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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1915.

A BILL

For the relief of persons whose relatives liable to support them reside in another State of the Commonwealth; to make further provision for serving and executing certain summonses and maintenance orders; and for purposes consequent thereon or incidental thereto.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Interstate Destitute Short title.
Persons Relief Act, 1915."

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2.

2. This Act shall come into operation on a day to be fixed by the Governor by proclamation published in the Gazette. Date of coming into operation.

3. This Act is divided into Parts, as follows :— Parts.

PART I.—PRELIMINARY—*ss.* 1-6.

PART II.—SUMMONS AND ORDER ISSUED OR MADE IN ANOTHER STATE—*ss.* 7-15.

PART III.—SUMMONS OR ORDER ISSUED OR MADE IN THIS STATE—*ss.* 16-20.

PART IV.—MISCELLANEOUS—*ss.* 21-27.

4. In this Act, unless inconsistent with the context or subject-matter— Definitions. cf. S. A. Act, 1910, s. 4.

“Collector” means the collector appointed under this Act, and includes an officer appointed in another State, whose duties, or part of whose duties, are similar to those of the collector appointed under this Act.

“Justice” means justice of the peace for the State wherein the particular matter or thing is done.

“Maintenance Order” includes any order or judgment whereby any person is adjudged, ordered, or directed to pay money, whether in one sum or by instalments, or to pay money periodically, or otherwise to make provision for or towards the support of any person.

“Prescribed” means prescribed by this Act or by regulation.

“Regulation” means regulation made under this Act.

“State” means a State of the Commonwealth of Australia, and includes the Dominion of New Zealand.

“Summons for maintenance” means a summons to show cause why a person should not support, or should not contribute towards the support of, another person.

“This Act” includes regulations made under this Act.

5.

5. When the Governor by Gazette notice proclaims that the provisions of section seven of this Act, or provisions substantially similar thereto, are in force in any State other than New South Wales, this Act shall apply to such State. Reciprocity. Ibid. s. 5.

The Governor may by like notice revoke any such proclamation, and thereupon this Act shall cease to apply to the State regarding which such revocation was made.

6. The Governor shall appoint a collector for the purposes of this Act, and may appoint such assistant collectors and other officers as he deems necessary for such purposes. Collectors. Ibid. s. 13.

PART II.

SUMMONS AND ORDER ISSUED OR MADE IN ANOTHER STATE.

7. When, either before or after the commencement of this Act, in any State to which this Act applies—
(a) a summons for maintenance has been issued; or
(b) a maintenance order has been made
by any justice or by any court not being a court of record, such summons may be served and the process for enforcing such order may be executed, subject to the provisions of this Act, in this State. Summons issued and order made in another State may be served and enforced in this State. Ibid. s. 6.

8. (1) The collector, upon receiving from a collector appointed in another State the following documents, namely:—

- (a) the original or a duplicate of a maintenance order made by a justice or justices for such State signed by him or them, or a copy of such order, certified as correct under the hand or hands of the justice or justices by whom such order was made, or a certificate of a maintenance order made by a court of such State, not being a court of record, under the hand of the clerk or other proper officer of such court and the seal thereof, such order, in any case, being made in favour of any person resident in such State; and Notice of intention to apply to make orders enforceable in this State. cf. Ibid. s. 14.
- (b)

- (b) an affidavit in the form in the First Schedule hereto, or to the like effect, stating the particulars indicated in the said Schedule, sworn by such last-mentioned collector; and
- (c) a request that the maintenance order be made enforceable in this State,

shall serve or cause to be served a copy of such order or certificate, certified as correct under his hand, upon the person against whom the order was made (hereinafter called the defendant) by delivering the said copy to the defendant or by posting the same by registered letter addressed to him at his last known place of residence, together with a notice in the form provided in the Second Schedule hereto, of the collector's intention to apply to a court for an endorsement of the said order, copy order, or certificate for the purpose of enforcing the said order, and of the time and place of such application, and that the defendant may appear and be heard for the purpose of proving—

- (1) that he was not heard at the original hearing owing to illness, or physical infirmity, or want of means disabling him from travelling; and
- (2) that he could have given evidence at such original hearing of such a character that the said order would not have been made or would have been made in a varied form.

(2) A document purporting to be such a document as mentioned in subsection one, and to be signed, certified, or sealed, as thereby required, shall, for the purposes of this Act, without proof of any signature or seal appearing thereon, be deemed to be what it purports to be, and to be duly signed, certified, or sealed, until the contrary is proved.

9. (1) The collector shall at the time and place aforesaid attend before such court and make such application, and thereupon upon production of such original or duplicate order, copy order, or certificate, and the affidavit referred to in section eight, the court, if satisfied that the defendant is resident either temporarily or permanently within this State, and that he has been duly served as provided by the said section, shall

Direction
that order be
enforced.
cf. *Ibid.* s. 15.

shall cause such original or duplicate order, copy order, or certificate to be endorsed with a fiat directing that the order be enforced within this State, and the presiding magistrate or justices shall sign such endorsement.

(2) Upon obtaining such endorsement, the collector shall serve or cause to be served a copy of such order, certified copy, and of the endorsement thereon, certified as correct under his hand, upon the person against whom the order was made, by delivering the said copy to the defendant, or by posting the same by registered letter addressed to him at his last known place of residence.

(3) Such order shall thereupon be and continue to be enforceable in this State.

10. When such endorsement has been made and signed as aforesaid, if the defendant prove to the satisfaction of the court— Defendant may come in and appeal.

- (1) that he was not heard at the original hearing owing to illness or physical infirmity, or want of means disabling him from travelling; and
- (2) that he could have given evidence such original hearing of such a character that the said order would not have been made or would have been made in a varied form,

then, if the defendant give security to the satisfaction of the court to apply for a variation or rescission of such order without delay, the court shall order that no moneys received by the collector under the said order shall be remitted until the expiration of such period as the said court shall think fit.

11. Nothing in the preceding section shall be deemed to prevent the collector from enforcing payment of the moneys due under the said order according to its tenor; and as soon as any order has been so endorsed as aforesaid, all moneys by such order adjudged, ordered, or directed to be paid shall be payable to the collector, who is hereby authorised to collect and receive the same and to take all steps for the recovery thereof. All moneys to be payable to collector. cf. *Ibid.* s. 17.

The receipt of the collector shall be a valid discharge of the liability of the defendant to pay the said moneys.

12.

12. (1) If before the expiration of the said period the defendant shall have obtained a rescission of the said order, he may apply to the collector for a refund of the moneys paid under the said order, and the collector, if satisfied that the said order has been so rescinded, shall refund such moneys to the defendant less the cost of collecting the same.

Defendant
may apply
for refund.

(2) If before the expiration of the said period the defendant shall have obtained a variation of the said order, he may apply to the collector for a refund of the moneys paid under the said order, and the collector shall refund such moneys, less the cost of collecting the same, and less the amount which would have been payable under the order as varied, if it had been so made in the first instance, and duly endorsed as aforesaid, and the order as so varied shall be and continue to be enforceable in this State without further endorsement.

13. (1) If remission of the moneys received under the said order be not delayed as provided by section ten, then such moneys shall, so soon as received, be available for remission by the collector in the manner prescribed to the persons entitled thereto.

Moneys
available for
remission.

(2) If remission of such moneys shall have been delayed as aforesaid, then, on the expiration of such period of delay, if the defendant have not in the meantime obtained a rescission or variation of the order made against him, the moneys received by the collector under such order shall be available for remission by him in the manner prescribed to the persons entitled thereto :

Provided that if the defendant make default in any instalment or payment due under the said order, the said period of delay shall forthwith be deemed to have expired, and the defendant shall lose any rights he may but for such default have acquired under section twelve.

14. (1) The process for enforcing any maintenance order made enforceable, under the provisions of this Act, in this State, shall be the same, where practicable, as that for enforcing a maintenance order made in this State, and where not practicable, shall be that prescribed by the Justices Act, 1902, for enforcing an order for the payment of money.

Procedure for
enforcing
orders.

(2)

(2) A maintenance order made enforceable under the provisions of this Act, in this State, shall be enforced only at the instance of the collector or of an assistant collector.

15. In addition to the powers and duties hereinbefore conferred and imposed, it shall be the duty of the collector—

Other powers
and duties of
collector.

Ibid. s. 18.

- (a) to collect all moneys payable to him as provided by section eleven, and give receipts for the sums so collected ;
- (b) to keep proper accounts of all moneys collected and received by him and of all moneys remitted and paid by him ;
- (c) to file in his office, and keep proper records of all documents received by him as mentioned in section eight ;
- (d) once at least in every fortnight, or as often as prescribed, to remit to the collectors appointed in the various States all moneys collected and received by him in respect of orders received from such States respectively, and available for remission by him, less the costs and expenses of collection and remittance, together with proper accounts showing in respect of what orders the various moneys were collected and received and the costs and expenses deducted in respect of such various moneys ;
- (e) to pay the various moneys received by him from the collectors appointed in other States to the persons on whose behalf such moneys are respectively received, less any costs and expenses connected with the receipt and payment thereof respectively ; and
- (f) to exercise such other powers and discharge such other duties as are conferred or imposed upon him by regulation.

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PART III.

SUMMONS OR ORDER ISSUED OR MADE IN THIS STATE.

16. When either before or after the commencement of this Act in this State—

- (a) a summons for maintenance has been issued ; or
- (b) a maintenance order has been made, and such order remains unsatisfied wholly or in part,

any justice may, upon application made by or on behalf of the person who has taken out the summons, or by or on behalf of the person for whose support the order was made, and on being satisfied that the person against whom the summons was directed or order made resides in another State, direct that such summons or order may be served in that State and indorse the summons or order to that effect.

Summons issued and order made to defendant in another State. cf. *Ibid.* s. 7.

17. Every summons indorsed under section sixteen shall state a place and a time after service for the hearing hereof, which shall be fixed by the justice indorsing the summons, regard being had to the distance of the alleged place of residence of the defendant from the place fixed for the hearing.

Time and place for leaving. *Ibid.* s. 9.

18. (1) A summons indorsed under section sixteen may be served either in this State or any other State.

Service of summons, and proof thereof.

(2) Service of such summons, or the steps taken in attempting to serve the same, shall be proved by affidavit sworn before a commissioner for taking affidavits in the Supreme Court of this State or of the State wherein service was effected or attempted, or by declaration made before a justice for this State or for the State wherein the service was effected or attempted.

Ibid. s. 10.

19. When a maintenance order has been made in this State against a person who at the time of making such order is proved to be residing in another State, the justice or justices by whom such order was made shall send to the collector a copy of such order certified as correct under his or their hands.

Copy of order to be sent to collector.

20. When a maintenance order has been indorsed as aforesaid for service in another State, and the person against whom the same is made goes to reside or is resident,

Documents to be sent to collector in another State. cf. *Ibid.* s. 19.

resident, either temporarily or permanently, in another State, any justice shall, upon application made by or on behalf of the person in whose favour such order was made, order the collector to send to a collector appointed in such other State the following documents, namely:—

- (a) The original or a duplicate of the said order made by a justice or justices, indorsed as aforesaid, or a copy of such order certified as correct under the hand or hands of the justice or justices by whom such order was made, or a certificate of the said order made by a court under the hand of the clerk or other proper officer of such court and the seal thereof.
- (b) An affidavit in the form in the First Schedule, or to the like effect, and stating the particulars indicated therein, sworn by the collector before a commissioner for taking affidavits in the Supreme Court of this State.
- (c) A statement of such information as the collector is able to obtain for the purpose of enabling the collector to whom the documents are sent to identify and discover the whereabouts of the person against whom the order was made.
- (d) A request that the order be made enforceable in such other State.

PART IV.

MISCELLANEOUS.

21. (1) A certificate under the hand of a collector, or an affidavit sworn by a collector, stating that any sum therein specified has or have been paid in respect of a maintenance order therein mentioned shall be sufficient evidence of such payment in any proceedings before any court, justice, or other tribunal.

Certificate or affidavit of collector sufficient evidence of payment.
Ibid. s. 20.

(2) Upon production of such certificate or affidavit to the clerk of the court in which such order was made, such clerk shall enter up satisfaction of such order to the extent of the amount by such certificate or affidavit stated to have been paid.

22. (1) Subject to subsection two, when—

- (a) a summons for maintenance; or
- (b) a copy of an original or duplicate maintenance order, or of a certified copy of such an order, or of a certificate of such an order,

Onus of proof of identity of persons served. *Ibid.* s. 21.

is served in pursuance of the provisions of this Act upon any person, such person shall be deemed to be the person upon whom the same was to be served, until the contrary is shown to the satisfaction of the court, magistrate, justice, or justices before whom the question is in issue.

(2) This section shall not apply unless the person by whom the document was so served states in his affidavit or declaration of service, or otherwise on oath, affirmation, or declaration, that he believes the person upon whom such document was served to be the person upon whom the same was to be served: Provided that nothing in this section shall prevent service being proved by any other evidence deemed sufficient by the court, magistrate, justice, or justices before whom the question is in issue.

23. If any affidavit or other document or writing required for the purposes of this Act complies, as to the form and the manner of making thereof, either with the law of the State where the same was made, or with the law of this State, such affidavit or other document or writing shall, as to the form and the manner of making thereof, be deemed sufficient in all proceedings under this Act and for all the purposes of this Act.

Form and manner of making affidavit, &c. *Ibid.* s. 23.

24. If the collector or any assistant collector or other officer appointed under this Act neglects to discharge or to exercise due diligence in the discharge of any duty imposed upon him by this Act, he shall, in addition to being liable to be dismissed from office, be liable to a penalty not exceeding *twenty* pounds.

Penalty on collector for neglect of duty.

25. (1) The collector's accounts shall, once at least in every year, and also whenever directed by the Governor, be audited by the Auditor-General.

Audit of collector's accounts. *Ibid.* s. 25.

(2) The Auditor-General shall, in respect of such accounts, have all the powers conferred upon him by the Audit Act, 1902, and any Act for the time being in force relating to the audit of public accounts.

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26. (1) The Governor may make regulations Regulations. not inconsistent with this Act prescribing all matters Ibid. s. 27. and things which by this Act are contemplated, required, or permitted to be prescribed, and prescribing, amongst others, the following matters and things :—

- (a) The duties of the collector and other officers appointed under this Act.
- (b) The methods to be adopted by the collector and other officers in the exercise and discharge of their powers and duties.
- (c) The accounts, records, and books to be kept by the collector, and other officers, and the methods of keeping the same.
- (d) The collection, remittance, and payment of moneys by the collector.
- (e) Generally such matters and things as may be necessary or convenient to enable the collector and other officers to exercise and discharge their powers and duties.
- (f) The forms of any documents to be used for the purposes of this Act, either in addition to or in variation of the forms in the Schedules to this Act; and
- (g) All such other matters and things as may be necessary or convenient for giving effect to this Act, and for carrying out its objects.

(2) Any regulation so made may impose a penalty not exceeding *twenty* pounds for any breach of the same or any other regulation.

(3) All regulations so made shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication, or from a later date to be specified herein; and
- (c) be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in session, and if not then within fourteen days after the commencement of the next session of Parliament.

27. Penalties imposed by this Act or any regulation Recovery of penalties. may be recovered in a summary way before a stipendiary or police magistrate or any two justices of the peace in petty sessions.

SCHEDULES.

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SCHEDULES.

FIRST SCHEDULE.

Form of affidavit to support application to enforce order outside the jurisdiction.

[Name of State where affidavit sworn.]

INTERSTATE DESTITUTE PERSONS RELIEF ACT, 1915.

[Full Christian name and surname of persons in whose favour the order was made.]

Complainant.

against

[Full Christian name and surname of person against whom the order was made.]

Defendant.

I, of , do hereby make oath and swear as follows:—

1. I am the collector of Interstate Destitute Persons [or as the official title may be] appointed for the said State under [short or other title of Act].

2. On the day of an order was made by [state by whom or by what court] whereby the above-named defendant was ordered to [state effect of the order and how payments were ordered to be made].

3. The period for appealing against the said order has expired, and the said order is still in force.

4. The following amount has been paid under the said order, namely [state the amount (if any) paid, and when paid, and, in case payable by instalments or periodically, up to what time payments have been made] (or No amount has been paid under the said order).

5. There is now remaining due and unsatisfied under the said order the sum of being for weeks [or as the case may be] at per week [or as the case may be].

6. To the best of my knowledge and belief the said defendant is now residing at , in the State of , and has been residing there since about [state the time so far as known or believed].

Sworn at this day of , in the State of , 19 , before me

SECOND

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Interstate Destitute Persons Relief.

SECOND SCHEDULE.

NEW SOUTH WALES.

INTERSTATE DESTITUTE PERSONS RELIEF ACT, 1915.

[Full Christian name and surname of person in whose favour the order was made.]

Complainant.

against

[Full Christian name and surname of person against whom the order was made.]

Defendant.

To the abovenamed Defendant.

Take notice that the collector for New South Wales intends to apply to the Court to be holden at , in the said State, on the day of , 19 , for an endorsement of the order (or copy order or certificate of order) made against you in favour of the above complainant at in the State of on , the day of , 19 , a copy whereof is annexed hereto, for the purpose of enforcing the said order against you.

You may appear at the said application and be heard for the purposes of proving (1) that you were not heard at the original hearing owing to illness or physical infirmity or want of means disabling you from travelling ; and (2) that you could have given evidence at such original hearing of such a character that the said order would not have been made or would have been made in a varied form.

Dated at , in the State of New South Wales, the day of , 19 .

Collector for New South Wales.