

(9) Upon the making of an attachment of earnings order by a court, the clerk of the court shall cause a copy of the order to be served on—

- (a) the defendant;
  - (b) the person to whom the attachment of earnings order is directed;
- and
- (c) if an officer of the Department is not a party to the application for the order, the Director-General,

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

**177.** (1) An employer to whom an attachment of earnings order is directed shall, so long as the order is in force and the net earnings of the defendant in relation to each pay-day after the making of the order exceed the amount of the protected earnings of the defendant in relation to that pay-day, pay to the Director-General, so far as the amount of the excess permits, the normal deduction in relation to that pay-day, but where—

**Employer to make payments under order.**

- (a) on any such pay-day the amount of that excess is insufficient to permit the payment of the normal deduction in relation to that pay-day;

or

- (b) in respect of any such pay-days the net earnings of the defendant were less than the protected earnings of the defendant and the amount by which those net earnings were less than those protected earnings has not been paid to the defendant,

the employer shall, so long as the order is in force, and if on any subsequent pay-day the net earnings of the defendant are sufficient after providing, if necessary, for the making good of any deficiency in the protected earnings referred to in paragraph (b) of this subsection, pay to the Director-General the normal deduction in relation to that subsequent pay-day and, so far as the balance of the defendant's net earnings permits, all the arrears of the normal deductions.

(2) A payment made by the employer under subsection (1) of this section to the Director-General shall be a valid discharge to him as against the defendant to the extent of the amount paid.

**178.** (1) Where any proceedings in relation to, or for the enforcement of, a maintenance order already made are brought in a court of summary jurisdiction the court may, instead of making any other order, make an attachment of earnings order.

**Power to make attachment of earnings order instead of other order.**

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(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.

Discharge or  
variation of  
order.

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

(2) Upon the court making an order discharging, suspending or varying an attachment of earnings order, the clerk of the court shall cause a copy of the order to be served on—

- (a) the respondent to the application;
- (b) the person to whom the attachment of earnings order is directed;
- and
- (c) if an officer of the Department is not a party to the application, the Director-General,

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

Cessation of  
attachment of  
earnings order.

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

- (a) upon being discharged by an order under this Subdivision;
- (b) subject to subsection (2) of this section, upon the discharge 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 or varying a maintenance order that arrears under the order will remain to be recovered under the order, the court may direct that the attachment of earnings order shall not cease to have effect until those arrears have been paid.

(3) Where an attachment of earnings order ceases to have effect the clerk of the court that made the order by virtue of which the attachment of earnings order ceases to have effect shall forthwith give notice accordingly to the Director-General and to the person to whom the order was directed.

(4) 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 his treating the order as still in force at any time before the expiration of seven days after the date on which the notice required by subsection (3) of this section or a copy of the discharging order, as the case may be, is served on him.

**181.** An attachment of earnings order made under this Subdivision 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 law, but subject to this Subdivision comply with the order.

Compliance  
with order.

**182.** (1) Where, on any occasion on which earnings become payable to a defendant, there are in force two or more orders for the attachment of those earnings (whether made under this Act or otherwise) the person to whom the orders are directed—

Where two or  
more orders are  
in force.

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

and

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

**183.** (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.

Notice to  
defendants of  
payments made.

(2) Where a person served with an attachment of earnings order directed to him—

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(a) is not the defendant's employer at the time of service of the order;

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 Director-General and the clerk of the court that made the order, and shall give that notice—

(i) where paragraph (a) of this subsection applies forthwith after service on that person of the order;

and

(ii) where paragraph (b) of this subsection applies forthwith after that person ceases to be the defendant's employer.

Determination as to what payments are earnings.

**184.** (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 purpose of that order.

(2) A person to whom an attachment of earnings order is directed who makes an application under subsection (1) of this section 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 him to the defendant while the application, or any appeal from a determination made on the application, is pending.

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

Service.

**185.** Any order or document that is required or permitted to be served on a person under this Subdivision may be served on that person—

(a) by delivering a copy thereof to that person;

(b) by leaving a copy thereof at the usual or last known place of residence or business of that person with some person apparently over the age of sixteen years who apparently resides therein or is employed thereat;

or

(c) by sending a copy thereof to him at his usual or last known place of residence or business by registered post.

**186.** (1) Any person who fails to comply with a requirement of this Subdivision or of any attachment of earnings order under this Subdivision that is applicable to him shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Offence.

(2) It shall be a defence to a prosecution for an offence arising under subsection (1) of this section if the defendant proves that he took all reasonable steps to comply with the requirement or order.

(3) Subsection (1) of this section does not apply to the Crown in right of the Commonwealth or in right of the State.

**187.** (1) Any person who dismisses an employee or injures him in his employment, or alters his position to his prejudice, by reason of the circumstance 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 and liable to a penalty not exceeding two hundred dollars.

Dismissing an employee, etc., by reason of the making of an attachment of earnings order.

(2) Subsection (1) of this section does not apply to the Crown in right of the Commonwealth or in right of the State.

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

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

**188.** This Subdivision shall have effect in relation to a defendant notwithstanding any Act or law that would otherwise prevent the attachment of his earnings.

Application of Subdivision.

**189.** The provisions of this Subdivision shall have effect in relation to deductions from earnings falling to be paid by the Crown whether in right of the Commonwealth or in right of the State, a Minister of the Crown whether in right of the Commonwealth or in right of the State or a statutory authority representing the Crown whether in right of the Commonwealth or in right of the State, and those earnings shall be treated as falling to be paid by the permanent head or principal officer of the Department, office or other body concerned.

Payments by Crown, etc.

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*Subdivision 3—General*

Provision where defendant supported wife, husband or child during any period.

**190.** 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 the failure to make payments during any period is concerned if it is proved that during that period the defendant adequately supported that person.

Duties of clerk of court in relation to orders.

**191.** Upon application made to him by or on behalf of any person for whose maintenance or for whose benefit a maintenance order is enforceable in the State, the clerk of the court of summary jurisdiction by which the order was made or in which it is enforceable or in which further proceedings in relation to the order may be brought shall, subject to this Act, take all steps necessary or expedient to assist in the enforcement of the order on behalf of that person.

Penalty for molesting child contrary to interstate custody order.

**192.** (1) Where an order made in any other State or a Territory of the Commonwealth under any Act or ordinance corresponding with this Act commits the legal custody of a child to the father or mother of the child, any person who in this State, without just cause or excuse, molests or interferes with or attempts to molest or interfere with, the child contrary to the order for custody or, having the care or control of the child in this State, without just cause or excuse, refuses or fails on demand to deliver the child to the person entitled to such custody under the order shall be guilty of an offence against this section.

(2) Any person guilty of an offence against this section shall be liable to a penalty not exceeding two hundred dollars or to imprisonment for a term not exceeding six months.

(3) It shall be a defence to a prosecution for an offence against this section if the defendant satisfies the court that he did not know and could not reasonably be expected to have known of the making of the order in respect of which the offence is alleged to have occurred.

(4) A person who is convicted of an offence against this section may (in addition to, or in lieu of, a penalty under this section) be required forthwith to enter into a recognizance, with or without sureties, in such reasonable amount as the court thinks fit, to abide by the provision of the order and in default of entering into the recognizance, that person may be imprisoned for a term not exceeding three months unless the recognizance is sooner entered into.

Recovery of penalties.

**193.** Proceedings for an offence against any of the provisions of this Division may be taken by any member of the police force or any officer of the Department.

194. (1) On the hearing of any complaint in which the defendant is charged with non-compliance with any maintenance order, the defendant shall be compellable to give evidence, and may be summoned as a witness for that purpose.

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Compellability  
of defendant as  
witness at  
hearing of  
complaint for  
non-compliance

(2) The defendant shall not be excused from giving evidence relevant to the matter of the complaint on the ground that the evidence might prove or tend to prove him guilty of the matter alleged or charged against him.

195. Whenever in any proceedings under this Act it is material to inquire whether any, or how much, money has been paid or is owing to the Director-General by any person liable under a maintenance order to make any such payment to the Director-General, any officer of the Department may on oath state his information and belief as to whether any, and how much, money has been paid, or is owing, and the court shall accept that statement as evidence of the facts stated.

Proof of  
payment or  
non-payment  
under  
maintenance  
order.

#### DIVISION VIII—RECIPROCAL ENFORCEMENT OF ORDERS

#### DIVISION VIII

##### *Subdivision 1—Interpretation and Administration*

196. (1) In this Division unless the contrary intention appears—

Interpretation.

“another Australian State” means an Australian State other than this State:

“Australian State” means a State or Territory of the Commonwealth:

“certified copy”—

(a) in relation to a maintenance order or other order of a court (not being an order made under the *Matrimonial Causes Act 1959*, as amended, of the Commonwealth)—means 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;

(b) in relation to a maintenance order or other order made under the *Matrimonial Causes Act 1959*, as amended, of the Commonwealth—means a certificate of the order or a copy of the decree nisi 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—means a copy of the record certified to be a true copy by an officer of that court:

“Collector”—

- (a) in relation to this State—means the Collector of Maintenance or the Deputy Collector of Maintenance or an Assistant Collector of Maintenance appointed under this Act;

and

- (b) in relation to another Australian State—means 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 Act:

“Collector’s certificate”—

- (a) in relation to a South Australian order, or an overseas order enforceable in this State—means 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—means 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 Act:

“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 this Division to have restricted reciprocity with this State:

“court” means a court, or a magistrate, justices or any other person or persons exercising judicial power, whether constituted or acting under the law of this State, any other Australian State, the Commonwealth, or a reciprocating country:

“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;

or

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

“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 any case where in a proclamation under this Division declaring that country to be a reciprocating country it is declared that maintenance orders made in that country shall be enforceable in this State in accordance with the provisions of this Act 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 (whether before or after the making of the proclamation) by a court of competent jurisdiction:

“reciprocating country” means a country that is for the time being a country declared by a proclamation in force under this Division to be a reciprocating country for the purposes of this Act:

“South Australian order” means a maintenance order—

(a) made in this State by a court of summary jurisdiction;

or

(b) made by the Supreme Court of South Australia (whether under the law of this State or under the law of the Commonwealth) and registered, for the purposes of enforcement in a court of summary jurisdiction in this State (whether under the law of this State or under the law of the Commonwealth).

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

(3) A reference in this Division 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 first-mentioned court.

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

197. (1) For the purposes of this Division—

(a) the Director-General shall be the Collector of Maintenance;

and

(b) the Minister may appoint, from officers of the Department, a Deputy Collector of Maintenance and as many Assistant Collectors of Maintenance as shall be necessary.