

## INTERSTATE DESTITUTE PERSONS RELIEF (AMENDMENT) ACT.

### Act No. 34, 1960.

An Act to amend the law relating to the enforcement and variation of certain maintenance orders; for this purpose to amend the Interstate Destitute Persons Relief Act, 1919, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 28th April, 1960.]

**B**E it enacted by the Queen'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:—

1. (1) This Act may be cited as the "Interstate Destitute Persons Relief (Amendment) Act, 1960".
1. (2) The Interstate Destitute Persons Relief Act, 1919, as amended by subsequent Acts and by this Act, may be cited as the Interstate Destitute Persons Relief Act, 1919-1960.
1. (3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.
2. The Interstate Destitute Persons Relief Act, 1919, as amended by subsequent Acts, is amended—
  - (a) (i) by inserting in the definition of "State" in section 4, four after the word "Australia," the words "a Territory of the Commonwealth of Australia or a Territory administered by the government of the Commonwealth of Australia under the trusteeship system of the United Nations,";
  - (ii)

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(ii) by inserting at the end of the same section the following new subsection :—

(2) A reference, however expressed, in this Act—

- (a) to a maintenance order registered, or registered by a court, in this State shall be construed as a reference to a maintenance order registered, or registered by or in a court, in this State, whether before or after the commencement of the Interstate Destitute Persons Relief (Amendment) Act, 1960, under the Maintenance Orders (Facilities for Enforcement) Act, 1923;
- (b) to a maintenance order registered, or registered by a court, in a State, other than New South Wales but being a State within the meaning of the Part of this Act in which the reference occurs, shall be construed as a reference to a maintenance order registered, or registered by or in a court, in the State concerned, whether before or after the commencement of the Interstate Destitute Persons Relief (Amendment) Act, 1960, under a law of that State reciprocal to the Imperial Act entitled the Maintenance Orders (Facilities for Enforcement) Act, 1920;
- (c) to a maintenance order confirmed, or confirmed by a court, in this State shall be construed as a reference to a maintenance order so confirmed, whether before or after the commencement of the Interstate Destitute Persons Relief (Amendment) Act, 1960, under
  - (i) the Maintenance Orders (Facilities for Enforcement) Act, 1923, where the order was registered under that Act; or
  - (ii)

(ii) section 16A of this Act, where the No. 34, 1960.  
order was registered under that  
section;

(d) to a maintenance order confirmed, or  
confirmed by a court, in a State, other  
than New South Wales but being a State  
within the meaning of the Part of this  
Act in which the reference occurs, shall  
be construed as a reference to a main-  
tenance order so confirmed, whether  
before or after the commencement of the  
Interstate Destitute Persons Relief  
(Amendment) Act, 1960, under—

(i) a law of the State concerned  
reciprocal to the Imperial Act  
entitled the Maintenance  
Orders (Facilities for Enforce-  
ment) Act, 1920, where the order  
was confirmed under that law; or

(ii) the provisions of the law of the  
State concerned that correspond,  
or substantially correspond, with  
section 16A of this Act, where the  
order was confirmed under those  
provisions.

(b) by inserting in subsections one and two of section Sec. 5.  
five after the words "an Act" the words "or a law"; (Recipro-  
city.)

(c) (i) by omitting from section seven the words "this Sec. 7.  
Act—  
(a) a summons for maintenance has been  
issued; or  
(b) a maintenance order has been made,  
by any justice or by any court not being a  
court of record," and by inserting in lieu thereof  
the words "the Interstate Destitute Persons  
Relief (Amendment) Act, 1960—  
(a) a summons for maintenance has been  
issued by a justice or by or out of a  
court; or  
(b)

(b)

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(b) a maintenance order has been made, registered or confirmed by a justice or by or in a court,";

(ii) by inserting in the same section after the word "made" where lastly occurring the words ", registered or confirmed";

Sec. 8.  
(Summons issued and order made to defendant in another State.)

(d) (i) by omitting from section eight the words "this Act" and by inserting in lieu thereof the words "the Interstate Destitute Persons Relief (Amendment) Act, 1960";

(ii) by inserting in the same section after the word "made," where firstly and secondly occurring the words "registered or confirmed,";

(iii) by inserting in the same section after the word "made" where lastly occurring the words ", registered or confirmed";

Sec. 12.  
(Documents to be sent to collector in another State.)

(e) (i) by inserting in section twelve of this Act after the word "made" where firstly and secondly occurring the words ", registered or confirmed";

(ii) by omitting from the same section the words "in favour of any person resident in this State";

(iii) by inserting in the same section after the word "made," where fourthly occurring the words "registered or confirmed,";

(iv) by inserting in paragraph (a) of the same section after the word "made" where thirdly occurring the words ", registered or confirmed";

(v) by omitting from the same paragraph the words "and the seal thereof";

(vi) by inserting in paragraph (c) of the same section after the word "made" the words ", registered or confirmed";

Sec. 13.  
(Notice of intention to apply to make orders enforceable in this State.)

(f) (i) by inserting in paragraph (a) of subsection one of section thirteen after the word "made" where thirdly occurring the words ", registered or confirmed";

(ii) by omitting from the same paragraph the words ", not being a court of record,";

(iii)

- (iii) by omitting from the same paragraph the words No. 34, 1960.  
“and the seal thereof, such order, in any case,  
being made in favour of any person resident in  
such State”;
- (iv) by omitting from subsection two of the same  
section the words “authenticated, or sealed”  
wherever occurring and by inserting in lieu  
thereof the words “or authenticated”;
- (v) by omitting from the same subsection the words  
“or seal”;
- (g) (i) by inserting in subsection one of section fourteen Sec. 14.  
after the word “made” where secondly occur- (Direction  
ring the words “, registered or confirmed”; that order  
be enforced.)
- (ii) by inserting in subsection two of the same  
section after the word “made,” the words  
“registered or confirmed”;
- (h) by omitting section sixteen and by inserting in lieu Subst.  
thereof the following sections :— sec. 16  
and new sec. 16A.

16. (1) A maintenance order made enforceable, under the provisions of this Act, in this State shall—  
Procedure for enforcing orders.

- (a) where the order was made or registered by the Supreme Court of the other State concerned—be enforceable under section 90A or 90B of the Matrimonial Causes Act 1899, as amended by subsequent Acts, in the same manner as if it had been made or registered by the Supreme Court of this State;
- (b) where the order was made, registered or confirmed in the other State concerned otherwise than by the Supreme Court of that State—be enforceable—
  - (i) where the order is an order in affiliation proceedings—under the Child Welfare Act, 1939, as amended by subsequent Acts, in the same manner as if it had been made under Part XVI of that Act;
  - (ii)

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(ii) in any other case—in the same manner as if it had been made under the Deserted Wives and Children Act, 1901, as amended by subsequent Acts;

(c) where it is not practicable to enforce it in any manner specified in the foregoing provisions of this section—be enforceable in the manner 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 enforceable only at the instance of—

(a) the collector;

(b) an assistant collector; or

(c) a person, being an officer of the Child Welfare Department or an officer of the petty sessions branch of the Department of the Attorney-General and of Justice or a member of the police force, authorised in writing in that behalf by the collector in relation to the specific case.

(3) A document purporting to be an authority of the kind referred to in subsection two of this section, and to be signed by the collector shall, for the purposes of this Act, without proof of the signature appearing on the document, be deemed to be what it purports to be, and to be duly signed, until the contrary is proved.

16A. (1) (a) Where a maintenance order made in another State (in this subsection referred to as the original order) is, by virtue of the provisions of this Act, being enforced in this State against a person in this State, that person may apply in the prescribed manner to a children's court for an order that the order being so enforced should be varied, suspended or discharged.

(b)

Power to apply in this State for variation of interstate order being enforced in this State.  
cf. Vict. Act No. 6116, s. 58; S.A. 1958 No. 13, s. 3.

(b) Notice of the application shall be served personally or by post not less than fourteen days before the date of the hearing of the application on—

- (i) the collector appointed in the State in which the original order was made; and
- (ii) the collector.

(c) Where on the hearing of the application it appears to the children's court that it is just that the original order should be varied, suspended or discharged, it may make such order varying, suspending or discharging the original order as it thinks fit, but an order so made shall be provisional only and shall have no effect until confirmed by a court in the State in which the original order was made that has power to vary, suspend or discharge the original order.

(d) Where a provisional order is made by the children's court under this section a copy of the order certified by the clerk of the court to be a true copy and the depositions in the matter shall be forwarded by that clerk to the collector appointed in the State in which the original order was made.

(2) (a) Where, pursuant to the provisions in the law of another State that correspond with this section, the collector receives a copy of an order (certified by the proper officer of the court that made the order to be a true copy) provisionally varying, suspending or discharging a maintenance order (in this subsection referred to as the original order) made in this State and depositions made and taken in the matter under those provisions, an authorised officer shall apply on behalf of the applicant in the matter to a court that has power to vary, suspend or discharge the original order for an order confirming the provisional order.

(b) Notice in the prescribed form of an application under paragraph (a) of this subsection shall be served by the authorised officer not less than

fourteen

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fourteen days before the date of the hearing of the application on the person in whose favour the original order was made either personally or by post addressed to his last known place of residence.

(c) Upon the hearing of the application the court may—

- (i) confirm or discharge the provisional order with or without any modification; or
- (ii) remit the provisional order to the court that made it for the purpose of taking such further evidence as the court hearing the application may request and adjourn the proceedings for the purpose.

(d) Any party shall have the same right of appeal against—

- (i) an order confirming a provisional order as he would have had against the making of the provisional order if the provisional order had been an order made by the court confirming the provisional order;
- (ii) an order discharging a provisional order as he would have had if all proceedings on the application to vary, suspend or discharge, as the case may be, the original order had been taken in the court discharging the provisional order and the order discharging the provisional order had been an order refusing the application.

(e) In this subsection “authorised officer” means—

- (i) the collector;
- (ii) an assistant collector; or
- (iii) a person, being an officer of the Child Welfare Department or an officer of the petty sessions branch of the Department of the Attorney-General and of Justice or a member of the police force, authorised in writing in that behalf by the collector in relation to the specific case.

(3)

(3) Where, pursuant to the provisions in the No. 34, 1960. law of another State that correspond with this section, a provisional order has been remitted to a children's court for the purpose of taking further evidence, the court shall, after giving the prescribed notice, take the further evidence and such other evidence as it thinks fit and may either discharge the provisional order or transmit the provisional order together with the depositions of the further or other evidence to the court that requested the taking of further evidence.

(4) The evidence of any witness who is examined pursuant to this section shall be put into writing, and the deposition shall be read over to, and signed by, the witness.

(5) Depositions taken under the provisions in the law of another State that correspond with this section may be received in evidence in proceedings under this section.

(6) For the purposes of this section, a document purporting to be signed by an officer of a court in another State shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

(7) In this section "children's court" means a children's court and includes a magistrate exercising the jurisdiction of a children's court.

- (i) by inserting in subsection two of section eighteen Sec. 18. after the word "made," the words "registered or (Certificate confirmed"; or affidavit of collector sufficient evidence of payment.)
- (j) (i) by omitting from subsection one of section Sec. 23. twenty-three the word "The" where firstly (Regulations occurring and by inserting in lieu thereof the and rules words "Subject to subsection (2A) of this sec- of court.) tion, the"; (ii)

(ii) by omitting from paragraph (f) of the same subsection the word "and";

(iii) by inserting next after the same paragraph the following new paragraph :—

(f1) the practice and procedure in respect of summary proceedings of any kind under this Act and the facilitation of communications between a court of summary jurisdiction in this State and courts in other States.

(iv) by inserting next after subsection two of the same section the following new subsections :—

(2A) The judges of the Supreme Court or any five of them may make rules of court prescribing the practice and procedure in respect of proceedings of any kind before the Supreme Court under this Act and for facilitating communications between the Supreme Court and courts in other States.

(2B) The provisions of subsections two and three of section ninety-one of the Matrimonial Causes Act 1899, as amended by subsequent Acts, apply to and in respect of the business that may be transacted, and the authority and jurisdiction that may be exercised, under this Act by the Supreme Court in its matrimonial causes jurisdiction.

The provisions of section ninety-four of that Act apply to and in respect of any power and jurisdiction that may be delegated pursuant to the operation of this subsection.

(v) by inserting in subsection three of the same section after the word "regulations" wherever occurring the words "or rules";

(vi) by inserting in subsection three of the same section after the word "regulation" wherever occurring the words "or rule";

(k)

(k) (i) by omitting from paragraph two of the Schedule **No. 34, 1960.** the word “made” where firstly occurring and <sup>—</sup> <sub>Schedule.</sub> by inserting in lieu thereof the words and symbols “[made *or* registered *or* confirmed *as the case may be!*”;

(ii) by inserting in paragraph three of the Schedule after the words “the said order” the words “*or the confirmation of the said order*”.