

[CONFIDENTIAL.]

No. , 1911.

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## A BILL

To make further provision for serving and executing certain summonses and maintenance orders; to amend the Deserted Wives and Children Act, 1901, the Infant Protection Act, 1904, the Prisons Act, 1899; and for other purposes.

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**B**E 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 Maintenance Short title. Orders Act, 1911."
2. This Act shall come into operation on a day to be fixed by Commencement. the Governor by proclamation published in the Gazette.
- 3.

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

Division of Act.

PART I.—PRELIMINARY.

PART II.—SUMMONS AND ORDER ISSUED OR MADE IN ANOTHER STATE.

PART III.—SUMMONS OR ORDER ISSUED OR MADE IN THIS STATE.

PART IV.—MISCELLANEOUS.

PART V.—WORK FOR PRISONERS COMMITTED.

**4.** In this Act, unless inconsistent with the context or subject-matter— Interpretation.

“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.** 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. Application of this Act.

**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. Collector for interstate destitute persons.

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PART

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 for maintenance or order issued in another State may be served in this State.

**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
- (b) An affidavit in the form in the 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,

Application for making order for relief enforceable in this State.

shall attend before a justice and apply to have such original or duplicate order, certified copy, or certificate indorsed as provided by section nine.

(2) A document purporting to be such a document as mentioned in subsection one shall, for the purposes of this Act, be deemed to be what it purports to be, until the contrary is proved.

**9.** Upon such application being made to a justice and upon production of the original or duplicate order, certified copy, or certificate and the affidavit referred to in section eight, the justice, if satisfied that the person against whom the order was made is resident, either temporarily or permanently, within this State, shall indorse such original or duplicate order, certified copy, or certificate with a fiat directing that the order be enforced within this State, and shall sign such indorsement.

To be indorsed if defaulter resident in this State.

**10.** (1) Upon obtaining the indorsement referred to in section nine the collector shall serve, or cause to be served, a copy of such order, certified copy, or certificate, and of the indorsement thereon, certified as correct under his hand, upon the person against whom the order was made; and such order shall thereupon be and continue to be enforceable in this State.

Collector to serve copy of indorsed order.

(2)

(2) The service required by this section may be effected by delivering the document to the person to be served, or by posting the same by registered letter addressed to him at his last known place of residence.

**11.** When an original or duplicate maintenance order, certified copy, or certificate has been indorsed pursuant to section nine, and a copy thereof has been served pursuant to section ten, 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.

After service all moneys to be payable to the collector.

The receipt of the collector for any such money shall be a valid discharge of the liability to pay the same.

**12.** (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.

Process for executing orders made enforceable in this State.

(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.

**13.** 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.

- (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, 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.

PART III.

SUMMONS OR ORDER ISSUED OR MADE IN THIS STATE.

**14.** 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 or order for maintenance issued in this State may be indorsed as servable in another State.

**15.** Every summons indorsed under section fourteen 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 hearing summons.

**16.** (1) A summons indorsed under section fourteen 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.

**17.** 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, 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 :—

Collector to forward maintenance orders for service in other States.

- (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 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)

- (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.

**18.** (1) A certificate under the hand of the collector or of a collector appointed in another State, or an affidavit sworn by either of such collectors, 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.

Affidavit or certificate of collector sufficient proof of payment.

(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.

**19.** (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 person served.

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.

**20.** 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.

**21.**

**21.** 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.

**22.** (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.

(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.

**23.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters 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 form in the Schedule 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.

PART V.

WORK FOR PRISONERS COMMITTED.

**24.** (1) Section eleven of the Deserted Wives and Children Act, 1901, is amended by omitting the words "or by the infliction of a fine not less than five pounds nor more than fifty pounds." Amendment of s. 11 of Deserted Wives and Children Act.

(2) Section eighteen of the Infant Protection Act, 1904, is amended by omitting the words "or by the infliction of a penalty not exceeding fifty pounds." Amendment of s. 18 of Infant Protection Act.

**25.** The following section is inserted next after section sixteen of the Prisons Act, 1899 :—

16A. (1) The Comptroller-General of Prisons may direct any prisoner who has, before or after the commencement of this Act, been committed to prison under sections eight or eleven of the Deserted Wives and Children Act, 1901, or sections five, fifteen, or eighteen of the Infant Protection Act, 1904, or under any provisions of the Interstate Maintenance Orders Act, 1911, to perform any specified class of work. Prisoner committed for disobedience of order may be directed to work.

The said Comptroller-General shall, in directing the performance of work under this section, have regard to the capability of the prisoner to perform the work and the value of the work.

(2) A valuation shall from time to time be made in pursuance of regulations which the Governor is authorised to make under this Act of the work performed by any such prisoner. Application of money earned by such work.

From the amount of such valuation shall be deducted—

- (i) the cost of the prisoner's keep, or so much thereof as is borne by the Government; and
- (ii) a further sum not exceeding seven shillings a week for or towards any support or any maintenance and education payable under any such order after the date of the commitment.

(3) The amount of such valuation after making the deductions aforesaid shall be applied in such manner as the Comptroller-General directs—

- (a) in or towards satisfaction of the order for the support of the wife or children of the prisoner under the Deserted Wives and Children Act, 1901, or the order for maintenance, education, expenses, and costs under the Infant Protection Act, 1904, as the case may be, in so far as any such order is unsatisfied at the date of the commitment;
- (b) in the case of a commitment under section five or section fifteen of the Infant Protection Act, 1904, in or towards the



Interstate Maintenance Orders.

the deposit of any sum for preliminary expenses, and the payment into court of the amount ordered to be secured by recognisances ;

(c) in or towards satisfaction of any order made enforceable under the Interstate Maintenance Orders Act, 1911.

(4) The Governor may release from prison any prisoner committed as aforesaid, and such release may be either unconditionally or subject to such conditions as the Governor thinks fit to impose. Release from prison.

Any justice may in a summary way, on proof made before him that any such condition has been broken, rescind such release, or the release may be revoked by the Governor.

Where a release is rescinded or revoked as aforesaid, the person released may be taken by any member of the police force and returned to prison, and there detained for the same period and subject to the same conditions as if he had not been released from prison.

SCHEDULE.

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

[Name of State where affidavit sworn.]

[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 in the State 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 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