

INTERSTATE DESTITUTE PERSONS RELIEF ACT.

Act No. 33, 1919.

George V. An Act for the relief of persons whose relatives
No. 33. liable to support them reside in another State
 of the Commonwealth; to make further
 provision for serving and executing certain
 summonses and maintenance orders; and for
 purposes consequent thereon or incidental
 thereto. [Assented to, 16th December, 1919.]

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

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Interstate Destitute Persons Relief Act, 1919."

Date of coming into operation.

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

Parts.

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

PART I.—PRELIMINARY—ss. 1–6.

PART II.—SUMMONS FOR MAINTENANCE OR MAINTENANCE ORDER ISSUED OR MADE AGAINST PERSON IN ANOTHER STATE—ss. 7–12.

PART III.—ENFORCING MAINTENANCE ORDER MADE IN ANOTHER STATE—ss. 13–18.

PART IV.—MISCELLANEOUS—ss. 19–24.

4.

4. In this Act, unless inconsistent with the context **George V,**
or subject-matter,— **No. 33.**

“Collector” means the collector appointed under ^{Definitions.} this Act, and includes an officer appointed in ^{cf. S.A. Act,} ^{1910, s. 4.} another State, whose duties, or part of whose duties, are similar to those of the collector appointed under this Act.

“Commonwealth” means the Commonwealth of Australia, and for the purposes of this Act includes the Dominion of New Zealand.

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

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

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

“Regulation” means regulation made under this Act.

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

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

“This Act” includes regulations made under this Act.

5. (1) When in any State (other than New South Wales) an Act is in force containing provisions substantially similar to those contained in, or for carrying out objects substantially similar to the objects of, section seven of this Act, the Governor by proclamation in the Gazette may declare that Part II of this Act is in force as regards such State, and such State shall thereafter be a State within the meaning of the said Part II.

(2)

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(2) When in any State (other than New South Wales) an Act is in force containing provisions substantially similar to those contained in, or for carrying out objects substantially similar to the objects of, Part III, and sections nineteen and twenty of this Act, the Governor by like proclamation may declare that Part III of this Act shall be in force as regards such State, and such State shall thereafter be a State within the meaning of the said Part III.

(3) Notwithstanding anything in this section, if at any time after the publication of any proclamation under this section neither the provisions in consequence of which such proclamation was published, nor any similar provisions are in force in the State regarding which such proclamation was published, such proclamation shall cease to be in force upon the publication in the Gazette of a proclamation by the Governor revoking the former proclamation, and such State shall thereupon cease to be a State within the meaning of Part II or Part III of this Act (as the case may be).

(4) A proclamation under subsection one or subsection two of this section shall be deemed to be in force until a proclamation revoking the same is proved.

(5) Proclamations under subsections one and two of this section or proclamations under subsection three of this section, regarding the same State, may be in the same or separate documents.

Collectors.

Ibid. s. 13.

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

PART II.

George V,
No. 33.SUMMONS FOR MAINTENANCE OR MAINTENANCE ORDER
ISSUED OR MADE AGAINST PERSON IN ANOTHER
STATE.

7. When in any State other than New South Wales, to Summons for relief issued in another State may be served in this State. which this Act applies, and whether before or after the commencement of this Act—

(a) a summons for maintenance has been issued; Ibid. s. 6.
or

(b) a maintenance order has been made, by any justice or by any court not being a court of record, and in any such case the person against whom such summons was issued or order made comes to reside or resides either temporarily or permanently in this State, such summons or any process for enforcing such order may be served in this State.

8. When, in this State either before or after the commencement of this Act— Summons issued and order made to defendant in another State.

(a) a summons for maintenance has been issued; or Ibid. s. 7.
(b) a maintenance order has been made, and such order remains unsatisfied wholly or in part,

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

9. Every summons indorsed under section eight shall state a place and a time after service for the hearing thereof, which shall be fixed by the justice indorsing the summons, regard being had to the distance of the alleged place of residence of the defendant from the place fixed for the hearing. Time and place for hearing. Ibid. s. 9.

10. (1) A summons indorsed under section eight may be served either in this State or any other State. Service of summons, and proof thereof. Ibid. s. 10.

(2) Service of such summons, or the steps taken in attempting to serve the same, shall be proved by affidavit

George V, affidavit sworn before a commissioner for taking affidavits in the Supreme Court of this State or of the State wherein service was effected or attempted, or by declaration made before a justice for this State or for the State wherein the service was effected or attempted.

Copy of
order to be
sent to
collector.

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

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

12. When a maintenance order has been made in this State in favour of any person resident in this State, and the person against whom the same is made goes to reside or is resident, either temporarily or permanently, in another State, any justice shall, upon application made by or on behalf of the person in whose favour such order was made, order the collector to send to a collector appointed in such other State the following documents, namely:—

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

PART III.

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No. 33.ENFORCING MAINTENANCE ORDER MADE IN ANOTHER
STATE.

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

- (a) the original or a duplicate of a maintenance order made by a justice or justices for such State signed by him or them, or a copy of such order, certified as correct under the hand or hands of the justice or justices by whom such order was made, or a certificate of a maintenance order made by a court of such State, not being a court of record, under the hand of the clerk or other proper officer of such court and the seal thereof, such order, in any case, being made in favour of any person resident in such State; and
- (b) an affidavit in the form in the Schedule hereto, or to the like effect, stating the particulars indicated in the said Schedule, sworn by such last-mentioned collector; and
- (c) a request that the maintenance order be made enforceable in this State,

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

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

14. (1) Upon such application being made to a justice and upon production of such original or duplicate order, copy order, or certificate, and the affidavit referred to in section thirteen, the justice, if satisfied that the person against whom the order was made is resident either

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

George V, either temporarily or permanently within this State,
No. 33. shall cause such original or duplicate order, copy order, or certificate to be indorsed with a fiat directing that the order be enforced within this State, and shall sign such indorsement.

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

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

All moneys to be payable to collector.
Ibid. s. 17.

15. When any indorsement has been made, and service effected as provided by section fourteen, all moneys by the order adjudged, ordered or directed to be paid shall be payable to the collector, who is hereby authorised to collect and receive the same and to take all steps for the recovery thereof.

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

Procedure for enforcing orders.

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

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

Other powers and duties of collector.
Ibid. s. 18.

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

- (a) to collect all moneys payable to him as provided by section fifteen, and give receipts for the sums so collected;
- (b) to keep proper accounts of all moneys collected and received by him and of all moneys remitted and paid by him;
- (c)

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

18. (1) A certificate under the hand of a collector, ^{Certificate of} or an affidavit sworn by a collector, stating that any sum ^{affidavit of} ^{collector} ^{a sufficient} ^{evidence of} ^{payment.} therein specified has or have been paid in respect of a maintenance order therein mentioned shall be sufficient evidence of such payment in any proceedings before *Ibid. s. 20.* any court, justice, or other tribunal.

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

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Onus of proof
of identity of
person served.
Ibid. s. 21.

PART IV.

MISCELLANEOUS.

19. (1) Subject to subsection two, when—
 (a) a summons or other process by this Act made servable; or
 (b) a summons issued under this Act; or
 (c) a copy of an original or duplicate maintenance order, or of a certified copy of such an order, or of a certificate of such an order,

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

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

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

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

Penalty on
collector for
neglect of
duty.

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

22.

22. (1) The collector's accounts shall, once at least **George V.** in every year, and also whenever directed by the **Governor**, be audited by the **Auditor-General**. No. 32.

(2) The Auditor-General shall, in respect of ^{Audit of collector's accounts.} such accounts, have all the powers conferred upon him *Ibid. s. 25.* by the Audit Act, 1902, and any Act for the time being in force relating to the audit of public accounts.

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

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

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

(3) All regulations so made shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication, or from a later date to be specified therein ; and
- (c) be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in

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Recovery
of penalties.

in session, and if not, then within fourteen days after the commencement of the next session of Parliament.

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

SCHEDEULE.

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

[Name of State where affidavit sworn.]

INTERSTATE DESTITUTE PERSONS RELIEF ACT, 1919.

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

Complainant.

against

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

Defendant.

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

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

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

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

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

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

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

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

NEWCASTLE