welfare advisory committee shall, subject to subsection (2) of this section, hold office at the pleasure of the Minister.

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

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

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

(2) At the conclusion of the deliberations of a committee the chairman shall report to the Minister on the conclusions reached by the committee as soon as practicable.

DIVISION IV—COMMUNITY AIDES

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

(2) A community aide shall be appointed upon such terms and conditions as the Director-General thinks fit and specifies in the instrument of his appointment.

(3) The Director-General may, at any time, by instrument in writing addressed to a person appointed as a community aide under this section, remove him from his position as a community aide.
17. A community aide shall have the following duties and functions:

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

and

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

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

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

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

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

21. (1) The Director-General may institute, and provide for the conduct of programmes of education and training for those who are engaged, or propose to engage, in the provision of services designed to overcome or ameliorate social disabilities or problems.

(2) The Director-General may arrange with any other person or body for the conduct of such educational or practical courses, lectures or seminars as he thinks necessary or desirable for the purposes of this Act or generally for the promotion of the welfare of the community.

22. The Director-General shall make provision within the Department for the conduct of research into problems affecting the welfare of the community, and the adequacy and efficacy of measures taken under this Act, or any other Act administered by the Minister, that are designed to overcome or ameliorate any such problems or to promote any aspect of community welfare.
23. The Director-General may co-operate with any person or body of persons in carrying out research that is, in his opinion, of value to the Department, or generally to the welfare of the community, and may, in his discretion, make available to any person, or body of persons, the results of research undertaken under this Division.

PART III
THE PROVISION OF COMMUNITY WELFARE SERVICES

DIVISION I—COMMUNITY WELFARE CENTRES AND CONSULTATIVE COUNCILS

24. (1) The Minister may establish community welfare centres in such localities throughout the State as he thinks fit.

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

25. The Minister may establish community welfare consultative councils in such localities throughout the State as the Minister thinks fit.

26. The functions of a consultative council shall be:

(a) to inquire into any matters affecting the welfare of the local community and to report to the Minister upon any matters that justify, in the opinion of the council, his consideration;

(b) to give advice and guidance in the rationalization and co-ordination of services designed to promote the welfare of the local community so as to achieve the most effective utilization of those services;

(c) to report upon any matter affecting the welfare of the local community referred to the consultative council for consideration and report by the Minister or the Director-General.

27. (1) A consultative council shall consist of not less than eight nor more than twelve persons appointed by the Minister.

(2) The members of a consultative council must be persons interested in the furtherance of community welfare within the local community.
(3) The Minister shall, wherever possible, appoint to a consultative council at least two representatives of municipal or district councils whose areas comprise, or are included in, the locality for which the consultative council is established.

(4) At least one member of a consultative council must be an officer of the Department.

(5) The Minister shall, at the request of a member of the House of Assembly within whose electoral district a consultative council is established, appoint that member or his nominee as a member of the consultative council.

28. (1) The term of office of a member of a consultative council shall be such term, not exceeding four years, as is specified in the instrument of his appointment.

(2) A member of a consultative council shall hold office upon such conditions as are specified in the instrument of his appointment.

29. (1) A consultative council shall in each year appoint a chairman from amongst its members.

(2) The chairman shall preside at any meeting of the consultative council at which he is present and if he is not for any reason present at a meeting of the council the members present shall elect one of their own number to act as chairman for that meeting.

(3) The Director-General shall arrange for an officer of the Department to act as secretary to a consultative council.

30. (1) Subject to subsection (2) of this section, a consultative council shall meet at such times as may be determined by the council, and at such other times as the secretary may have convened a meeting of the council.

(2) A consultative council must meet at least six times in each year and at least once in any period of four months.

31. (1) A quorum at a meeting of a consultative council shall be constituted of not less than one-half of the total number of members of the council and no business shall be transacted by the council unless a quorum is present.

(2) Any matter arising for decision at a meeting of a consultative council shall be decided by a majority of the votes cast by the members present at that meeting.

(3) Each member present at a meeting of a consultative council shall be entitled to one vote on any matter arising for decision at that meeting and the chairman shall have, in addition to that vote, a second or casting vote in the event of an equality of votes.
DIVISION II—ASSISTANCE TO FAMILIES AND PERSONS IN NEED

32. (1) The Director-General may, subject to any directions of the Minister, provide assistance for such families or persons in need or distress as he may determine.

(2) The assistance may be provided in any of the following ways—

(a) the Director-General may provide a family or person in need of assistance with money or commodities for maintenance and may provide services that may conduce to the welfare of that family or person;

(b) the Director-General may provide, or arrange for a person in need of assistance to receive such care or treatment as he may require;

or

(c) the Director-General may receive a person in need of assistance into a suitable home.

(3) In determining an application for assistance under this Act, account shall not be taken of any gift of food, or any gift or loan of household goods or commodities to the applicant by any person or agency.

33. (1) In any case where—

(a) assistance has been provided for any person pursuant to this Division or the corresponding provisions of the repealed Social Welfare Act;

and

(b) that person, or a near relative of that person, is at any time within six years after the provision of that assistance, able to repay the whole or any part of the cost of that assistance,

a court of summary jurisdiction may, upon complaint by an officer of the Department, inquire into the matter.

(2) If the court is of the opinion that the person who received the assistance, or the near relative, is able to repay any amount towards the cost of the assistance provided, and that in the circumstances repayment is desirable, it may order him to pay that amount to the Director-General, either in one sum, or by instalments.

(3) An order under this section may be enforced in the same manner as a maintenance order under this Act.

(4) Where two or more persons of whom the defendant is a near relative have received assistance under this Division, a single complaint may be laid under this section in respect of that assistance.
34. An allegation in a complaint for the recovery of any amount towards the cost of assistance under this Division—

(a) that assistance has been provided for any person named in the complaint under this Division;

(b) that an amount specified in the complaint was the cost of that assistance;

(c) that the person against whom the complaint is laid is able to repay the cost of that assistance;

or

(d) that the defendant is a near relative of the person for whom assistance has been provided,

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

35. (1) The Director-General shall not deduct from moneys in his hands received as payments of maintenance for or on behalf of any person any amount towards the repayment of the cost of assistance granted under this Division except upon the written authority of that person, or upon the order of a court of summary jurisdiction.

(2) A court of summary jurisdiction may, on complaint of the Director-General, or an officer of the department, alleging that the means of the defendant are sufficient to permit deductions under this section without causing hardship, order that such deductions be made of an amount, or amounts, specified in the order of the court.

DIVISION III—COMMUNITY GRANTS SCHEME

36. (1) The Minister shall establish a fund entitled the "Community Welfare Grants Fund".

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

(3) The Minister may apply any portion of the fund—

(a) towards the cost of establishing, adding to, improving, or providing equipment for, any home or centre for the care, treatment, training or rehabilitation of children;

(b) towards the cost of providing training in leadership and youth work for those who are engaged, or propose to engage, in work designed to assist, or promote the development of, young persons;

or

(c) towards the cost of promoting, advancing or establishing any service, project, home or facility that will conduce to the welfare of any section of the community.
(4) An application for a grant of moneys under this section shall be made to the Minister in a manner and form determined by the Minister.

PART IV

FAMILY CARE

DIVISION I—FAMILY CARE SERVICES

37. The administration of this Part by the Minister and the Department shall be founded upon the principle that the welfare of the family is the basis of the welfare of the community, and should be protected and promoted as far as may be possible.

38. Without limiting in any way the operation of any provision of this Act, the Minister and the Department may, in seeking to promote family welfare, provide such substitute and supportive care and guidance as may protect, or conduce to, healthy family relationships, and, in particular, may—

(a) provide counselling services from which families, and members of families, may obtain the advice and guidance necessary to enable them to overcome domestic problems with which they are confronted;

(b) provide supervision and counselling for children, either upon a voluntary basis, or in accordance with the Juvenile Courts Act;

(c) provide psychological, psychiatric and medical services for children where they are under the care and control of the Minister, or in such other circumstances as the Minister may approve;

and

(d) provide for adequate care and guidance of children who are, for any reason, separated from the care of their near relatives and ensure as far as possible that such children receive the advantage of a healthy and balanced family environment;
Division II—The Care of Children

Subdivision 1—Reception of a Child into the Care and Control of the Minister

39. (1) A parent, guardian, or person having the custody, of a child may apply in the prescribed form to the Minister for an order that the child be placed under the care and control of the Minister.

(2) The Minister may, if satisfied that the child may otherwise become neglected or uncontrolled, by order in writing, place the child under the care and control of the Minister for any period expiring on or before the day on which the child attains the age of eighteen years.

(3) Except as provided in subsection (4) of this section, no such order shall be made—

(a) with respect to a legitimate child, except with the consent of both parents of the child;

or

(b) with respect to an illegitimate child, except with the consent of the mother of the child.

(4) If the whereabouts of a parent whose consent is required under subsection (3) of this section cannot after reasonable inquiry by the Minister be ascertained, an order may be made under subsection (2) of this section without the consent of that parent.

(5) An order shall not be made under subsection (2) of this section with respect to any child over the age of fifteen years, except with the consent of that child.

40. (1) The Minister may, upon receipt of a request under this section, receive a child into his care and control where, in the opinion of the Minister, it would be in the interest of the child to do so.

(2) A request may be made under this section by a parent or guardian of the child or, where the child is of or above the age of fifteen years, by the child himself.

(3) Where a child is of or above the age of fifteen years, he shall not, unless he has consented thereto, be received into the care and control of the Minister under this section.

(4) A child shall not be received into the care and control of the Minister under this section for a period in excess of three months.

(5) A child received into the care and control of the Minister under this section shall not be detained in a home for any period in excess of three weeks except with the approval of the person upon whose application the child was received into that care and control.

(6) The child shall be discharged from the care and control of the Minister—
(a) at the expiration of the period for which he was received into the care and control of the Minister;

or

(b) at any time prior to the expiration of that period where a parent or guardian has applied for the return of the child, or the Director-General has directed that he be discharged from the care and control of the Minister, or the child, if he is over the age of fifteen years, has requested that he be so discharged.

41. (1) The Minister may, on request by or on behalf of an authority having the custody and control in any other State or Territory of the Commonwealth of a child who has entered or is about to enter this State, by order in writing, receive the child into his care and control for so long as he remains in this State.

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

(3) Where a child has been received into the care and control of the Minister under this section, the Minister shall have the custody and be the lawful guardian of the child to the exclusion of any other person or authority.

(4) The child shall not remain under the care and control of the Minister for a period in excess of that for which he would, if he had not been received into the care and control of the Minister, have remained subject to the custody or control of the authority from which he was received.

Subdivision 2—Provisions relating to Children under the Care and Control of the Minister

42. In exercising the powers conferred by this Division, the Minister and the Director-General shall treat the interests of the child in respect of whom the powers are to be exercised as the paramount consideration and shall adopt a course calculated to—

(a) secure for the child such care, guidance and (where necessary) correction, as will conduce to the welfare of the child and the public interest;

and

(b) conserve or promote as far as may be possible a satisfactory relationship between the child and other members of, or persons within, his family or domestic environment.
43. While a child is under the care and control of the Minister, the Minister shall be entitled to the custody and guardianship of the child to the exclusion of the rights of any other person.

44. (1) Subject to this Act, the Director-General may deal with the child under the care and control of the Minister in any of the following ways—

(a) he may place the child, or permit the child to remain, in the care or custody of a parent, near relative, or guardian of the child;

(b) he may place the child in the care or custody of an approved foster parent or other suitable person;

(c) he may, subject to this Act, direct that the child be placed in any home established or licensed under this Act;

(d) he may, if it is necessary for the sake of the physical or mental health of the child, place the child in any hospital, receiving house or mental hospital;

or

(e) he may otherwise deal with the child as the circumstances of the case require.

(2) Whenever a child is dealt with by the Director-General pursuant to the provision of subsection (1) of this section (otherwise than by placing the child in the custody of his parents) the Director-General shall advise the parents, in writing, at their last address known to him, of the manner in which the child has been dealt with under that subsection.

(3) Where a child under the care and control of the Minister has been placed in the custody of any person or in any home or hospital under subsection (1) of this section, the child may be removed from the custody of that person, or from that home or hospital by any officer of the department authorized for the purpose by the Director-General.

(4) For the purpose of removing a child under subsection (3) of this section, the authorized officer may enter upon any land or premises and any person who hinders his entry upon land or premises for the purpose of removing the child, or hinders the removal of the child, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.
45. (1) Where the Director-General has directed that any child under the care and control of the Minister be placed in a home, any member of the police force or an officer of the Department authorized in writing by the Director-General, may, without any warrant, apprehend the child, and bring him to the home specified in the direction, and for the purposes of apprehending the child, may enter upon or into any land or premises on which he knows or reasonably suspects the child to be.

(2) A person who hinders a member of the police force or an officer of the Department in the exercise of powers under this section shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

46. (1) Where a child is placed in a home, he shall, subject to subsection (2) of this section, be detained in the home in accordance with the directions of the Director-General.

(2) A child shall not be detained in a home beyond the period for which he is under the care and control of the Minister.

(3) The Director-General may direct that a child be removed from a home and placed in another home, and the child shall be removed and placed in that other home in accordance with the direction.

47. (1) The Director-General shall establish within the Department such Review Boards as may be necessary to keep under consideration and review the progress and personal circumstances of children under the care and control of the Minister.

(2) Where a child has been under the care and control of the Minister for a period in excess of one year, a Review Board shall obtain and review reports upon the progress and personal circumstances of that child during the year, and further reports in respect of each subsequent year for which the child remains under the care and control of the Minister.

(3) The reports referred to in subsection (2) of this section shall be available for examination by the Minister and the Director-General.

48. (1) Where a child has been placed under the care and control of the Minister until he attains the age of eighteen years, or for a period extending beyond the time in which he attains that age, and it is, in the opinion of the Director-General, desirable that the child should remain under the care and control of the Minister for a further period, the Director-General may apply to a juvenile court constituted of a judge or special magistrate for an order under this section.
(2) The Director-General shall, at least twenty-eight days before the hearing of an application under this section, notify the child, and notify the parents of the child in writing, at their last address known to him, of the fact that he has made an application for an order under this section.

(3) The Director-General shall supply the juvenile court with a report setting out the grounds upon which he considers an extension of the period of care and control desirable.

(4) The Director-General shall supply the juvenile court with such other reports as the court may require.

(5) The court, after considering the reports, and any representations made by or on behalf of the child or the parents of the child, may, if it is of the opinion that it is in the interests of the child to do so, order that the period of care and control be extended in accordance with the application.

(6) Subject to subsection (7) of this section, no order shall be made extending the period for which a person is to be under the care and control of the Minister beyond the time at which he will attain the age of twenty years.

(7) Where the court is of the opinion that a person under the care and control of the Minister is incapable of managing his own affairs, the court may order that he remain under the care and control of the Minister for a period extending beyond the time at which he attains the age of twenty years.

49. (1) The Minister may, on receipt of a report from the Director-General, order that a child be discharged from the care and control of the Minister.

(2) A parent of a child who is under the care and control of the Minister may apply in the prescribed form to the Minister for an order that the child be discharged from the care and control of the Minister.

(3) Where an application has been duly made for an order under this section, and the application has been refused, the applicant may, subject to this section, appeal to a juvenile court constituted of a judge against that refusal.
(4) An appeal to a juvenile court under this section may be made after the expiration of the first year for which the child has been under the care and control of the Minister and after the expiration of each subsequent year but no such appeal shall be made more than once in any one year.

(5) The juvenile court shall not be bound by the rules of evidence in the hearing and determination of an appeal under this section, but shall consider all matters that it regards as relevant and determine the appeal in what it considers to be the best interests of the child.

(6) Where an appeal has been instituted under this section, the Director-General shall supply the court with a report upon the personal circumstances of the child and his parents, and the court may require such further reports to be prepared as it thinks fit.

(7) Upon the hearing of an appeal under this section the court may order that the child in respect of whom the appeal has been instituted be discharged from the care and control of the Minister.

Subdivision 3—Foster Care

50. The purpose of this subdivision is to provide a means by which children whose parents are for any period unable to care for them may receive adequate care, support and guidance in a proper family environment as a substitute for the parental care, support and guidance of which they are deprived.

51. A person shall not, for any monetary or other consideration, be or act as foster parent to any child under the age of fifteen years unless he is approved as a foster parent under this subdivision.

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

(a) the applicant will have adequate interest in, and affection and respect for a child placed in his care;

(b) that the applicant will treat the child in a consistent manner and will provide a stable family environment for the child;

(c) that the applicant will adequately understand the developing personality of the child, and will provide opportunities to develop the abilities of the child;

(d) that the applicant will provide adequate accommodation for the child and any other material provision necessary for the welfare of the child;
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(e) that, where appropriate, the applicant will provide opportunities for the child to maintain or recover his identity as a member of his own family and will allow the child reasonable access to his parents;

and

(f) any other matters that the Director-General may consider relevant.

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

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

(3) The foster parent shall not be permitted to have more than five foster children under the age of fifteen years in his custody unless the children are all of the same family.

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

54. It shall be the duty of the Director-General to satisfy himself as to the welfare of all foster children.

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

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

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

(2) Where the Director-General exercises his powers under this section to cancel the approval of a foster parent, the person in respect of whom the approval was given shall thereupon cease to be an approved foster parent.
(3) The Director-General shall give the foster parent notice in writing of his intention to cancel the approval under this section at least twenty-eight days before he does so.

57. An approved foster parent —
   (a) shall advise the Director-General as soon as practicable of any change in his address;
   and
   (b) shall furnish the Director-General with such information in relation to the foster child as he may require.

Subdivision 4—Establishment of Homes, Assessment Centres and Youth Project Centres

58. (1) The Minister may establish such homes as he thinks necessary for the care, correction, detention, training and treatment of children.
   (2) The Minister may establish such assessment centres as he thinks necessary for the examination of children, the evaluation of their personal circumstances and social background, and the assessment of the most appropriate treatment or rehabilitative correction or education for each child.
   (3) The Minister may establish such youth project centres as he thinks fit in which children may, without going into residence, receive training and treatment.

59. A home established under this subdivision shall be under the control of the Minister, and the Director-General shall, subject to any instructions of the Minister, manage every such home, and shall ensure that proper standards are observed in the administration of every home.

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

Subdivision 5—Licensed Children’s Homes

61. (1) No person shall have the conduct or control of any children’s home in which more than five children under the age of fifteen years are, for monetary or other consideration, maintained and cared for apart from their parents or relatives unless that person is the holder of a valid licence granted under this section in respect of the children’s home.
(2) The Director-General may grant a licence under this section subject to such terms and conditions (which shall include terms and conditions as to the standard to be observed in the management and operation of the children's home) as the Director-General thinks fit and specifies in the licence.

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

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

(5) This section does not apply in respect of—
   (a) a home established by the Minister under this Act;
   (b) any premises or place in which foster children are cared for by an approved foster parent in accordance with the approval;
   or
   (c) a licensed child care centre.

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

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

(3) The licensee may at any time within twenty-one days after service of a notice under subsection (2) of this section, appeal to the Minister against the proposed cancellation of the licence.

(4) The Minister may upon consideration of any such appeal, revoke the decision of the Director-General to cancel the licence.

63. A person licensed under this Subdivision to have the conduct or control of a children's home shall keep a register containing the following particulars with respect to every child received by him, so far as those particulars are reasonably ascertainable by him—
   (a) the name, age, place of birth and religion (if any) of the child;
   (b) the names, and addresses of the parents of the child;
64. (1) The Director-General, or any officer of the Department authorized in writing by him, may at any reasonable time enter and inspect any licensed children’s home.

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

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

65. (1) A person licensed under this Subdivision shall not receive a child into a children’s home to be cared for in the home unless a parent, or person having the custody of the child has signed an agreement in the prescribed form relating to the period for which the child will remain in the home and the care and control of the child while he remains in the home.

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

Subdivision 6—Child Care Centres

66. (1) No person shall have the conduct or control of a child care centre in which more than three children under the age of six years are, for monetary or other consideration, cared for apart from their parents or relatives unless that person is the holder of a valid licence granted under this section in respect of the child care centre.

(2) The Director-General may grant a licence under this section subject to such terms and conditions as he thinks fit and specifies in the licence.
(3) A licence shall, subject to this section, remain in operation for a period of twelve months after the day on which it was issued, and may be renewed for successive periods of twelve months.

(4) A person who contravenes subsection (1) of this section, or any condition upon which a licence is granted under this Subdivision, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

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

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

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

or

(c) a licensed children's home;

(6) This section does not apply where the children who are cared for apart from their parents or relatives are all of the same family.

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

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

(3) The licensee may at any time within twenty-one days after service of a notice under subsection (2) of this section, appeal to the Minister against the proposed cancellation of the licence.

(4) The Minister may upon consideration of any such appeal, revoke the decision of the Director-General to cancel the licence.

68. (1) A person shall not leave a child under the age of six years to be cared for in a licensed child care centre for more than a prescribed number of consecutive hours over a prescribed period. Penalty: Fifty dollars.

(2) The licensee of a child care centre shall notify the Director-General in writing of any breach of subsection (1) of this section. Penalty: Two hundred dollars.
69. The licensee of a child care centre shall keep a register containing the following particulars with respect to every child received by him so far as those particulars are reasonably ascertainable by him—

(a) the name and date of birth of the child;
(b) the name and address of the person from whom the child was received;

and

(c) such other particulars as may be prescribed.

70. (1) The Director-General, or any officer of the Department authorized in writing by him, may at any reasonable time enter and inspect a licensed child care centre.

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

(3) A person shall not hinder the Director-General or any officer so authorized, in the exercise of powers conferred on him under subsection (1) of this section, or to comply with a requirement made of him pursuant to subsection (2) of this section.

71. (1) The Director-General may, upon the application of any person, approve any premises in respect of which no licence is required under this Act, but in which he cares for, or proposes to care for, a child, or children under the age of six years in a family environment for monetary or other consideration.

(2) The Director-General may, at any time, revoke an approval under this section.

(3) This section is not to be construed as requiring the approval of the Director-General in respect of any premises.

(4) A person shall not falsely represent that any premises have been approved by the Director-General under this section, nor make any representation that might reasonably be expected to cause to induce any other person falsely to believe that the premises have been so approved.
72. Any person having the care, custody, control or charge of a child, who without lawful excuse—

(a) neglects to provide such food, clothing and lodging for the child as the court thinks reasonably sufficient;

or

(b) ill-treats, neglects, abandons, or exposes the child, or causes the child to be ill-treated, neglected, abandoned or exposed, in a manner that the court thinks likely to subject the child to unnecessary risk, danger, injury or suffering,

shall be guilty of an offence and be liable to a fine not exceeding five hundred dollars or imprisonment for any period not exceeding twelve months.

73. (1) If a person to whom this section applies suspects upon reasonable grounds that an offence under section 72 of this Act has been committed against a child under the age of fifteen years, that person shall, as soon as is reasonably practicable, report to a member of the police force or an officer of the Department that he suspects the commission of such an offence and the observations and opinions upon which the suspicion is based.

(2) Where a report has been made pursuant to subsection (1) of this section—

(a) the making of the report shall not in any proceedings before any court or tribunal be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;

(b) in any proceedings for defamation, the report shall be regarded as absolutely privileged;

(c) the making of the report shall not constitute a ground for civil proceedings for malicious prosecution or conspiracy;

(d) the report shall not be admissible in evidence before any court or tribunal except where it is tendered in evidence by the person by whom it was made in answer to a charge or allegation against him;

and
(e) a person shall not be compelled in any proceedings before any court or tribunal to produce the report, any copy of or extract from the report or to disclose any of the contents of the report.

(3) For the purposes of subsection (1) of this section, a person to whom this section applies is—

(a) any legally qualified medical practitioner;

(b) any registered dentist;

and

(c) any person, or any person of a class declared by proclamation to be a person or a class of persons to whom or to which this section applies.

(4) The Governor may by proclamation declare that this section shall apply to any person or class of persons and may by subsequent proclamation vary or revoke any such proclamation.

Subdivision 8—Miscellaneous

74. (1) Subject to this Act, the Director-General may grant to the foster parent, or to any other person in charge, of any child who is—

(a) under the care and control of the Minister;

or

(b) under the guardianship of the Director-General under the Adoption of Children Act, 1966-1971,

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

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

75. (1) No person, other than a parent, shall care for or keep in his immediate custody any child under the age of fifteen years for a continuous period exceeding six months, or for periods aggregating more than six months in any period of twelve months, unless—

(a) he is a relative of the child;

(b) he is an approved foster parent under this Part;
(c) he is licensed under this Part to conduct a children’s home;

(d) he is authorized in writing by the Director-General to care for the child or to keep the child in his immediate custody;

(e) he is entitled to have the care, custody or guardianship of the child in pursuance of the order of a court of competent jurisdiction;

(f) he is the principal or person in charge of a school or hospital, and the child is a student or patient at that school or hospital;

or

(g) the child is with the permission of his parent or guardian, boarding with him for the purpose of attending school or for the purpose of undergoing any medical treatment that a legally qualified medical practitioner has certified to be necessary for the sake of the health of the child.

Penalty: Two hundred dollars.

(2) In any proceedings for an offence against subsection (1) of this section it is immaterial that the parent or guardian of the child has consented to, or acquiesced in, the child being cared for, or kept in the custody of, any person in contravention of that subsection.

(3) The Director-General may, at any time, in his discretion make or revoke an authorization under paragraph (d) of subsection (1) of this section in respect of any person.

Absconders. 76. (1) A child under the care and control of the Minister who absconds from any home, or the custody of any person in whose custody the child has been placed by the Director-General, may be apprehended without a warrant by a member of the police force or an officer of the Department, and placed in any home nominated by the Director-General.

(2) A person of or above the age of eighteen years who is under the care and control of the Minister, and who absconds from any home or centre, or from the custody of any person in whose custody he has been placed by the Director-General, shall be guilty of an offence and liable upon conviction to be imprisoned for any period not exceeding six months.

(3) A person who is sentenced to imprisonment under this section shall, on his release from prison, continue to be under the care and control of the Minister for any unexpired portion of the period for which he was placed under the care and control of the Minister.
77. A person who—

(a) without the authority of the Director-General takes a child, or induces a child to abscond, from a home, or from the custody of a foster parent before the expiration of the term for which the child was placed in the home in pursuance of this Act, or any other Act, or for which the child was placed in the custody of the foster parent;

or

(b) harbours or conceals any such child,

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

78. A person who—

(a) without the authority of the Director-General, holds any communication with a child in a home;

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

or

(c) having been forbidden to do so by the Director-General, holds any communication with any child under the care and control of the Minister,

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

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

(2) A person shall not hinder the Director-General or any such officer in the exercise of powers under subsection (1) of this section. Penalty: Two hundred dollars.

80. Any person who sells, lends, or gives, or offers to sell, lend or give, to any child under the age of sixteen years any tobacco, cigar or cigarette shall be guilty of an offence and liable to a penalty not exceeding twenty dollars.
81. (1) The Director-General may, by notice in writing served personally or by post upon the employer of a child under the care and control of the Minister, require him to pay the whole or any portion of the wages or other remuneration that become due to the child to the Director-General.

(2) An employer shall comply with the requirement under subsection (1) of this section.

(3) The Director-General may receive moneys (whether paid pursuant to a requirement under subsection (1) of this section or not) on behalf of a child.

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

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

(6) The whole, or any portion of, moneys deposited in the Treasury, and any interest thereon, may be expended by the Director-General for the benefit of the child when, and in such manner, as the Director-General thinks fit.

(7) All moneys deposited in the Treasury, and not expended as provided by this section, shall be payable to the child upon his ceasing to be under the care and control of the Minister, but if not claimed by the child, or any person lawfully claiming under him, before the expiration of seven years after that date, may be appropriated by the Director-General and shall not thereafter be recoverable.

82. (1) A juvenile court constituted of a Judge or special magistrate may, on the application of the Director-General, order that a child who is under the care and control of the Minister be held in custody in a prison.

(2) No order shall be made under this section unless the court is satisfied that the conduct of the child has been such that the child cannot be properly controlled in any of the homes established by the Minister under this Act for the reception and detention of children.
(3) No order shall be made under this section in respect of a child who has not attained the age of sixteen years.

(4) Where a juvenile court makes an order under this section, the Comptroller of Prisons shall detain the child in any prison that he thinks appropriate.

(5) A child shall not be detained in a prison pursuant to an order under this section beyond the expiration of the period for which the child was placed under the care and control of the Minister.

(6) A child so detained shall, subject to the provisions of the Prisons Act, 1936-1969, be eligible for remission of portion of the period of detention and may be released upon parole, in all respects as if he had been sentenced to imprisonment for the period of that detention.

(7) A child shall not cease to be under the care and control of the Minister by reason of the fact that he is held in custody in, or released from a prison under this section.
PART V

SPECIAL PROVISIONS RELATING TO ABORIGINAL AFFAIRS

83. (1) The powers and functions of the Minister under this Part shall include the following:—

(a) to promote, in consultation and collaboration with the Aboriginal people, the cultural, social, economic and political welfare and development of the Aboriginal people;
(b) to encourage and assist the Aboriginal people to preserve and develop their own languages, traditions and arts;
(c) to formulate and implement programmes of research into matters relating to the Aboriginal people;
(d) to establish, and foster the development of, Aboriginal councils and associations;
(e) to foster or promote the establishment or conduct of any business, trade or industry by the Aboriginal people;
(f) to provide grants of money or other assistance to advance the development of Aboriginal people;
and
(g) to provide technical and other assistance to advance the development of the Aboriginal people.

(2) The Minister shall establish a division of the Department with the specific purpose of providing consultative, planning and advisory services in relation to the economic, social and cultural development of the Aboriginal people and to advise upon the implementation, adequacy and co-ordination of services provided, or to be provided, for the welfare or advancement of the Aboriginal people.

84. (1) The Governor may, by proclamation—

(a) declare any Crown lands to be an Aboriginal reserve;
(b) with the consent of the owner of any land, declare that land to be an Aboriginal reserve;
or
(c) add to, or vary, the provisions of a proclamation under this section, or the corresponding provision of the repealed Aboriginal Affairs Act.

(2) A proclamation under this section may contain such prohibitions and restrictions as to the persons, or class of persons who may be within the reserve, as the Governor considers appropriate to the reserve.
85. (1) Subject to this Act, the Minister shall have the management and control of all Aboriginal reserves, but not so as to alienate any portion of any such reserve from the use or benefit of Aboriginals.

(2) The Minister may grant a licence over any land, or premises, within an Aboriginal reserve—

(a) for the purpose of occupation or use as a dwelling;

or

(b) for the purpose of establishing or carrying on any industry, business or trade.

(3) A licence shall not be granted under this section unless the Minister is satisfied that the conditions of the licence are such as to ensure that the enjoyment of the rights conferred by the licence is and will remain restricted to Aboriginals, to near relatives of Aboriginals, or to persons who have habitually resided on the reserve and been accepted by the Aboriginal community.

86. The Minister may, subject to, and in accordance with, the provisions of the Land Acquisition Act, 1969, as amended, acquire land for occupation or use by Aboriginals.

87. A place shall not be deprived of its character as a public place within the meaning of any Act or law by reason only of the fact that the place constitutes an Aboriginal reserve, or portion thereof.

88. (1) A person who is within the boundaries of an Aboriginal reserve without the written permission of the Minister, except—

(a) an Aboriginal who is, in terms of the proclamation establishing the reserve, permitted to be within the reserve;

(b) any person of a class declared by instrument in writing under the hand of the Minister and published in the Gazette to be a class of persons permitted to be within a reserve without a permit;

(c) an officer of the Department acting in the course of his duties as such;
(d) an officer of any Department of the Government who is authorized in writing by the Director-General;

or

(e) a member of the police force acting in the course of his duties as such,

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

(2) The Minister may, in his discretion delegate authority to grant permission to any person to be within the boundaries of an Aboriginal reserve to any group or association of Aborigines living on the reserve, where he is of the opinion that it is in the best interests of the Aboriginal community on the reserve to do so.

(3) Any person who without any such permission, the proof of which shall lie on him, is found within the boundaries of an Aboriginal reserve shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(4) The Minister may after consultation with the Aboriginals living on a reserve, and satisfying himself that the majority of those Aboriginals desire him to do so, recommend to the Governor that a proclamation be made removing all restrictions under this Act upon access to the reserve.

(5) Where such a proclamation has been made, no offence is committed by any person by reason of the fact that he is within the reserve to which the proclamation relates without a permit.

(6) The Governor may, upon the recommendation of the Minister, make or revoke a proclamation under this section.

(7) Subject to subsection (8) of this section, the Mining Act and the Petroleum Act shall not confer any right of entry, prospecting, exploration or mining in respect of land within an Aboriginal reserve.

(8) The Governor may declare by proclamation that the rights of entry, prospecting, exploration or mining conferred by the Mining Act, or the Petroleum Act shall be exercisable, subject to such conditions and modifications (if any) as may be specified in the proclamation upon an Aboriginal reserve or any part thereof.

(9) A proclamation under this section shall have effect according to its terms, and may be varied or revoked by subsequent proclamation.

89. (1) An officer of the Department, authorized in writing by the Director-General may at any reasonable time enter upon any pastoral lands for the purpose of inquiring into the welfare of any Aboriginal person whom he has reasonable cause to suspect to be in the place or premises.
(2) A person shall not hinder any such officer in the exercise of powers under subsection (1) of this section.

(3) In this section—

“pastoral lands” means lands subject to the provisions of the Pastoral Act, 1936-1971:

90. (1) Where an Aboriginal appears before a court charged with an indictable offence, and the Aboriginal is not represented by counsel and no officer of the Department is present in the court, the court shall inform the Director-General who may, if he thinks it necessary, request the adjournment of the hearing to enable him to arrange legal representation of the Aboriginal, or the presence of an officer of the Department, or an interpreter, in the court to advise and assist the Aboriginal.

(2) Where an Aboriginal appears before a court charged with an offence that is not an indictable offence, and the Aboriginal is not represented by counsel, and no officer of the Department is present in the court, the court may inform the Director-General, who may, if he thinks it necessary, request an adjournment of the hearing to enable him to arrange legal representation of the Aboriginal or the presence of an officer of the Department, or an interpreter, in the court to assist the Aboriginal.

(3) A court to which a request is made under subsection (1) or subsection (2) of this section shall grant the adjournment requested.

91. (1) Where the Minister has been requested in writing to do so by an Aboriginal, he may undertake the general care, protection or management of his property, and may—

(a) take possession of, retain, sell, or dispose of any such property, whether real or personal, and, upon any such sale or disposition, pass a valid title to the property;

(b) sue for, recover, or receive any money or other property due or belonging to, or held in trust for, any Aboriginal or damages for any conversion of, or injury to any such property;

and

(c) appoint any person to act as agent or attorney for the Aboriginal in any matter connected with the management or administration of his property, and exercise any other power that the Aboriginal might himself exercise.

(2) The Minister shall keep proper records and accounts of moneys and other property received or dealt with by him under the provisions of this section.
92. (1) A near relative of any person who is, by reason of poverty, unable to support himself shall, at his own expense, according to his financial capacity and material resources, maintain any such person and, in default of so doing, shall be subject to the provisions of this Division.

(2) A near relative who is a married woman shall be liable to maintain or contribute to the maintenance of any such person.

(3) This section does not apply to the maintenance of any child.

93. Upon complaint made by or on behalf of any person who is, by reason of poverty unable to support himself, any justice may issue a summons requiring the relative or relatives therein named to appear before a court of summary jurisdiction, at a time and place to be specified in the summons, to show cause why he or they should not maintain, or contribute to the maintenance, of that person.

94. (1) At the time and place appointed for the hearing of the complaint, the court shall inquire as to the person or persons who by this Act are bound to maintain his or their relatives, and as to his or their financial capacity and material resources and the court may, if it thinks fit, adjourn the hearing of the complaint, and appoint a time and some other place for the adjourned hearing, and may summon any other persons alleged to be near relatives to appear at the time appointed for the adjourned hearing; and if it is satisfied at the original or any adjourned hearing that the persons summoned or any of them are near relatives of the person in respect of whom the proceedings are brought and are able to pay for, or contribute towards, his maintenance, may order payment to be made by those near relatives or any one or more of them of such amount or periodical amounts for the maintenance of that person as the court thinks reasonable.

(2) In making any such order the court shall fix the periods at which, the place where, and person to whom the amount allowed is payable, and in case two or more persons are ordered to contribute to the support of the person in respect of whom the proceedings are brought the court shall fix the amount or proportions payable by each.

95. (1) When any husband unlawfully deserts his wife, or leaves her without adequate means of support, any justice may, upon complaint made by or on behalf of the wife, issue a summons to the
husband, to show cause why he should not support his wife, and the
justice, may, in his discretion, issue his warrant for the apprehension
of the husband.

(2) Upon the day appointed for the hearing, any court of summary jurisdiction may hear and determine the matter of complaint in a summary way; and if it is satisfied that the wife is in fact without adequate means of support, and that the husband is able to maintain her, or to contribute to her maintenance, the court shall make an order in writing, directing him to pay weekly, fortnightly, or monthly, at its discretion, and to such person and in such manner for her use as the court may think fit, such sum or allowance for the past or future maintenance of the wife as it considers proper.

(3) Where any children of the family are in fact under the wife's custody and control, the court may, in fixing the amount payable to her under this section, include such amount as is reasonably necessary for the support of the children.

(4) The provisions of this section shall not limit or affect the operation of any other provision of this Act.

96. (1) When any wife leaves her husband without adequate means of support, any justice may, upon complaint made by or on behalf of the husband, issue a summons to the wife, to show cause why she should not support her husband.

(2) Upon the day appointed for the hearing, any court of summary jurisdiction may hear and determine the matter of the complaint in a summary way; and if it is satisfied that the husband is in fact without adequate means of support and that the wife is able to maintain her husband, or to contribute to his maintenance, the court shall make an order directing her to pay weekly, fortnightly, or monthly, at its discretion, and to such person and in such manner for his use as the court may think fit, such sum or allowance for the past or future maintenance of the husband as it considers proper.

(3) The provisions of this section shall not limit or affect the operation of any other provision of this Act.

97. (1) On the complaint of any person liable upon or entitled to the benefit of any order made under this Subdivision the court may, while the order continues in force, make further inquiry as to the financial capacity and material resources of the person liable upon the order or as to the means of the person entitled to the benefit of the order, and may make an order increasing, reducing, or entirely remitting the amount so ordered to be paid.

(2) Where, upon the complaint of any person liable upon any order made under this Subdivision, it appears to the court that he has bona fide made to his wife an offer to maintain her adequately in his home, the court may, in its discretion, discharge the order.
98. The near relatives of any child (including a child under the care and control of the Minister) shall be liable to pay for, or contribute towards, the cost of maintenance of the child according to their financial capacity and in the following order:—

(a) in the case of a legitimate child—father, mother, stepfather, stepmother;

(b) in the case of an illegitimate child—father, mother's husband, mother.

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

(2) Every complaint under this section in respect of a child under the care and control of the Minister shall be made by or on behalf of the Minister.

(3) A justice may, instead of issuing a summons issue a warrant under his hand for the apprehension of any person against whom a complaint has been made under this section, and for his detention until the hearing of the complaint, unless that person enters into a recognizance with one or more sureties, in such sums as the justice directs, conditioned upon his appearance at the hearing of the complaint.

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

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

and

(b) of such weekly or other periodical sum for the future maintenance of the child, and for such period, as the court consider sufficient.
(2) If an order is made against two or more near relatives, the sums or proportions payable by each shall be fixed by the court.

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

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

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

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

Subdivision 2—Orders, etc., in Affiliation Cases

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

103. Upon complaint made in an affiliation case, a justice may, instead of issuing a summons issue a warrant under his hand for the apprehension of any person against whom a complaint has been made under this subdivision, and for his detention until the hearing of the complaint unless that person enters into a recognizance, with one or more sureties, in such sums as the justice directs, conditioned upon his appearance at the hearing of the complaint.

104. (1) Where a court of summary jurisdiction, upon complaint made by or on behalf of a woman, is satisfied—

(a) that she is pregnant by the defendant (not being her husband) or has been delivered of a child or a stillborn child of whom the defendant (not being her husband) is the father;

and

(b) that he has not made adequate provision for the payment of the preliminary expenses in respect of the confinement,
the court may order the defendant to pay to the Director-General such amount as it thinks reasonable for or towards those preliminary expenses.

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

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

105. (1) Where an order is made for payment of, or contribution towards, preliminary expenses during the pregnancy of the woman, the order shall—
(a) specify a date on which the order will cease to have effect if the woman has not then been delivered of a child;

and

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

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

or

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

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

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

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

or

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

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

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

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

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

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

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

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

or

(b) the person has been given notice of the complainant's intention to apply for the order.
Compellability of defendant as witness in affiliation cases.

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

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

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

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

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

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

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

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

(5) Where a certified copy of the registration of the birth of the child in relation to whom an order has been made under subsection (1) of this section is produced to the clerk of the court, the clerk shall forthwith send by post to the defendant at his usual or last-known place of residence or business notice in writing of the name of the child (if shown in the certified copy of the registration of the birth of the child) and of the date and place of birth of the child and the date on which and the place at which the first payment under the order is required to be made.
110. (1) A complaint may be made under this Act by or on behalf of the Minister or by any officer of the department against one or more male persons over the age of eighteen years at the time of the making of the complaint alleging that the male person or persons have had sexual intercourse with the mother of an illegitimate child at a time or times such that the male person or any one of the male persons may possibly be the father of the illegitimate child.

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

(3) A justice may, instead of issuing a summons, issue a warrant under his hand for the apprehension of any person against whom a complaint has been made under this section and for his detention until the hearing of the complaint, unless that person enters into a recognizance with one or more sureties, in such sums as the justice directs, conditioned upon his appearance at the hearing of the complaint.

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

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

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

111. (1) Where a person is liable or, without a complaint being made against him under this Act, admits liability to pay for or contribute towards the preliminary expenses in respect of the confinement of the mother of an illegitimate child or the maintenance of the child, the Director-General may, with the approval of the Minister, accept from that person a sum of money in full settlement of all such liability.
(2) On payment of that sum no proceedings shall be commenced or proceeded with by or on behalf of the mother or any other person in respect of the liability or expenses.

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

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

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

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

(4) No such direction shall be given unless the child has been born and the child, the mother and the defendant are all living.

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

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

(7) The analyst so nominated must be a person whose name is on a panel of names prepared by the Minister on the recommendation of the Director-General of Public Health and published in the Gazette.

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

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

(a) the proceedings in connection with the affiliation case shall be stayed until the expiration of the period or extended period fixed under subsection (5) or subsection (6) of this section;
(b) if the mother and child referred to in the direction do not, or either of them does not, within that period or extended period, attend upon the medical practitioner nominated in the direction and permit him to take the necessary blood samples for the purposes of the blood tests, the complaint, if made by or on behalf of the mother, shall be dismissed, but otherwise shall be set down for hearing; and

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

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

(11) The medical practitioner nominated in the direction given under this section shall, in the manner and within the time prescribed forward all blood samples taken by him pursuant to the direction to the analyst nominated in the direction and the blood tests shall be made by the analyst and the results of the tests shall be embodied in a certificate in the prescribed form signed by the analyst.

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

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

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

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

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

(b) that the defendant has had sexual intercourse with the
complainant at such a time that the act of intercourse
may have resulted in the pregnancy of the complainant,
the court may order the defendant to pay such amount as it considers
reasonable for or towards the medical and hospital expenses incurred
by the complainant in connection with the termination of the
pregnancy.

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

Subdivision 4—Orders for Funeral, Medical and other Expenses

114. (1) Where a court of summary jurisdiction—

(a) upon complaint made by or on behalf of a parent of a
legitimate child or an adopted child, is satisfied that the
child was a child of the family who has died and—

(i) that, at the date of the death, the complainant was
entitled to receive payments from the other
parent of the child for the maintenance of the
child or there was in existence an order of a
court against the other parent for the main­
tenance of the child;

(ii) that, at the date of the death, the complainant was
entitled to receive payments for his or her
maintenance from the other parent or there was
in existence an order under which that other
parent was directed to make payments for the
benefit of the complainant;

or

(iii) that at the date of the death there was in existence
an order directing the payment by the other
parent of a nominal amount in respect of the
child or the complainant;

or

(b) upon complaint made by or on behalf of a parent of a
legitimate stillborn child, is satisfied that the child had
quickened and that at the date of the stillbirth the
complainant was entitled to receive payments for his or
her maintenance from the other parent or there was in
existence an order for the maintenance of the complainant
by the other parent,

and the court is further satisfied that the other parent of the child
has not made adequate provision for the funeral expenses of the
child, the court may order the other parent to pay such amount as
it thinks reasonable for or towards the funeral expenses of the child.
(2) Where a parent of a child might, but for that parent's death, have made a complaint under subsection (1) of this section, the complaint may be made by or on behalf of the Minister, or by any person who has paid, or is liable to pay, the funeral expenses of the child.

(3) Where a court of summary jurisdiction, upon complaint made by or on behalf of the mother of an illegitimate child, is satisfied that the child was stillborn, or died either before attaining the age of eighteen years, or, in the case of a child for whose maintenance an order has been made in his lifetime, while the mother was entitled to receive payments under the order, and that the defendant—

(a) was the father of the child or had been adjudged to be the father of the child in any legal proceedings;

and

(b) has not made adequate provision for the funeral expenses of the child,

the court may order him to pay such amount as it thinks reasonable for or towards the funeral expenses of the child.

(4) Where the mother of an illegitimate child has died, a complaint under subsection (3) of this section may be made by or on behalf of the Minister, or by any person who has paid, or is liable to pay, the funeral expenses of the child.

(5) An order shall not be made under subsection (3) of this section in relation to a stillborn child unless the court is satisfied that the child had quickened.

(6) An order shall not be made under this section upon a complaint made more than twelve months after the stillbirth or the death of the child to whom the complaint relates.

115. (1) Where a court of summary jurisdiction, upon complaint made by any person, is satisfied—

(a) that the defendant is the father of an illegitimate child, whether living or not (including a child that had quickened but was stillborn) or has been so adjudged in any legal proceedings;

(b) that the mother of the child died during and in consequence of her pregnancy or in consequence of the birth of the child;

and

(c) that the defendant has not made adequate provision for the funeral expenses of the mother,

the court may order him to pay such amount for or towards the funeral expenses of the mother as it thinks reasonable.
(2) An order shall not be made under this section upon a complaint made more than twelve months after the death of the mother.

116. (1) Where a court of summary jurisdiction, upon complaint made by or on behalf of a near relative of a deceased person or by or on behalf of the Minister, is satisfied that the surviving spouse of a deceased person (which person was before his or her death entitled to receive payments for his or her maintenance from that spouse) has not made adequate provision for the funeral expenses of that person, the court may order the spouse to pay to the complainant such amount as it thinks reasonable for or towards the funeral expenses of that person.

(2) An order shall not be made under this section upon a complaint made more than twelve months after the death of the deceased person.

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

(a) that any medical, surgical, psychiatric, dental, hospital or nursing care or treatment by way of physiotherapy or chiropractic is or was reasonably required in respect of that person;

(b) that the financial position of that person is and has been such as to preclude the person from making provision for or towards the cost of that care or treatment;

and

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

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

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

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

and

(b) transport by a vehicle to a hospital or other place for medical examination or medical treatment and where necessary, transport from the hospital or place on the return journey.
(3) For the purposes of this section, but without limiting the generality of its application—

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

and

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

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

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

DIVISION II—THE SUMMARY PROTECTION OF MARRIED WOMEN

118. (1) Any married woman—

(a) whose husband during the preceding six months has been guilty of—

(i) cruelty to her or any of her children;

(ii) persistent indecent behaviour before her children;

(iii) adultery;

(iv) desertion;

or

(v) wilful neglect to provide reasonable maintenance for her or any of her children;

or

(b) whose husband is a person who is, by reason of habitual intemperate drinking of intoxicating liquor or habitual use of drugs, at times dangerous to himself or others, or incapable of managing himself or his affairs,

may apply for summary protection under this Division, and an order for summary protection may be made accordingly.

(2) When a complaint has been made under this section, a justice may, in his discretion, issue his warrant for the apprehension of the husband.

(3) The court may order summary protection under this section on the grounds of desertion notwithstanding that the desertion has not continued for two years or upwards.
119. Except as otherwise specifically provided, every application under this Division shall be heard and determined by a court of summary jurisdiction constituted of a special magistrate.

120. (1) Any order for protection under this Division may—
(a) relieve the applicant from any obligation to cohabit with her husband;
(b) grant to the applicant the legal custody of her children;
(c) grant to the husband of the applicant such rights of access to the children of the applicant and her husband as the court deems proper;
or
(d) direct the husband to pay to the applicant personally, or for her use, to any officer of the court, or any person on her behalf, such weekly or other periodical sum as the court, having regard to the means both of the husband and the wife, consider reasonable for the past or future maintenance of herself and also of all children (if any) whose custody is granted to her.

(2) The court may direct that such security be given for payments directed under subsection (1) of this section as the court thinks fit.

121. (1) An application may be made under this Division on more than one ground in the same complaint.

(2) Costs may be ordered against a complainant in respect of any matter of complaint not established at the hearing.

122. No order shall be made under this Division on the application of a married woman, if—
(a) the adultery complained of has been condoned and not revived;
or
(b) the applicant is intemperate in the use of intoxicating liquor or drugs or has committed adultery and the husband has not condoned, or connived at, or, by his cruelty, wilful neglect or misconduct, conduced to the applicant's adultery or intemperate habits.

123. (1) No order under this Division shall affect the order of any court of superior jurisdiction.

(2) A court shall not make an order under this Division granting the custody of a child to its mother—
(a) where there is in force an order for the legal custody of the child made by the Supreme Court of South Australia or the Supreme Court of any other State or of a Territory of the Commonwealth;

(b) where the child is under the care and control of the Minister;

or

(c) unless either the applicant or the respondent was resident in the State at the time the application was made and the child is present in the State at the time the order is made.

124. In determining the amount that a defendant is to be ordered to pay under this Division for the maintenance of any person the court shall have regard, where practicable, to—

(a) the accustomed condition in life of the person for whose maintenance the order is sought;

(b) the earning capacity and financial position of the person for whose benefit the order is sought but the court shall not attribute to the wife of the defendant a greater earning capacity than that which could, in the opinion of the court, be exercised consistently with the proper discharge of her obligations to her family or dependants;

and

(c) the earning capacity and financial position of the defendant.

125. Upon proof, in any application under this Division, that the husband has omitted to supply reasonable maintenance, wilful neglect shall be presumed, unless the husband proves the contrary.

126. (1) Any court of summary jurisdiction constituted of a special magistrate may, on the due application of a married woman or of her husband, and upon cause being shown upon fresh evidence to the satisfaction of the court, at any time alter, vary or discharge any order under this Division, and may, upon any such application increase or diminish the amount of any payment ordered.

(2) If any married woman upon whose application an order has been made under this Division voluntarily resumes cohabitation with her husband, or commits adultery, the order shall, upon application and proof, be discharged.

127. In case of the conviction of a husband in any court for any offence involving cruelty to his wife or children, an application for protection under this Division may, by leave of the court, be heard immediately after the conviction without any summons.
PART VI
DIVISION II
Molestasion of
wife by
husband.

128. (1) If a husband molests or interferes with or attempts to molest or interfere with his wife in her manner of living contrary to any order for relief from cohabitation he shall be guilty of an offence against this section.

(2) Where an order made under this Division commits the legal custody of a child to the mother of the child, any person who, without just cause or excuse, molests or interferes with or attempts to molest or interfere with, the child, contrary to the order for the custody or, having the care or control of the child, without just cause or excuse, refuses or fails on demand to deliver the child to the mother, shall be guilty of an offence against this section.

(3) Where an order made under this Division makes provision for access by any person to a child, any person who, without just cause or excuse, refuses to afford, or prevents, or interferes with, access to that child in accordance with that order, shall be guilty of an offence against this section.

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

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

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

(7) Any court of summary jurisdiction may exercise jurisdiction under this section whether or not it is constituted of a special magistrate.

129. The payment of any sum of money ordered to be paid under this Division may be enforced in the same manner as an order for the payment of maintenance.

DIVISION III—JURISDICTION AND POWERS OF COURTS OF SUMMARY JURISDICTION

130. (1) Subject to this Act, but without limiting the jurisdiction of any court, a court of summary jurisdiction shall have jurisdiction to hear and determine any complaint and to make and to discharge, suspend or vary any order of a kind provided for in this Part.
(2) Subject to this Act, the court shall have jurisdiction to make an order under this Part by reason of facts and circumstances, whether or not those facts or circumstances, or some of them, took place before the commencement of this Act or outside this State—

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

or

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

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

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

(a) that that person is not presently without adequate means of support;

or

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

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

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

132. (1) Upon ex parte application made to the court of summary jurisdiction at any time after complaint made against a near relative of a child for the maintenance of a child of the family the court may order the defendant to pay for the maintenance of the child such amount (being not more than six dollars per week) as the court thinks reasonable until the expiration of three months from the making of the order or until the making or refusal of an order for the maintenance of the child upon complaint under this Division (whichever first occurs).

(2) The evidence of any person in support of the application shall be by affidavit.
(3) Any order under this section shall be in writing signed by the justices, or the magistrate constituting the court, and if necessary, shall forthwith be sent by the court together with the affidavits in support of the application, to the clerk of the court at which proceedings in the complaint are returnable and shall, subject to subsection (1) of this section, be enforceable and all proceedings in relation thereto may be taken as if it were an order made by that court.

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

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

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

Subdivision 1—Commencement and Duration of Orders

134. Except as otherwise provided in this Division—

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

and

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

135. (1) This section applies to any child for whose maintenance an order is or, at the time the child attained the age of eighteen years, was in existence under this Act.

(2) Where, upon application made to a court of summary jurisdiction by or on behalf of a child to whom this section applies, it appears to the court that, in the case of a child who has not attained the age of eighteen years, the child will be engaged in a course of education or training after he attains that age that will fit him for some profession, trade or occupation in which to earn his livelihood or, in the case of a child who has attained that age, the child is or will be so engaged, or in the case of any child, the child is, because of physical disability or mental incapacity, unable to earn his livelihood, the court may order—
(a) where the child has not attained the age of eighteen years—
that the maintenance order continue and be in force for
such amount and for such period not exceeding two years
from the date on which he attains that age as may be
specified in the order under this section;

or

(b) where the child has attained the age of eighteen years—
that the maintenance order revive on and from a date to
be specified in the order under this section (not being a
date earlier than the date on which the order is made)
and that the maintenance order thereafter be in force
for such amount and for such period, not exceeding two
years from the date so specified, as may be specified in
the order made under this section.

(3) A court may, from time to time, by a subsequent order under
this section extend the period specified in any previous order so
made for such further period not exceeding two years from the date
of expiry of the previous order as may be specified in the subsequent
order.

(4) An application under this section shall be heard by a court at
the place where the maintenance order was made unless—

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

or

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

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

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

137. An order under this Part for the maintenance of a wife by
her husband, or a husband by his wife shall, if not earlier discharged
or terminated, cease to have effect upon the death of the wife or
husband (whichever death first occurs).
PART VI

DIVISION IV

Recovery of arrears after cessation of order.

Constructive desertion by conduct.

1972 Community Welfare Act, 1972

No. 51

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

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

Subdivision 2—Evidentiary Provisions

139. (1) Where—

(a) the conduct of a party to a marriage constitutes just cause and excuse for the other party to the marriage to live separately or apart and—

(i) occasions the other party to live separately or apart;

(ii) occasions the other party to live separately or apart and to take with him or her a child of the family from the matrimonial home;

or

(b) the conduct of a parent constitutes just cause and excuse for a child of the family to live separately or apart and occasions the child to live separately or apart,

the party or parent shall, for the purposes of this Part, be deemed to have unlawfully deserted the other party, or the other party and the child, or the child, as the case may be, notwithstanding that that party or parent may not in fact have intended the conduct to occasion the other party or the child to live separately or apart.

(2) Where—

(a) the conduct of a party to a marriage constitutes just cause and excuse for the spouse of that party to live separately or apart and—

(i) occasions the spouse to live separately or apart;

or

(ii) occasions the spouse to live separately or apart and to take a child of the family from the matrimonial home;

or

(b) the conduct of a parent constitutes just cause and excuse for a child of the family to live separately or apart and occasions the child to live separately or apart,

an offer made bona fide by that party or parent to provide a home for the spouse, the spouse and child or the child, as the case may be, is not of itself a sufficient answer to a complaint under Division II of
this Part for the maintenance of the spouse or child, or a sufficient reason for the discharge, suspension or variation of an order under that Division for the maintenance of the spouse or child.

(3) Where a husband and wife are parties to an agreement for separation whether oral or in writing or constituted by conduct, the refusal by one party to the marriage, without reasonable justification, to comply with a request made bona fide by the other party to resume cohabitation shall for the purposes of this Part as from the date of the refusal constitute unlawful desertion on the part of the party so refusing.

(4) For the purposes of subsection (3) of this section, “reasonable justification” means reasonable justification in all the circumstances, including the conduct of the other party since the marriage, whether that conduct took place before or after the agreement for separation.

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

(a) where the defendant is present in court during the hearing of the complaint and does not give evidence on oath denying that he is the father of the child or that she is pregnant by him;

and

(b) where the defendant is not present in court during the hearing of the complaint and the court is satisfied that he was duly served personally with a summons to attend the court,

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

141. Upon the hearing of a complaint under this Part by one party to a marriage against the other party to the marriage, the person making the complaint shall—

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

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

(a) that the person complained against is a near relative of a child and liable to maintain the child;

(b) that the person complained against is able to contribute to the maintenance of the child;

(c) that any sum has been expended upon, or is due or owing for, or in respect of, the maintenance of a child;

(d) that a child is a legitimate child;

or

(e) that a child is under the care and control of the Minister, shall be deemed to be proved in the absence of proof to the contrary.

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

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

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

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

or

(b) unless the hearing of the application is adjourned, upon the application of either party, to a court sitting at another place.
(3) An order shall not be discharged, suspended or varied under this Division unless the court is satisfied—

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

(b) that the means of the person for whose benefit the order was made or the means and ability to pay of the person against whom the order was made have so altered as to justify the discharge, suspension or variation of the order;

(c) that new facts or circumstances have arisen that have not previously been disclosed to a court in any proceedings in connection with the order and that by reason of those facts or circumstances it is reasonable to discharge, vary or suspend the order;

or

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

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

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

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

145. (1) Any justice, on the complaint of a near relative liable upon an order for the maintenance of a child made under this Part, may summon all or any of the persons alleged in the complaint to be near relatives of the child named in the order to appear before a court of summary jurisdiction at a time and place to be appointed in the summons, and shall give notice thereof to the Director-General.
(2) At the time and place so appointed, or at any adjourned hearing of the complaint, the court may make further inquiry as to the relationship to the child of the complainant and the persons summoned and as to their respective financial capacity to maintain or contribute to the maintenance of the child, and may make such order as appears just—

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

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

or

(c) directing that the persons so summoned, or any one or more of them, shall thereafter pay for or contribute towards the maintenance of the child, or may make such other order not inconsistent with the provisions of this Act as appears just.

(3) Subsection (2) of this section shall not authorize any court of summary jurisdiction to annul an adjudication that any person is the father of an illegitimate child.

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

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

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

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

147. Where an order under this Part for the maintenance of an illegitimate child is made before the birth of the child and two or more children are born, an application may be made under this Part for variation of the order to provide for the maintenance of the additional child or children.
148. (1) Where an order under this Part has been made and has
been suspended under this Division until a specified day or until
further order, a court of summary jurisdiction may, upon application
made by an officer of the department or by or on behalf of any
person for whose benefit the order was made, make an order reviving
the suspended order in whole or in part, with or without variation, as
the court thinks fit.

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

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

or

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

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

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

DIVISION VI—PROCEDURAL

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

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

or

(b) if satisfied by oath that the whereabouts of the defendant
is unknown to the complainant, or that the defendant
has moved or is about to move out of the State or to a
distant part of the State, may issue a warrant for the
apprehension of the defendant and for his being brought
before a court pursuant to this Act.
(2) Two or more complaints made against a defendant by a complainant, whether on the complainant’s own behalf, on behalf of other persons or both on the complainant’s own behalf and on the behalf of other persons, may be joined in the one form of complaint.

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

(a) one summons or warrant may be issued in respect of those complaints;

(b) those complaints shall, unless the court otherwise orders, be heard and determined by the court at the same time;

and

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

(4) Where complaints—

(a) for maintenance of a child are made by the same complainant against the father and the mother or the adoptive father and adoptive mother of that child;

or

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

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

150. No complaint under this Part against the father or alleged father of an illegitimate child shall be made except—

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

(b) by or on behalf of the child itself;

or

(c) by an officer of the Department.
151. Except as otherwise provided by this Act, an order made by a court under this Act directing the payment of moneys may direct that—

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

or

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

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

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

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

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

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

(3) Upon proof of service of the notice the court may, if it thinks it just in the circumstances of the case so to do, set aside the order made in the absence of the defendant on such terms as to costs as it thinks fit and may proceed to hear and determine the matter of the complaint or, in the absence of the complainant, may adjourn the matter of the application to some other time or place and may direct such notice as the court thinks fit of the adjourned hearing to be given to the complainant.

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

(a) direct the defendant to attend before the court at a time fixed by the court to be examined concerning his means and ability to comply with the order;

(b) direct the defendant to state to the court or to furnish to the court within any time fixed by the court a statement signed by the defendant setting out—

(i) the name and address of his employer or, if he has more than one employer, of each of his employers;

(ii) particulars as to the defendant's earnings;

and

(iii) such other particulars as the court thinks necessary for the enforcement of the order;

or

(c) direct any person who appears to the court to be indebted to the defendant or to be the employer of the defendant to give to the court, within any time fixed by the court, a statement signed by him or on his behalf containing such particulars as are specified in the direction of his indebtedness to the defendant or of all the earnings of the defendant that became payable by that person during a specified period.

(2) If the defendant fails to comply with the direction, the court may, upon proof that the direction was served personally upon the defendant, or that the direction was duly posted to the defendant
at his last address of which the court has notice, issue a warrant for the apprehension of the defendant.

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

(4) Every person who—

(a) without reasonable cause or excuse refuses or fails to comply with a direction under this section that is applicable to him;

or

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

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

DIVISION VII—ENFORCEMENT OF ORDERS AND SUPPLEMENTARY PROVISIONS

Subdivision I—Attachment of Property, Caveats, Warrants, Disobedience of Orders, Etc.

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

(a) an order for maintenance;

(b) an order for the enforcement of an order for maintenance;

or

(c) an order for the recovery of moneys in repayment of the cost of assistance provided by the Director-General under this Act,

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

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

or

(e) any person against whom the person complained against has any civil or statutory right to the payment of money, not to pay or part with the possession of that money or property until the complaint has been heard and determined, and the money and property shall thereby become and be attached in the hands of
Order for delivery of attached property.

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

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

Attachment may be pleaded.

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

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

Liability of persons contravening order.

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

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

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

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

Collection by police of monies due to Director-General.

159. (1) Subject to the provisions of a maintenance order, any member of the police force shall, when so directed in writing signed by the Director-General and countersigned by the Commissioner of Police, demand, collect, and receive from any person all sums of money due to the Director-General for which that person is liable under any maintenance order.
(2) The receipt in writing of any such member of the police force shall be a sufficient discharge for the person from whom the moneys were received of his liability to pay those moneys to the Director-General.

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

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

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

or

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

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

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

163. Any sale under the warrant may be by public auction or private contract for cash or on credit, or partly for cash and partly on credit, and subject to any conditions that the Director-General thinks expedient.
164. (1) The Director-General or person authorized by the warrant to sell, may execute to the purchaser all such conveyances, assignments, memoranda of transfer, or other assurances of the property sold as the person against whom the order was made might have executed but for this Act, and the property so conveyed or assured shall vest in the purchaser accordingly.

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

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

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

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

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

167. The rents, profits, and income, and the proceeds of any sale, received under any such warrant and the estate or interest in any real or personal estate taken under any such warrant shall be applied firstly in payment of the costs of collection or sale; secondly, in payment of the costs of obtaining the warrant; thirdly, in paying any money due under the original order; and the balance shall be applied in or towards future maintenance, or in such other manner as a court of summary jurisdiction may direct.
168. (1) The court making any maintenance order may, by the
same or a separate order, and any court, on complaint that any
person liable upon any such order has made default thereunder, or
intends to evade compliance therewith, may by a subsequent order,
require the person liable for the maintenance to find such good and
sufficient sureties or security as it thinks fit, that he will comply with
the order made against him, and the court may, in default of such
sureties or security being found, commit him to gaol for any period
not exceeding six months.

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

169. (1) Where a court of summary jurisdiction is satisfied,
upon complaint made by or on behalf of any person for whose
benefit a maintenance order has been made, that the defendant
(being a male person) has disobeyed or failed to comply with the
order and that an amount of money (in this section called the "arrears
of maintenance") is presently due and payable and has not been
paid, the court may order that the defendant be committed to gaol
in default of payment of the arrears of maintenance for such term as
the court thinks proper in the circumstances, but not in any case
exceeding twelve months.

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

(3) Where the court orders a person to be committed to gaol
under subsection (1) of this section, the court or a justice may,
upon the making of the order or at any time thereafter, order that
the issue of the warrant of commitment shall be suspended upon the
condition that the defendant makes such payments in respect of the
arrears of maintenance as are specified by the court, and duly pays
all sums becoming payable under the maintenance order or the order
for costs after the order for commitment.
(4) Where the court has ordered that the issue of a warrant of commitment shall be suspended as provided in subsection (3) of this section, the complainant may apply to any justice for the issue of the warrant; and upon proof that the defendant has made default in compliance with any of the conditions on which the issue of the warrant was ordered to be suspended, the justice shall issue the warrant of commitment.

(5) Notwithstanding anything to the contrary in any Act where an order has been made under this section committing the defendant to gaol in respect of arrears of maintenance and it appears to the clerk of the court of summary jurisdiction to which application is made for the issue of a warrant of commitment that the amount of the arrears of maintenance in respect of which the commitment order was made has been reduced, the fact of such reduction shall be stated in the warrant of commitment, and the term of imprisonment for which the defendant may be committed shall be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days in the term of imprisonment as the amount paid bears to the whole arrears of maintenance.

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

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

or

(b) any lesser amount,

and in either case the keeper shall receive the payment.

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

(8) Where an amount mentioned in paragraph (b) of subsection (6) of this section is paid to the keeper, the term of imprisonment fixed by the commitment order shall be reduced by the number of days bearing to the total number of days in the term of imprisonment a proportion that is the same as, or most nearly approximates to, the proportion that the amount paid bears to the whole of the arrears of maintenance and on the expiration of the term as so reduced the person imprisoned shall, if in custody for no other cause, be discharged.
(9) A court shall not commit a defendant to gaol pursuant to this section if it is satisfied—

(a) that the defendant has not and has not had the means and ability and could not by reasonable effort have had the means and ability to comply with the original order;

or

(b) that for any other reason the original order or, if the order is varied, the order as so varied should not be enforced by imprisonment.

(10) Where the court referred to in subsection (1) of this section is aware that a court has previously refused to commit the defendant to gaol under this section for non-payment of a sum (in this subsection referred to as “the original sum”) included in the amount of arrears of maintenance in respect of which the complaint is made, the court shall only have regard to the amount by which the sum still due and unpaid exceeds the original sum unless it is satisfied that, since that refusal, the means and ability of the defendant to pay the original sum have so altered as to make it reasonable for him now to be committed to gaol for non-payment of the original sum.

170. Upon a complaint in respect of any alleged disobedience of, or neglect to comply with, any maintenance order, a justice may, instead of issuing a summons, issue a warrant under his hand for the apprehension of the person against whom the complaint is made, and for the detention of that person until the hearing of the complaint, unless he enters into a recognizance, with one or more sureties, in such sum as the justice directs, conditioned upon his appearance at the hearing of the complaint.

171. (1) Where a maintenance order has been made and it appears to a court of summary jurisdiction, after consideration of evidence given on oath, that default has been made by the defendant in making the payments directed by the maintenance order, the court may, upon application by or on behalf of the Director-General or any person for whose maintenance, or for whose benefit, the order was made, and subject to subsection (5) of this section, grant a certificate stating the amount due under the maintenance order at the date thereof without requiring notice of the application to be given to the defendant.
(2) The Director-General or person for whose maintenance, or for whose benefit, the maintenance order was made, may file the certificate or cause the certificate to be filed in the Local Court of Adelaide and the clerk of the court shall enter judgment for that person in the Record Book of the court for the amount stated in the certificate to be due together with the fees paid for the certificate and for filing and entering the judgment and shall forthwith send notice in writing of the entry of the judgment to the clerk of the court of summary jurisdiction at the place where payments under the maintenance order are for the time being required to be made.

(3) Subject to the following provisions of this section, the judgment may be enforced in any manner in which a final judgment in an action in the Local Court may be enforced.

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

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

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

172. Every person who disobeys or neglects to comply with any maintenance order made against him under this Act and goes to reside beyond the State, either permanently or temporarily, shall be guilty of a misdemeanour, punishable by imprisonment, with or without hard labour, for any period not exceeding twelve months.

173. Every near relative liable to maintain any child who leaves the child without, or fails to provide the child with, adequate means of support, and goes to reside either temporarily or permanently, outside the State, shall be guilty of a misdemeanour, punishable by imprisonment for any period not exceeding twelve months.
1972 Community Welfare Act, 1972 No. 51

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

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

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

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

Subdivision 2—Attachment of Earnings

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

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

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

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

(a) by way of wages or salary (including any fees bonus, commission, overtime pay, any payment in lieu of leave or other emolument payable in addition to wages or salary);
(b) by way of pension, including—

(i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity;

and

(ii) periodical payments in respect of or by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment,

but does not include any pension, benefit or sum payable to the defendant under the Commonwealth Acts known as the Social Services Act 1947, as amended by subsequent Acts, the Repatriation Act 1920, as amended by subsequent Acts, or the Seaman’s War Pensions and Allowances Act, 1940, as amended by subsequent Acts:

“employer”, in relation to a defendant, means a person (including the Crown whether in right of the Commonwealth or in right of the State, a Minister of the Crown, whether in right of the Commonwealth or in right of the State and any statutory authority representing the Crown whether in right of the Commonwealth or in right of the State) by whom, as a principal and not as a servant or agent, earnings are payable or likely to become payable to the defendant:

“net earnings”, in relation to a pay-day, means the amount of the earnings becoming payable by a particular employer on that pay-day, after deduction from those earnings of—

(a) any sum deducted from those earnings under Division 2 of Part VI of the Commonwealth Act known as the Income Tax and Social Services Contribution Assessment Act 1936, as amended by subsequent Acts;

and

(b) any sum deducted from those earnings that would be an allowable deduction—

(i) under section 82H of that Act as so amended other than life insurance premiums, not being life insurance premiums payable in respect of superannuation;

or

(ii) under section 82HA of that Act as so amended:
"normal deduction", in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order in respect of the period between that pay-day and either the last preceding pay-day, or, where there is no last preceding pay-day, the date on which the employer became, or last became, the defendant's employer:

"pay-day" means 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 subdivision—

(a) a reference to a person entitled to receive payments under a maintenance order shall be read as a reference to a person entitled to receive payments under the maintenance order either directly or through another person or for transmission to another person;

and

(b) a reference to proceedings relating to an order shall be read as including a reference to proceedings in which the order may be made.

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

(a) to the court that made the order;

or

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

for an attachment of earnings order.

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

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

or

(b) in any other case—two payments,

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

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

(a) securing payment of the sums from time to time falling due under the maintenance order;

and

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

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

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

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

(8) An attachment of earnings order shall contain such particulars as the court thinks proper for the purpose of enabling the person to whom the order is directed to identify the defendant.
(9) Upon the making of an attachment of earnings order by a court, the clerk of the court shall cause a copy of the order to be served on—

(a) the defendant;

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

and

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

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

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

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

or

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

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

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

178. (1) Where any proceedings in relation to, or for the enforcement of, a maintenance order already made are brought in a court of summary jurisdiction the court may, instead of making any other order, make an attachment of earnings order.
(2) Unless the court otherwise orders, where an attachment of earnings order is in force, no warrant or other process shall be issued or order made in proceedings for the enforcement of the maintenance order that were begun before the making of the attachment of earnings order.

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

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

(a) the respondent to the application;

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

and

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

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

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

(a) upon being discharged by an order under this Subdivision;

(b) subject to subsection (2) of this section, upon the discharge or variation of the maintenance order in relation to which the attachment of earnings order was made;

or

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

(2) Where it appears to the court discharging or varying a maintenance order that arrears under the order will remain to be recovered under the order, the court may direct that the attachment of earnings order shall not cease to have effect until those arrears have been paid.
(3) Where an attachment of earnings order ceases to have effect, the clerk of the court that made the order by virtue of which the attachment of earnings order ceases to have effect shall forthwith give notice accordingly to the Director-General and to the person to whom the order was directed.

(4) Where an attachment of earnings order ceases to have effect, the person to whom the attachment of earnings order is directed shall not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days after the date on which the notice required by subsection (3) of this section or a copy of the discharging order, as the case may be, is served on him.

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

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

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

and

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

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

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

(2) Where a person served with an attachment of earnings order directed to him—
(a) is not the defendant's employer at the time of service of the order;

or

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

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

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

and

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

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

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

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

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

(a) by delivering a copy thereof to that person;

(b) by leaving a copy thereof at the usual or last known place of residence or business of that person with some person apparently over the age of sixteen years who apparently resides therein or is employed thereat;

or

(c) by sending a copy thereof to him at his usual or last known place of residence or business by registered post.
186. (1) Any person who fails to comply with a requirement of this Subdivision or of any attachment of earnings order under this Subdivision that is applicable to him shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

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

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

187. (1) Any person who dismisses an employee or injures him in his employment, or alters his position to his prejudice, by reason of the circumstance that an attachment of earnings order has been made in relation to the employee or that the person is required to make payments under such an order in relation to the employee shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

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

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

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

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

189. The provisions of this Subdivision shall have effect in relation to deductions from earnings falling to be paid by the Crown whether in right of the Commonwealth or in right of the State, a Minister of the Crown whether in right of the Commonwealth or in right of the State or a statutory authority representing the Crown whether in right of the Commonwealth or in right of the State, and those earnings shall be treated as falling to be paid by the permanent head or principal officer of the Department, office or other body concerned.
190. Where proceedings are taken under this Part in respect of a failure to make payments for or towards the maintenance of a person it shall be a sufficient answer to those proceedings so far as the failure to make payments during any period is concerned if it is proved that during that period the defendant adequately supported that person.

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

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

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

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

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

193. Proceedings for an offence against any of the provisions of this Division may be taken by any member of the police force or any officer of the Department.
194. (1) On the hearing of any complaint in which the defendant is charged with non-compliance with any maintenance order, the defendant shall be compellable to give evidence, and may be summoned as a witness for that purpose.

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

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

DIVISION VIII—RECIPROCAL ENFORCEMENT OF ORDERS

Subdivision 1—Interpretation and Administration

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

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

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

“certified copy”—

(a) in relation to a maintenance order or other order of a court (not being an order made under the Matrimonial Causes Act 1959, as amended, of the Commonwealth)—means a copy of the order certified to be a true copy by an officer of the court that made the order or a copy of such a copy certified to be a true copy by an officer of a court in or by which the order has been registered or confirmed;

(b) in relation to a maintenance order or other order made under the Matrimonial Causes Act 1959, as amended, of the Commonwealth—means a certificate of the order or a copy of the decree nisi issued under the rules made under that Act, or a copy of such a certificate certified to be a true copy by an officer of a court in which the order has been registered under that Act;
(c) in relation to a record of the evidence of a witness in proceedings before a court—means a copy of the record certified to be a true copy by an officer of that court:

“Collector”—

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

and

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

“Collector’s certificate”—

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

and

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

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

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

“country having restricted reciprocity” means a reciprocating country that is for the time being declared by a proclamation in force under this Division to have restricted reciprocity with this State:
“court” means a court, or a magistrate, justices or any other person or persons exercising judicial power, whether constituted or acting under the law of this State, any other Australian State, the Commonwealth, or a reciprocating country:

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

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

“interstate order” means a maintenance order—

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

or

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

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

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

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

and

(b) in any other case—a maintenance order made in that country (whether before or after the making of the proclamation) by a court of competent jurisdiction:
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"reciprocating country" means a country that is for the time being a country declared by a proclamation in force under this Division to be a reciprocating country for the purposes of this Act:

"South Australian order" means a maintenance order—

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

or

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

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

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

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

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

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

and

(b) the Minister may appoint, from officers of the Department, a Deputy Collector of Maintenance and as many Assistant Collectors of Maintenance as shall be necessary.
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(2) The Deputy Collector of Maintenance and every Assistant Collector of Maintenance shall have and may exercise, subject to the directions of the Collector of Maintenance, all the powers, authorities, duties and functions of the Collector of Maintenance.

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

(2) The Collector shall—

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

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

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

and

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

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

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

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

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

Subdivision 2—Interstate Maintenance

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

(a) three certified copies of the order;

(b) a Collector's certificate relating to the order;

(c) such information and material as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant;

and

(d) a request in writing that the order be made enforceable in that other Australian State.

(2) Where—

(a) a South Australian order is, under the law of another Australian State, enforceable in that other Australian State;

and

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

he may send to the Collector for that other Australian State, a request in writing that the order be made no longer enforceable in that other Australian State and, for the purposes of this Act, the order shall, upon the sending of the request, cease to be enforceable in that other Australian State.
The fact that a South Australian order has ceased to be enforceable in another Australian State by reason of action taken in that other Australian State as a result of a request made under subsection (2) of this section does not prevent a further request under subsection (1) of this section that the order be again made enforceable in that other Australian State.

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

(a) the order becomes unenforceable in this State;

(b) the order remains unenforceable in this State, and no proceedings for the enforcement thereof shall lie, unless and until it ceases to be enforceable in that other Australian State;

and

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

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

(a) three certified copies of an interstate order made in that State;

(b) a Collector's certificate relating to the order;

and

(c) a request in writing that the order be made enforceable in this State,

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

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

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

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

(a) specifying the amount, if any, of the arrears due under the order;

(b) stating that payments under the order are to be made to the Collector;

and

(c) giving an address at which those payments may be made.

(5) Where—

(a) an interstate order is registered in this State under this section;

and

(b) the Collector receives from the Collector for the other Australian State a request in writing that the order be made no longer enforceable in this State,

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

(6) Where the registration of an interstate order is so cancelled—

(a) the order shall become unenforceable in this State;

(b) the order shall remain unenforceable in this State and no proceedings for the enforcement thereof shall lie, unless and until it is again registered in this State;

and

(c) every warrant or other process under this Act arising out of the order previously issued in this State, and not executed shall cease to have effect.

202. Where an interstate order has been registered in this State under this Act and the Collector has reasonable grounds for believing that the defendant is no longer resident in this State, but is resident in, or proceeding to, another Australian State, he shall forthwith notify the Collector in the State in which the order was made of the fact and shall give him such information as he possesses concerning the whereabouts and intended movements of the defendant.
203. (1) Where an interstate order made by a court of summary jurisdiction, or by a magistrate or justices, is enforceable in this State by virtue of this Subdivision, application in writing in accordance with the prescribed form may be made by or on behalf of the complainant or the defendant to a prescribed court of summary jurisdiction in this State constituted of a special magistrate for an order discharging, suspending, varying or reviving the interstate order, and that court has jurisdiction to hear and determine the application.

(2) Where a South Australian order made by a court of summary jurisdiction is enforceable in another Australian State by virtue of any enactment in that State corresponding with this Subdivision, application in writing in accordance with the prescribed form may be made by or on behalf of the complainant or the defendant to any court of summary jurisdiction in this State constituted of a special magistrate (being a court that would have jurisdiction to make an order under this Act in relation to the South Australian order) for an order discharging, suspending, varying or reviving the South Australian order.

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

(4) Except where the complainant and the defendant both appear upon the hearing, the evidence of any witness who is examined at the hearing of any such application shall be put into writing and shall be read over to and signed by him.

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

204. Where—

(a) an application is made under subsection (1) of section 203 of this Act by a defendant for the discharge, suspension or variation of an interstate order;

(b) the defendant did not appear at the hearing of the complaint upon which the original interstate order was made and was not served personally in the Australian State in which the order was made with the summons upon that complaint;
(c) the application is made within six months after service on the defendant of notice of registration of the order in this State,

the defendant may, in addition to raising any matter that could have been raised on an application under section 144 of this Act, raise any ground of opposition that he could have raised in the original proceedings.

205. In an application under section 203 of this Act, the law to be applied shall, except in matters of practice or procedure, be the law of the Australian State in which the original order was made.

206. (1) Except as provided in subsection (2) of this section, an order made on an application under section 203 of this Act discharging, suspending, varying or reviving a maintenance order shall be provisional only and shall have no effect unless and until confirmed by a competent court of the appropriate Australian State in which the maintenance order was made or is enforceable, and shall be expressed accordingly.

(2) Where the respondent to an application under section 203 of this Act has been served personally in this State with notice of the application or appears on the hearing of the application, any order made on the application shall recite that fact, and the order shall, subject to subsection (4) of section 200 of this Act, be enforceable and have effect forthwith in this State according to the tenor thereof.

(3) Where an order made on an application under section 203 of this Act is expressed to be provisional, the clerk of the court making the provisional order shall send a certified copy of the order, together with the depositions of the witnesses, to the Collector for the other Australian State.

(4) Where an order referred to in subsection (3) of this section has been confirmed (whether with or without modification) by a competent court of the other Australian State, the order shall, subject to subsection (4) of section 200 of this Act, be enforceable and have effect in this State as so confirmed.

207. (1) Where a provisional order made under the foregoing provisions of this Subdivision is remitted by a court in another Australian State to the court in this State that made the provisional order for the taking of further evidence, the court in this State, or, if requested by that court, another court in this State shall, after notice has been given to such persons in such manner as the court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the other Australian State.
(2) If, upon the taking of the further evidence, it appears to the court taking the further evidence that the order ought not to have been made, the court may rescind the order and may, if it thinks fit, make a fresh provisional order in its stead.

208. (1) Where the Collector receives—

(a) a certified copy of—

(i) a provisional order made by a court in another Australian State discharging, suspending, varying or reviving a South Australian order enforceable in that other Australian State;

or

(ii) a provisional order made by a court in another Australian State discharging, suspending, varying or reviving an interstate order made in that Australian State and enforceable in this State by virtue of this Subdivision;

and

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

the Collector shall, on behalf of the party on whose application the provisional order was made in the other Australian State, apply to the court in this State by or in which the maintenance order was made or is registered for an order confirming the provisional order.

(2) The Collector shall cause notice, in accordance with the prescribed form, of the application under this section to be served on the respondent to the application not less than seven days before the hearing of the application.

(3) Upon the hearing of such an application, the court may—

(a) confirm the provisional order, either with or without modification;

(b) discharge the provisional order;

or

(c) adjourn the proceedings and remit the provisional order to the court that made it with a request that that court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed shall, subject to subsection (4) of section 200 of this Act, be
(5) Each party to an application for confirmation of a provisional order under this section shall have the same right of appeal against an order confirming or discharging the provisional order as he would have had on the making of, or the refusal to make, the original order.

209. (1) Where an interstate order is enforceable in this State by virtue of this Subdivision—

(a) all proceedings may be taken for the enforcement of the order;

and

(b) the provisions of this Part shall, so far as they are applicable and with such modifications as are necessary, apply and have effect,

as if it were a maintenance order made under this Part by the court of summary jurisdiction in which it is registered or by which it was confirmed, as the case may be.

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

(3) Where proceedings are so taken by the Collector, the court shall, unless it is satisfied by evidence to the contrary, presume that the enforcement of the order is required for the actual support of the person for whose benefit the order was made and that since the order became enforceable in this State no moneys have been paid under the order otherwise than to the Collector.

Subdivision 3—Overseas Maintenance

210. Where a South Australian order is presently enforceable in this State but not in any other Australian State and it appears to the Collector that the defendant is resident in, or proceeding to, a reciprocating country, the Collector may send to an appropriate authority in that reciprocating country—

(a) three certified copies of the South Australian order;

(b) a Collector's certificate relating to the South Australian order;

(c) such information and material as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant;

and
(d) a request in writing that the South Australian order be made enforceable in that reciprocating country.

211. (1) This section applies to an application for a maintenance order under this Act—

(a) against a husband for the maintenance of his wife;

(b) against a wife for the maintenance of her husband;

or

(c) against a near relative of a child for the maintenance of that child.

(2) Upon application made in writing in accordance with the prescribed form to a court of summary jurisdiction constituted of a special magistrate for a maintenance order to which this section applies and upon proof that the person against whom the order is sought is resident in, or proceeding to, a reciprocating country, the court may, in the absence of that person, make any order it could have made if a summons had been duly served on that person and he had failed to appear at the hearing.

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

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

(5) Where a court makes an order under subsection (2) of this section, the clerk of the court shall send to the Collector for transmission to the reciprocating country referred to in subsection (2) of this section—

(a) the depositions of the witnesses;

(b) three certified copies of the order;

and

(c) a statement of the grounds on which the making of the order could have been opposed if the defendant had appeared at the hearing.

(6) Where any provisional order made under this section has come before a court in a reciprocating country for confirmation and the order has by that court been remitted to the court in this State that made the order for taking of further evidence that court, or, if
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requested by that court, another court in this State shall, after notice has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence, and shall send the depositions of the witnesses to the Collector for transmission to the court in the reciprocating country.

(7) If, upon the taking of the further evidence, it appears to the court taking that further evidence that the order ought not to have been made, that court may rescind the order and may, if it thinks fit, make a fresh provisional order in its stead.

(8) Where a court takes evidence in pursuance of a request of another court made under subsection (6) of this section, the first-mentioned court may, for the purposes of subsection (7) of this section have regard to the evidence given at the hearing in the second-mentioned court.

(9) Where a court in a reciprocating country in which the defendant is for the time being resident confirms (either with or without modification) a provisional order made under this section, the order shall be enforceable and have effect in this State as so confirmed as if it were an order validly made under this Part by the court of summary jurisdiction referred to in subsection (2) of this section.

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

(11) The applicant shall have the same right of appeal (if any) against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought.

212. Where—

(a) a South Australian order is, under the law of a reciprocating country, enforceable in that reciprocating country; and

(b) the Collector is satisfied that there are reasonable grounds for believing that the defendant is not resident in, or proceeding to, that reciprocating country or it appears to the Collector that there is some other good reason why the order should no longer be enforceable in that reciprocating country,
the Collector may send to an appropriate authority in that reciprocating country a request in writing that the order be made no longer enforceable in that reciprocating country and, for the purposes of this Act, the order shall, upon the sending of the request, cease to be enforceable in that reciprocating country.

213. (1) Where the Collector receives—

(a) a certified copy of an overseas order;

and

(b) a certificate signed by an officer of a court or by an appropriate authority in the reciprocating country relating to the order and containing—

(i) a statement that the order is, at the date of the certificate, enforceable in that reciprocating country;

and

(ii) a statement as to the amount of any arrears due under the order, distinguishing any amount in respect of which the defendant has been imprisoned,

the Collector shall, subject to subsection (2) of this section, if it appears to him that there are reasonable grounds for believing that the defendant is resident in or proceeding to this State send those documents to the clerk of the court of summary jurisdiction at Adelaide known as the Adelaide Magistrates' Court with a request that the order be registered in that court.

(2) In the case of an overseas order originating in a country having restricted reciprocity, the Collector shall not send the documents as required by subsection (1) of this section unless the Collector is satisfied that the order is a maintenance order of such a kind as can be made under this Part.

(3) Upon a request made under subsection (1) of this section, the clerk shall register the order and file in the court a certified copy of the order and the certificate relating thereto.

(4) An overseas order so registered shall, until the registration is cancelled and subject to any order for the suspension thereof, be enforceable in this State, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.
(5) Upon registration of an overseas order, the Collector shall notify the officer of the court or other appropriate authority in the reciprocating country accordingly and cause a certified copy of the order to be served upon the defendant, together with a notice of registration of the order in this State—

(a) specifying the amount, if any, of the arrears due under the order;

(b) stating that payments under the order are to be made to the Collector;

and

(c) giving an address at which such payments may be made.

214. (1) Where—

(a) an overseas order (other than an order in an affiliation case or an order consequent upon such an order) has no effect under the law of the reciprocating country in which it is made unless and until confirmed by a court outside that reciprocating country (whether or not it appears from the order that it may be confirmed by a court in this State);

(b) a certified copy of the order and the depositions of the witnesses in the proceedings in which the order was made, together with a statement of the grounds on which the making of the order could have been opposed if the defendant had appeared at the hearing, have been received by the Collector;

and

(c) it appears to the Collector that—

(i) there are reasonable grounds for believing that the defendant is resident in, or proceeding to, this State;

and

(ii) the order will have effect under the law of the reciprocating country if it is confirmed by a court in this State,

a summons may, subject to subsection (2) of this section, on the application of the Collector, be issued by any justice calling upon the defendant to appear before a convenient court of summary jurisdiction specified in the summons and constituted of a special magistrate to show cause why the provisional order should not be confirmed.
(2) In the case of a provisional order made in a country having restricted reciprocity, the Collector shall not make an application as provided by subsection (1) of this section unless he is satisfied that the order is of such a kind (apart from its provisional nature) as could be made under this Part.

(3) At the hearing the defendant may raise any ground of opposition which he could have raised in the original proceedings or any ground of opposition which he could have raised if those proceedings had been heard in this State, and the statement referred to in subsection (1) of this section shall be conclusive evidence that the grounds referred to in that statement are grounds on which the making of the order might have been refused in the original proceedings.

(4) If the defendant, having been served in this State with the summons, does not appear at the hearing, or if the defendant appears at the hearing but fails to satisfy the court that the order ought not to be confirmed, the court may—

(a) confirm the provisional order (either with or without modification); or

(b) adjourn the proceedings and remit the provisional order to the court that made it, with a request that that court take further evidence and further consider its provisional order,

but the court may, if it thinks it just to do so, discharge the provisional order.

(5) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed shall be enforceable and have effect in this State as if it were an order to the like effect validly made by the court in this State.

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

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

(a) three certified copies of the overseas order;

(b) a Collector's certificate relating to the order;
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(c) such information and material as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant;

and

(d) a request in writing that the order be made enforceable in that Australian State,

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

(2) Where a request is made under subsection (1) of this section—
(a) the order shall become unenforceable in this State, and, if the order has been registered in a court in this State, that registration shall be deemed to be cancelled;
(b) the order shall remain unenforceable in this State and no proceedings for the enforcement thereof shall lie, unless and until it is registered, or again registered, in this State;

and

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

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

(i) three certified copies of an overseas order;
(ii) a Collector's certificate signed by the Collector for that Australian State relating to the order;

and

(iii) a request in writing that the order be made enforceable in this State;

and

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

(i) the order has been registered in, or confirmed by, a court in that Australian State under a law of that Australian State corresponding with this Subdivision;

and

(ii) the order was, at the date of the certificate, presently enforceable in that Australian State in accordance with that law,
the Collector shall if it appears to him that there are reasonable
grounds for believing that the defendant is residing in, or proceeding
to, this State, send the documents to the clerk of the court of summary
jurisdiction at Adelaide known as the Adelaide Magistrates’ Court
with a request that the order be registered in that court.

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

(3) An overseas order so registered shall, until the registration is
cancelled, be enforceable in this State, both 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 the appropriate court or the other appropriate
authority in the reciprocating country accordingly, and shall cause
a certified copy of the order to be served upon the defendant, together
with a notice of registration of the order in this State—

(a) specifying the amount, if any, of the arrears due under the
order;

(b) stating that payments under the order are to be made to the
Collector;

and

(c) giving an address at which such payments may be made.

217. Where the Collector receives documents relating to an over-
seas order (including a provisional order) that have been trans-
mitted to this State for the purpose of having the order made
enforceable or confirmed in this State and it appears to him that the
defendant is not resident in, or proceeding to, this State but is
resident in, or proceeding to another Australian State or a
reciprocating country other than that in which the order was made,
the Collector may, instead of taking steps with a view to the regis-
tration or confirmation of the order in this State—

(a) transmit the documents to the Collector for that other
Australian State or an appropriate authority in that
other reciprocating country together with such informa-
tion as he possesses concerning the whereabouts and
intended movements of the defendant;

and

(b) give to the officer of the appropriate court or other
appropriate authority in the reciprocating country in
which the order was made notice of the fact that he has
so transmitted the documents.
218. (1) Where—
(a) an overseas order is registered or confirmed under this Subdivision;

and

(b) the Collector receives a request in writing made by an officer of the Court that made the order or some other appropriate authority in the reciprocating country that the order be made no longer enforceable in this State,

the Collector shall send the request to the clerk of the court of summary jurisdiction at Adelaide known as the Adelaide Magistrates' Court, who shall file the request and, if the order is registered under this Subdivision, cancel the registration of the order.

(2) Where such a request has been so filed—
(a) the overseas order shall become unenforceable in this State;

(b) the order shall remain unenforceable in this State unless and until it is registered, or again registered, in this State;

and

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

219. (1) Where an overseas order is enforceable in this State by virtue of this Subdivision—
(a) all proceedings may be taken for the enforcement of the order;

and

(b) the provisions of this Part shall, so far as they are applicable and with such modifications as are necessary, apply and have effect,

as if it were a maintenance order made under this Part by the court in this State in which the order is registered or by which it was confirmed, as the case may be.

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

(3) Where proceedings are so taken by the Collector, the court shall, unless it is satisfied by evidence to the contrary, presume that the enforcement of the order is required for the actual support of the person for whose benefit the order was made and that since the order became enforceable in this State no moneys have been paid under the order otherwise than to the Collector.
220. (1) Where an overseas order is enforceable in this State by virtue of this Subdivision, the defendant may make an application in writing, in accordance with the prescribed form, to a prescribed court of summary jurisdiction constituted of a special magistrate for an order discharging, suspending or varying the overseas order, and that court has jurisdiction to hear and determine the application.

(2) Where a South Australian order is enforceable under the law of a reciprocating country in which the defendant is for the time being resident, the complainant may make an application in writing, in accordance with the prescribed form, to the court that made the order for an order varying or (if the order has been suspended) reviving, the order.

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

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

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

221. Where—

(a) an application is made by a defendant for the discharge, suspension or variation of an overseas order;

(b) the defendant did not appear at the hearing of the proceedings upon which the overseas order was made and was not served personally in the reciprocating country with notice of those proceedings;

and

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

the defendant may, in addition to raising any matter that could have been raised on an application under section 144 of this Act, raise any ground of opposition that he could have raised had the proceedings on which the overseas order was made been heard in this State.

222. In an application under section 220 of this Act the law to be applied shall be the law of this State.
223. (1) Where the court proposes to make an order on an application under section 220 of this Act and any court in the reciprocating country will, if the order is provisional only, have jurisdiction to confirm the order, the order shall be provisional only and shall have no effect unless and until confirmed (either with or without modification) by such a court, and shall be expressed accordingly.

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

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

(4) Notwithstanding anything contained in this section, if a provisional order made on an application under subsection (2) of section 220 of this Act is confirmed (either with or without modification, by a court of a reciprocating country being a country other than the country specified in the order) in which the defendant is resident at the time of the confirmation, the order shall be enforceable and have effect in this State as so confirmed.

224. (1) Where a provisional order made in accordance with section 223 of this Act is remitted by a court in a reciprocating country to the court in this State that made the provisional order, for the taking of further evidence, the court in this State, or, if requested by that court, another court in this State, shall, after notice has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence, and shall send the depositions of the witnesses to the Collector for transmission to the court in the reciprocating country.

(2) If, upon the taking of the further evidence, it appears to the court taking that further evidence that the order ought not to have been made, that court may rescind the order and may, if it thinks fit, make a fresh provisional order in its stead.

225. (1) Where the Collector receives—

(a) a certified copy of—

(i) a provisional order made by a court of a reciprocating country discharging, suspending, varying or reviving a South Australian order enforceable in that reciprocating country;
(ii) a provisional order made by a court in a reciprocating country discharging, suspending, varying or reviving an overseas order made in that reciprocating country and enforceable in this State by virtue of this Subdivision;

and

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

the Collector shall, on behalf of the party on whose application the provisional order was made in the reciprocating country, apply to the court in this State by or in which the maintenance order was made, registered or confirmed for an order confirming the provisional order.

(2) The Collector shall cause notice in accordance with the prescribed form of the application under this section to be served on the respondent to the application not less than seven days before the hearing of the application.

(3) Upon the hearing of any such application, the court may—

(a) confirm the provisional order (either with or without modification);

(b) discharge the provisional order;

or

(c) adjourn the proceedings and remit the provisional order to the court that made it with a request that the court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this section (whether with or without modification) the order as so confirmed shall be enforceable and have effect in this State as if it were an order to the like effect validly made by the court in this State.

226. (1) Where the Governor is satisfied that the law of a country makes provision for the enforcement in that country of maintenance orders made in another country and that under that law South Australian orders may be made enforceable in that country, the Governor may, by proclamation, declare that country to be a reciprocating country for the purposes of this Act.
(2) If it appears to the Governor that the jurisdiction of the courts of a country specified, or to be specified, in a proclamation under subsection (1) of this section to make maintenance orders extends to the making of orders that are not of the same kind as orders that may be made in this State under this Part he may, by the same or a subsequent proclamation, declare that that country has restricted reciprocity with this State.

(3) In a proclamation made under subsection (1) or subsection (2) of this section the Governor may specify, in relation to the country to which the proclamation applies, a date, which may be before or after or the same day as the date of the proclamation, and declare that maintenance orders made in that country on or after that date shall be enforceable in this State in accordance with the provisions of this Act.

(4) The Governor may, by the like proclamation, revoke or vary or further vary any proclamation made under subsection (1) or subsection (2) of this section or any corresponding previous enactment.

(5) Where, by virtue of any proclamation made pursuant to this section, a country that has been a reciprocating country ceases to be a reciprocating country—

(a) a maintenance order made in that country and enforceable in this State by virtue of this Subdivision shall cease to be so enforceable and no further proceedings for the enforcement thereof shall lie;

and

(b) every warrant or other process under this Act arising out of any such order previously issued in this State and not executed shall cease to have effect,

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

(6) At least once in every year the Collector shall cause to be published in the Gazette a list of the names of the reciprocating countries, showing the respective dates upon which they became reciprocating countries, the dates, if any, on or after which maintenance orders made in those countries are enforceable in this State and indicating which of those countries are countries having restricted reciprocity.

(7) A copy of the Gazette containing such a list shall be accepted in any proceedings as evidence of the matters stated in the list and of the fact that a country shown in the list as a reciprocating country of either class continues to be a reciprocating country of that class.
227. While a maintenance order is enforceable in this State under Subdivision 2 or Subdivision 3 of this Division, all moneys directed by the order to be paid are payable and shall be paid by the person against whom the order is made to the Collector, and the receipt of the Collector for any such moneys shall be a sufficient discharge of the liability of the person to pay those moneys in accordance with the order.

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

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

(a) file the certified copy or notice in the court in which the order affected was made or confirmed or is registered;

and

(b) if the complainant or defendant is resident in this State, cause a copy of the certified copy or notice to be served on the complainant or defendant, as the case may require.

(2) Where a certified copy or notice is filed in accordance with subsection (1) of this section in relation to a maintenance order, the order, event or matter shall have the like effect in this State as it appears from the certified copy or notice to have in the other Australian State or reciprocating country.
(3) This section shall not apply in relation to an order (in this subsection referred to as “the first-mentioned order”) made in a reciprocating country affecting a maintenance order in a manner adverse to the defendant unless it appears from the documents received by the Collector that the defendant appeared on the hearing of the proceedings in connection with which the first-mentioned order was made.

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

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

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

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

(5) In this section “the prescribed date” means—

(a) in relation to a maintenance order registered under this Division, or a certificate with respect to the arrears payable under a maintenance order sought to be so registered—the day upon which the order is registered;

(b) in relation to a provisional order confirmed under this Division—the day upon which the order is confirmed;

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

(a) the translation may be received in evidence to the same
extent as the document of which it is a translation and
shall, unless the contrary is proved, be deemed to be
a correct translation;

(b) all notations made on the document shall be made also on
the translation;

and

(c) any copy of the document served on any person shall be
accompanied by a copy of the translation.

232. In any proceedings under or for the purposes of this Division,
a certificate purporting to be signed by the Collector or the Collector
for another Australian State, or the like officer of a reciprocating
country in which a maintenance order was made or is enforceable,
concerning amounts paid or unpaid under a maintenance order shall
be evidence of the facts stated in the certificate.

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

(a) a certified copy of an order (including a provisional order)
of a court;

(b) the record, or a certified copy of the record, of the evidence
of a witness in proceedings before a court;

or

(c) a certificate or notice of a kind referred to in this Division,
shall, unless the contrary is proved, be taken to be such a certified
copy, record, certificate or notice, and shall be admitted in evidence
without proof of the signature of the person purporting to have
signed it or of his official position.
PART VI

DIVISION VIII

Audit.

1972 Community Welfare Act, 1972

No. 51

(2) The depositions of a witness in proceedings before a court in another Australian State or in a reciprocating country, received in this State for the purposes of this Act, shall be admissible in evidence in proceedings under this Act in a court in this State.

234. (1) Except where the contrary intention appears in this Division, any document required or permitted by this Division to be served on a person shall be served on that person personally.

(2) A document required by subsection (4) of section 201, subsection (5) of section 213, subsection (4) of section 216 or subsection (1) of section 229 of this Act to be served on a person may be served on that person—

(a) personally;

or

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

(3) Where, under this Division, any document is required or permitted to be served on a person personally, it may be 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 person who apparently resides therein or is employed thereat, and is apparently over the age of sixteen years.

235. The accounts of the Collector shall, once at least in every year be audited by the Auditor-General and, for the purposes of this section, the Audit Act, 1921, as amended, shall apply and have effect as if the moneys received or held by the Collector were public moneys as defined by that Act.
236. No liability in tort shall attach to the Minister or any officer of the Department in respect of an act or omission on the part of a child under the care and control of the Minister unless the act or omission occurs while the child is acting as the servant or agent of the Minister, or that officer and within the scope of his employment or authority as such.

237. (1) Where in any proceedings there are circumstances that make it desirable, in the interests of the proper administration of justice, that the proceedings, or any part of the proceedings should not be heard in open court, the court may order that any persons (not being party to the proceedings, their counsel or solicitors, or officers of the Department) be excluded during the hearing of those proceedings, or that part of the proceedings.

(2) At the hearing of a complaint in an affiliation case no person shall be permitted to be present in the court, except the following:—

(a) the adjudicating judge, magistrate, or justices, and the officers of the court;

(b) the complainant and the defendant and their respective counsel and solicitors, and the clerks of the counsel or solicitors;

(c) the mother, sister, or friend of the complainant, if the complainant desires the presence of any such person;

(d) any person while being examined as a witness;

(e) the mother, sister, or female friend of any female witness if she desires the presence of any such person while she is being examined as a witness;

and

(f) officers of the Department,

unless the court thinks fit to permit any other person to be present.

238. (1) Any person who prints or publishes or causes or procures to be printed or published any particulars whatsoever in relation to any complaint or proceedings under this Act concerning an illegitimate child or the mother of an illegitimate child or concerning an affiliation case, or in relation to any proceedings incidental to such a complaint or proceedings, shall be guilty of an offence against this section.
(2) Any person who sells, or distributes or causes or procures to be sold or distributed or who has in his possession for sale or distribution any newspaper or document containing or purporting to contain any matter or details or particulars the printing or publication of which would be a contravention of the provisions of this section shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, in respect of each offence, be liable to a penalty not exceeding one thousand dollars or to imprisonment for a term not exceeding six months.

(4) This section does not apply to—

(a) the printing, sale, distribution or possession of any pleading, transcript of evidence or other document for the purposes of the proceedings;

(b) the printing or publishing of any notice or report in pursuance of the directions of the adjudicating court;

(c) any matter that forms part of a genuine series of reports of proceedings in courts of law which reports do not form part of any other publication;

or

(d) any publication of a technical character primarily intended for circulation amongst members of the legal or medical professions or amongst persons engaged in community welfare work.

(5) No prosecution for an offence against this section shall be commenced by any person without the authority in writing of the Minister.

Institution and conduct of proceedings.

239. (1) Where a person is entitled to bring proceedings under this Act, the Director-General may, upon the request of that person, institute and conduct those proceedings in the name, and on behalf, of that person.

(2) Any proceedings under the provisions of this Act that may be taken by or on behalf of the Minister, or the Director-General (including proceedings under subsection (1) of this section) may be taken by an officer of the Department who is authorized by the Director-General to take the proceedings, and any such proceedings may be conducted by that officer, or by any other officer of the Department.

(3) It shall be competent for the Crown Solicitor to represent any party in proceedings under this Act.
(4) The Director-General, or an officer of the Department, shall be entitled to be present in any proceedings in which a child is alleged to have committed an offence, and may examine or cross-examine witnesses, and shall be entitled to make representations upon any matter arising for determination in those proceedings.

240. (1) An apparently genuine document purporting to be an order, authorization or document under the hand or seal of the Minister, or under the hand of the Director-General, shall, in any legal proceedings, be deemed, in the absence of evidence to the contrary to be an order, authorization or document duly made or executed by the Minister or the Director-General, as the case may require.

(2) In any proceedings under this Act taken by an officer of the Department, an allegation that any premises or place referred to in the complaint were or was a childrens home or an assessment centre established or licensed under this Act shall, in the absence of evidence to the contrary, be deemed to be proved.

241. (1) Where the Minister is of the opinion that any person who has been received into a home under this Act, or any child under the care and control of the Minister, is incapable of properly managing his affairs, he may grant to the Public Trustee an authority under this section.

(2) The Public Trustee may, subject to any terms and conditions upon which the authority is granted take possession of any real or personal property of the person to whom the authority relates and may transact any business on behalf of that person, and act in the administration of his affairs, in such manner as the Public Trustee considers in the best interests of that person.

242. (1) The Director-General may require any person whom he believes to be in a position to do so, to furnish him with a report as to the financial circumstances or transactions of—

(a) any person who has applied for financial assistance under this Act, or on whose behalf such an application has been made;
(b) any person who is in receipt of any such assistance;
(c) a near relative of any such person;
(d) any person from whom maintenance is sought under this Act; or
(e) any person who is pursuant to any provision of this Act, or the order of any court, required to pay any moneys to the Director-General.

(2) A person who fails to comply with a requirement under subsection (1) of this section or who furnishes a report that is false or misleading in any material particular shall be guilty of an offence and be liable to a penalty not exceeding two hundred dollars.

243. (1) Where in any proceedings under this Act, it is material to ascertain the earnings of a person, the court may receive as evidence of those earnings a statement in writing signed by—

(a) the employer of that person;

(b) a person employed by that employer as manager, secretary, accountant, or in such other capacity as, in the opinion of the court, qualifies him to testify of his own knowledge to the earnings of the person whose earnings are in question;

or

(c) a member of the police force of this State, any other State or Territory of the Commonwealth, or of the Commonwealth, who has ascertained, or claims in the statement to have ascertained, from a person referred to in paragraph (a) or (b) of this section, any information as to the earnings of that person.

(2) Where in any proceedings under this Act, it is material to ascertain the financial position of any person, the court may receive as evidence of his financial position a statement in writing signed by him.

(3) A document purporting to be a statement in writing under subsection (1) or subsection (2) of this section shall, in any proceedings under this Act, in the absence of evidence to the contrary, be accepted without further proof as a statement under this section.

244. Any moneys paid in pursuance of an order for maintenance, (whether made in pursuance of this Act, or any other Act or law) shall, subject to any order of a court, or any direction of the defendant, as to the appropriation of the moneys, be deemed to have been paid towards the discharge—

(a) first, of any liability (apart from a liability to pay costs) arising under the order, a liability falling due at an earlier date being discharged before the moneys are applied towards the discharge of a liability falling due at a later date;
245. The wife or husband of any person shall be competent and compellable to give evidence for or against that person in any proceedings under this Act.

246. No officer of the Department, or other person holding any office or position under this Act, shall, in any proceedings before a court, be compelled to give evidence, or produce any document relating to any matter in connection with which any officer of the Department or other person has in the course of his duties given advice to, or been consulted by, any person, except—

(a) where the evidence or document relates specifically to the payment or non-payment of maintenance or financial assistance;

or

(b) where the evidence relates to, or the document constitutes, correspondence between an officer of the Department and a party to the proceedings who is not represented by an officer of the Department.

247. (1) Subject to the Service and Execution of Process Act, 1901, as amended, of the Commonwealth, the obligations created by this Act may be enforced against defendants who reside outside the boundaries of this State.

(2) A summons or other process issued under this Act may be served either in this State or in any other State or Territory of the Commonwealth.

248. Subject to this Act, an order made pursuant to this Act is not revoked by a subsequent order unless the subsequent order expressly or by necessary implication revokes or varies the former order.

249. Except as otherwise expressly provided by this Act, an order shall be valid notwithstanding that no copy of the order or any minute thereof has been served on the defendant.

250. (1) Any person who obtains or attempts to obtain from the Minister, the Director-General, the Department or any officer of the Department any pecuniary or other assistance or benefit by
means of any false pretence shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or imprisonment for three months.

(2) Any person who wilfully wastes or damages any property of the Minister shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or imprisonment for three months.

(3) The provisions of this section are in addition to, and do not derogate from, the provisions of any other Act or law.

251. The Governor may make such regulations as are contemplated by this Act, or as he thinks necessary or expedient for the purposes of this Act and, without limiting the generality of the foregoing, regulations may be made with respect to the following matters—

(a) the duties, powers authorities, and privileges, of persons employed in the administration of this Act;

(b) the meetings and proceedings of community welfare advisory committees and consultative councils;

(c) the management, control and supervision of homes;

(d) the management, control and supervision of Aboriginal reserves;

(e) the care, maintenance, education, employment and supervision of children under the care and control of the Minister;

(f) the visitation of children in homes, or in the custody of foster-parents, or in child care centres;

(g) communication and correspondence with children in homes or in the custody of foster parents;

(h) the manner in which children under the care and control of the Minister may be dealt with;

(i) the provision of wages and rewards for children under the care and control of the Minister;

(j) the management and control of property vested in, or in the control of the Minister;

(k) the issue of licences in respect of homes and child care centres, and the approval of foster parents;

(l) the record to be kept in respect of homes and child care centres;

(m) the manner in which a person may apply for assistance under this Act;
(n) the regulation of any matters relating to blood tests made for the purposes of affiliation cases;

(o) the regulation of any matters or procedures relating to the recovery of moneys in connection with maintenance;

(p) the establishment and constitution of Aboriginal councils, and associations in respect of Aboriginal reserves, and the definition of the rights, duties, powers and functions of those councils and associations;

(q) providing for the establishment, constitution, incorporation, management, regulation and registration of Aboriginal organizations for carrying on industries, trades or businesses;

(r) prescribing penalties, not exceeding two hundred dollars for breach of, or non-compliance with, any regulation.

252. (1) Proceedings in respect of offences under this Act (not being misdemeanours) shall be disposed of summarily.

(2) Where a person contravenes or fails to comply with any provision of this Act and no penalty is prescribed in relation to a contravention of or failure to comply with that provision, he shall (whether or not a contravention of, or failure to comply with, that provision is declared to be an offence) be guilty of an offence and liable to a penalty not exceeding two hundred dollars.
THE SCHEDULE

The Acts repealed by this Act are as follows:—

the Aboriginal Affairs Act, 1962;
the Aboriginal Affairs Act Amendment Act, 1966-1967;
the Aboriginal Affairs Act Amendment Act, 1968;
the Children's Protection Act, 1936;
the Children's Protection Act Amendment Act, 1961;
the Children's Protection Act Amendment Act, 1969;
the Maintenance Act, 1926;
the Maintenance Act Amendment Act, 1930;
the Maintenance Act, 1937;
the Maintenance Act Amendment Act, 1937;
the Maintenance Act Amendment Act, 1941;
the Maintenance Act Amendment Act, 1946;
the Maintenance Act Amendment Act, 1948;
the Maintenance Act Amendment Act, 1950;
the Maintenance Act Amendment Act, 1952;
the Maintenance Act Amendment Act, 1957;
the Maintenance Act Amendment Act, 1958;
the Maintenance Act Amendment Act, 1963;
the Maintenance Act Amendment Act, 1965.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Governor's Deputy