

Queensland



# MAINTENANCE ACT 1965

**Reprinted as in force on 1 September 2002  
(includes amendments up to Act No. 17 of 2001)**

**Reprint No. 1E revised edition**

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# Information about this reprint

This Act is reprinted as at 1 September 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## **Dates shown on reprints**

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Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.

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# MAINTENANCE ACT 1965

[as amended by all amendments that commenced on or before 1 September 2002]

**An Act to consolidate and amend the law relating to the making of orders for the maintenance of wives, husbands and children, and for confinement, medical and like expenses and funeral expenses, and for the enforcement of such orders and of similar orders made in certain other States, Territories and countries, and for purposes connected therewith**

## PART 1—PRELIMINARY

### 1 Short title

This Act may be cited as the *Maintenance Act 1965*.

### 4 Repeals and savings

(1) The Acts and enactments set out in the schedule to this Act are hereby repealed to the extent and as from the respective dates indicated in that schedule.

(1A) However, except as in this Act expressly or by necessary implication provided, and without limiting the operation of the *Acts Interpretation Act 1954*—

- (a) all persons, things and circumstances appointed or created by or under any provision of the repealed Acts or existing or continuing under any provision of the repealed Acts immediately prior to the commencement of this Act or of the corresponding provision of this Act shall, under and subject to this Act, continue to have the same status, operation and effect as they respectively would have had if the repealed Acts had not been repealed;
- (b) in particular, and without affecting the generality of paragraph (a)—

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- (i) the repeal of the repealed Acts shall not disturb the continuity of status, operation, or effect of any proclamation, regulation, rule, order, complaint, summons, warrant, application, appeal, determination, decision, endorsement, direction, declaration, certificate, consent, approval, disapproval, confirmation, objection, appointment, registration, condition, recognisance, notice, fee, liability, or right made, effected, issued, served, granted, given, passed, fixed, accrued, incurred, or acquired or existing or continuing by or under any provision of the repealed Acts prior to the commencement of this Act or of the corresponding provision of this Act;
- (ii) any proceedings commenced under the *Maintenance Act 1949*, prior to the commencement of this Act, and not concluded prior to that commencement, shall for all the purposes of this Act be deemed to have been commenced under this Act and may be continued and an order made thereon accordingly;
- (iii) where the original or duplicate of an order made in another Australian State or in a Territory has been received, prior to the commencement of part 4, division 2,<sup>1</sup> from that State or Territory, accompanied by a request that the order be made enforceable in Queensland, and that order could, under the *Interstate Destitute Persons Relief Act 1914*, had that Act not been repealed, have been directed to be enforced in Queensland—the original or duplicate of the order and the request shall be deemed to have been received in Queensland after the commencement of part 4, division 2, and the provisions of that division, with such modifications as are necessary, shall apply to and with respect to every such request accordingly;
- (iv) where an application has, prior to the commencement of part 4, division 2, been made by or on behalf of a person for whose benefit an order, as defined in the *Interstate Destitute Persons Relief Act 1914*, has been made in Queensland to forward the order for enforcement in another Australian State or in a Territory, and that order could have been so forwarded under that Act, had that Act not been

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<sup>1</sup> Part 4 (Reciprocal enforcement of orders), division 2 (Interstate maintenance)

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repealed—the application shall be deemed to have been made in Queensland after the commencement of part 4, division 2, and the provisions of that division, with such modifications as are necessary, shall apply to and with respect to every such application accordingly;

- (v) where a maintenance order, as defined in the *Maintenance Orders (Facilities for Enforcement) Act 1921*, has, prior to the commencement of part 4, division 3,<sup>2</sup> been transmitted to Queensland from England or Ireland or from a State or country (not being an Australian State or a Territory), that was, immediately prior to the commencement of part 4, division 3, a reciprocating State under the *Maintenance Orders (Facilities for Enforcement) Act 1921*, and that is a reciprocating country under this Act—the order shall be deemed to have been transmitted to Queensland after the commencement of part 4, division 3, and the provisions of that division, with such modifications as are necessary, shall apply to and with respect to every such order accordingly;
- (vi) where a maintenance order, as defined in the *Maintenance Orders (Facilities for Enforcement) Act 1921*, has, prior to the commencement of part 4, division 2, been transmitted to Queensland from another Australian State or a Territory that was, at the time of that transmission, a reciprocating State under the *Maintenance Orders (Facilities for Enforcement) Act 1921*—the order shall be deemed to have been received in Queensland for registration and enforcement pursuant to part 4, division 2 and the provisions of that division, with such modifications as are necessary, shall apply to and with respect to every such order accordingly;
- (vii) where an application has been made, prior to the commencement of part 4, division 3, under the *Maintenance Orders (Facilities for Enforcement) Act 1921*, for a maintenance order, as defined in that Act, against a person resident in England or Ireland, or in a State or country (not being an Australian State or a Territory), that was, immediately prior to the commencement of part 4, division 3, a reciprocating State under the *Maintenance Orders (Facilities for Enforcement) Act 1921*, and that is a

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2 Part 4 (Reciprocal enforcement of orders), division 3 (Overseas maintenance)

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reciprocating country under this Act—the application shall be deemed to have been made after the commencement of part 4, division 3, and the provisions of that division, with such modifications as are necessary, shall apply to and with respect to every such application accordingly;

- (viii) where a provisional order was made, prior to the commencement of part 4, division 3, in England or Ireland, or in a State or country (not being an Australian State or a Territory) that was, immediately prior to the commencement of part 4, division 3, a reciprocating state under the *Maintenance Orders (Facilities for Enforcement) Act 1921*, and that is a reciprocating country under this Act, and the provisional order has been received in Queensland for confirmation under the *Maintenance Orders (Facilities for Enforcement) Act 1921*—the order shall be deemed to have been received in Queensland after the commencement of part 4, division 3, and the provisions of that division, with such modifications as are necessary, shall apply to and with respect to every such provisional order accordingly;
- (ix) where an order made under the repealed Acts for the enforcement of an order enforceable under this Act was in force immediately prior to the commencement of this Act—that enforcement order shall, if a like order of enforcement could be made under this Act, continue in force as if it were such like order, and compliance therewith may be enforced or noncompliance therewith punished accordingly;
- (x) where an order enforceable under the repealed Acts and enforceable under this Act was, prior to the commencement of this Act, disobeyed or not complied with—that disobedience or noncompliance shall be deemed to have occurred after the commencement of this Act and any proceedings relating to that disobedience or noncompliance may be taken or, if already commenced, may be concluded, under this Act, and the several provisions of this Act, with such modifications as are necessary, shall apply to and with respect to those proceedings accordingly;
- (xi) every penalty imposed under any provision of the repealed Acts and not enforced or recovered prior to the commencement of the corresponding provision of this Act

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may be enforced or recovered as if the repealed Acts had not been repealed;

- (xii) every proceeding for an offence against any provision of the repealed Acts (other than an offence of failing to comply with an order) commenced or pending immediately prior to the commencement of the corresponding provision of this Act may be carried on and prosecuted as if the repealed Acts had not been repealed and no such proceeding shall abate or be discontinued or prejudicially affected by anything in this Act contained;
- (xiii) every investigation or inquiry commenced under the repealed Acts may be continued and concluded as if the repealed Acts had not been repealed, and any offence against any provision of the repealed Acts (other than an offence of failing to comply with an order) committed prior to the commencement of the corresponding provision of this Act may be investigated and prosecuted and any penalty may be imposed and enforced with respect thereto as if the repealed Acts had not been repealed.

(2) Notwithstanding the provisions of subsections (1) and (1A), where a State or country (not being an Australian State or a Territory) that was, immediately prior to the commencement of part 4, division 3, a reciprocating State under the *Maintenance Orders (Facilities for Enforcement) Act 1921* (in this subsection called the “**repealed Acts**”) is not a reciprocating country under this Act—

- (a) a maintenance order made in that State or country and enforceable in Queensland under or pursuant to the repealed Acts is not enforceable in Queensland under this Act; and
- (b) every warrant or other process arising out of any such order previously issued in Queensland and not executed ceases to have effect;

but this subsection does not affect the validity of anything done for the enforcement of the order under or in pursuance of the repealed Act while that State or country was a reciprocating State under the repealed Act.

## 5 Transitional

(1) Where, immediately prior to the commencement of this Act, an order made under the *Maintenance Act 1949*, was enforceable in Queensland

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under that Act, that order shall, on and from the commencement of this Act, and for all the purposes of this Act, be deemed to be an order made under part 2.<sup>3</sup>

(1A) Where, immediately prior to the commencement of this Act, an order for the payment of moneys made by a court in Queensland under any other Act was enforceable in Queensland under the *Maintenance Act 1949*, that order shall, on and from the commencement of this Act, be enforceable under this Act as if it were an order made under part 2.

(2) Where, immediately prior to the commencement of part 4, division 2,<sup>4</sup> an order was enforceable in Queensland under the *Interstate Destitute Persons Relief Act 1914*, that order shall, on and from the commencement of that division, and for all the purposes of this Act, be deemed to be an order registered under that division in the court for the place where payments under the order were required to be made.

(3) Where—

- (a) immediately prior to the commencement of part 4, division 3,<sup>5</sup> an order made by a court of summary jurisdiction in England or Ireland, or in a State or country (not being an Australian State or a Territory) that was, immediately prior to the commencement of that division, a reciprocating State under the *Maintenance Orders (Facilities for Enforcement) Act 1921*, and that is a reciprocating country under this Act, was enforceable in a court of summary jurisdiction in Queensland, that order shall, on and from the commencement of that division, and for all the purposes of this Act, be deemed to be an order registered or, as the case may require, confirmed, under that division;
- (b) immediately prior to the commencement of part 4, division 2, an order made by a court of summary jurisdiction in another Australian State or in a Territory was enforceable in Queensland under the *Maintenance Orders (Facilities for Enforcement) Act 1921*, that order shall, for the purposes of subsection (2), be deemed to be an order that was, immediately prior to the commencement of that division, an order enforceable in Queensland under the *Interstate Destitute Persons Relief*

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3 Part 2 (Maintenance and other orders)

4 Part 4 (Reciprocal enforcement of orders), division 2 (Interstate maintenance)

5 Part 4 (Reciprocal enforcement of orders), division 3 (Overseas maintenance)

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*Act 1914*, and the provisions of that subsection shall apply to and with respect to every such order accordingly.

(4) Where, immediately prior to the commencement of part 4, division 3, an order was enforceable in the Supreme Court under the *Maintenance Orders (Facilities for Enforcement) Act 1921*, that order continues to be enforceable in that court as if that Act had not been repealed and the provisions of that Act continue to apply in relation to that order accordingly.

(5) Where—

- (a) immediately prior to the commencement of this Act, an order of the Supreme Court; or
- (b) immediately prior to the commencement of part 4, division 3, an order registered in the Supreme Court under the *Maintenance Orders (Facilities for Enforcement) Act 1921*;

was enforceable in a court of summary jurisdiction in Queensland by reason of a direction given under the *Matrimonial Causes Act 1864*, section 47A(1) or under the *Guardianship and Custody of Infants Act 1891*, section 6B(1) that order shall—

- (c) in the case of an order referred to in paragraph (a)—on and from the commencement of this Act be enforceable as if it were an order made under part 2 by the court for the place where payments under the order were, by virtue of the direction, required to be made; or
- (d) in the case of an order referred to in paragraph (b)—on and from the commencement of part 4, division 3 be enforceable as if it were an order registered under that division in the court for the place where payments under the order were, by virtue of the direction, required to be made;

but nothing in this Act contained shall prejudice the operation of the said section 47A or the said section 6B or the *Maintenance Orders (Facilities for Enforcement) Act 1921*, as the case may be, with respect to the discharge, suspension or variation of the order or the substitution of a new order therefor.

(6) On and from the commencement of this Act, an order that was, immediately prior to the commencement of this Act, enforceable in a court of summary jurisdiction in Queensland under—

- (a) the *Interstate Destitute Persons Relief Act 1914*;

- (b) the *Maintenance Orders (Facilities for Enforcement) Act 1921*;
- (c) the *Matrimonial Causes Act 1864*;
- (d) the *Guardianship and Custody of Infants Act 1891*;
- (e) the *Matrimonial Causes Act 1959* (Cwlth);

may be enforced in Queensland by any of the means provided for in part 3<sup>6</sup> and that part shall apply to and with respect to every such order accordingly.

(7) This Act shall apply to all complaints and applications made under any provision of this Act, whether the matter of the complaint or application arose before or after the commencement of that provision.

(8) For the purposes of this section, an order that is suspended for the time being shall be deemed to be an order that is enforceable.

(9) Where, immediately prior to the commencement of this Act, an order made under the *Maintenance Act 1949*, was enforceable in any other Australian State, or any Territory or any other country, by virtue of any laws corresponding to the *Interstate Destitute Persons Relief Act 1914*, or the *Maintenance Orders (Facilities for Enforcement) Act 1921*, that order shall, for the purposes of this section, be deemed to have been, immediately prior to the commencement of this Act, enforceable in Queensland.

## 7 Interpretation

(1) In this Act—

“adopted”—

- (a) adopted in accordance with the law of Queensland, or the law of another State or of a Territory; or
- (b) adopted in a country outside Australia and the Territories, if the adoption was effective according to the law of that country and the adoption is recognised by the law of Queensland as having effect in Queensland.

“child”, in relation to any person or persons, includes an adopted child of that person, or as the case may be, of those persons, but does not include a child of that person or those persons adopted by another

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6 Part 3 (Enforcement of orders made in Queensland)



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person or persons; and “mother”, “father” and “parent”, in relation to a child, shall be construed accordingly.

“**child of the family**”, in relation to the parties to a marriage or to either of them and whether or not either party to the marriage is dead, means—

- (a) any child of both parties; and
- (b) any child of either party who has been accepted as one of the family by the other party;

and “mother”, “father”, and “parent”, in relation to a child of the family, shall be construed accordingly.

“**clerk of the court**” means a clerk of the court as defined in the *Justices Act 1886*, and includes the clerk (maintenance), Magistrates Courts Office, Brisbane and any person who for the time being occupies, or performs the duties of, that office.

“**court**” means a Magistrates Court constituted by a magistrate sitting alone or, in the case of a Magistrates Court referred to in an order in council under subsection (8), by any 2 justices of the peace.

“**preliminary expenses**”, in respect of the confinement of a woman, means—

- (a) the expenses of the maintenance of the woman during the period of 2 months immediately preceding the confinement; and
- (b) reasonable medical, surgical, hospital and nursing expenses attendant upon the confinement; and
- (c) the expenses of the maintenance of the woman and the child or children born to the woman during the confinement for 3 months immediately after birth.

“**repealed Acts**” means the Acts repealed by section 4, or any of them.

“**unmarried father**”, in relation to a child, means the child’s father being a person who was not married to its mother at the time of its conception and who has not since married her.

“**unmarried mother**”, in relation to a child, means the child’s mother being a person who was not married to its father at the time of its conception and who has not since married him.

“**woman**” includes girl.

(2) For the purposes of the interpretation of “**child of the family**”, a child of either party to the marriage shall, in the absence of proof to the

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contrary, be taken to have been accepted by the other party as one of the family if it is proved that at any time the child was ordinarily a member of the family household.

(3) For the purposes of this Act, a man and a woman married by a subsisting marriage, whether monogamous or polygamous, shall, if the marriage is lawful and binding in the place where it was solemnised, be regarded as husband and wife.

(4) For the purposes of this Act—

- (a) in determining whether a person has been left without adequate means of support provided by another person, the court shall have regard to the accustomed condition in life, but not the means (not being means provided by that other person), or earning capacity, of the firstmentioned person; and
- (b) the fact that payments have been made by the defendant for or towards the maintenance of a person for whose benefit an order is sought since the date of the complaint may be disregarded by the court in determining whether that person is left without adequate means of support provided by the defendant at the date of the hearing of the complaint, unless the court is satisfied that the defendant bona fide intends to continue to provide adequate means of support for that person.

(5) A reference in this Act to a person for whose benefit an order is sought or made shall not be construed as a reference to a person who makes a complaint or application on behalf of another person.

(6) A reference in this Act to an order shall be read and construed, where the order has been varied, as a reference to the order as varied from time to time.

(7) Where an order enforceable under this Act is for the benefit of 2 or more persons it shall be deemed to be a separate order in respect of each of the persons for whose benefit the order was made.

(8) The Governor in Council may, by order in council, declare that, in respect of a Magistrates Court held within a Magistrates Court district specified in that order in council, that court may, whenever a magistrate is not available, or it is not practicable for the magistrate to constitute the court, be constituted by 2 justices of the peace.

(9) Where a court is so constituted, and notwithstanding any other provision of this Act, all the powers, duties and authorities conferred or

imposed upon a Magistrates Court by or under this Act may and where necessary shall be exercised by that court as so constituted.

## **PART 2—MAINTENANCE AND OTHER ORDERS**

### *Division 1—Jurisdiction and powers of Magistrates Courts*

#### *Subdivision 1—General*

### **8 General jurisdiction of Magistrates Court in respect of maintenance orders**

(1) Subject to this Act, a court shall have jurisdiction to make and to discharge, suspend, or vary any of the following kinds of orders—

- (a) an order against a husband for the maintenance of his wife;
- (b) an order against a father for the maintenance of children of the family;
- (c) an order against a wife for the maintenance of her husband;
- (d) an order against a mother for the maintenance of children of the family;
- (e) an order against an unmarried father for the maintenance of his child;
- (f) an order against an unmarried mother for the maintenance of her child;
- (g) an order against an unmarried father for preliminary expenses in respect of the birth of his child;
- (h) an order against an unmarried father for funeral expenses in respect of the death of his child, or of the mother of such a child;
- (i) an order against a husband, wife, father, or mother for or towards the cost of medical, surgical, psychiatric, dental, hospital, or nursing care or treatment of a wife, husband, or child, or of funeral expenses in relation to any such person;

(j) such nominal, preliminary and interim orders as are provided for by this part.

(2) A court shall have jurisdiction to make an order under this part—

(a) if the person against whom the order is sought is resident in Queensland; or

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

(2A) However, where proceedings are taken under section 10, 11, 12, 13, 14, 15, 16, 18, 19 or 20 and the court, on objection taken by or on behalf of the defendant, is of opinion that the proceedings should have been taken in another court of similar jurisdiction in Queensland, it may remit the proceedings to that other court for hearing and determination and the proceedings shall then be deemed to have been taken in that other court and the hearing of the objection so taken shall be deemed not to be a commencement of the hearing of the complaint.

(3) Subject to this section, a court shall have jurisdiction to make an order under this part whether or not the facts or circumstances, or any of them, the existence or occurrence of which is necessary for the making of the order, took place before the commencement of this Act or outside Queensland.

(4) Nothing in this Act shall limit or affect the operation of any provision of any other Act (whether relating to child welfare or family welfare or children's services or social services, or otherwise), or any law, 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.

(5) Where it is necessary for the court to be satisfied, before making an order under this Act, that the complainant has been, is, or is about to be, left without adequate means of support provided by the defendant, the court shall not make the order if, upon the evidence before the court, it is satisfied that the defendant had, has, or will have, as the case may be, just cause or excuse for so leaving the complainant.

## **9 Matters affecting amount of orders**

(1) In determining the amount that a defendant is to be ordered to pay by an order under section 10, 11, 12, 14, 15 or 17, the court shall have regard, where appropriate, to—

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- (a) the accustomed condition in life of the person for whose benefit the order is to be made; and
- (b) any evidence before the court as to the means and earning capacity of the defendant and that person and the ability of the defendant to pay maintenance;

but may, in its discretion, disregard—

- (c) the earnings or savings from earnings from an occupation engaged in by that person, or any part of those earnings or savings, if it is satisfied that that person engaged in that occupation solely or mainly because that person was, or reasonably expected to be, left without adequate means of support; and
- (d) the earning capacity of that person, if it is satisfied that that person would engage in an occupation solely or mainly because that person is, or reasonably expects to be, left without adequate means of support.

(2) In the case of an order for the benefit of a child of the family or a child whose parents were not married to each other at the time of its conception and have not since married each other, the expressions—

- (a) ‘defendant’, in subsection (1)(b); and
- (b) ‘that person’, in subsection (1)(c) and (d);

include the parent of the child, not being the parent who is the defendant.

(3) In determining the amount that a defendant is to be ordered to pay by an order under this part for a child in custody, no regard shall be had to the fact that the child is a child in custody.

(4) In this section—

**“chief executive for child protection”** means the chief executive of the department in which the *Child Protection Act 1999* is administered.

**“child in custody”** means a child in the custody or under the guardianship of the chief executive for child protection under a court assessment order or child protection order under the *Child Protection Act 1999*.

***Subdivision 2—Orders against husbands for maintenance of wives, and against parents for maintenance of children***

**10 Court may order husband to maintain wife**

Where the court, upon complaint made by or on behalf of a wife, is satisfied—

- (a) that she is left by her husband without adequate means of support provided by him and was so left on the date alleged in the complaint; or
- (b) that her husband is about to remove out of Queensland or into a distant part of Queensland and leave her without adequate means of support provided by him;

the court may order the husband to pay for or towards her maintenance such amount as it thinks reasonable.

**11 Court may order father to maintain children**

Where the court, upon complaint made on behalf of a child of the family, is satisfied—

- (a) that the child is left by the father without adequate means of support provided by him and was so left on the date alleged in the complaint; or
- (b) that the father is about to remove out of Queensland or into a distant part of Queensland and leave the child without adequate means of support provided by him;

the court may order the father to pay for or towards the maintenance of the child such amount as it thinks reasonable.

**12 Court may order mother to maintain children**

Where the court, upon complaint made on behalf of a child of the family, is satisfied—

- (a) that the child is left by the mother without adequate means of support provided by her and was so left on the date alleged in the complaint; or

- (b) that the mother is about to remove out of Queensland or into a distant part of Queensland and leave the child without adequate means of support provided by her;

the court may order the mother to pay for or towards the maintenance of the child such amount as it thinks reasonable.

### *Subdivision 3—Orders against wives for maintenance of husbands*

#### **13 Court may order wife to maintain husband**

Where the court, upon complaint made by or on behalf of a husband, is satisfied that the husband is unable to support himself adequately and—

- (a) that he is left by his wife without adequate means of support provided by her and was so left on the date alleged in the complaint; or
- (b) that his wife is about to remove out of Queensland or into a distant part of Queensland and leave him without adequate means of support provided by her;

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

### *Subdivision 4—Orders against unmarried fathers or mothers for maintenance of children*

#### **14 Court may order unmarried father to maintain child**

Where the court, upon complaint made on behalf of a child whose parents were not married to each other at the time of its conception and have not since married each other, is satisfied that the defendant is the father of the child and—

- (a) that the child is left by the defendant without adequate means of support provided by him and was so left on the date alleged in the complaint; or

- (b) that the defendant is about to remove out of Queensland or into a distant part of Queensland and leave the child without adequate means of support provided by the defendant;

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

### **15 Court may order unmarried mother to maintain child**

Where the court, upon complaint made on behalf of a child whose parents were not married to each other at the time of its conception and have not since married each other is satisfied—

- (a) that the child is left by the mother without adequate means of support provided by her and was so left on the date alleged in the complaint; or
- (b) that the mother is about to remove out of Queensland or into a distant part of Queensland and leave the child without adequate means of support provided by the mother;

the court may order the mother to pay for or towards the maintenance of the child such amount as it thinks reasonable.

### **15A Court may make order by consent**

(1) Notwithstanding any jurisdiction otherwise had, a court may, subject to this section, make an order under this part for the payment of maintenance—

- (a) where the defendant states that he or she has no cause to show why an order should not be made against him or her; and
- (b) where the defendant admits the truth of the complaint; and
- (c) where both the complainant and the defendant consent to the amount that the defendant is to be ordered to pay and inform the court of that consent.

(2) A court shall not make an order under this section unless the complainant and the defendant adduce, by admissions, either orally or in writing—

- (a) in the case of a person for whose benefit the order is to be made—full particulars of the means, reasonable needs and accustomed condition in life of that person; and



- (b) in the case of a person against whom an order is to be made—full particulars of that person’s means, earning capacity and ability to pay maintenance; and
- (c) in either case—any relevant particulars that the court considers necessary or desirable.

(3) The court may, in its discretion, refuse to make the order for the amount referred to in subsection (1)(c), whereupon—

- (a) with the consent of the complainant and the defendant, the amount the defendant is to be ordered to pay shall be determined by the court; or
- (b) if the complainant and the defendant do not give the consent specified in paragraph (a)—the hearing upon the complaint shall commence de novo.

(3A) Where the hearing upon a complaint is commenced de novo pursuant to subsection (3)(b), evidence of admissions made for the purpose of obtaining an order by consent under this section shall not be admissible at that hearing.

(4) Upon the hearing of a complaint under this section the complainant and the defendant shall appear before the court in person or be represented before it by counsel or solicitor.

(5) Any oral admission made under this section shall be recorded by the court and if an order is made by consent under this section become part of the record of that consent proceeding.

***Subdivision 5—Orders against putative fathers for preliminary expenses and for maintenance of unborn children***

**16 Court may order payment of preliminary expenses etc.**

(1) Where the court, upon complaint made by or on behalf of a woman, is satisfied—

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

the court may order the defendant to pay for preliminary expenses such amount as it thinks reasonable.

**(1A)** Where a woman might, but for her death, have made a complaint under subsection (1), the complaint may be made by any person who has paid or is liable to pay the preliminary expenses.

**(2)** A complaint referred to in subsection (1) or (1A) or a claim referred to in subsection (8) shall not be made after the expiration of 12 months after the birth or stillbirth of the child.

**(3)** An order shall not be made under subsection (1) where the woman for whose benefit the order is sought is pregnant unless the court is satisfied by the evidence or a certificate of a medical practitioner that the woman is quick with child.

**(4)** Where an order under subsection (1) was made in the case of a woman who was pregnant by the defendant and—

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

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

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

**(6)** Where an order ceases to have effect on 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; or
- (b) be repaid to the defendant; or
- (c) be divided between the woman and the defendant in such proportions as the court thinks fit.

**(7)** Where an order is made under subsection (1) in the case of a woman who is pregnant by the defendant—

- (a) the court may, at any time while the order is in force, with or without any application for that purpose, and, if upon application, after notice of such application given in such manner

and to such persons as the court may direct, give such directions as the court 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 stillborn child, of amounts aggregating more than one-half of the amount to be paid under the order; and

- (b) amounts paid under the order shall not be disbursed otherwise than in accordance with directions so given.

(8) Where a complaint has been made under section 14, the court may, if a claim for preliminary expenses is made at the hearing of the complaint, and subject to subsection (2), make an order under subsection (1) for the payment of those expenses, notwithstanding that a complaint has not been made under this section.

(9) Where a claim referred to in subsection (8) is made, the court shall, on the application of the defendant, if it is of opinion that the defendant would be prejudiced unless the hearing were adjourned, adjourn the hearing for such period as it thinks fit.

(10) The adoption of a child, whether before or after the commencement of this Act, does not prevent the making of an order for preliminary expenses in the same manner as if the child had not been adopted and does not affect the validity or operation of any order for preliminary expenses in respect of the child.

(11) The death of a child, whether before or after the commencement of this Act, does not prevent the making of an order for preliminary expenses in the same manner as if the child had not died.

(12) In this section—

“**child**” includes an adopted child.

## **17 Court may order future maintenance of child upon complaint for preliminary expenses**

(1) Where a court makes an order under section 16 for or towards the payment of preliminary expenses, being an order made before the birth of the child to which it relates, the court may, upon complaint made by or on behalf of the person who made the complaint under section 16, if it appears probable that the child will, at the expiration of 3 months after birth, be without adequate means of support provided by the father of the child, order the father to pay for or towards the maintenance of the child such amount as it thinks reasonable.

(2) An order under subsection (1) takes effect—

- (a) where 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 within a period of 3 months after the birth of the child—at the expiration of that period; or
- (b) where such a certified copy is not so produced—upon the production to the clerk of that certified copy.

(3) An order under subsection (1) does 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) shall not be made requiring a person to make payments for or towards the maintenance 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.

(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) is produced to the clerk of the court, the clerk shall forthwith send by post to the defendant at the defendant’s usual or last-known place of residence or business notice in writing of the name of the child, if shown in the certified copy, and of the date and place of birth of the child and the date on which and place at which the first payment under the order is required to be made.

### *Subdivision 6—Orders for funeral expenses*

## **18 Court may order payment of funeral expenses of children**

(1) Where—

- (a) the court, upon complaint made by or on behalf of a parent (in this paragraph called the “**complainant**”) of a child (including an adopted child) is satisfied that the child was a child of the family who died before attaining the age of 16 years, and—
  - (i) that the complainant was, at the date of the death, entitled to receive payments from the other parent under an order for the maintenance of the child; or

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- (ii) that an order for the maintenance of the complainant was, at the date of the death, in force under which the other parent was directed to make payments for the benefit of the complainant; or
  - (iii) that at the date of death there was in force an order under section 21 directing the payment by the other parent of a nominal amount in respect of the child or the complainant; or
- (b) the court, upon complaint made by or on behalf of a parent of a stillborn child, is satisfied that the child quickened and that an order for the maintenance of the parent was in force at the date of the stillbirth;

and the court is also 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), the complaint may be made by any person who has paid or is liable to pay the funeral expenses of the child.

(3) Where the court, upon complaint made by or on behalf of the mother of a child to whose father she was not married at the time of its conception and whom she has not since married, is satisfied that the child was stillborn or died either before attaining the age of 16 years or, in the case of a child for whose maintenance an order had been made in the lifetime of the child, 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 other legal proceedings; and
- (b) has not made adequate provision for the funeral expenses of the child;

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

(4) Where the mother of a child (including a stillborn child) to whose father she was not married at the time of its conception and whom she did not subsequently marry has died, a complaint under subsection (3) may be made 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) in relation to a stillborn child unless the court is satisfied that the child quickened.

(6) An order shall not be made under this section upon a complaint made more than 12 months after the stillbirth or the death of the child to whom it relates.

(7) An order shall not be made under subsection (1) in respect of the funeral expenses of a child whose death occurred before the commencement of this Act.

## **19 Court may order father to pay funeral expenses of mother of child**

(1) Where the court, upon complaint made by any person, is satisfied—

- (a) that the defendant is the father of a child to whose mother he was not married at the time of its conception and whom he did not subsequently marry (including a child that quickened but was stillborn) or has been so adjudged in any other legal proceedings; and
- (b) that the mother of the child died during and in consequence of her pregnancy or in consequence of the birth or stillbirth of the child; and
- (c) that the defendant has not made adequate provision for the funeral expenses of the mother;

the court may order the defendant 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 12 months after the death of the mother.

### *Subdivision 7—Orders for medical and like expenses*

## **20 Orders for medical and like expenses**

(1) Where the court, upon complaint made by or on behalf of—

- (a) a person for whose maintenance an order (not being an order for preliminary expenses) has taken effect and is in force under this part; or

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- (b) a person in respect of whom there has been made an order under section 21 that is in force under this part;

is satisfied—

- (c) that any medical, surgical, psychiatric, dental, hospital, or nursing care or treatment is or was reasonably required to be rendered in respect of that person;
- (d) that the amount ordered to be paid for the maintenance of that person is not sufficient to enable adequate provision to be made thereout for or towards the cost of that care or treatment;
- (e) 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 the person pay or contribute towards that cost;

the court may order the person to pay for or towards that cost such amount as it thinks reasonable.

(2) Where the court, upon complaint made on behalf of a child in respect of whom an order for preliminary expenses has been made, is satisfied—

- (a) that any care or treatment referred to in subsection (1)(c)—
- (i) where the child has not attained the age of 3 months—is reasonably required to be rendered in respect of that child; or
- (ii) where the child has attained that age—was reasonably required and was in fact rendered in respect of that child before the child attained that age; and
- (b) that the amount ordered to be paid for preliminary expenses was not sufficient to enable adequate provision to be made thereout for or towards the cost of that care or treatment; and
- (c) 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 the person pay or contribute towards that cost;

the court may order the person to pay for or towards that cost such amount as it thinks reasonable.

(3) 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)(c), the court may, at any time, with or without any

application for that purpose, and, if upon application, after notice of such application given in such manner and to such persons as the court may direct, give such directions as the court thinks proper with respect to 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.

(4) The adoption of a child does not prevent the making of an order under this section in the same manner as if the child had not been adopted and does not affect the validity or operation of any such order in respect of the child.

(5) Where complaint might have been made under this section by or on behalf of a person but for that person's death, the complaint may be made by any person who has paid or is liable to pay the cost of any care or treatment referred to in subsection (1)(c).

(6) An order shall not be made under this section in respect of the cost of any care or treatment that was rendered before the commencement of this Act, or upon a complaint made more than 12 months after the care or treatment to which the complaint relates was rendered.

### *Division 2—Nominal, preliminary and interim orders*

#### *Subdivision 1—Nominal orders*

## **21 Nominal orders**

Where, upon the hearing of a complaint under this part for the maintenance of a person, the court is satisfied that it would make an order for the maintenance of that person but for the fact—

- (a) that that person is not presently left 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.



**22 Nominal orders not to be enforced**

Proceedings shall not be taken under this Act to enforce payment of the nominal amount directed to be paid by an order made under section 21, but, if that amount is varied under section 31,<sup>7</sup> proceedings may be taken to enforce payment of any amount payable under the order as varied.

***Subdivision 2—Preliminary and interim maintenance orders*****23 Ex parte order for preliminary maintenance of child**

(1) Upon ex parte application made to a magistrate or to any 2 justices (whether sitting as a Magistrate Court or otherwise) at any time after the making of a complaint made under division 1, subdivision 2 for the maintenance of the child of the family, the magistrate or justices may order the defendant to pay weekly for the maintenance of the child such amount as the magistrate or justices may think reasonable.

(1A) An order under this section shall remain in force until the commencement of the hearing of the complaint referred to in subsection (1).

(2) The evidence of any person who is examined on an application under subsection (1) shall be taken down in writing and shall be read over and signed by that person.

(3) An order under this section shall be in writing, signed by the magistrate or by the justices, shall forthwith be sent, together with the depositions of the witnesses who gave evidence in support of the application, to the clerk of the court at which the summons issued upon the complaint is returnable, and shall, subject to subsection (1), be enforceable as if it were an order made by that court.

(4) An order under this section may be made without prior notice being given to the defendant and shall not be subject to suspension, variation, or appeal, and any moneys paid thereunder shall not, irrespective of the outcome of the proceedings upon the complaint, be recoverable.

(5) The hearing of an application under this section shall be deemed not to be a commencement of the hearing of the complaint, and the complaint may be heard and determined by a court whether constituted by the magistrate who heard the application or by any other magistrate.

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<sup>7</sup> Section 31 (Court may discharge, suspend, or vary order)

**24 Interim orders for payment of maintenance pending determination of case**

(1) Upon any occasion when the hearing of a complaint made for the purpose of obtaining an order for the maintenance of a wife, husband, or child of the family is adjourned for a period of not less than 7 days (whether or not the hearing has previously been so adjourned), the court may, after such inquiry as it thinks necessary, order the defendant to pay, for or towards the maintenance of the wife, husband, or child 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 3 months from the date on which the order is made or until the complaint again comes before the court (whichever first occurs), and any moneys paid thereunder shall not, irrespective of the outcome of the proceedings upon the complaint, be recoverable.

(3) The making of an order under this section shall, unless the hearing of the complaint has otherwise commenced, be deemed not to be a commencement of the hearing of the complaint, and the complaint may be heard and determined by a court whether constituted by the magistrate who constituted the court that made the order by any other magistrate.

***Division 3—General******Subdivision 1—Commencement and duration of orders*****25 Orders for maintenance of children**

Subject to this Act—

- (a) an order shall not be made under this part in respect of a child who has attained the age of 16 years; and
- (b) an order for the maintenance of a child ceases to have effect when the child attains the age of 16 years, or dies, or is adopted, or the person against whom the order was made dies (whichever first occurs).

**26 Extension of maintenance order after child's 16th birthday**

(1) This section applies to any child for whose maintenance an order (in this section called a “**maintenance order**”) is or, at the time the child attained the age of 16 years, was in force under this Act or under the repealed Acts.

(2) Where, upon application made to a court 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 16 years, the child will, after the child attains that age, be engaged in a course of education or training or, in the case of a child who has attained that age, the child is or will be so engaged, and that the maintenance order made in respect of the child should be continued or revived, as the case may require, with or without variation, for the purpose of making provision for or towards the maintenance of the child while the child is so engaged and for or towards the meeting of the expenses of the course, the court may order—

- (a) where the child has not attained the age of 16 years—that the maintenance order continue and be in force for such amount and for such period (not exceeding 2 years from the date on which the child attains that age, unless the defendant consents to a longer period) as may be specified in the order under this section; or
- (b) where the child has attained the age of 16 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 2 years from the date so specified, unless the defendant consents to a longer period) as may be specified in the order so made.

(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 2 years, unless the defendant consents to a longer period) from the date of expiry of the previous order as may be specified in the subsequent order.

(4) An order under this section shall not require payments to be made under a maintenance order after the date on which the child attains the age of 21 years.

(5) An application under this section shall be heard by the court for the place where payments under the maintenance order are or were required to be 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.

## **27 Orders for maintenance of wife, husband, or child may include limited provision for past maintenance**

Subject to this part, an order under this part for the maintenance of a person may, whether or not any application in that behalf has been made, be made to take effect from a past date, not being earlier than 3 months before the date on which the order is made, 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 instalments as the court directs.

## **28 Duration of order for support of wife or husband**

An order under this part for the maintenance of a wife or husband ceases to have effect, if not earlier discharged or terminated, upon the death of the wife or husband (whichever death first occurs).

## **29 Recovery of arrears after cessation of order**

(1) The fact that an order under this part for the maintenance of a person ceases to have effect does not prevent the enforcement of the order so far as it relates to any period before it ceased to have effect.

(2) Subsection (1) does not apply where the order ceases to have effect by reason of the death of the defendant.

### ***Division 4—Discharge, suspension, variation, and annulment of orders***

## **31 Court may discharge, suspend, or vary order**

(1) Upon application made by or on behalf of a party to an order (including an order as varied) made under this part, a court may, subject to this division, at any time make an order—

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- (a) discharging the order; or
- (b) suspending the order in whole or in part until a specified day or until further order; or
- (c) varying the order in any specified particular.

(2) An application under subsection (1) shall be heard by the court for the place where payments under the order are required to be 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.

(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; or
- (b) that new facts or circumstances have arisen that have not previously been disclosed to a court and that by reason of those facts or circumstances it is reasonable to discharge, suspend or vary the order; or
- (c) 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 and that were not and could not by the exercise of reasonable diligence have previously been known to the party presently seeking the discharge, suspension, or variation of the order, and that by reason of those facts or circumstances it is reasonable to discharge, suspend or vary the order.

(4) An order—

- (a) that is in force under this part may be—
  - (i) discharged, suspended, or varied as from any past or future day;
  - (ii) suspended in respect of any past or future period; or

- (b) that has ceased to have effect, may be discharged, suspended, or varied from any past day, or suspended in respect of any past period;

specified in the order that effects the discharge, suspension, or variation.

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

(5A) However, where under this Act proceedings for enforcement have been instituted in respect of a maintenance order enforceable under this Act, an application for discharge, suspension or variation of that order shall not be made, by or on behalf of the person against whom that order was made, prior to the completion of those proceedings for enforcement.

(6) Notwithstanding subsection (3) an order that is in force under this part may, subject to this subsection and subsections (7) to (9), be discharged, suspended or varied by the court where the parties to the application consent to the terms and conditions of a discharge, suspension or, as the case may be, variation and inform the court of that consent.

(7) A court shall not make an order under subsection (6) unless the parties to the application—

- (a) appear before the court in person or are represented before it by counsel or solicitor; and
- (b) adduce, by admissions made orally or in writing, evidence of the facts and circumstances upon which that order is to be based.

(8) The court may, in its discretion, refuse to make the order sought by the parties whereupon—

- (a) the hearing upon the application shall commence de novo, and in such case evidence of admissions made for the purpose of obtaining an order by consent under subsection (6) shall not be admissible at that hearing; or
- (b) with the consent of the parties to the application the court may proceed to hear and determine the application.

(9) Any oral admission made under subsection (7) shall be recorded by the court and if an order is made by consent under subsection (6) become part of the record of that consent proceeding.

### **32 Effect of suspension of order**

(1) Where an order is suspended under this division until a specified day, the order, unless earlier revived pursuant to section 34, 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 section 34.

(3) Subject to subsection (4), the fact that an order is suspended under this division 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 is suspended under this division, 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, and thereupon no certificate in relation to those moneys shall be granted under section 45<sup>8</sup> during that period.

### **33 Plural births**

Where an order is made under section 17<sup>9</sup> before the birth of the child and 2 or more children are born, an application may be made under this division for variation of the order to provide for the maintenance of the additional child or children.

### **34 Court may revive suspended order**

(1) Upon application made by or on behalf of any person for whose benefit an order was made that has been suspended under this division until a specified day or until further order, a court may 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) shall be heard by the court for the place where the suspending order was made unless—

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8 Section 45 (Registration of arrears as civil judgement)

9 Section 17 (Court may order future maintenance of child upon complaint for preliminary expenses)

- (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.

(3) A suspended order may be revived from any past day, or, subject to section 31(1), any future day, specified in the reviving order, and shall from that day have and (where necessary) be deemed to have had effect accordingly.

(4) Where the court revives an order from a past day, the court 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.

### **35 Court may annul affiliation order**

(1) Where—

- (a) an order has been made under this part; and
- (b) it was necessary to satisfy the court making the order that the defendant was the father of a child to whose mother he was not married at the time of its conception and whom he has not since married or that a woman was with child by the defendant (not being her husband);

the defendant may at any time make an *ex parte* application to the court for the annulment of the order.

(2) If evidence is given to the court on oath, either orally or on affidavit—

- (a) showing that evidence material to the question of the paternity of the child is available and that the evidence was not produced at the time the order was made; and
- (b) disclosing the nature of that evidence and the names and addresses of the witnesses who are to be called to give that evidence;

the court may, upon such terms as to costs or otherwise as it thinks fit, issue a notice directed to all persons (other than the child) to be affected thereby, calling upon them to show cause why the order should not be annulled.



(3) An application under this section for the annulment of an order shall be heard and determined by the court for the place where payments under the order are required to be made unless—

- (a) the applicant and every person to whom a notice referred to in subsection (2) is directed, 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 the applicant or any such person, to a court sitting at another place.

(4) The court shall entertain an application to annul an order notwithstanding that the applicant is in default in complying therewith.

(5) The court shall receive and consider the evidence recorded at the original hearing or on appeal as well as the fresh evidence submitted.

(6) If, at the conclusion of the evidence in chief submitted by the applicant, no fresh evidence material to the question of paternity has been submitted, the application shall be dismissed.

(7) At the hearing the onus is upon the applicant to prove that he is not the father of the child.

(8) If the court finds that the applicant is not the father of the child the court shall so declare and annul the order but otherwise the application shall be dismissed.

(9) If the order is annulled, the defendant is released from payment of any amount due and unpaid under the order, but is not, except as provided in subsection (11), entitled to recover from any person any amount paid under and by virtue of the order.

(10) If the order is annulled, the annulment does not, except as provided in subsection (9), affect the previous operation of the order or anything duly suffered or done thereunder.

(11) Where an affiliation order has been annulled under this section and any court, whether before or after the annulment of the order, and whether in proceedings under this Act or otherwise, has adjudged to be the father of the child who was the subject of the annulled order a person other than the person against whom the annulled order was made, the person against whom the annulled order was made may recover from that other person, by proceedings as for a debt, in any court of competent jurisdiction, all moneys paid by him under the annulled order, and the certificate of the clerk of the court for the place where payments under the annulled order

were required to be made as to the payments made under the annulled order shall be admissible in evidence in those proceedings and shall be prima facie proof of the matters certified to therein.

### **36 Discharge of orders apparently abandoned**

(1) Where the court, upon ex parte application by the clerk of the court for the place where payments under an order are required to be made, is of opinion that the order appears to have been abandoned, the court shall, upon such terms as it thinks fit, issue a notice directed to all persons (other than children) to be affected thereby, calling upon them to show cause why the order should not be discharged.

(2) The court may, in a proper case, dispense with the service of a notice issued under subsection (1) in the case of any person or persons to whom the notice is directed.

(3) An application under subsection (1) shall be heard and determined by the court for the place where payments under the order are required to be made unless the hearing of the application is adjourned upon the application of the clerk of the court, or of any person served with a notice as aforesaid and desirous of showing cause, to a court sitting at another place.

(4) Where the court hearing an application under subsection (1) is satisfied—

- (a) that during the 12 months immediately preceding the application no payment under the order has been made by or on behalf of the person against whom the order was made; and
- (b) that the person for whose benefit the order was made appears to have abandoned the order, or, where that person is a child, the person or persons, other than the child, interested in enforcing the order appears or appear to have abandoned the order; and
- (c) that either—
  - (i) all persons to whom the notice under subsection (1) was directed (not being any such person upon whom service of the notice is dispensed with under subsection (2)) fail to appear; or
  - (ii) if any of those persons appear—cause is not shown to the satisfaction of the court why the order should not be discharged;

the court shall discharge the order.

(5) Where an order is discharged under this section, it may be discharged as from any past day.

(6) The court shall entertain an application under this section to discharge an order notwithstanding that the person against whom the order was made is in default in complying therewith.

### **37 Variation of order as to place of payment**

(1) Subject to this section, so much of an order for or towards the maintenance of a person as relates to the place where payments under the order are required to be made may from time to time be varied upon application made to the court by—

- (a) any person who may make an application under section 31;<sup>10</sup> or
- (b) the clerk of the court for the place where payments under the order are required to be made.

(2) An application under subsection (1) shall specify the place where it is desired that future payments under the order be made.

(3) The court, on an application under subsection (1), may—

- (a) determine the application without requiring the attendance of any person, including the applicant; or
- (b) upon such terms as the court thinks fit—issue a notice directed to all persons to be affected thereby, calling upon them to show cause why the order should not be so varied.

(4) An application under subsection (1) shall—

- (a) where the court determines the application without requiring the attendance of any person—be determined by the court for the place where payments under the order are required to be made;
- (b) where the court issues a notice under subsection (3)(b)—be heard by the court for the place where payments under the order are required to be made unless—
  - (i) the applicant and every person to whom a notice referred to in subsection (3)(b) is directed consent to the hearing of the application by a court sitting at another place; or

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<sup>10</sup> Section 31 (Court may discharge, suspend, or vary order)

- (ii) the hearing of the application is adjourned, upon the application of the applicant or any such person, to a court sitting at another place.

(5) Where the court is satisfied that the order can be more conveniently enforced at the place specified pursuant to subsection (2), the court may vary the order by directing that payments under the order shall, from a date specified by the court, be made to the clerk of the court for the place specified as aforesaid in the application, which place shall, from the date so specified and until the order is further varied under this section, be for all the purposes of this Act the place where payments under the order are required to be made.

(6) Where an order is varied under this section, the clerk of the court that varied the order shall send to the clerk of the court for the place where payments under the order are required, pursuant to the order of variation, to be made—

- (a) all records in the clerk's office relating to the order; and
- (b) a copy, certified as a true copy by the clerk of the court that varied the order, of the order of variation;

and the clerk of the court for the place where payments under the order are required, pursuant to the order of variation, to be made shall thereupon be the officer ordinarily having the custody of the records relating to the order.

### *Division 5—Procedural*

## **38 Orders to direct mode of payment**

An order made by a court under this part shall direct that—

- (a) the moneys payable under the order be paid to the clerk of the court for the place specified in the order; and
- (b) the moneys payable under the order for or towards the maintenance of a person be paid, except where otherwise provided in this part, weekly, monthly, or otherwise periodically; and
- (c) the moneys payable under the order, other than moneys referred to in paragraph (b), be paid in one sum or by instalments or partly in one sum and partly by instalments; and

- (d) in any case where payments are to be made weekly, monthly, or otherwise periodically or by instalments—the payments shall commence on a date specified in the order, which date may, subject to this Act, be a past or future date.

### **39 Forwarding of orders to other courts**

Where an order referred to in section 38 directs that payments under the order made to the clerk of the court for a place other than the place where the order is made, the clerk of the court that made the order shall transmit to the clerk of the court for the place where payments under the order are required, pursuant to the order, to be made—

- (a) the complaint and record of the proceedings thereon; and
- (b) a copy, certified as a true copy by the clerk of the court that made the order, of the order;

and, for all the purposes of this Act, every such order shall thereupon be deemed to have been made by the court for the place where payments under the order are required to be made and the clerk of that court shall be the officer ordinarily having the custody of the records of those proceedings.

### **40 Regulations under this part**

Without limiting the generality of section 139,<sup>11</sup> the Governor in Council may, from time to time, make regulations, not inconsistent with this Act, prescribing and regulating—

- (a) the procedure of Magistrates Courts in and in relation to proceedings under this part; and
- (b) the duties of the clerk of the court under this part; and
- (c) the accounts, records and books to be kept by the clerk of the court for the purposes of this part, and the method of keeping those accounts, records and books; and
- (d) the fees, costs and charges that may be charged, awarded and made under this part; and
- (e) the forms to be used under this part; and

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<sup>11</sup> Section 139 (Regulations)

- (f) generally any act, matter, or thing required or necessary or convenient to be prescribed or regulated for giving effect to this part.

## **PART 3—ENFORCEMENT OF ORDERS MADE IN QUEENSLAND**

### *Division 1—Enforcement by registration of certificate of arrears, or sale of goods*

#### **41 Interpretation**

In this part—

“**maintenance order**” means an order made under part 2 for the payment of money, whether in one sum, by instalments, by periodical payments, or for costs, or enforceable as if so made; and, if such an order has been varied, includes the order as so varied; and includes such an order that has ceased to have effect, if any arrears are recoverable under the order.

#### **45 Registration of arrears as civil judgment**

(1) Where it is made to appear on oath to the court for the place where payments under a maintenance order (other than an order made under section 18, 19 or 20<sup>12</sup>) are required to be made that a sum of money due under the maintenance order (being an amount of not less than \$100) is unpaid, the court may, upon ex parte application made by or on behalf of the person for whose benefit the order was made and subject to section 32(4),<sup>13</sup> grant a certificate stating the amount due under the maintenance order at the date of the certificate.

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12 Section 18 (Court may order payment of funeral expenses of children), 19 (Court may order father to pay funeral expenses of mother of child) or 20 (Orders for medical and like expenses)

13 Section 32 (Effect of suspension of order)

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(2) The person for whose benefit the maintenance order was made may file the certificate or cause the certificate to be filed in a court of competent jurisdiction having jurisdiction in respect of the place where payments under the order are required to be made, or the place where the defendant resides, or where any real property of the defendant is situate, and the registrar of that court shall enter judgment for that person for the amount stated in the certificate to be due together with the fees paid for the certificate and for filing it, and entering the judgment, and shall forthwith send notice in writing of the entry of judgment to the clerk of the court that granted the certificate.

(3) Subject to subsections (4) to (7), such a judgment may be enforced in any manner in which a final judgment in an action in the court in which the judgment is entered may be enforced.

(4) Where a judgment is entered under this section, proceedings to enforce the judgment shall not be commenced—

- (a) unless an affidavit has been filed stating—
  - (i) that no proceedings are pending in any other court for the recovery of any of the arrears of maintenance included in the amount of the judgment; and
  - (ii) that the maintenance order has not been discharged, suspended, varied, or annulled since the date the certificate to which the judgment relates in such a way as to affect any of the arrears of maintenance included in the amount of the judgment; and
- (b) except within a period of 14 days after the date on which the affidavit was sworn.

(5) One application may be made under subsection (1) in respect of 2 or more maintenance orders if—

- (a) the applicant is entitled to receive the payments under each of the maintenance orders; and
- (b) the defendant in each of the proceedings in which those maintenance orders were made was the same person.

(6) Where 1 application is made in accordance with subsection (5) 1 certificate may be granted in respect of the total amount due under all of the maintenance orders in respect of which the application was made.

(7) All such rules of court as may be deemed necessary or convenient for regulating the practice and procedure of the Supreme Court, of the District

Court and of the Magistrates Court, to be observed in connection with the filing of certificates and entering up of judgments thereon in pursuance of this section, and the fees to be paid, may be made, and the provisions of the *Supreme Court Act 1995*, the *District Courts Act 1958*<sup>14</sup> and the *Magistrates Courts Act 1921*, shall, as the case may require, apply and extend in respect of such rules of court.

#### **47 Orders for seizure of goods, chattels, securities, rents etc.**

(1) Upon the making or during the operation of a maintenance order, the court may, upon ex parte application made by or on behalf of the person for whose benefit the order was made, by order authorise and direct a person named in the order during the operation of the order and from time to time, if necessary, to seize and sell to the extent necessary to satisfy the order, any goods, chattels and securities belonging to the defendant or to demand and receive to that extent any annuity, rents and other income (not being earnings within the meaning of division 2) payable to the defendant or any moneys credited to the defendant in any financial institution account or other like account and to apply the proceeds of any such sale or any moneys so received, after deducting therefrom the person's costs and charges, towards the payment of the amounts required to be paid under the maintenance order.

(2) Any person so authorised and directed shall have full power and authority to do all acts and things, including the execution of transfers, receipts, discharges and acquittances, necessary to give full effect to the seizures, sales, demands and receipts so authorised and directed.

(3) Any person who fails to comply with a demand made upon him or her under subsection (1) by a person authorised and directed by the court in that behalf shall be guilty of an offence against this Act.

Maximum penalty—\$200 or 6 months imprisonment.

(4) One application may be made under subsection (1) in respect of 2 or more maintenance orders, if—

- (a) the applicant is entitled to receive the payments under each of the maintenance orders; and
- (b) the defendant in each of the proceedings in which those maintenance orders were made was the same person.

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14 Now see *District Court of Queensland Act 1967*, section 133.



(5) Where 1 application is made in accordance with subsection (4), 1 order may be made under subsection (1) in respect of all the maintenance orders in respect of which the application was made.

(6) Where an order is made under this section, the applicant shall forthwith deliver a copy of the order to the clerk of the court.

### *Division 2—Enforcement by attachment of earnings*

#### **48 Interpretation**

(1) In this division—

**“attachment of earnings order”** means an order under section 49(3) 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 the 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 fee, bonus, commission, overtime pay or other emolument payable in addition to wages or salary); or
- (b) by way of pension, including—
  - (i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; and
  - (ii) periodical payments in respect of or by way of compensation for the loss, abolition, or relinquishment, or any diminution in the emoluments, of any office or employment;

but does not include any pension payable to the defendant under the *Social Security Act 1991* (Cwlth), the *Repatriation Act 1920* (Cwlth) or the *Veterans’ Entitlements Act 1986* (Cwlth).

**“employer”**, in relation to a defendant, means a person (including the Crown in right of the State, a Minister in right of the State and any statutory authority representing the Crown in right of the State) by

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whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the defendant.

**“maintenance order”** means an order made under section 10, 11, 12, 13, 14, 15 or 17,<sup>15</sup> or enforceable as if so made, and, if such an order has been varied, includes the order as so varied, and includes—

- (a) an order made pursuant to section 21<sup>16</sup> where the nominal amount directed by the order to be paid has been varied under section 31; and
- (b) any of the abovementioned orders that has ceased to have effect, if any arrears are recoverable under the order; and
- (c) an order for the payment of costs in any proceedings in which any of the abovementioned orders was made.

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

- (a) any sum deducted from those earnings under the *Income Tax Assessment Act 1936* (Cwlth), part 6, division 2; and
- (b) any sum deducted from those earnings that would be an allowable deduction—
  - (i) under section 82H of that Act other than life insurance premiums, not being life insurance premiums payable in respect of superannuation; or
  - (ii) under section 82HA of that Act.

**“normal deduction”**, in relation to an attachment of earnings order and in relation to a payday, means an amount representing a payment at the normal deduction rate specified in the order in respect of the period between that payday and either the last preceding payday, or, where there is no last preceding payday, the date on which the employer became, or last became, the defendant’s employer.

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15 Section 10 (Court may order husband to maintain wife), 11 (Court may order father to maintain children), 12 (Court may order mother to maintain children), 13 (Court may order wife to maintain husband), 14 (Court may order unmarried father to maintain child), 15 (Court may order unmarried mother to maintain child) or 17 (Court may order future maintenance of child upon complaint for preliminary expenses)

16 Section 21 (Nominal orders)

**“payday”** 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 payday, means the amount representing a payment at the protected earnings rate specified in the order in respect of the period between that payday and either the last preceding payday, or, where there is no last preceding payday, the date on which the employer became, or last became, the defendant’s employer.

(2) In this division—

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

#### **49 Application for attachment of earnings order**

(1) A person entitled to receive payments under a maintenance order may apply in writing—

- (a) where the name of an employer is specified in the application—either to the court for the place where payments under the order are required to be made or to the court for the place where the employer’s place of business is situate; or
- (b) where the name of an employer is not so specified—to the court for the place where payments under the order are required to be made;

for an attachment of earnings order.

(2) An application under subsection (1) 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—

- (a) 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—
  - (i) in the case of an order for weekly payments—4 payments;
  - or

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- (ii) in any other case—2 payments; or
- (b) that the defendant has persistently failed to comply with the requirements of the order;

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 section 50.

**(3A)** Where an application for an attachment of earnings order is made to a court other than the court for the place where payments under the maintenance order are required to be made, the clerk of the court to which the application is made shall, for the purpose of enabling that court to ascertain the matters set out in subsection (3)(a), obtain from the clerk of the court for the place where payments under the maintenance order are required to be made a certificate referred to in section 124.<sup>17</sup>

**(4)** The court shall not make an attachment of earnings order if it appears to the court, in a case to which subsection (3)(a) applies, that the failure of the defendant to make payments under the maintenance order was not due to the defendant's wilful refusal or culpable neglect.

**(5)** An attachment of earnings order shall specify either generally or in relation to any particular payday or paydays 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.

**(6)** An attachment of earnings order may specify a higher normal deduction rate to apply for a specified number of paydays after the order comes into force and a lower normal deduction rate to apply to subsequent paydays.

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<sup>17</sup> Section 124 (Certificate of clerk of the court)

(7) An attachment of earnings order shall also specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the defendant and of any person for whom the defendant 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.

(8) An attachment of earnings order shall provide that payments under the order are to be made to the clerk of the court specified in the order.

(9) 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.

(10) An attachment of earnings order shall be served on—

(a) the defendant; and

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

and shall not come into force until the expiration of 7 days after the day on which a copy of the order is served on the person to whom the order is directed.

(11) Where an attachment of earnings order is made by a court other than the court for the place where payments under the maintenance order are required to be made, the clerk of the court that made the attachment of earnings order shall forthwith advise accordingly the clerk of the court for the place where payments under the maintenance order are required to be made.

## **50 Employer to make payments under attachment of earnings order**

(1) An employer to whom an attachment of earnings order is directed, being an attachment of earnings order that is in force, shall, in respect of each payday, if the net earnings of the defendant exceed the sum of—

(a) the protected earnings of the defendant; and

(b) so much of any amount by which the net earnings that became payable on any previous payday were less than the protected earnings in relation to that payday as has not been made good on any other previous payday;

pay, so far as that excess permits, to the clerk of the court specified in the order—

(c) the normal deduction in relation to that payday; and

- (d) so much of the normal deduction in relation to any previous payday as was not paid on that payday and has not been paid on any other previous payday.

(2) A payment made by the employer under subsection (1) is a valid discharge to the employer as against the defendant to the extent of the amount paid.

(3) Where the clerk of the court to whom moneys are paid under an attachment of earnings order is not the clerk of the court for the place where payments under the maintenance order are required to be made, the clerk shall from time to time transmit the moneys so paid to him or her to the clerk of the court for the place where payments under the maintenance order are required to be made.

## **51 Court may make attachment of earnings order instead of other order**

(1) Where any proceedings are brought in a court to enforce a maintenance order, the court may, instead of making any other order, make an attachment of earnings order.

(2) 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.

## **52 Discharge or variation of attachment of earnings order**

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

(2) An order suspending or varying an attachment of earnings order shall be served on—

(a) the respondent to the application; and

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

and shall not come into force until the expiration of 7 days after the day on which a copy of the order is served on the person to whom the order is directed.

(3) Where an order discharging, suspending, or varying an attachment of earnings order is made by a court other than the court for the place where payments under the maintenance order are required to be made, the clerk of the court that made the order of discharge, suspension, or variation shall forthwith advise accordingly the clerk of the court for the place where payments under the maintenance order are required to be made.

### **53 Cessation of attachment of earnings order**

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

- (a) upon being discharged under section 52; or
- (b) upon the annulment or, unless the court otherwise orders under this section, upon the discharge, suspension, 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 a maintenance order that arrears under the order will remain to be recovered under the order, the court may order that the attachment of earnings order shall not cease to have effect until those arrears have been paid.

(3) Where it appears to the court suspending a maintenance order that arrears under the order will remain to be paid and those arrears relate to a period before the day as from which the suspension took or takes effect, the court may—

- (a) order that the attachment of earnings order shall not cease to have effect until those arrears have been paid; or
- (b) order that the attachment of earnings order be suspended for the period of the suspension of the maintenance order; or
- (c) order that the attachment of earnings order be varied and continue to have effect as varied until those arrears have been paid.

(4) Where a court varies a maintenance order the court may order an attachment of earnings order to be varied and to continue to have effect as so varied.

(5) Where—

- (a) an attachment of earnings order ceases to have effect by virtue of an order made by a court other than the court that made the attachment of earnings order; or
- (b) an order is made pursuant to subsection (2), (3) or (4) by a court other than the court that made the attachment of earnings order;

the clerk of the firstmentioned court shall forthwith advise accordingly the clerk of the court that made the attachment of earnings order.

**(6)** Where—

- (a) an attachment of earnings order ceases to have effect; or
- (b) an order is made pursuant to subsection (2), (3) or (4);

the clerk of the court that made the attachment of earnings order shall forthwith give notice accordingly to the person to whom the attachment of earnings order was directed.

**(7)** 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 the person treating the order as still in force at any time before the expiration of 7 days after the date on which the notice required by subsection (6) is served on the person.

#### **54 Compliance with attachment of earnings order**

An attachment of earnings order made under this division 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 Act or law contained, but subject to this division, comply with the attachment of earnings order.

#### **55 Where 2 or more attachment of earnings orders are in force**

**(1)** Where, on any occasion on which earnings become payable to a defendant, there are in force in relation to those earnings 2 or more orders, 1 or more of which is an attachment of earnings order and the other or others of which is an order or are orders of the like nature, the person to whom the orders are directed—

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



- (b) shall comply with any order as if the earnings to which that 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 that 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.

## **56 Notice to defendant of payments made**

(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 on whom an attachment of earnings order that is directed to the person is served—

- (a) is not the defendant's employer at the time when the order is served on that person; 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 clerk of the court that made the order, and shall give that notice—

- (c) where paragraph (a) applies—forthwith after service on that person of the order; or
- (d) where paragraph (b) applies—forthwith after that person ceases to be the defendant's employer.

## **57 Determination as to what payments are earnings**

(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 purposes of that order.

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

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

## **58 Service**

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

- (a) as if that order or document was a summons under the *Justices Act 1886*; or
- (b) by sending a copy thereof to the person at his or her usual or last-known place of residence or business by registered post.

## **59 Offence**

(1) Any person who fails to comply with any requirement of this division or of any attachment of earnings order under this division that is applicable to the person shall be guilty of an offence against this Act.

Maximum penalty—\$200 or 6 months imprisonment.

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

## **60 Dismissing an employee etc. by reason of the making of an attachment of earnings order**

(1) Any person who dismisses an employee or injures the employee in his or her employment, or alters the employee's position to his or her prejudice, by reason of the circumstances 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 against this Act.

Maximum penalty—\$200 or 6 months imprisonment.

(2) In any proceeding for an offence against this Act arising under subsection (1), if all the facts and circumstances constituting the offence, other than the reason for the action of the person charged with having committed the offence, are proved, the burden lies upon that person to prove that the person was not actuated by the reason alleged in the charge.

## **61 Reimbursement of wages and reinstatement**

(1) Where any person is convicted of an offence against this Act arising under section 60(1), the court by which the person is convicted may order that the employee be reimbursed any wages lost by the employee and may also direct that the employee be reinstated in his or her old position or in a similar position.

(2) Any amount ordered to be reimbursed under subsection (1) may be recovered from the person convicted as aforesaid as if it were part of the penalty to which that person is liable under section 60(1).

## **62 Application of this division**

This division shall have effect in relation to a defendant notwithstanding any Act or law that would otherwise prevent the attachment of the defendant's earnings or limit the amount capable of being attached.

## **63 Wages Attachment Acts not to apply with respect to maintenance orders**

Notwithstanding anything contained in the *Wages Attachment Act 1936*, that Act shall not apply with respect to the attachment of earnings of a defendant for the purposes of recovery of moneys due by the defendant under a maintenance order enforceable under this Act.

## **64 Payments by Crown etc.**

The provisions of this division shall have effect in relation to deductions from earnings falling to be paid by the Crown in right of the State, or by a Minister in right of the State, or a statutory authority representing the Crown in right of the State, or out of consolidated revenue, and those earnings shall be treated as falling to be paid by the chief executive or principal officer of the department, subdepartment, branch, section, office, or other body concerned, but the provisions of section 126(3)<sup>18</sup> do not apply to that chief executive or principal officer.

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18 Section 126 (Court may require defendant to state his or her employer etc.)

***Division 3—General*****65 Provision where defendant maintained wife, husband or child during any period**

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 relates to the failure to make payments during any period if it is proved that during that period the defendant adequately maintained that person.

**66 Regulations under this part**

Without limiting the generality of section 139,<sup>19</sup> the Governor in Council may, from time to time, make regulations, not inconsistent with this Act, prescribing and regulating—

- (a) the seizure and sale of goods, chattels and securities; and
- (b) the demand and receipt of annuities, rents and other income (other than earnings within the meaning of division 2); and
- (c) the procedure of Magistrates Courts in and in relation to proceedings under this part; and
- (d) the duties of the clerk of the court under this part; and
- (e) the fees, costs and charges that may be charged, awarded or made under this part; and
- (f) the forms to be used under this part; and
- (g) generally any act, matter, or thing required or necessary or convenient to be prescribed or regulated for giving effect to this part.

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<sup>19</sup> Section 139 (Regulations)

## PART 4—RECIPROCAL ENFORCEMENT OF ORDERS

### *Division 1—Interpretation and administration*

#### **67 Interpretation**

(1) In this part—

**“another Australian State”** means an Australian State other than Queensland.

**“Australian State”** means a State or Territory.

**“certified copy”**—

- (a) in relation to a maintenance order or other order of a court (not being an order made under the *Family Law Act 1975* (Cwlth))—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; and
- (b) in relation to a maintenance order or other order made under the *Family Law Act 1975* (Cwlth)—a certificate of the order 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; and
- (c) in relation to a record of the evidence of a witness in proceedings before a court—a copy of the record certified to be a true copy by an officer of that court.

**“collector”** means—

- (a) in relation to Queensland—the collector of maintenance, the deputy collector of maintenance, or an assistant collector of maintenance appointed under this division; and
- (b) in relation to another Australian State—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 division.

**“collector’s certificate”** means—

*Maintenance Act 1965*

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- (a) in relation to a Queensland order, or an overseas order enforceable in Queensland—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—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 part.

**“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 section 98<sup>20</sup> to have restricted reciprocity with Queensland.

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

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

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<sup>20</sup> Section 98 (Governor in Council may declare reciprocating countries)

a law of that Australian State or under a law of the Commonwealth.

**“justice”**, in relation to the exercise or discharge of any power or function, means a justice of the peace authorised to exercise or discharge that power or function in accordance with the law of the place where it is exercised or discharged.

**“maintenance order”** means an order (whether made before or after the commencement of this Act and whether made in Queensland or elsewhere) being—

- (a) an order whereby a person is ordered to pay money, whether in 1 sum or by instalments, or to pay sums of money periodically, for or towards the maintenance of another person or by way of recoupment of moneys spent in, or provided for the maintenance of another person; or
- (b) an order made under, or of a kind similar to an order made under section 16, 18, 19 or 20;<sup>21</sup>

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

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

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

- (a) in the case where in a proclamation under section 98 declaring that country to be a reciprocating country it is also declared that maintenance orders made in that country shall be enforceable in Queensland in accordance with the provisions of division 3 as on and 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 by a court of competent jurisdiction whether before or after the making of the proclamation.

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21 Section 16 (Court may order payment of preliminary expenses etc.), 18 (Court may order payment of funeral expenses of children), 19 (Court may order father to pay funeral expenses of mother of child) or 20 (Orders for medical and like expenses)

**“Queensland order”** means a maintenance order—

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

**“reciprocating country”** means a country that is for the time being declared by a proclamation in force under section 98 to be a reciprocating country for the purposes of this part.

(2) A reference in this part to a certified copy of an order shall, where the order has been varied or otherwise affected by a provisional order of 1 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 a reference to both a certified copy of the provisional order and a certified copy of the confirming order.

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

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

## **68 Collector of maintenance**

(1) A collector of maintenance, deputy collector of maintenance, assistant collectors of maintenance and other officers necessary for this part are to be employed under the *Public Service Act 1996*.

(2) Upon the commencement of this part—

- (a) the clerk of the court, Brisbane, shall be the collector of maintenance; and
- (b) the assistant clerk of the court, Brisbane, shall be the deputy collector of maintenance; and
- (c) every other clerk of the court in Queensland shall be an assistant collector of maintenance;



each by virtue of the respective office and without further or other appointment of any kind.

(3) The deputy collector of maintenance and every assistant collector of maintenance shall have and may exercise, subject to any directions of the collector of maintenance and to the regulations made under this Act, all the powers and functions of the collector of maintenance.

## **69 Powers etc. of the collector**

(1) The collector has power to do all things necessary or convenient to be done for the enforcement in Queensland of maintenance orders that are enforceable in Queensland by virtue of this part.

(2) The collector shall—

- (a) receive moneys payable to the collector pursuant to orders enforceable under this part and moneys remitted to the collector by collectors for other States and authorities in reciprocating countries and give receipts for moneys so received; and
- (b) keep proper accounts of all moneys received, remitted or paid by the collector; and
- (c) remit to collectors for other Australian States and to the proper authorities in reciprocating countries moneys received by the collector in respect of maintenance orders made for the benefit of persons residing in those other 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 the collector to the persons entitled thereto;

and has such other powers and functions as are specified in this part or are prescribed.

(3) The collector may by instrument in writing delegate to an officer of the department any of the collector's powers and functions under this part in respect of any case or class of cases specified in the instrument, and that officer or member may act in accordance with the delegation.

(4) The provisions of section 70 shall apply with respect to acts done by any delegate of the collector in pursuance of such delegation.

**70 Protection of collector**

The provisions of the *Justices Act 1886*, part 10<sup>22</sup> relating to the protection of a justice with respect to any act done by the justice shall, with such modifications as are necessary, extend and apply to and with respect to acts done by the collector, or by the deputy collector, or an assistant collector, or any person authorised by the collector, deputy collector, or an assistant collector in pursuance of this Act.

**71 Appearance of collector etc.**

In all proceedings under this part the collector, deputy collector, every assistant collector, and any person authorised by the collector, deputy collector, or an assistant collector, is entitled to appear, to be heard, to give evidence, and to call, examine and cross-examine witnesses.

*Division 2—Interstate maintenance***72 Transmission of Queensland orders for enforcement in other States**

(1) Where a Queensland order is presently enforceable in Queensland under this Act but is not presently enforceable 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) 3 certified copies of the order; and
- (b) a collector's certificate relating to the order; and
- (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 Queensland order is, under the law of another Australian State, enforceable in that other Australian State; and

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22 *Justices Act 1886*, part 10 (Miscellaneous)

- (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;

the collector 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, be deemed to cease to be enforceable in that other Australian State.

(3) The fact that a Queensland 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) does not prevent a further request under subsection (1) that the order be again made enforceable in that other Australian State.

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

- (a) the order ceases to be enforceable in Queensland; and
- (b) the order remains unenforceable in Queensland 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 Queensland and not executed ceases to have effect.

### **73 Enforcement in Queensland of orders made in other Australian States**

(1) Where the collector receives from a collector for another Australian State—

- (a) 3 certified copies of an interstate order made in that State; and
- (b) a collector's certificate relating to the order; and
- (c) a request in writing that the order be made enforceable in Queensland;

the collector shall, if it appears to the collector that there are reasonable grounds for believing that the defendant is resident in, or proceeding to, Queensland, send the documents to the clerk of such court in Queensland

as the collector deems appropriate, with a request that the order be registered in that court.

(2) Where a request is so made the clerk of the court shall (whether or not the order is of such a kind as could be made in Queensland) register the order by filing in the court a certified copy of the order and the collector's certificate and noting the fact and date of the registration on that certified copy, and shall forthwith notify the collector of the fact of the registration.

(3) An interstate order so registered is, until the registration is cancelled, enforceable in Queensland, 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 interstate order—

- (a) the collector shall notify the collector for the other Australian State accordingly; and
- (b) the clerk of the court in which the order is registered shall cause a certified copy of the order to be served upon the defendant, together with a notice of the registration of the order in Queensland—
  - (i) specifying the amount (if any) of the arrears due under the order; and
  - (ii) stating that payments under the order are to be made to the clerk of the court for the place where the order is so registered; and
  - (iii) giving an address at which such payments may be made; and
- (c) all moneys due or becoming due under the order are payable to the clerk of the court for the place where the order is so registered.

(5) Where—

- (a) an interstate order is registered in Queensland 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 Queensland;

the collector shall request the clerk of the court in which the order is registered to cancel the registration of the order, and the clerk of the court

shall thereupon cancel the registration by noting the fact and date of the cancellation on the certified copy of the order filed in the court.

(6) Where the registration of an interstate order is so cancelled—

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

#### **74 Collector to notify original State when defendant leaves Queensland**

Where an interstate order has been registered in Queensland under this division, and the collector has reasonable grounds for believing that the defendant is no longer resident in Queensland, but is resident in, or proceeding to, another Australian State, the collector shall forthwith notify the collector in the State in which the order was made of the fact and shall give the collector such information as the collector possesses concerning the whereabouts and intended movements of the defendant.

#### **75 Provisional variation etc. in Queensland of interstate orders**

(1) Where an interstate order made by a court of summary jurisdiction, or by a magistrate or justices, is enforceable in Queensland by virtue of this division, an application in writing in accordance with the prescribed form may be made by or on behalf of the complainant or the defendant to the court in Queensland for the place where payments under the order are required to be made 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 Queensland order made by a court of summary jurisdiction is enforceable in another Australian State by virtue of provisions corresponding with this division, an application in writing in accordance with the prescribed form may be made by or on behalf of the complainant or the defendant to a court in Queensland that would have had jurisdiction to make an order under section 31<sup>23</sup> in relation to the Queensland order had

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23 Section 31 (Court may discharge, suspend, or vary order)

the Queensland order not been made enforceable in that other Australian State, for an order discharging, suspending, varying or reviving the Queensland order, and that court has jurisdiction to hear and determine the application.

(3) The applicant shall cause notice of an application under this section to be served, not less than 14 days before the hearing of the application, upon the collector personally or by post and the collector shall, forthwith upon receipt by the collector of the notice, notify the collector for the Australian State in which the interstate order was made, or the Queensland order is enforceable, as the case may be, accordingly.

(4) While a Queensland 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 Queensland except in accordance with this section.

## **76 Discharge, suspension or variation of order made in absence of defendant**

Where—

- (a) an application is made under section 75(1) by a defendant for the discharge, suspension, or variation of an interstate order; and
- (b) the defendant neither appeared at the hearing of the complaint upon which the original interstate order was made, nor was served personally in the State or Territory in which that order was made with a summons issued pursuant to the complaint upon which that order was made; and
- (c) the application is made within 6 months after service on the defendant of notice of the registration of the order in Queensland, or within such further period of time as the court may, in a particular case, allow;

the defendant may, in addition to raising any matter that may be raised on an application under section 31, raise any ground of opposition that the defendant could have raised in the original proceedings.

## **77 Law to be applied**

In an application under section 75, 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.

**78 Order of variation etc. to be provisional only**

(1) Except as provided in subsection (2), an order made on an application under section 75 discharging, suspending, varying, or reviving a maintenance order shall be provisional only and shall have no effect unless and until confirmed (either with or without modification) by a competent court of the Australian State in which the maintenance order was made or is enforceable, and shall be expressed accordingly.

(2) Where the respondent to the application has been personally served in Queensland 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 has effect forthwith in Queensland.

(3) Where an order made on an application under section 75 is expressed to be provisional, the clerk of the court that made the provisional order shall send a certified copy of the order, together with the depositions of the witnesses, to the collector for transmission to the collector for the other Australian State.

(4) Where an order referred to in subsection (3) has been confirmed (whether with or without modification) by a competent court of the other Australian State, the order has effect in Queensland as so confirmed.

**79 Procedure where provisional order remitted by court of other Australian State**

(1) Where a provisional order made under sections 72 to 78 is remitted by a court in another Australian State to the court in Queensland that made the provisional order for the taking of further evidence, the court in Queensland, or, if requested by that court, another court of similar jurisdiction in Queensland, shall, after notice has been given to the collector and to such persons and in such manner as the court thinks fit, proceed to take the evidence.

(2) Where the further evidence is taken by a court in Queensland other than the court that made the provisional order, the firstmentioned court shall cause the depositions of the witnesses to be transmitted to the court that made the provisional order.

(3) When the further evidence is taken by the court in Queensland that made the provisional order or is received by that court from another court in Queensland that took the further evidence, the firstmentioned court shall cause the depositions of the witnesses to be sent to the court in the other Australian State.

(4) If, when the further evidence has been taken, it appears to the court that made the provisional order that the order ought not to have been made, the court may rescind the order and may, if it thinks fit, make a fresh provisional order on the application under section 75.

## **80 Confirmation in Queensland of provisional orders made in other Australian States**

(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 Queensland order made by a court of summary jurisdiction and enforceable in that Australian State; or
- (ii) a provisional order made by a court in another Australian State discharging, suspending, varying, or reviving an interstate order made by a court of summary jurisdiction in that other Australian State and enforceable in Queensland by virtue of this division; and

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

the collector shall, on behalf of the party on whose application the provisional order was made in the other Australian State, make or cause to be made an application—

- (c) in the case of an order referred to in paragraph (a)(i)—to a court in Queensland that would have had jurisdiction to make an order under section 31 in relation to the Queensland order had the Queensland order not been made enforceable in that other Australian State; or
- (d) in the case of an order referred to in paragraph (a)(ii)—to the court in Queensland for the place where payments under the order are required to be made;

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 7 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); or
- (b) discharge the provisional order; or
- (c) adjourn the proceedings and remit the provisional order to the court that made it with a request that that court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed has effect in Queensland as if it were an order to the like effect made by the court in Queensland.

## **81 Proceedings for enforcement**

(1) Where an interstate order is enforceable in Queensland by virtue of this division—

- (a) all proceedings may be taken for the enforcement of the order; and
- (b) the provisions of this Act shall, so far as they are applicable and with such modifications as are necessary, apply to and in relation to proceedings for the enforcement of the order;

as if it were a maintenance order made under part 2 by the court for the place in Queensland where payments under the order are required to be made.

(2) The collector may take or cause to be taken any proceedings that are authorised by subsection (1).

(3) Where proceedings are so taken or caused to be taken by the collector, the court shall, unless it is satisfied by evidence to the contrary, presume that the enforcement of the order (being an order of the kind referred to in section 67(1),<sup>24</sup> definition “maintenance order”, paragraph (a)) is required for the actual support of the person for whose benefit the order was made and that no moneys have been paid under the order since its registration in Queensland other than any moneys so paid to the clerk of the court for the place in Queensland where the order is registered.

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24 Section 67 (Interpretation)

***Division 3—Overseas maintenance*****82 Transmission of maintenance orders made in Queensland for enforcement in reciprocating countries**

(1) Where a Queensland order is presently enforceable in Queensland under this Act but is not presently enforceable 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 the chief executive—

- (a) 3 certified copies of the Queensland order; and
- (b) a collector's certificate relating to the Queensland order; and
- (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 chief executive should seek to have the Queensland order made enforceable in that reciprocating country;

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

(2) This section does not apply in relation to an order under section 14, 16, 17, 18, 19 or 20,<sup>25</sup> or under any corresponding previous enactment, where the order relates to a child whose parents were not married to each other at the time of its conception and have not since married each other or to the mother of such a child unless the defendant appeared in the proceedings in which his paternity of the child was held to be established, or was duly served with a summons to appear in those proceedings, or consented to the making of the order in those proceedings.

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25 Section 14 (Court may order unmarried father to maintain child), 16 (Court may order payment of preliminary expenses), 17 (Court may order future maintenance of child upon complaint for preliminary expenses), 18 (Court may order payment of funeral expenses of children), 19 (Court may order father to pay funeral expenses of mother and child) or 20 (Orders for medical and like expenses)

### **83 Power to make provisional order against person resident in reciprocating country**

(1) Upon application made in writing in accordance with the prescribed form to a court in Queensland for a maintenance order of a kind that may be made under part 2, division 1, subdivision 2 or 3<sup>26</sup> against any person, and upon proof that that person 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 under either of those subdivisions if a summons had been duly served on that person and that person had failed to appear at the hearing.

(2) An order made under subsection (1) 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.

(3) Where a court makes an order under subsection (1), the clerk of the court shall send to the collector—

- (a) the depositions of the witnesses; and
- (b) 3 certified copies of the order; and
- (c) a statement of the grounds on which the making of the order could have been opposed if the defendant had appeared at the hearing.

(4) Upon receiving the documents, the collector shall send the documents, together with any information and material the collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant to the chief executive for transmission to the reciprocating country referred to in subsection (1).

(5) Where any such provisional order has come before a court in a reciprocating country for confirmation and the order has by that court been remitted to the court in Queensland that made the order for the purpose of taking further evidence, the court in Queensland or, if requested by that court, another court of similar jurisdiction in Queensland, shall, after notice

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26 Part 2 (Maintenance and other orders), division 1 (Jurisdiction and powers of Magistrates Courts), subdivision 2 (Orders against husbands for maintenance of wives, and against parents for maintenance of children) or subdivision 3 (Orders against wives for maintenance of husbands)

has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence.

(6) Where the further evidence is taken by a court in Queensland other than the court that made the provisional order, the firstmentioned court shall cause the depositions of the witnesses to be transmitted to the court that made the provisional order.

(7) When the further evidence is taken by the court in Queensland that made the provisional order or is received by that court from another court in Queensland that took the further evidence, the firstmentioned court shall cause the depositions of the witnesses to be transmitted to the court in the reciprocating country.

(8) If, when the further evidence has been taken, it appears to the court that made the provisional order that the order ought not to have been made, the court may rescind the order and may, if it thinks fit, make a fresh provisional order on the application under subsection (1).

(9) Where a court in a reciprocating country in which the defendant is for the time being resident confirms (whether with or without modification) a provisional order made under this section, the order has effect in Queensland as so confirmed.

(10) Where a court in a reciprocating country confirms (whether 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 provisions of part 2, division 3, subdivision 1<sup>27</sup> shall, so far as the same are applicable, apply to and with respect to any order made under this section, or under a corresponding provision of the repealed Acts.

## **84 Cancellation of registration**

(1) Where—

- (a) a Queensland 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,

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<sup>27</sup> Part 2 (Maintenance and other orders), division 3 (General), subdivision 1 (Commencement and duration of orders)

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 chief executive may, at the request of the collector, send, or cause to be sent, to an appropriate authority in that reciprocating country a request in writing that the order be made no longer enforceable in that reciprocating country and, for the purposes of this Act, the order shall, upon the sending of the request of the chief executive, be deemed to cease to be enforceable in that reciprocating country.

(2) The fact that a Queensland order has ceased to be enforceable in a reciprocating country by reason of action taken in that reciprocating country as a result of a request made by the chief executive under subsection (1) does not prevent a further request under section 82 that the order be again made enforceable in that reciprocating country.

(3) Where a Queensland order is, in pursuance of a request made by the chief executive under section 82, made enforceable in a reciprocating country—

- (a) the order ceases to be enforceable in Queensland and remains unenforceable in Queensland so long as it is enforceable in that reciprocating country; and
- (b) every warrant or other process under this Act arising out of the order previously issued in Queensland and not executed ceases to have effect.

## **85 Registration of overseas order**

(1) Where the chief executive receives—

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

the chief executive shall, if it appears to the chief executive that there are reasonable grounds for believing that the defendant is resident in, or

proceeding to, Queensland, send the documents received by the chief executive to the collector.

(2) In the case of an overseas order in the nature of an affiliation order, or an overseas order consequent upon such an order, the chief executive shall not send the documents relating to the order to the collector if it appears to the chief executive from those documents that the defendant did not appear in the proceedings on which the order was made or consent to the making of the order.

(3) In the case of an overseas order originating in a country having restricted reciprocity, the chief executive shall not send the documents relating to the order to the collector unless the chief executive is satisfied that the order is a maintenance order of such a kind as can be made under part 2.

(4) Where the collector receives from the chief executive the documents referred to in subsection (1), the collector shall send the documents to the clerk of such court in Queensland as the collector deems appropriate, with a request that the order be registered in that court.

(5) Where a request is so made, the clerk of the court shall register the overseas order by filing in the court a certified copy of the order and the certificate relating thereto and noting the fact and date of the registration on that certified copy, and shall forthwith notify the collector of the fact of the registration.

(6) An overseas order so registered is, until the registration is cancelled, enforceable in Queensland, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.

(7) Upon registration of an overseas order—

- (a) the collector shall notify an officer of the court or other authority in the reciprocating country accordingly; and
- (b) the clerk of the court in which the order is registered shall cause a certified copy of the order to be served upon the defendant, together with a notice of the registration of the order in Queensland—
  - (i) specifying the amount (if any) of the arrears due under the order; and

- (ii) stating that payments under the order are to be made to the clerk of the court for the place where the order is so registered; and
  - (iii) giving an address at which such payments may be made; and
- (c) all moneys due or becoming due under the order are payable to the clerk of the court for the place where the order is so registered.

## **86 Confirmation of provisional orders made overseas**

### **(1) Where—**

- (a) an overseas order (other than an order in the nature of an affiliation order, or an order consequent upon such an order) has no effect under the law of the reciprocating country in which it is made unless and until confirmed by a court outside that reciprocating country (whether or not it appears from the order that it may be confirmed by a court in Queensland); and
- (b) a certified copy of the order and the depositions of the witnesses in the proceedings in which the order is 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 chief executive; and
- (c) it appears to the chief executive that—
  - (i) there are reasonable grounds for believing that the defendant is resident in, or proceeding to, Queensland; and
  - (ii) the order will have effect under the law of the reciprocating country if it is confirmed by a court in Queensland;

the chief executive shall send the documents received by the chief executive to the collector.

(2) In the case of a provisional order made in a country having restricted reciprocity, the chief executive shall not send the documents relating to the order to the collector unless the chief executive is satisfied that the order is of such a kind as could be made (otherwise than as a provisional order) under part 2.<sup>28</sup>

(3) Where the collector receives from the chief executive the documents referred to in subsection (1) the collector shall send the documents to the clerk of such court in Queensland as the collector deems appropriate.

(4) Upon receipt of the documents by the clerk of the court, a summons may be issued by any justice calling upon the defendant to appear before the court to show cause why the provisional overseas order should not be confirmed.

(5) At the hearing it shall be open to the defendant to raise any ground of opposition that the defendant could have raised in the original proceedings or any ground of opposition that the defendant could have raised had the proceedings on which the provisional overseas order was made been heard in Queensland, and the statement referred to in subsection (1) shall be conclusive evidence that the grounds referred to in that statement are the grounds of opposition that could have been raised in the original proceedings.

(6) If the defendant, having been served in Queensland 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) 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.

(7) Where a provisional overseas order is confirmed under this section (whether with or without modification), the order as so confirmed has effect in Queensland as if it were an order to the like effect made by the court in Queensland.

(8) 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.

(9) Where the court confirms a provisional overseas order (whether with or without modification) the court shall direct that the moneys payable under the order be paid to the clerk of the court for the place specified in



the confirming order, and the provisions of sections 38 and 39<sup>29</sup> shall, where necessary, and with any necessary modifications, apply.

### **87 Order enforceable in Queensland may be sent to another Australian State**

(1) Where an overseas order is enforceable in Queensland under this division, and it appears to the collector that there are reasonable grounds for believing that the defendant has ceased to reside in Queensland and is resident in, or proceeding to, another Australian State, the collector may send to the collector for that Australian State—

- (a) 3 certified copies of the overseas order; and
- (b) a collector's certificate relating to the order; and
- (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 the collector does so, shall forthwith notify an appropriate officer in the reciprocating country of the fact that the collector has so sent the documents.

(2) Where a request is made under subsection (1)—

- (a) the order ceases to be enforceable in Queensland, and, if the order has been registered in a court in Queensland, that registration shall be deemed to be cancelled; and
- (b) the order remains unenforceable in Queensland unless and until it is registered, or again registered, in Queensland; and
- (c) every warrant or other process under this Act arising out of the order previously issued in Queensland and not executed ceases to have effect.

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29 Sections 38 (Orders to direct mode of payment) and 39 (Forwarding of orders to other courts)

**88 Registration of overseas orders registered or confirmed in another Australian State****(1) Where—**

- (a) the collector receives from the collector for another Australian State—
  - (i) 3 certified copies of an overseas order; and
  - (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 Queensland; 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 division; 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 the collector that there are reasonable grounds for believing that the defendant is resident in, or proceeding to, Queensland, send the documents to the clerk of such court in Queensland as the collector deems appropriate, with a request that the order be registered in that court.

**(2)** Where a request is so made, the clerk of the court shall (whether or not the order is of such a kind as could be made under part 2<sup>30</sup>) register the order by filing in the court a certified copy of the order and the collector's certificate and noting the fact and date of the registration on that certified copy, and shall forthwith notify the collector of the fact of the registration.

**(3)** An overseas order so registered is, until the registration is cancelled, enforceable in Queensland, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.

**(4) Upon registration of the overseas order—**

- (a) the collector shall notify the officer of the court or other authority in the reciprocating country accordingly; and

- (b) the clerk of the court in which the order is registered shall cause a certified copy of the order to be served upon the defendant, together with a notice of the registration of the order in Queensland—
  - (i) specifying the amount (if any) of the arrears due under the order; and
  - (ii) stating that payments under the order are to be made to the clerk of the court for the place where the order is so registered; and
  - (iii) giving an address at which such payments may be made; and
- (c) all moneys due or becoming due under the order are payable to the clerk of the court for the place where the order is so registered.

### **89 Transmission of documents where defendant not in Queensland**

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

- (a) transmit the documents to the collector for that other Australian State or to an appropriate authority in that other reciprocating country together with such information and material as the chief executive possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
- (b) give to the officer of a court or other authority in the reciprocating country in which the order was made notice of the fact that the chief executive has so transmitted the documents.

### **90 Cancellation of registration**

- (1) Where—

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

the collector shall send the request to the clerk of the court for the place where payments under the order are required to be made who shall file the request and, if the order is registered under this division, cancel the registration of the order by noting the fact and date of the cancellation on the certified copy of the order filed in the court.

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

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

## **91 Proceedings for enforcement**

(1) Where an overseas order is enforceable in Queensland by virtue of this division—

- (a) all proceedings may be taken for the enforcement of the order; and
- (b) the provisions of this Act shall, so far as they are applicable and with such modifications as are necessary, apply to and in relation to proceedings for the enforcement of the order;

as if it were a maintenance order made under part 2<sup>31</sup> by the court for the place in Queensland where payments under the order are required to be made.

(2) The collector may take or cause to be taken any proceedings that are authorised by subsection (1).

(3) Where proceedings are so taken or caused to be taken by the collector, the court shall, unless it is satisfied by evidence to the contrary, presume that enforcement of the order (being an order of the kind referred to in section 67(1), definition “maintenance order”, paragraph (a)) is required for the actual support of the person for whose benefit the order was made, and that no moneys have been paid under the order since its registration or confirmation in Queensland other than moneys so paid to the clerk of the court for the place in Queensland where payments under the order are required to be made.

## **92 Variation etc. in Queensland of overseas orders**

(1) Where an overseas order is enforceable in Queensland by virtue of this division an application in writing in accordance with the prescribed form may be made by or on behalf of the defendant to the court for the place in Queensland where payments under the order are required to be made for an order discharging, suspending, or varying the overseas order, and that court has jurisdiction to hear and determine the application.

(2) Where a Queensland order made by a court of summary jurisdiction is enforceable under the law of a reciprocating country in which the defendant is for the time being resident, an application in writing in accordance with the prescribed form may be made, by or on behalf of the complainant, to a court in Queensland that would have had jurisdiction to make an order under section 31 in relation to the Queensland order had the Queensland order not been made enforceable in that reciprocating country for an order varying or (if the order has been suspended) reviving the Queensland order, and that court has jurisdiction to hear and determine the application.

(3) The applicant shall cause notice of an application under this section to be served upon the collector personally or by post not less than 14 days before the hearing of the application.

(4) The court shall, as far as practicable, hear and determine an application under this section as if it were a similar application under part 2, division 4.

## **93 Variations etc. in Queensland of overseas order made in absence of defendant**

Where—

- (a) an application is made under section 92 by a defendant for the discharge, suspension or variation of an overseas order;
- (b) the defendant neither appeared at the hearing of the complaint upon which the original overseas order was made nor was served personally in the country in which that order was made with a summons issued pursuant to the complaint upon which that order was made;
- (c) the application is made within 6 months after service on the defendant of notice of the registration of the overseas order in Queensland, or within such further period of time as the court may, in a particular case, allow;

the defendant may, in addition to raising any matter that may be raised on an application under section 31,<sup>32</sup> raise any ground of opposition that the defendant could have raised had the proceedings on which the overseas order was made been heard in Queensland.

#### **94 Law to be applied**

In an application under section 92, the law to be applied shall be the law of Queensland.

#### **95 Certain orders to be provisional only**

(1) Where the court proposes to make an order on an application under section 92 and a 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 clerk of the court shall send a certified copy of the provisional order, together with the depositions of the witnesses, to the collector who shall send the documents to an officer of the court in the reciprocating country having jurisdiction to confirm the provisional order.

(3) Where a court in the reciprocating country confirms (whether with or without modification) a provisional order made on an application under section 92, the order has effect in Queensland as so confirmed.

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<sup>32</sup> Section 31 (Court may discharge, suspend or vary order)

(4) Notwithstanding anything contained in this section, if a provisional order made on an application under section 92(2) is confirmed (whether with or without modification) by a court in a reciprocating country (not being the country specified in the order) in which the defendant is resident at the time of the confirmation, the order has effect in Queensland as so confirmed.

## **96 Procedure where provisional order remitted by court in reciprocating country**

(1) Where a provisional order made in accordance with section 95 is remitted by a court in a reciprocating country to the court in Queensland that made the provisional order for the taking of further evidence, the court in Queensland or, if requested by that court, another court of similar jurisdiction in Queensland shall, after notice has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence.

(2) Where the further evidence is taken by a court in Queensland other than the court that made the provisional order, the firstmentioned court shall cause the depositions of the witnesses to be sent to the court that made the provisional order.

(3) When the further evidence is taken by the court in Queensland that made the provisional order or is received by that court from another court in Queensland that took the further evidence, the firstmentioned court shall cause the depositions of the witnesses to be transmitted to the court in the reciprocating country.

(4) If, when the further evidence has been taken, it appears to the court that made the provisional order that the order ought not to have been made, the court may rescind the order and may, if it thinks fit, make a fresh provisional order on the application under section 92.

## **97 Confirmation in Queensland of provisional orders of variations etc. made in reciprocating countries**

(1) Where the collector receives—

(a) a certified copy of—

(i) a provisional order made by a court in a reciprocating country discharging, suspending, varying, or reviving a

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Queensland order made by a court of summary jurisdiction and enforceable in that reciprocating country; or

- (ii) a provisional order made by a court in a reciprocating country discharging, suspending, varying, or reviving an overseas order made in that reciprocating country and enforceable in Queensland by virtue of this division; and
- (b) the depositions of the witnesses who gave evidence at the hearing of the application upon which the provisional order was made;

the collector shall, on behalf of the party on whose application the provisional order was made in the reciprocating country, make or cause to be made an application—

- (c) in the case of an order referred to in paragraph (a)(i)—to a court in Queensland that would have had jurisdiction to make an order under section 31 in relation to the Queensland order had the Queensland order not been made enforceable in that reciprocating country; or
- (d) in the case of an order referred to in paragraph (a)(ii)—to the court in Queensland for the place where payments under the order are required to be made;

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 7 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); or
- (b) discharge the provisional order; or
- (c) adjourn the proceedings and remit the provisional order to the court that made it with a request that that court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this section (whether with or without modification) the order as so confirmed has effect in Queensland as if it were an order to the like effect made by the court in Queensland.



**98 Governor in Council may declare reciprocating countries**

(1) Where the Governor in Council is satisfied that the law of any country makes provision for the enforcement in that country of maintenance orders made in another country, and that under that law Queensland orders may be made enforceable in that country, the Governor in Council may, by proclamation, declare that country to be a reciprocating country for the purposes of this division.

(2) If it appears to the Governor in Council that the jurisdiction of the courts of a country specified, or to be specified, in a proclamation under subsection (1) to make maintenance orders extends to the making of orders that are not of the same kind as orders that may be made in Queensland under part 2, the Governor in Council may, by the same or a subsequent proclamation, declare that that country has restricted reciprocity with Queensland.

(3) In a proclamation made under subsection (1) or (2) the Governor in Council 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 Queensland in accordance with the provisions of this division.

(4) The Governor in Council may, by the like proclamation, revoke or vary or further vary any proclamation made under this section.

(5) Where a country that has been a reciprocating country ceases to be a reciprocating country—

- (a) a maintenance order made in that country and enforceable in Queensland by virtue of this division ceases to be so enforceable; and
- (b) every warrant or other process under this Act arising out of any such order previously issued in Queensland and not executed ceases to have effect;

but this subsection does not affect the validity of anything done under this Act for the enforcement of a maintenance order while that country was a reciprocating country.

(6) Within 1 month after a proclamation is made under subsection (1), (2) or (4) the chief executive 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 and indicating which of those countries are countries having restricted reciprocity and where a date

has been specified pursuant to subsection (3) with respect to any such country indicating that date.

(7) Production of a copy of the gazette containing such a list is 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.

#### *Division 4—General*

### **99 Transfer of order to another court**

(1) Where an interstate order or an overseas order is enforceable in Queensland, the court for the place where payments under the order are required to be made, may, where it is satisfied, upon ex parte application made by the clerk of the court or by or on behalf of the defendant, that the order can be more conveniently enforced at another place in Queensland, direct the transfer of the order to a court at that other place.

(2) Where the court gives a direction under subsection (1), the clerk of the court shall—

- (a) send to the clerk of the court to which the order is directed to be transferred—
  - (i) all records in the clerk's office relating to the order; and
  - (ii) a copy, certified as a true copy by the clerk of the court that directed the transfer of the order, of the direction to transfer the order; and
- (b) notify the collector accordingly.

(3) Upon the transfer of an order pursuant to a direction under subsection (1)—

- (a) the collector shall notify the collector in the other Australian State or the officer of the court or other authority in the reciprocating country, as the case may be, accordingly; and
- (b) the clerk of the court to which the order has been transferred shall cause to be served upon the defendant a certified copy of the direction under subsection (1), together with a notice—
  - (i) specifying the amount (if any) of the arrears due under the order; and

- (ii) stating that payments under the order are to be made to the clerk of the court to which the order has been transferred; and
  - (iii) giving an address at which such payments may be made; and
- (c) all moneys due or becoming due under the order are payable to the clerk of the court to which the order has been transferred and that court shall, for all the purposes of this Act, be the court for the place where payments under the order are required to be made.

### **100 Payments under this part**

Where a maintenance order is enforceable in Queensland under this part the receipt of the clerk of the court for any moneys under the order paid to the clerk is a sufficient discharge of the liability of a person to pay those moneys in accordance with the order.

### **101 Collector to notify changes in orders enforceable in other Australian States or reciprocating countries**

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

### **102 Collector to note changes in orders made or enforceable in Queensland**

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

operation of a Queensland order enforceable in that other Australian State or in that reciprocating country, or of an interstate order or overseas order enforceable in Queensland under this part—

- (a) the collector shall forward the certified copy or notice to the clerk of the court for the place in Queensland where payments under the order are or, had the Queensland order not been made enforceable in that other Australian State or in that reciprocating country, would be required to be made; and
- (b) the clerk of the court to whom the certified copy or notice is so forwarded shall—
  - (i) file the certified copy or notice in the court; and
  - (ii) if the complainant or defendant is resident in Queensland, cause a copy of the order or notice to be served on the complainant or defendant, as the case may be.

(2) Where a certified copy or notice is filed in accordance with subsection (1) in relation to a maintenance order, the order, event, or matter has the like effect in Queensland as it appears from the certified copy or notice to have in that other Australian State or reciprocating country.

(3) Subsections (1) and (2) do not apply in relation to an order made in a reciprocating country affecting a maintenance order in a manner adverse to the defendant unless it appears from the documents received by the collector that the defendant appeared on the hearing of the proceedings.

### **103 Conversion of currency**

(1) For the purposes of this part, an overseas order (including a provisional order), or a certificate or notice originating in a reciprocating country, that refers to an amount of money (including an amount of arrears) expressed in the currency of a reciprocating country shall be deemed to refer to the amount that was the equivalent amount in Australian currency on the prescribed date on the basis of the telegraphic transfer rate of exchange that prevailed on that date.

(2) For the purposes of this section, a certificate signed by the chief executive or the collector, or the collector for another Australian State, and purporting to be based on information obtained by the chief executive or collector from a financial institution, that a specified amount in Australian currency was, on a specified date, the equivalent of a specified amount in another currency on the basis of the telegraphic transfer rate of exchange prevailing on that date is evidence of the matter stated in the certificate.

(3) Where a certificate in accordance with subsection (2) has been filed in a court in Queensland 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 firstmentioned certificate.

(4) Where, under section 69,<sup>33</sup> the collector is required to remit an amount of money to a country outside the Commonwealth, the collector shall remit such amount in the currency of that country as the collector is able to remit by the expenditure of that firstmentioned amount.

(5) In this section—

**“the prescribed date”** means—

- (a) in relation to a maintenance order registered under this part or a certificate with respect to the arrears payable under a maintenance order sought to be so registered—the day upon which the order is registered; or
- (b) in relation to a provisional order confirmed under this part—the day upon which the order is confirmed; or
- (c) in relation to an order or notice referred to in section 102(1)—the day upon which the certified copy of the order or the notice is filed in a court in accordance with that subsection.

### **104 Translation of orders, records etc.**

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

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

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33 Section 69 (Powers etc. of the collector)

- (c) any copy of the document served on any person shall be accompanied by a copy of the translation.

### **105 Certificate of payment of arrears**

In any proceedings under or for the purposes of this part, a certificate purporting to be signed by the clerk of the court, the collector, the collector for another Australian State, or an officer of a reciprocating country in which a maintenance order was made or is enforceable, concerning amounts paid or unpaid under a maintenance order is evidence of the facts stated in the certificate.

### **106 Evidentiary**

(1) For the purposes of this part, and in all proceedings under or arising out of this part, a document purporting to be—

- (a) a certified copy of an order (including a provisional order) of a court;
- (b) the record, or a certified copy of the record, of the evidence of a witness in proceedings before a court;
- (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 the person's official position.

(2) The depositions of a witness in proceedings before a court in another Australian State or in a reciprocating country, received in Queensland for the purposes of this part, shall be admissible in evidence in proceedings under this part in a court in Queensland.

### **107 Service of documents**

(1) Except where the contrary intention appears in this part—

- (a) where a document is required or permitted by this part to be served on a person—the provisions of section 114(1) and (2) shall apply with respect to that service;
- (b) where a notice (not being a document referred to in paragraph (a)) is required or permitted by this part to be given to

a person—the provisions of section 114(3) shall apply with respect to the giving of that notice.

(2) Notwithstanding the provisions of subsection (1), any request or notice required or permitted by this part to be made or given by the chief executive or the collector to any person and any document required or permitted by this part to be sent by the chief executive or the collector to any person may be sent to that person by post.

### **108 Regulations under this part**

Without limiting the generality of section 139,<sup>34</sup> the Governor in Council may, from time to time, make such regulations, not inconsistent with this Act, prescribing and regulating—

- (a) the procedure of Magistrates Courts in and in relation to proceedings under this part; and
- (b) the duties of the collector, the deputy collector, assistant collectors and clerks of the court under this part; and
- (c) the accounts, records and books to be kept by the collector and by clerks of the court for the purposes of this part and the method of keeping those accounts, records and books; and
- (d) the fees, costs and charges that may be charged, awarded and made under this part; and
- (e) the forms to be used under this part; and
- (f) generally any act, matter, or thing required or necessary or convenient to be prescribed or regulated for giving effect to this part.

## **PART 5—MISCELLANEOUS**

### **109 Proof of marriage etc.**

(1) Where it is necessary for the purposes of obtaining an order under this Act to prove a marriage, the order shall not be made unless—

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34 Section 139 (Regulations)

- (a) direct evidence of the marriage is produced to the court; or
- (b) evidence on oath is given of the time, place and circumstances of the marriage.

(2) In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of or extract from a certificate, entry or record of a birth, adoption, death, or marriage alleged to have taken place, whether in Queensland or elsewhere.

### **110 Husbands and wives competent and compellable witnesses**

A husband and a wife are competent and compellable witnesses in any proceedings under this Act, and any evidence given by a husband or a wife in those proceedings may be used in any court—

- (a) in proceedings to which the husband and wife are parties and in which they are competent and compellable witnesses; and
- (b) in proceedings for perjury committed in the course of giving that evidence.

### **111 Resumption of cohabitation etc.**

For the purposes of this Act—

- (a) the resumption of cohabitation by husband and wife, and the maintenance of the wife by the husband or of the husband by the wife, for a continuous period of 1 month or longer shall be prima facie evidence of intention to abandon a maintenance order made for the benefit of the wife, or as the case may be, husband, in force at the date of resumption of cohabitation; and
- (b) the return of a child of the family—
  - (i) to the child's father, with the consent of the mother; or
  - (ii) to the child's mother, with the consent of the father; or
  - (iii) to the child's father or mother, with the consent of any person interested in maintaining a maintenance order made for the benefit of the child;

and the maintenance by that father or, as the case may be, mother, of that child, for a continuous period of 1 month or longer, shall be prima facie evidence of intention by the mother,



father, or other person, as the case may be, to abandon a maintenance order made for the benefit of the child, in force at the date of that return.

### **112 Offer to provide home**

Where—

- (a) the conduct of a party to a marriage constitutes just cause or 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 or excuse for a child of the family to live separately or apart, and occasions the child to live separately or apart;

a bona fide offer by that party or parent to provide a home for the spouse or child, as the case may be, is not of itself a sufficient answer to a complaint under this Act for the maintenance of the spouse or child, or a sufficient reason for the discharge, suspension, or variation of an order under this Act for the maintenance of the spouse or child, and, in the case of a child, the court may, if it appears just so to do having regard primarily to the welfare of the child, make a maintenance order for the benefit of the child notwithstanding that the parent is willing to receive and maintain the child in his or her own home or elsewhere.

### **113 Application of the Justices Act 1886**

(1) So far as is not inconsistent with this Act, the provisions of the *Justices Act 1886*, relating to complaints, summonses and warrants and the service or execution thereof, and the proof of such service or execution, and relating to proceedings in Magistrates Courts, orders made by Magistrates Courts and other acts and things done by Magistrates Courts, shall, with all necessary adaptations and modifications, extend and apply to and with respect to complaints, summonses and warrants made or issued and proceedings instituted and orders made by and other acts and things done by a court or justice under and by virtue of this Act in like manner as if the complaints, summonses and warrants had been made or issued, the

proceedings instituted, the orders made, or the other acts and things done under the *Justices Act 1886*.

(1A) However, the provisions of the *Justices Act 1886*, section 139<sup>35</sup> with respect to the place where a complaint of a simple offence or breach of duty may be heard and determined shall not apply with respect to proceedings under this Act.

(2) The provisions of the *Justices Act 1886*, part 10<sup>36</sup> of relating to the protection of a justice with respect to any act done by the justice shall, with such modifications as are necessary, extend and apply to and with respect to acts done by a clerk of the court in pursuance of this Act.

#### **114 Service of documents etc.**

(1) Any document required or permitted by this Act to be served on a person shall, unless otherwise provided by this Act, be served as if it were a summons and the provisions of section 113(1) shall apply accordingly.

(2) If the court, on evidence on oath or by affidavit, is satisfied that from any cause any summons or other document required or permitted by this Act to be served on a person has not been and can not promptly be served on that person, the court may make such order for substituted or other service of the summons or other document or for the substitution for service of notice by advertisement or otherwise as to the court seems just.

(3) Any notice (not being a document referred to in subsection (1)) required or permitted by this Act to be given to a person may, unless otherwise provided by this Act, be given to that person—

- (a) by serving it on that person as though it were a summons under this Act; or
- (b) by sending it to that person by registered post at the person's usual or last-known place of address or business.

#### **115 Complaints to be in writing and on oath etc.**

(1) A complaint made for the purposes of this Act shall be in writing and on oath before a justice.

(2) A justice before whom any complaint is made under this Act—

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35 *Justices Act 1886*, section 139 (Where summary cases to be heard)

36 *Justices Act 1886*, part 10 (Miscellaneous)

- (a) may issue a summons addressed to the defendant to attend the court upon the hearing of the complaint;
- (b) if satisfied by oath that the whereabouts of the defendant are unknown to the complainant, or that the defendant is about to remove out of Queensland or into a distant part of Queensland, or has so moved, and that such removal or intended removal may unreasonably delay the hearing of the complaint or may tend to defeat any of the provisions of this Act or may enable the defendant to avoid service of a summons under this Act—may issue a warrant for the apprehension of the defendant and for the defendant being brought before a court pursuant to this Act.

(3) Two or more complaints made under this Act against a defendant by a complainant, whether on the complainant's own behalf, on behalf of other persons, or both on the complainant's own behalf and on behalf of other persons, may, if the court thinks fit, be heard and determined by the court at the same time, but an order in respect of each complaint shall be a separate order.

(4) Where complaints are made under this Act against a defendant by a complainant on behalf of more than 1 child of the family or more than 1 child whose parents were not married to each other at the time of its conception and have not since married each other, the complaints may be joined in the 1 form of complaint and 1 summons may be issued in respect of all complaints so joined, but an order in respect of each complaint shall be a separate order.

(5) Where complaints for the maintenance—

- (a) of a child of the family are made by the same person against the father as well as the mother of the child;
- (b) of a child are made by the same person against a person alleged to be the father of the child as well as against the mother of the child;

the complaints may, if the court thinks fit, be heard and determined by the court at the same time, but an order in respect of each complaint shall be a separate order.

### **116 Court may proceed in defendant's absence in certain cases**

(1) Where the defendant does not appear before the court in obedience to a summons issued in relation to a complaint under this Act or on any day to which the hearing of that complaint is adjourned, the court may, upon

proof that the summons was duly served on the defendant a reasonable time before the day appointed for the defendant's appearance—

- (a) issue a warrant for the apprehension of the defendant, and adjourn the hearing of the complaint until the defendant is brought before the court; or
- (b) proceed to hear and determine the complaint in the absence of the defendant.

(2) Where a warrant has been issued under this Act for the apprehension of a defendant (whether in the first instance or upon the defendant failing to appear as aforesaid) and the court is satisfied that, after strict inquiry and search, the defendant can not 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 the evidence given orally or by affidavit of the person or persons who made such inquiry and search.

### **117 Applications to be in writing**

(1) An application to a court for the purposes of this Act shall be in writing made to the court at which the application is, by the application, set down for hearing.

(2) Except where an ex parte application may be made under this Act, the court may, after service of notice of the application upon such persons as appear to the court to be affected by the application, proceed to hear the application whether or not any person to whom any such notice has been issued is present at the hearing.

(3) Any person on whom any such notice has been served shall be entitled to be heard and may be represented by counsel or solicitor, and may examine and cross-examine the witnesses giving evidence for or against the person respectively.

### **118 Court may set aside order made in the absence of the defendant**

(1) Where a court proceeds pursuant to section 116 to make an order against a defendant who was not served with a summons and who did not appear at the hearing, the defendant may, within 21 days after the order comes to the defendant's notice, (proof of which time lies upon the defendant) or, with the leave of the court, at any later date, apply to the

court that made the order to set aside the order and rehear the matter of the complaint in respect of which the order was made.

(2) Notice in writing of intention to make an application under subsection (1) shall be lodged with the clerk of the court, and a copy thereof, together with notice of the place, date and time fixed for the hearing of the application, shall be served upon the person who was the complainant in the proceedings in which the order was made.

**119(3)** Upon proof of due service of the notice referred to in subsection (2), 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 rehear the matter of the complaint in respect of which the order was made in accordance with the provisions of part 2.

(4) Any order made pursuant to subsection (3) may be made to take effect from any date upon which the order set aside could have been made to take effect pursuant to section 27.<sup>37</sup>

(5) The provisions of this section shall be in addition to and not in diminution of the provisions of section 134.<sup>38</sup>

## **119 Complaints or applications made on behalf of persons**

(1) A complaint or an application under this Act purporting to be made on behalf of a person is, in the absence of evidence to the contrary, deemed to be made on behalf of that person.

(2) Where a complaint or an application under this Act may be made by a person on behalf of a child that person may make the complaint or application whether or not the person has been duly authorised so to do.

## **120 Evidence of earnings**

(1) Where, in proceedings before a court for the purposes of 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; or

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<sup>37</sup> Section 27 (Orders for maintenance of wife, husband, or child may include limited provision for past maintenance)

<sup>38</sup> Section 134 (Appeals)

- (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 or her to testify of his or her own knowledge as to the earnings of the person whose earnings are in question.

(2) A document purporting to be a statement in writing referred to in subsection (1) shall, in any proceeding under or by virtue of this Act, unless the contrary is shown, be deemed without further proof to be such a statement.

### **121 Payments under orders**

(1) Subject to any directions given under this Act with respect to the appropriation of moneys and to any express directions given by the defendant in relation thereto any moneys received under an order for the payment of moneys made under this Act by the person entitled to receive those moneys shall be deemed a payment made by the defendant to that person, so as to discharge, to the extent of the moneys received, firstly any sums due and unpaid under the order (a sum due at an earlier date being discharged before a sum due at a later date) and secondly any costs incurred in proceedings relating to the order that were payable by the defendant in respect of any previous proceedings for the enforcement of the order.

(2) Subject to any directions given under this Act with respect to the appropriation of moneys and to any express directions given by the defendant in relation thereto, the collector or clerk of the court, as the case may be, may disburse any moneys received by the collector or clerk from the defendant in relation to a maintenance order whether or not those moneys were, at the time of such disbursement, due and owing under the maintenance order.

### **122 Further orders**

(1) Where an order under this Act directs the payment of moneys, the court may, by that or a subsequent order, give such directions as it thinks necessary relating to the mode of payment of moneys under the order, for regulating the receipt and disbursement of the moneys, for investing and applying the proceeds of the sale of any goods, chattels, or securities directed to be sold or any annuity, rents or income directed to be collected, under an order made under this Act, for ensuring the proper appropriation of those moneys or for causing any child for whose benefit those moneys are payable to be properly brought up and educated.

(2) A direction may be given under subsection (1), at the discretion of the court—

- (a) either with or without any application for the direction; and
- (b) either upon notice of any such application being given to the defendant against whom the order was made or without any such notice being given.

### **123 Appropriation of moneys**

(1) Where—

- (a) the clerk of the court for the place where payments under 2 or more orders made against the same defendant are required to be made under this Act receives from the defendant an amount that is less than the total amount payable under those orders; and
- (b) no order for the appropriation of that amount has been given by the defendant to the clerk;

the clerk shall, subject to section 121, and to any direction given under section 122, appropriate that amount to the payment of the sums payable under each of the orders in such manner as the clerk thinks proper or, where a manner is prescribed, in that manner.

### **124 Certificate of clerk of the court**

(1) A certificate purporting to be under the hand of a clerk of the court for a place where payments under an order enforceable under this Act are required to be made—

- (a) that any payment under the order is or is not recorded in the clerk's office at that place; or
- (b) that an amount stated in that certificate in respect of such payments was in arrears and not paid on a date specified therein;

shall be received in evidence and shall be prima facie proof of the matters certified to therein.

(2) Upon production of a certificate pursuant to subsection (1), it shall be presumed, until the contrary is proved, that the payments which are recorded in the office of the clerk of the court and referred to in the certificate are the only payments that have been made.

**125 Agreement no bar to making of maintenance order**

An agreement by a husband, wife, father, or mother shall not take away or restrict any of the liabilities of the husband, wife, father, or mother under this Act in respect of the maintenance of a person, or affect the operation of a maintenance order against the husband, wife, father, or mother, or the right of the court to make any such order, but the court may, having regard to the existence of the agreement and to all the circumstances of the case, refuse to make any such order.

**126 Court may require defendant to state his or her employer etc.**

(1) In this section—

“**defendant**” includes a person in respect of whom an application is made under subsection (2).

(1A) Subsection (2) applies in relation to—

- (a) an order made in Queensland or elsewhere that is at the material time in force and is enforceable in Queensland under this Act; and
- (b) a nominal order made under section 21 that is at the material time in force whether or not proceedings may be duly taken at that time to enforce the order.

(2) The clerk of the court at any place within the Magistrates Court district in which a person against whom is an order in relation to which this subsection applies resides or carries on or is employed at a place of business may at any time make an ex parte application to the court for the exercise of 1 or more of the powers referred to in subsection (3).

(3) In any proceedings under this Act (whether instituted under subsection (2) or any other provision of this Act), the court may—

- (a) direct the defendant to attend before the court, at a specified time, to be examined concerning the defendant’s means and ability to comply with any order that is or may become enforceable against the defendant under this Act; or
- (b) direct the defendant to state to the court or to furnish to the court within a specified period a statement signed by the defendant specifying—



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- (i) the name and address of the defendant's employer or, if the defendant has more employers than 1, of each of the defendant's employers; and
  - (ii) particulars as to the defendant's earnings; and
  - (iii) such particulars as the court thinks are necessary to enable the defendant to be identified by any of the defendant's employers; 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 furnish to the court, within any time fixed by the court, a statement signed by the person or on the person's behalf containing such particulars as are specified in the direction of the person's indebtedness to the defendant or of all the earnings of the defendant that became payable by that person during a specified period, as the case may be.

(4) A document purporting to be a statement referred to in subsection (3) shall be received in evidence in any proceedings under this Act and shall, unless the contrary is shown, be deemed without further proof to be such a statement.

(5) If the court to which application is made under subsection (2) gives a direction referred to in subsection (3), a copy of its order shall be served on the person to whom it is directed in the same manner as a summons may be served under the *Justices Act 1886* and the provisions of section 56 of that Act shall apply accordingly.

(6) Any person who—

- (a) without reasonable cause or excuse, refuses or fails to comply with a direction under this section that is applicable to the person; or
- (b) in any statement furnished to a court pursuant to the provisions of this section, makes a statement that the person 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 against this Act.

Maximum penalty—\$200 or 6 months imprisonment.

(7) Where a person fails to attend before a court as required by an order made under subsection (3) and served on the person the court may issue a warrant directed to any police officer or police officers by name or

generally to all police officers or to the holder of an office nominated by the court and ordering such person's apprehension and production before the court with a view to the person complying with the order made under subsection (3).

(8) A warrant issued under subsection (7)—

- (a) shall be lawful authority to the person to whom it is directed to apprehend the person in respect of whom it is issued at any place where the person may be found within Queensland and to bring the person before the court at the place where the warrant was issued; and
- (b) shall be, as nearly as may be, in the form required for a warrant issued under the *Justices Act 1886*; and
- (c) shall remain in force until it is executed; and
- (d) where it is directed to all police officers—may be executed by any police officer thereof as if it were directed to the police officer by name.

## **127 Proceedings for the enforcement of orders**

Except as in this Act otherwise provided, all proceedings under this Act for the enforcement of an order enforceable in Queensland under this Act or for the recovery of moneys due under an order enforceable in Queensland under this Act may be taken concurrently or successively with any other such proceedings under this Act.

## **128 Hearing of complaints in camera**

(1) Except as hereinafter provided, upon and during the hearing of a complaint under part 2, division 1, subdivision 4, 5 or 6<sup>39</sup> (so far as it relates to a child whose parents were not married to each other at the time of its conception and have not since married each other, or the mother of such child), no person shall be or be permitted to be present in the court except the following—

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39 Part 2 (Maintenance and other orders), division 1 (Jurisdiction and powers of Magistrates Courts), subdivision 4 (Orders against unmarried fathers of mothers for maintenance of children), 5 (Orders against putative fathers for preliminary expenses and for maintenance of unborn children) or 6 (Orders for funeral expenses)

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- (a) the adjudicating magistrate, the officers of the court and a police officer;
- (b) the complainant and the defendant and their respective counsel and solicitors;
- (c) the mother or sister or other relative or friend of the complainant if so desired by the complainant;
- (d) any person whilst being examined as a witness;
- (e) the mother or sister or other relative or friend of any female witness if so desired by the witness whilst being examined;
- (f) an officer of the department of the government of Queensland within which the *Family Services Act 1987* is administered;
- (g) an officer of the public service authorised by the Minister so to appear pursuant to section 132;<sup>40</sup>
- (h) any representative of any organisation or institution interested in the care of deserted wives or children, children whose parents are not married to each other or the mothers of such children, and permitted by the adjudicating magistrate to be present.

(1A) However, the court may, if of the opinion that there are special circumstances that make it necessary or desirable in the interests of the proper administration of justice so to do, permit any other person to be present.

(2) The provisions of subsections (1) and (1A) shall, with such modifications and adaptations as are necessary, extend and apply to the hearing of—

- (a) any appeal against a decision or order made upon any complaint referred to in subsection (1); and
- (b) any application for the discharge, suspension, variation, or annulment of a maintenance order made upon any such complaint and any appeal against a decision or order made upon any such application.

(3) Notwithstanding the provisions of the *Justices Act 1886*, section 70,<sup>41</sup> where, in any proceedings under this Act, the court is satisfied that there are special circumstances that make it necessary or desirable in the

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40 Section 132 (Appearance by officers of the public service)

41 *Justices Act 1886*, section 70 (Open court)

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 or their counsel or solicitors, shall be excluded during the hearing of the proceedings, or the part of the proceedings, as the case may be.

### **129 Publication of proceedings**

(1) Any person who publishes, or causes to be published, in a newspaper or periodical, or by means of broadcasting, television, or public exhibition any report or account of the proceedings or any part of the proceedings referred to in section 128(1) shall be guilty of an offence against this Act.

Maximum penalty—\$200 or 6 months imprisonment.

(2) The court, in relation to any proceedings under this Act, may by order prohibit the publication of—

- (a) any report or account of the proceedings or any part of the proceedings; or
- (b) the name or address or any other information reasonably likely to disclose the identity of any person involved in or connected with the proceedings.

(3) Any person who publishes or causes to be published in a newspaper or periodical, or by means of broadcasting, television, or public exhibition any matter the publication of which is prohibited by reason of an order made under subsection (2) shall be guilty of an offence against this Act.

Maximum penalty—\$200 or 6 months imprisonment.

(4) Where an offence against this Act arising under any provision of this section is constituted by the publication of the prohibited matter in a newspaper or periodical, the proprietor, publisher and printer of that newspaper or periodical shall each also be guilty of the offence and liable to the penalty as prescribed.

(5) In this section—

**“newspaper”, “proprietor”, “publisher” and “printer”** shall respectively have the meanings assigned to those terms by the *Printers and Newspapers Act 1953*.<sup>42</sup>

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42 Now see *Acts Interpretation Act 1954*, section 14H and *Printing and Newspapers Act 1981*.

(6) Subject to subsection (7), this section and any order under this section applies so as not to prevent or prohibit the publication of a report of any proceedings under this Act—

- (a) in, or in any separate volume or part of, any bona fide series of law reports not forming part of any other publication and comprising solely reports of proceedings in courts of law; or
- (b) in any publication of a technical character bona fide intended for circulation amongst members of the legal or medical profession.

(7) A report authorised by subsection (6) shall not contain any name or address or any other information reasonably likely to disclose the identity of any person involved in or connected with any proceedings referred to in subsection (1) or any proceedings with respect to which an order has been made under subsection (2).

### **130 Conciliation**

(1) If, upon the hearing of a complaint or application under this Act, it appears to the court—

- (a) that the proceedings result directly or indirectly from a dispute or difference between husband and wife; and
- (b) that there are reasonable prospects of settling the dispute or difference by conciliation;

the court may, at any stage of the proceedings, do all such things and take all such steps as may, in the opinion of the court, effect a settlement of the dispute or difference by conciliation.

(2) If the husband and wife fail to be reconciled, the court may complete the hearing and determination of the proceedings unless, in the absolute discretion of the court, it appears that the court is or is likely to be biased by any statement or admission not provable or admissible in evidence made by the husband or wife, or by his or her demeanour, in the course of any thing done or step taken by the court under this section.

(3) Neither the fact that a husband or wife made a statement or admission in the course of anything done or step taken by the court under this section to effect a reconciliation nor that statement or admission shall be used in evidence in any proceedings under this Act or under any other Act or law.

### **131 Costs**

Except as may be otherwise prescribed, the court may, in any proceedings under this Act, in its discretion, order the payment of such costs by such parties as to the court seems just and reasonable.

### **132 Appearance by officers of the public service**

(1) The Minister may authorise 1 or more officers of the public service to appear on behalf of the complainant or applicant in any proceedings under this Act to which the officer's authority extends.

(2) Any such authority may be given in respect of particular proceedings, or any class or classes of proceedings, under this Act.

(3) An officer so authorised shall be entitled to appear and be heard in any proceedings to which the officer's authority extends as if the officer were the complainant or applicant in those proceedings.

(4) Professional costs may be allowed in respect of any such appearance and any professional costs so allowed shall, when recovered, be paid to the consolidated fund.

### **133 Children in care**

Where an order for the maintenance of a child is enforceable under this Act, and the child becomes a "child in care" under the *Children's Services Act 1965*, all moneys becoming due thereafter under the order whilst the child remains a "child in care" shall, upon payment or recovery, be disbursed by the clerk of the court to the chief executive of the department for the purposes of the *Family Services Act 1987* for or towards the maintenance of the child.

### **134 Appeals**

(1) Except as otherwise provided in this Act, the provisions of the *Justices Act 1886*, part 9,<sup>43</sup> relating to appeals from the decisions of justices, shall extend and apply to and with respect to all proceedings under this Act.

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43 *Justices Act 1886*, part 9 (Appeals from the decisions of justices)

(2) Where an appeal is made pursuant to subsection (1) against an order directing the payment of moneys or against an order varying such an order, the court to which the appeal is made may stay the order and, if it thinks fit, in addition may make a temporary order to take effect during the pendency of the appeal.

(3) A court making a temporary order under subsection (2) may exercise all the powers of the court that made the stayed order.

(4) A temporary order made under subsection (2) may, upon service of a copy thereof upon the clerk of the court that made the order appealed against, be enforced in the same manner in all respects as if it were a final order, but shall not be subject to appeal, nor, except by the court by which it was made, to discharge, suspension, or variation.

(5) Where an order has been made under section 16<sup>44</sup> for the benefit of a pregnant woman, and the defendant in the defendant's notice of appeal requests that the appeal be not heard before the birth of the child, the appeal court may, in its discretion, order that the appeal be adjourned to the first sittings of the appeal court to be held after a period of 1 month after the birth of the child or to any subsequent sittings of the court.

(6) At the request of either party to an appeal against a decision a complaint made on behalf of a child, the child shall be produced in court.

### **135 General penalty**

Any person guilty of an offence against any provision of this Act for which no specific penalty is provided shall be liable to a penalty not exceeding \$200 or 6 months imprisonment.

### **136 Summary proceeding**

(1) All offences against this Act may be prosecuted in a summary way under the *Justices Act 1886*.

(2) A prosecution for an offence against this Act may be instituted at any time within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

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44 Section 16 (Court may order payment of preliminary expenses etc.)

(3) Proceedings for an offence against this Act may be commenced by any person authorised by the Minister or by any clerk of the court.

(4) The provisions of subsection (2) shall not limit the time for taking any proceedings under this Act for the enforcement of an order enforceable under this Act or for the recovery of moneys due under such an order.

### **137 Common law etc. liability of husband preserved**

Nothing in this Act shall take away or diminish any liability of a husband under any other Act or law in respect of contracts made by a wife deserted by her husband without reasonable cause.

### **138 Effect of Act on power to imprison and persons in prison**

(1) A person shall not be imprisoned or otherwise placed in custody after the commencement of this Act by reason of—

- (a) the person's disobedience of or failure to comply with an order for the payment of money for or towards the maintenance of another person made or deemed to have been made under the *Maintenance Act 1965*;
- (b) the person's failure to comply with an undertaking given or order made for the payment of money for or towards the maintenance of any child or infant under the *Children's Services Act 1965*.

(2) A person who is in prison or other custody at the commencement of this Act by reason of the person's disobedience of or failure to comply with an order or undertaking referred to in subsection (1) shall be released from that prison or custody forthwith.

(3) The release from prison or other custody under subsection (2) of a person who was in that prison or custody by reason of the person's failure to pay arrears due under an order or undertaking referred to in subsection (1) does not discharge the person from liability to pay those arrears.

### **139 Regulations**

(1) The Governor in Council may, from time to time, make such regulations, not inconsistent with this Act, prescribing all matters and things that are necessary or convenient for carrying out or giving effect to this Act.



(2) Regulations may be made under this Act at any time after the passing hereof.

#### **140 Publication of proclamations etc.**

(1) Every proclamation, order in council and regulation made under this Act shall—

- (a) be published in the gazette;
- (b) upon its publication in the gazette, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;
- (c) take effect from such publication unless, in the case of any such regulation, a later date is specified in that or in any other regulation for its commencement when in such case it shall take effect from that later date;
- (d) be laid before the Legislative Assembly within 14 sitting days after such publication if the Legislative Assembly is in session, and, if not, then within 14 sitting days after the commencement of the next session.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within 14 sitting days after any such proclamation, order in council, or regulation has been laid before it disallowing such proclamation, order in council, or regulation, or part thereof, that proclamation, order in council, regulation, or part shall thereupon cease to have effect but without prejudice to the validity of anything done in the meantime or to the making of a further proclamation, order in council, or regulation.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 September 2002. Future amendments of the Maintenance Act 1965 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Corrected minor errors	1
Obsolete and redundant provisions	1

## 6 List of legislation

### **Maintenance Act 1965 No. 44**

date of assent 23 November 1965

pt 4 div 3 commenced 1 January 1969 (proc pubd gaz 30 November 1968 p 1193)

remaining provisions commenced 1 November 1967 (proc pubd gaz 14 October 1967 p 577)

Note—This Act contains a provision that was relocated from the Maintenance Act and Another Act Amendment Act 1978 No. 26. A list of legislation for the relocated Act appears below.

amending legislation—

### **Maintenance Act Amendment Act 1974 No. 27**

date of assent 24 April 1974

commenced on date of assent

### **Maintenance Act and Another Act Amendment Act 1978 No. 26 pt 2, ss 4–12**

date of assent 2 June 1978

commenced 17 July 1978 (proc pubd gaz 24 June 1978 p 978)

### **Status of Children Act 1978 No. 30 s 14(1) sch**

date of assent 8 June 1978

commenced 1 January 1979 (see s 1(2))

### **Maintenance Act Amendment Act 1981 No. 68**

date of assent 14 September 1981

commenced on date of assent

### **Family Services Act 1987 No. 32 s 69(1) sch (prev Family and Youth Services Act 1987) (this Act is amended, see amending legislation below)**

date of assent 30 April 1987

s 69(1) sch s 32 commenced 9 June 1987 (proc pubd gaz 30 May 1987 p 846)

remaining provisions never proclaimed into force and repealed 1994 No. 87 s 3 sch 3

amending legislation—

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 s 3 sch 3**  
(amends 1987 No. 32 above)

date of assent 1 December 1994

commenced on date of assent

**Acts Amendment and Construction Act 1988 No. 47 s 3 sch 1**

date of assent 12 May 1988

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch**

date of assent 25 October 1989

commenced on date of assent

**Public Service (Administrative Arrangements) Act (No. 2) 1990 No. 80 s 3 sch 6**

date of assent 14 November 1990

commenced 7 December 1989 (see s 2(4)(b))

**List of legislation to Maintenance Act and Another Act Amendment Act 1978—before relocation of s 13 to Maintenance Act 1965**

**Maintenance Act and Another Act Amendment Act 1978 No. 26 s 13**

date of assent 2 June 1978

commenced 17 July 1978 (proc pubd gaz 24 June 1978 p 978)

amending legislation—

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Amending legislation to Maintenance Act 1965—after relocation of Maintenance Act and Another Act Amendment Act 1978 s 13**

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17 ss 1–2, 74 sch**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

**Child Protection Act 1999 No. 10 ss 1, 2(2), 205 sch 3**

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 23 March 2000 (2000 SL No. 45)

**Justice and Other Legislation (Miscellaneous Provisions) Act 2000 No. 58 ss 1–2 sch**

date of assent 17 November 2000

commenced on date of assent

**Status of Children Amendment Act 2001 No. 17 pts 1, 3**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 2002 (2002 SL No. 222) (proposed commencement 11 May 2003 (automatic commencement under AIA s 15DA(2) (2002 SL No. 95))

## 7 List of annotations

**Long title** amd 1978 No. 30 s 14(1) sch**Commencement of this Act**

s 2 om R1 (see RA s 37)

**Arrangement of Act**

s 3 amd 1978 No. 26 s 5; 1978 No. 30 s 14(1) sch

om R1 (see RA s 36)

**Severability**

s 6 om R1 (see RA s 39)

**Interpretation**

s 7 amd 1974 No. 27 s 2(b)

def “**child**” amd 1978 No. 30 s 14(1) schdef “**clerk of the court**” sub 1974 No. 27 s 2(a)(i)def “**Commonwealth**” om R1 (see RA s 39)def “**court**” amd 1974 No. 27 s 2(a)(ii)def “**Minister**” sub 1990 No. 80 s 3 sch 6

om R1 (see RA s 39)

def “**Queensland**” om R1 (see RA s 39)def “**Territory of the Commonwealth**” om R1 (see RA s 39)def “**The commencement of this Act**” om R1 (see RA s 39)def “**unmarried father**” ins 1978 No. 30 s 14(1) schdef “**unmarried mother**” ins 1978 No. 30 s 14(1) sch**General jurisdiction of Magistrates Court in respect of maintenance orders**

s 8 amd 1978 No. 30 s 14(1) sch

**Matters affecting amount of orders**

s 9 amd 1978 No. 30 s 14(1) sch; 1987 No. 32 s 69(1) sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3); 1999 No. 10 s 205 sch 3

**Subdivision 4—Orders against unmarried fathers or mothers for maintenance of children****sdiv hdg** amd 1978 No. 30 s 14(1) sch**Court may order unmarried father to maintain child****prov hdg** sub 1978 No. 30 s 14(1) sch**s 14** amd 1978 No. 30 s 14(1) sch**Court may order unmarried mother to maintain child****prov hdg** sub 1978 No. 30 s 14(1) sch**s 15** amd 1978 No. 30 s 14(1) sch**Court may make order by consent****s 15A** ins 1974 No. 27 s 3**Court may order future maintenance of child upon complaint for preliminary expenses****s 17 hdg** amd 1978 No. 30 s 14(1) sch**Court may order payment of funeral expenses of children****s 18** amd 1978 No. 30 s 14(1) sch**Court may order father to pay funeral expenses of mother of child****prov hdg** amd 1978 No. 30 s 14(1) sch**s 19** amd 1978 No. 30 s 14(1) sch**Ex parte order for preliminary maintenance of child****s 23** amd 1974 No. 27 s 4**Subdivision 2—Evidentiary****sdiv hdg** om 2001 No. 17 s 21**Order relating to child not to be made in certain cases****prov hdg** amd 1978 No. 30 s 14(1) sch**s 30** amd 1978 No. 30 s 14(1) sch

om 2001 No. 17 s 21

**Court may discharge, suspend, or vary order****s 31** amd 1974 No. 27 s 5**Plural births****s 33** amd 1978 No. 30 s 14(1) sch**Court may annul affiliation order****s 35** amd 1978 No. 30 s 14(1) sch**PART 3—ENFORCEMENT OF ORDERS MADE IN QUEENSLAND****Division 1—Enforcement by registration of certificate of arrears, or sale of goods****div hdg** amd 1978 No. 26 s 6**Court may commit defendant to prison for disobedience of Order for payment of moneys****s 42** om 1978 No. 26 s 7**Court not to order imprisonment in certain cases****s 43** om 1978 No. 26 s 7

**Postponement of issue of warrant of commitment**

s 44 om 1978 No. 26 s 7

**Registration of arrears as civil judgment**

s 45 amd 1981 No. 68 s 3

**Court may order defendant to enter into recognizance to perform obligations under order**

s 46 om 1978 No. 26 s 8

**Orders for seizure of goods, chattels, securities, rents etc.**

s 47 amd 1981 No. 68 s 3; 1997 No. 17 s 74 sch

**Offence**

s 59 amd 1981 No. 68 s 3

**Dismissing an employee etc. by reason of the making of an attachment of earnings order**

s 60 amd 1981 No. 68 s 3

**Interpretation**s 67 def “**Department**” ins 1990 No. 80 s 3 sch 6

om R1 (see RA s 39)

def “**Director-General**” ins 1990 No. 80 s 3 sch 6

om R1 (see RA s 39)

def “**reciprocating country**” amd 1990 No. 80 s 3 sch 6def “**Under Secretary**” om 1990 No. 80 s 3 sch 6**Collector of maintenance**

s 68 amd 1996 No. 37 s 147 sch 2

**Powers etc. of the collector**

s 69 amd 1990 No. 80 s 3 sch 6

**Proceedings for enforcement**

s 81 amd 1978 No. 26 s 9

**Transmission of maintenance orders made in Queensland for enforcement in reciprocating countries**

s 82 amd 1978 No. 30 s 14(1) sch; 1989 No. 103 s 3 sch; 1990 No. 80 s 3 sch 6

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

s 83 amd 1990 No. 80 s 3 sch 6

**Cancellation of registration**

s 84 amd 1990 No. 80 s 3 sch 6

**Registration of overseas order**

s 85 amd 1990 No. 80 s 3 sch 6

**Confirmation of provisional orders made overseas**

s 86 amd 1990 No. 80 s 3 sch 6

**Transmission of documents where defendant not in Queensland**

s 89 amd 1990 No. 80 s 3 sch 6

**Proceedings for enforcement**

s 91            amd 1978 No. 26 s 10

**Governor in Council may declare reciprocating countries**

s 98            amd 1990 No. 80 s 3 sch 6; 2000 No. 58 s 2 sch

**Conversion of currency**

s 103          amd 1990 No. 80 s 3 sch 6; 1997 No. 17 s 74 sch

**Service of documents**

s 107          amd 1990 No. 80 s 3 sch 6

**Complaints to be in writing and on oath etc.**

s 115          amd 1978 No. 30 s 14(1) sch

**Court may require defendant to state his or her employer etc.**

s 126          amd 1981 No. 68 s 2

**Hearing of complaints in camera**

s 128          amd 1978 No. 30 s 14(1) sch; 1990 No. 80 s 3 sch 6

**Children in care**

s 133          amd 1987 No. 32 s 69(1) sch; 1988 No. 47 s 3 sch 1

**General penalty**

s 135          amd 1981 No. 68 s 3

**Summary proceeding**

s 136          amd 1978 No. 26 s 11

**Effect of Act on power to imprison and persons in prison**

s 138          (prev 1978 No. 26 s 13)  
                prev s 138 om 1978 No. 26 s 12  
                pres s 138 reloc 1995 No. 58 s 4 sch 1

**SCHEDULE**

om R1 (see RA s 40)