

## MAINTENANCE RECOVERY (RECIPROCITY WITH STATES).

### No. 16 of 1963.

An Ordinance relating to the Reciprocal Enforcement of Maintenance Orders of the Australian Capital Territory and of the States and other Territories of the Commonwealth.

**Short title.** 1. This Ordinance may be cited as the *Maintenance Recovery (Reciprocity with States) Ordinance 1963*.\*

**Interpretation.** 2.—(1.) In this Ordinance, unless the contrary intention appears—

“certificate”, in relation to an order, means a certificate setting out full particulars of the order and certified by the proper officer of the court that made the order, or, if the order is registered in a court other than the court that made the order, by the proper officer of that other court, to be a true record of those particulars;

“certified copy”, in relation to an order made by a court or to a record of the depositions of a witness in proceedings before a court, means a copy of the order or of the record certified by the proper officer of the court to be a true copy;

“collector”, in relation to a reciprocating State, means an officer appointed in that State whose duties, or a part of whose duties, are similar to the duties of the Collector for the Territory;

“Magistrate” has the same meaning as in the *Court of Petty Sessions Ordinance 1930-1961*;

“maintenance order” means an order (whether made or pronounced before or after the commencement of this Ordinance) whereby a person is ordered to pay money, whether in a lump sum or by instalments, or to pay sums of money periodically, for or towards the maintenance of another person, or otherwise to make provision for or towards the

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\* Made on 25th June, 1963; notified in the *Commonwealth Gazette* and commenced on 1st August, 1963.

maintenance of another person or by way of recoupment of moneys spent in, or provided for, the maintenance of another person, and, if such an order has been varied, means the order so varied and all orders by which it has been varied;

“order” means a subsisting order or judgment of a court;

“reciprocating State” means—

(a) a State of the Commonwealth; or

(b) a Territory of the Commonwealth that is declared by the Attorney-General, by notice published in the *Gazette*, to be a Territory in which legislation reciprocal with this Ordinance is in force;

“the Collector” or “the Collector for the Territory” means the Collector of Inter-State Maintenance holding office under this Ordinance;

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

“the Court of Petty Sessions” means the Court of Petty Sessions established under the *Court of Petty Sessions Ordinance 1930-1961*;

“the defendant”, in relation to a maintenance order or to a proceeding in connexion with a maintenance order, means the person against whom the maintenance order was made;

“the Register of Australian Maintenance Orders” means the Register of Australian Maintenance Orders kept in pursuance of section seven of this Ordinance;

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

(2.) A reference in this Ordinance to a copy of an order shall be read as a reference to the original document recording the order or to a duplicate or certified copy of that document.

(3.) A reference in this Ordinance to an order made by a Court shall be deemed to include a provisional order that has been confirmed by that Court.

**The Collector.**

3. For the purposes of this Ordinance, there shall be a Collector of Inter-State Maintenance, who shall be appointed by the Attorney-General.

**The Deputy Collector.**

4.—(1.) The Attorney-General may appoint a person to be the Deputy Collector of Inter-State Maintenance.

(2.) The Deputy Collector of Inter-State Maintenance may, subject to any directions of the Collector of Inter-State Maintenance, exercise any power or perform any function or duty of the Collector of Inter-State Maintenance.

**Acting Collector and Acting Deputy Collector.**

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

(2.) A person appointed under the last preceding subsection to act in the office of Collector of Inter-State Maintenance has all the powers, and shall perform all the functions and duties, of the Collector of Inter-State Maintenance during any vacancy in the office, or in the event of any illness or absence, of the Collector of Inter-State Maintenance.

(3.) A person appointed under sub-section (1.) of this section to act in the office of Deputy Collector of Inter-State Maintenance may, subject to the directions of the Collector of Inter-State Maintenance, exercise any power and perform any function or duty of the Collector of Inter-State Maintenance during any vacancy in the office, or in the event of any illness or absence, of the Deputy Collector of Inter-State Maintenance.

**Assistant Collector.**

6.—(1.) The Attorney-General may appoint a person to be an Assistant Collector of Inter-State Maintenance.

(2.) The Collector of Inter-State Maintenance may, either generally or otherwise as provided in the instrument of delegation, by writing under his hand, delegate to an Assistant Collector of Inter-State Maintenance all or any of his powers and functions under this Ordinance (except this power of delegation).

(3.) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(4.) A delegation under sub-section (2.) of this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Collector of Inter-State Maintenance or by the Deputy Collector of Inter-State Maintenance.

7. The duties of the Collector are—

Duties of  
the Collector.

- (a) to keep a Register of Australian Maintenance Orders for the purposes of this Ordinance;
- (b) to take all necessary proceedings for the enforcement in the Territory of maintenance orders that are enforceable in the Territory by virtue of section ten or section eleven of this Ordinance;
- (c) to collect or receive moneys payable to him in pursuance of section fifteen of this Ordinance and to receive moneys remitted to him by collectors for reciprocating States and to give receipts for moneys so collected or received;
- (d) to keep proper accounts of all moneys collected or received, and of all moneys remitted or paid, by him;
- (e) to keep, and keep proper records of, documents that are received by him;
- (f) at least once in every fortnight, to remit to collectors for reciprocating States all moneys collected or received by him in respect of maintenance orders made for the benefit of persons residing in those reciprocating States together with proper accounts specifying the maintenance orders in respect of which the moneys were collected;
- (g) to pay moneys received by him from collectors for reciprocating States to the persons on whose behalf the moneys were respectively received; and
- (h) to carry out such other duties as the Attorney-General directs.

8.—(1.) Subject to the directions of the Attorney-General, the Collector has power to do all things incidental to, or necessary or convenient to be done in connexion with, the performance of his functions and duties.

Powers of the  
Collector.

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

Transmission of maintenance orders for enforcement in reciprocating States.

9.—(1.) Where, in relation to a maintenance order—

- (a) made by the Court of Petty Sessions or by a court upon appeal from the Court of Petty Sessions; or
- (b) made by the Supreme Court, or by a court upon appeal from the Supreme Court, and registered in the Court of Petty Sessions under the *Matrimonial Causes Act 1959*,

and presently in operation in the Territory, it appears to the Collector that the defendant is or may be, or is or may be about to be, in a reciprocating State, the Collector may send to the collector for that reciprocating State—

- (c) a certificate of the maintenance order;
- (d) a certificate by the Collector referring to the maintenance order and containing—
  - (i) a statement that the maintenance order is presently in operation in the Territory; and
  - (ii) a statement as to the amount of any arrears due under the maintenance order;
- (e) such information (if any) as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
- (f) a request in writing that the maintenance order be made enforceable in the reciprocating State.

(2.) Where the operation of a maintenance order a certificate of which has been sent by the Collector to the collector for a reciprocating State is varied, terminated or otherwise affected under the law of the Territory by an order of a court, stay of proceedings or other matter, the Collector for the Territory shall send to the collector for that reciprocating State a certificate of the order, or a certificate by the Collector for the Territory giving particulars of the stay or other matter, by which the operation of the maintenance order has been varied, terminated or otherwise affected.

10.—(1.) Where the Collector receives from a collector for a reciprocating State—

Enforcement in the Territory of maintenance orders made in reciprocating States.

(a) a certificate of—

- (i) a maintenance order made by a court of summary jurisdiction of that reciprocating State or by a court upon appeal from such a court; or
- (ii) a maintenance order made by the Supreme Court of that reciprocating State or by a court upon appeal from that Court and registered in a court of summary jurisdiction of that reciprocating State (including an order so registered in pursuance of section one hundred and five of the *Matrimonial Causes Act 1959*);

(b) a certificate of the collector for that reciprocating State referring to the maintenance order and containing—

- (i) a statement that the maintenance order is presently enforceable in that reciprocating State; and
- (ii) a statement as to the amount of any arrears due under the maintenance order; and

(c) a request in writing that the maintenance order be made enforceable in the Territory,

he shall register the order in the Register of Australian Maintenance Orders.

(2.) Where a maintenance order (whether or not it is of such a kind as could be made in the Territory) is registered in accordance with the last preceding sub-section, the maintenance order is enforceable in the Territory, both as regards any arrears payable under the order and as regards amounts becoming due under the order after the registration.

(3.) A person shall not be apprehended or committed to prison by reason of failure to comply with a maintenance order that is enforceable in the Territory by virtue of this section unless a copy of the certificate of the order has been served upon the person by being delivered to him personally or by being sent by post addressed to him at his last known place of residence or business, either before or at the time of the apprehension or committal, as the case may be.

Enforcement in the Territory of orders, &c., affecting maintenance orders made in reciprocating States.

11.—(1.) Where the Collector receives from the collector for a reciprocating State a certificate of an order, or a certificate by the collector for that reciprocating State giving particulars of a stay of proceedings or other matter, varying, terminating or otherwise affecting the operation in that reciprocating State of a maintenance order that has become enforceable in the Territory under this Ordinance, he shall—

- (a) register the certificate in the Register of Australian Maintenance Orders; and
- (b) cause a copy of the certificate to be served on the defendant by the delivery of it to him personally or by the sending of it by post addressed to him at his last known place of residence or business.

(2.) Where a certificate is registered in accordance with the last preceding sub-section, the order, stay or other matter has, in relation to the maintenance order, the like effect in the Territory as it has in the reciprocating State.

(3.) A person shall not be apprehended or committed to prison by reason of failure to comply with a maintenance order the operation of which is affected in a manner adverse to the person by the registration of a certificate in accordance with sub-section (1.) of this section unless a copy of the certificate has been served on him in accordance with that sub-section either before or at the time of the apprehension or committal, as the case may be.

Confirmation in the Territory of provisional order made in reciprocating State varying, &c., a maintenance order.

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

- (a) a provisional order, or a certified copy of a provisional order, made by a court of a reciprocating State or a court upon appeal from such a court (not being a provisional order made in substitution for a provisional order remitted to that court under sub-section (4.) of this section) and varying, suspending or discharging a maintenance order referred to in sub-section (1.) of section nine of this Ordinance (being an order made by the Court of Petty Sessions or by a court upon appeal from the Court of Petty Sessions) and enforceable under the law of that reciprocating State; and
- (b) a record, or a certified copy of a record, of the depositions of the witnesses who gave evidence on the hearing of the application for the provisional order,

the Collector shall request a Magistrate to issue a summons directed to the complainant requiring her to appear upon the hearing of proceedings for confirmation or otherwise of the order, and the Magistrate shall thereupon issue such a summons in accordance with Form 1 in the Schedule to this Ordinance.

(2.) The Collector shall cause a summons issued under this section to be served on the complainant by the delivery of the summons to her personally or by the sending of the summons by post addressed to her at her last known place of residence or business.

(3.) Upon the hearing of a summons under this section, the Court of Petty Sessions may, subject to the next succeeding sub-section, confirm, with or without a variation, or discharge, the provisional order or any provisional order that has been made in substitution for that provisional order.

(4.) The Court of Petty Sessions may, before coming to a decision on the hearing of a summons under this section, if it sees fit, 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, and the Court of Petty Sessions may adjourn the proceedings for that purpose.

(5.) Where an order is made by the Court of Petty Sessions under this section, or an order is made upon appeal from such an order, confirming, with or without a variation, a provisional order, the provisional order as so confirmed has effect in the Territory, and the laws of the Territory (including this Ordinance) apply in relation to it, as if it were an order to the like effect made by the Court of Petty Sessions.

**13.—**(1.) Subject to this section, where a maintenance order (in this section referred to as “the original order”) is enforceable in the Territory by virtue of this Ordinance, the defendant may apply to the Court of Petty Sessions for an order varying, suspending or discharging the original order.

Variation, &c.,  
of maintenance  
orders.

(2.) The last preceding sub-section does not apply in relation to a maintenance order unless a court of summary jurisdiction of the reciprocating State in which the maintenance order was made has jurisdiction to vary, suspend or discharge that order, as the case may be.

(3.) An application for an order under this section shall be in writing and shall state the facts relied on in support of the application.

(4.) Notice, in accordance with Form 2 in the Schedule to this Ordinance, of an application for the variation, suspension or discharge of a maintenance order shall be

served by the applicant upon the Collector for the Territory, and upon the collector for the reciprocating State in which the original order was made, personally or by post addressed to those persons at their respective offices not later than fourteen days before the hearing of the application.

(5.) The Court of Petty Sessions shall hear and determine the application and may vary or discharge the original order, suspend the original order indefinitely or for such period as the Court thinks fit or dismiss the application.

(6.) The law to be applied in an application under this section shall, except in matters of practice and procedure, be the law of the State or Territory of the Commonwealth in which the original order was made.

(7.) An order made under sub-section (5.) of this section varying, suspending or discharging a maintenance order, or an order made by a court upon appeal from an order dismissing an application for an order under that sub-section, is provisional only and does not have effect unless and until it is confirmed, with or without a variation, by a competent court in the reciprocating State in which the original order was made, in which event the order has effect as so confirmed.

(8.) Sub-section (4.) of section sixty of the *Court of Petty Sessions Ordinance 1930-1961* does not apply upon the hearing of an application under this section.

(9.) Where a provisional order referred to in this section is made by the Court of Petty Sessions or by a court upon appeal from the Court of Petty Sessions, the Clerk of the Court of Petty Sessions shall send to the collector for the reciprocating State in which the original order was made the provisional order or a certified copy of the provisional order together with a record, or a certified copy of a record, of the depositions of the witnesses who gave evidence on the hearing of the application for the provisional order.

(10.) Where a provisional order is remitted by a court of a reciprocating State to the Court of Petty Sessions for the purpose of taking further evidence, the Court of Petty Sessions shall, after giving notice to such persons and in such manner as it thinks fit, proceed to take the further evidence and any other evidence it thinks fit, and the Clerk of the Court of Petty Sessions shall cause the record, or a certified copy of the record, of the depositions of the witnesses who gave the further or other evidence to be sent to the court that requested the taking of the further evidence.

(11.) The Court of Petty Sessions may, after hearing evidence in accordance with the last preceding sub-section, if it thinks fit—

- (a) discharge the provisional order; or
- (b) discharge the provisional order and make a fresh provisional order in its stead.

(12.) Where an order is made under the last preceding sub-section, or an order is made upon appeal from such an order, the Clerk of the Court of Petty Sessions shall cause the order or a certified copy of the order to be sent to the court that requested the taking of further evidence.

14.—(1.) Subject to the next succeeding sub-section, where a maintenance order is enforceable in the Territory by virtue of this Ordinance, the like proceedings may be taken for the enforcement of the order as could be taken for the enforcement of a maintenance order made by the Court of Petty Sessions.

Proceedings for enforcement.

(2.) A proceeding authorized to be taken by the last preceding sub-section may be taken only by the Collector.

15.—(1.) Where a maintenance order becomes enforceable in the Territory by virtue of this Ordinance, all moneys directed by the order to be paid are payable to the Collector.

Moneys payable under maintenance order to be paid to the Collector.

(2.) The receipt of the Collector for any moneys paid or remitted to him by any person is a sufficient discharge of any liability of that person so to pay or remit those moneys.

16. Notwithstanding anything contained in section two hundred and eight A of the *Court of Petty Sessions Ordinance* 1930-1961, a person aggrieved by an order of the Court of Petty Sessions under this Ordinance (other than an order made as a provisional order) may appeal to the Supreme Court against the order.

Appeals.

17. Subject to this Ordinance, the *Court of Petty Sessions Ordinance* 1930-1961 applies, so far as it is capable of application and *mutatis mutandis*, to and in relation to—

Application of Court of Petty Sessions Ordinance.

- (a) acts and things done by the Court of Petty Sessions or a Magistrate; and
- (b) proceedings instituted in, and orders made by, that Court,

under or by virtue of this Ordinance in like manner as it would have applied if the acts or things had been done, the proceedings instituted or the orders made under the *Court of Petty Sessions Ordinance* 1930-1961.

Depositions taken in reciprocating State may be received in evidence before Court of Petty Sessions.

18. A document purporting to be a record, or a certified copy of a record, of the depositions of a witness who gave evidence before a court of a reciprocating State in proceedings connected with or arising out of an order (including a provisional order) made by a court of a reciprocating State that is the subject of a proceeding before the Court of Petty Sessions under or by virtue of this Ordinance shall be received in evidence in that proceeding and, unless the contrary is shown, be deemed without further proof to be a true record of those depositions.

Evidence of earnings.

19.—(1.) Where, in proceedings before the Court of Petty Sessions for the purposes of this Ordinance, it is material to ascertain the earnings of a person, the Court may, in its absolute discretion, receive as evidence of those earnings a statutory declaration made by—

- (a) the employer of the person whose earnings are in question; or
- (b) a person employed by that person as manager, secretary, accountant, or in such other capacity as, in the opinion of the Court, qualifies him to testify of his own knowledge of the earnings of the person whose earnings are in question.

(2.) A document purporting to be a statutory declaration referred to in the last preceding sub-section shall, in any proceeding under or by virtue of this Ordinance, unless the contrary is shown, be deemed without further proof to be such a statutory declaration.

Affidavit or certificate of Collector to be evidence.

20.—(1.) In any proceeding under or by virtue of this Ordinance—

- (a) a certificate issued by the Collector for the Territory or a collector for a reciprocating State, or an affidavit sworn by either of those persons, stating that a specified amount has been paid under a specified maintenance order is evidence that that amount has been paid; and

- (b) a certificate issued, or an affidavit sworn, by either of those persons stating that a specified amount is in arrear under a specified maintenance order is evidence that that amount was in arrear under that order at the date of the certificate or affidavit and has not been paid since that date.

(2.) Upon production to the Clerk of the Court of Petty Sessions of such a certificate or affidavit stating that a specified amount has been paid under a specified maintenance order, the Clerk shall enter in the records of the Court satisfaction of the maintenance order to the extent of that amount.

**21. In any proceeding under or by virtue of this Ordinance—** Proof of documents.

- (a) a document purporting to be signed by the Collector for the Territory, a collector for a reciprocating State or an officer of a court shall, unless the contrary is proved, be deemed to have been so signed without proof of the signature or of the official character of the person appearing to have signed it; and

- (b) the officer of a court, being an officer by whom a document is signed, shall, unless the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

**22. If the form or the manner of making of an affidavit or other document required for the purposes of this Ordinance complies with the law of the Territory or with the law of the State or the Territory of the Commonwealth where the affidavit or document was made, the affidavit or document shall, for the purposes of any proceeding under or by virtue of this Ordinance, be deemed to be in the proper form and to be made in the proper manner.** Form and manner of making of affidavits.

**23. Strict compliance with a form in the Schedule to this Ordinance is not necessary and substantial compliance is sufficient.** Forms.

**24. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.** Regulations.

THE SCHEDULE.

FORM 1.

Section 12.

AUSTRALIAN CAPITAL TERRITORY.

Maintenance Recovery (Reciprocity with States) Ordinance 1963.

SUMMONS FOR ORDER CONFIRMING PROVISIONAL ORDER.

In the Court of Petty Sessions at

Complainant. Defendant.

To the abovenamed Complainant.

Whereas it has been made to appear to the undersigned, a Magistrate for the Australian Capital Territory, that a provisional order has been made by the [specify the court that made the provisional order] varying suspending\* the maintenance order made by the Court of Petty Sessions at discharging on the day of 19 as varied,† by which provisional order it is ordered [set out particulars of the provisional order]:

These are therefore to command you to appear on the day of 19 at o'clock in the noon at in the said Territory before the Court of Petty Sessions upon the hearing of proceedings for confirmation or otherwise of the provisional order.

Dated at this day of 19 Magistrate.

\* Strike out whichever is inapplicable. † Strike out if inapplicable.

FORM 2.

Section 13 (4.)

AUSTRALIAN CAPITAL TERRITORY.

Maintenance Recovery (Reciprocity with States) Ordinance 1963.

NOTICE OF APPLICATION FOR VARIATION, SUSPENSION OR DISCHARGE OF MAINTENANCE ORDER.

In the Court of Petty Sessions at

Complainant. Defendant.

To

Take notice that on the day of 19 at o'clock in the noon application will be made to the Court of Petty Sessions at in the Australian Capital Territory for the variation suspension\* of the maintenance order made on the day of discharge

as varied.† , 19 , by [specify the court that made the maintenance order.

Particulars of the suspension or variation sought are as follows:—†

Dated at this day of 19 Defendant.

\* Strike out whichever is inapplicable. † Strike out if inapplicable.