

MATRIMONIAL CAUSES.

No. 104 of 1959.

An Act relating to Marriage and to Divorce and Matrimonial Causes and, in relation thereto, Parental Rights and the Custody and Guardianship of Infants.

[Assented to 16th December, 1959.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Matrimonial Causes Act* Short title. 1959.
2. This Act shall come into operation on a date to be fixed Commence- by Proclamation. ment.

Parts.

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

Part I.—Preliminary (Sections 1–8).

Part II.—Marriage Guidance Organizations (Sections 9–13).

Part III.—Reconciliation (Sections 14–17).

Part IV.—Void and Voidable Marriages (Sections 18–22).

Part V.—Jurisdiction (Sections 23–27).

Part VI.—Matrimonial Relief.

Division 1.—Dissolution of Marriage (Sections 28–46).

Division 2.—Nullity of Marriage (Sections 47–51).

Division 3.—Judicial Separation (Sections 52–59).

Division 4.—Restitution of Conjugal Rights (Sections 60–64).

Division 5.—Jactitation of Marriage (Sections 65–66).

Division 6.—General (Sections 67–75).

Part VII.—Intervention (Sections 76–82).

Part VIII.—Maintenance, Custody and Settlements (Sections 83–89).

Part IX.—Appeals (Sections 90–93).

Part X.—Recognition of Decrees (Sections 94–95).

Part XI.—Evidence (Sections 96–101).

Part XII.—Enforcement of Decrees (Sections 102–109).

Part XIII.—Transitional Provisions (Sections 110–117).

Part XIV.—Miscellaneous (Sections 118–127).

Repeal and saving.

4.—(1.) The *Matrimonial Causes Act* 1945 and the *Matrimonial Causes Act* 1955 are repealed.

(2.) Notwithstanding the repeal effected by the last preceding sub-section—

(a) the validity of a judgment, decree or order made before the commencement of this Act by virtue of the Imperial Act entitled the *Matrimonial Causes (War Marriages) Act*, 1944 or Part I. of the *Matrimonial Causes (War Marriages) Act*, 1947 of New Zealand and in force immediately before the commencement of this Act shall continue to be recognized in all courts in the Commonwealth and the Territories of the Commonwealth;

- (b) a judgment, decree, order or sentence of the Supreme Court of a State or Territory of the Commonwealth given, made or pronounced before the commencement of this Act in the exercise of jurisdiction invested or conferred by the *Matrimonial Causes Act 1945* or that Act as amended by the *Matrimonial Causes Act 1955* and in force immediately before the commencement of this Act shall continue to have effect throughout the Commonwealth and the Territories of the Commonwealth; and
- (c) any proceedings instituted before the commencement of this Act in the Supreme Court of a Territory of the Commonwealth, not being a Territory to which this Act applies, by virtue of the jurisdiction conferred by the *Matrimonial Causes Act 1945* or that Act as amended by the *Matrimonial Causes Act 1955* may be continued and dealt with, and proceedings incidental to proceedings so instituted may be instituted, continued and dealt with, as if this Act had not been passed.

(3.) The repeal of the *Matrimonial Causes Act 1945* does not affect the operation of the amendment made by that Act to the *Service and Execution of Process Act 1901-1934* or the provision for the citation of the latter Act as so amended.

5.—(1.) In this Act, unless the contrary intention appears— Interpretation.

- “adopted”, in relation to a child, means adopted under the law of any place (whether in or out of Australia) relating to the adoption of children;
- “appeal” includes an application for a rehearing;
- “approved”, in relation to a marriage guidance organization, means approved by the Attorney-General in pursuance of section ten of this Act;
- “Australia” includes Norfolk Island;
- “crime” means an offence punishable by imprisonment;
- “cross-petition” includes an answer in which the respondent to a petition seeks a decree or declaration of a kind referred to in paragraph (a) or (b) of the definition of “matrimonial cause” in this sub-section;
- “decree” means decree, judgment or order, and includes a decree *nisi* and an order dismissing a petition or application or refusing to make a decree or order;
- “imprisonment” includes penal servitude;
- “marriage conciliator” means a person authorized by an approved marriage guidance organization to endeavour to effect marital reconciliations or a person nominated by a Judge, in pursuance of section fourteen of this Act, to endeavour to effect a reconciliation;

“ marriage guidance counsellor ” means a person authorized by an approved marriage guidance organization to offer marriage guidance on behalf of the organization;

“ matrimonial cause ” means—

(a) proceedings for a decree of—

- (i) dissolution of marriage;
- (ii) nullity of marriage;
- (iii) judicial separation;
- (iv) restitution of conjugal rights; or
- (v) jactitation of marriage;

(b) proceedings for a declaration of the validity of the dissolution or annulment of a marriage by decree or otherwise or of a decree of judicial separation, or for a declaration of the continued operation of a decree of judicial separation, or for an order discharging a decree of judicial separation;

(c) proceedings with respect to the maintenance of a party to the proceedings, settlements, damages in respect of adultery, the custody or guardianship of infant children of the marriage or the maintenance, welfare, advancement or education of children of the marriage, being proceedings in relation to concurrent, pending or completed proceedings of a kind referred to in either of the last two preceding paragraphs, including proceedings of such a kind pending at, or completed before, the commencement of this Act;

(d) any other proceedings (including proceedings with respect to the enforcement of a decree, the service of process or costs) in relation to concurrent, pending or completed proceedings of a kind referred to in any of the last three preceding paragraphs, including proceedings of such a kind pending at, or completed before, the commencement of this Act; or

(e) proceedings seeking leave to institute proceedings for a decree of dissolution of marriage or of judicial separation, or proceedings in relation to proceedings seeking such leave;

“ petition ” includes a cross-petition;

“ petitioner ” includes a cross-petitioner;

“ proceedings ” includes cross-proceedings;

“ respondent ” includes a petitioner against whom there is a cross-petition;

“ Territory to which this Act applies ” means the Australian Capital Territory, the Northern Territory of Australia or Norfolk Island;

“ the court ”, in relation to any proceedings, means the court exercising jurisdiction in those proceedings by virtue of this Act;

“ the rules ”, in relation to a court, means the rules or other provisions in relation to the practice and procedure of that court made under, or applicable by virtue of, this Act;

“ welfare officer ” means a person authorized by the Attorney-General, by instrument in writing, to perform duties as a welfare officer for the purposes of this Act, being—

(a) a person who is permanently or temporarily employed in the Public Service of the Commonwealth or of a Territory of the Commonwealth;

(b) a person who is permanently or temporarily employed in the Public Service of a State and whose services have been made available for the purposes of this Act in pursuance of an arrangement between the Commonwealth and the State; or

(c) a person nominated by an organization undertaking child welfare activities.

(2.) A reference in this Act to a court having jurisdiction under this Act, or exercising jurisdiction under this Act, shall be deemed not to include a reference to a court having jurisdiction under this Act, or exercising jurisdiction under this Act, by virtue only of section one hundred and five or one hundred and six of this Act or the Third Schedule to this Act.

(3.) For the purposes of this Act, the date of a petition shall be taken to be the date on which the petition was filed in a court having jurisdiction under this Act.

(4.) For the purposes of this Act, a person shall be deemed to have been convicted of an offence on indictment if he has been convicted of that offence otherwise than by a court of summary jurisdiction or on appeal from such a court.

6.—(1.) For the purposes of the application of this Act in relation to a marriage—

(a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other;

(b) a child of the husband and wife born before the marriage, whether legitimated by the marriage or not; and

Certain children to be deemed to be children of the marriage.

- (c) a child of either the husband or wife (including an illegitimate child of either of them and a child adopted by either of them) if, at the relevant time, the child was ordinarily a member of the household of the husband and wife,

shall be deemed to be a child of the marriage, and a child of the husband and wife (including a child born before the marriage, whether legitimated by the marriage or not) who has been adopted by another person or other persons shall be deemed not to be a child of the marriage.

(2.) For the purposes of the last preceding sub-section, in relation to any proceedings the relevant time is—

- (a) the time immediately preceding the time when the husband and wife ceased to live together or, if they have ceased on more than one occasion to live together, the time immediately preceding the time when they last ceased to live together before the institution of the proceedings; or
- (b) if the husband and wife were living together at the time when the proceedings were instituted, the time immediately preceding the institution of the proceedings.

(3.) The provisions of the last two preceding sub-sections apply in relation to a purported marriage that is void as if the purported marriage were a marriage.

**Extension
of Act to
Territories.**

7.—(1.) This Act extends to Norfolk Island.

(2.) In this Act—

- (a) a reference to the Supreme Court of a Territory to which this Act applies shall, in relation to Norfolk Island, be read as a reference to the Court of Norfolk Island sitting in its Full Jurisdiction; and
- (b) a reference to a court of summary jurisdiction shall, in relation to Norfolk Island, be read as including the Court of Norfolk Island sitting in its Limited Jurisdiction.

(3.) Section four, sub-section (1.) of section twelve, section sixteen, section ninety-four and sub-section (1.) of section ninety-five of this Act extend to all the Territories of the Commonwealth.

**Supersession of
existing laws.**

8.—(1.) Subject to this section—

- (a) a matrimonial cause shall not be instituted after the commencement of this Act except under this Act; and
- (b) a matrimonial cause instituted before the commencement of this Act shall not be continued except in accordance with Part XIII. of this Act.

(2.) Subject to the next succeeding sub-section, where, before or after the commencement of this Act, a matrimonial cause has been instituted, then, whether or not that matrimonial cause has been completed, proceedings for any relief or order of a kind that could be sought under this Act in proceedings in relation to that matrimonial cause shall not be instituted after the commencement of this Act except under this Act.

(3.) Subject to the succeeding provisions of this section—

(a) the jurisdiction of a court of summary jurisdiction of a State or of a Territory to which this Act applies, or of a court on appeal from such a court, under the law of that State or Territory, to make—

(i) orders with respect to the maintenance of wives or children or the custody of or access to children; or

(ii) separation orders or other orders having the effect of relieving a party to a marriage from any obligation to cohabit with the other party,

is not affected by this Act or any proceedings under this Act; and

(b) proceedings for or in respect of such an order, or for the enforcement of such an order, may be continued or instituted as if this Act had not been passed.

(4.) Where a marriage is dissolved or annulled by a decree under this Act—

(a) any jurisdiction of a court of summary jurisdiction, or of a court on appeal from such a court, to make orders of the kind specified in paragraph (a) of the last preceding sub-section shall, by force of this sub-section, cease to be applicable in relation to the parties to the marriage or the children of the marriage; and

(b) any order of that kind made by such a court in relation to those parties or children shall, subject to sub-section (6.) of this section, cease to have effect.

(5.) A court exercising jurisdiction under this Act may at any time order that an order of the kind specified in paragraph (a) of sub-section (3.) of this section made by a court of summary jurisdiction, or by a court on appeal from such a court, shall cease to have effect, and that order shall, subject to the next succeeding sub-section, cease to have effect accordingly.

(6.) Where, by virtue of this section, an order with respect to the maintenance of a wife or of children ceases to have effect, nothing in this Act shall be deemed to prevent the enforcement, as if this Act had not been passed, of that order so far as it relates to any period before it so ceased to have effect.

(7.) In this section, “ court of summary jurisdiction of a State or of a Territory to which this Act applies ” includes a magistrate or a justice or justices of the peace exercising jurisdiction under the law of a State or of a Territory to which this Act applies.

PART II.—MARRIAGE GUIDANCE ORGANIZATIONS.

Grants to approved marriage guidance organizations.

9. The Attorney-General may, from time to time, out of moneys appropriated by the Parliament for the purposes of this Part, grant to an approved marriage guidance organization, upon such conditions as he thinks fit, such sums by way of financial assistance as he determines.

Approval of marriage guidance organizations.

10.—(1.) A voluntary organization may apply to the Attorney-General for approval under this Part as a marriage guidance organization.

(2.) The Attorney-General may approve any such organization as a marriage guidance organization where he is satisfied that—

- (a) the organization is willing and able to engage in marriage guidance; and
- (b) marriage guidance constitutes or will constitute the whole or the major part of its activities.

(3.) The approval of an organization under this section may be given subject to such conditions as the Attorney-General determines.

(4.) Where the approval of an organization has been given subject to conditions, the Attorney-General may, from time to time, revoke or vary all or any of those conditions or add further conditions.

(5.) The Attorney-General may, at any time, revoke the approval of an organization where—

- (a) the organization has not complied with a condition of the approval of the organization;
- (b) the organization has not furnished, in accordance with the next succeeding section, a statement or report that the organization was required by that section to furnish; or
- (c) the Attorney-General is satisfied that the organization is not adequately carrying out marriage guidance.

(6.) Notice of the approval of an organization under this section, and of the revocation of such an approval, shall be published in the *Gazette*.

11.—(1.) An approved marriage guidance organization shall, not later than the thirty-first day of December in each year, furnish to the Attorney-General, in respect of the year that ended on the last preceding thirtieth day of June—

Reports, &c.,
by approved
marriage
guidance
organizations.

- (a) an audited financial statement of the receipts and expenditure of the organization, in which receipts and expenditure in respect of its marriage guidance activities are shown separately from other receipts and expenditure; and
- (b) a report on its marriage guidance activities, including information as to the number of cases dealt with by the organization during the year.

(2.) Where the Attorney-General is satisfied that it would be impracticable for an organization to comply with the requirements of the last preceding sub-section or that the application of those requirements to an organization would be unduly onerous, he may, by writing under his hand, exempt the organization, wholly or in part, from those requirements.

12.—(1.) A marriage guidance counsellor is not competent or compellable, in any proceedings before a court (whether exercising federal jurisdiction or not) or before a person authorized by a law of the Commonwealth or of a State or Territory of the Commonwealth, or by consent of parties, to hear, receive and examine evidence, to disclose any admission or communication made to him in his capacity as a marriage guidance counsellor.

Admissions,
&c., made to
marriage
guidance
counsellors.

(2.) A marriage guidance counsellor shall, before entering upon the performance of his functions as such a counsellor, make and subscribe, before a person authorized under the law of the Commonwealth or of a State or a Territory to which this Act applies to take affidavits, an oath or affirmation of secrecy in accordance with the form in the First Schedule to this Act.

13. A reference in this Part to a voluntary organization shall be deemed to include a reference to a branch or section of such an organization, being a branch or section identified by a distinct name and in respect of which separate financial accounts are maintained.

Application of
Part to certain
branches and
sections of
voluntary
organizations.

PART III.—RECONCILIATION.

14.—(1.) It is the duty of the court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage (unless the proceedings are of such a nature that it would not be appropriate to do so), and if at any time it appears

Reconciliation.

to the Judge constituting the court, either from the nature of the case, the evidence in the proceedings or the attitude of those parties, or of either of them, or of counsel, that there is a reasonable possibility of such a reconciliation, the Judge may do all or any of the following:—

- (a) adjourn the proceedings to afford those parties an opportunity of becoming reconciled or to enable anything to be done in accordance with either of the next two succeeding paragraphs;
- (b) with the consent of those parties, interview them in chambers, with or without counsel, as the Judge thinks proper, with a view to effecting a reconciliation;
- (c) nominate—
 - (i) an approved marriage guidance organization or a person with experience or training in marriage conciliation; or
 - (ii) in special circumstances, some other suitable person,
 to endeavour, with the consent of those parties, to effect a reconciliation.

(2.) If, not less than fourteen days after an adjournment under the last preceding sub-section has taken place, either of the parties to the marriage requests that the hearing be proceeded with, the Judge shall resume the hearing, or arrangements shall be made for the proceedings to be dealt with by another Judge, as the case requires, as soon as practicable.

Hearing when
reconciliation
fails.

15. Where a Judge has acted as conciliator under paragraph (b) of sub-section (1.) of the last preceding section but the attempt to effect a reconciliation has failed, the Judge shall not, except at the request of the parties to the proceedings, continue to hear the proceedings, or determine the proceedings, and, in the absence of such a request, arrangements shall be made for the proceedings to be dealt with by another Judge.

Statements,
&c., made in
course of
attempt to
effect
reconciliation.

16. Evidence of anything said or of any admission made in the course of an endeavour to effect a reconciliation under this Part is not admissible in any court (whether exercising federal jurisdiction or not) or in proceedings before a person authorized by a law of the Commonwealth or of a State or Territory of the Commonwealth, or by consent of parties, to hear, receive and examine evidence.

Marriage
conciliator
to take oath
of secrecy.

17. A marriage conciliator shall, before entering upon the performance of his functions as such a conciliator, make and subscribe, before a person authorized under the law of the Commonwealth or of a State or a Territory to which this Act applies to take affidavits, an oath or affirmation of secrecy in accordance with the form in the First Schedule to this Act.

PART IV.—VOID AND VOIDABLE MARRIAGES.

18.—(1.) Subject to the next succeeding sub-section and to section twenty of this Act, a marriage that takes place after the commencement of this Act is void where— Void marriages.

- (a) either of the parties is, at the time of the marriage, lawfully married to some other person;
- (b) the parties are within the prohibited degrees of consanguinity or affinity;
- (c) the marriage is not a valid marriage under the law of the place where the marriage takes place, by reason of a failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages;
- (d) the consent of either of the parties is not a real consent because—
 - (i) it was obtained by duress or fraud;
 - (ii) that party is mistaken as to the identity of the other party, or as to the nature of the ceremony performed; or
 - (iii) that party is mentally incapable of understanding the nature of the marriage contract; or

(e) either of the parties is not of marriageable age, and not otherwise.

(2.) Paragraph (c) of the last preceding sub-section does not apply in relation to—

- (a) a marriage that is solemnized under the *Marriage (Overseas) Act* 1955–1958, including a marriage to which section twenty-four of that Act applies; or
- (b) any other marriage recognized in Australia by virtue of that Act or regulations made under that Act.

19.—(1.) After the commencement of this Act, the prohibited degrees of consanguinity and affinity respectively are those set out in the Second Schedule to this Act and none other. Prohibited degrees.

(2.) A marriage solemnized before the commencement of this Act is not voidable on the ground of consanguinity or affinity of the parties unless the parties were, at the time of the marriage, within one of the degrees of consanguinity or affinity set out in the Second Schedule to this Act.

(3.) The last preceding sub-section does not make voidable a marriage that would not, apart from that sub-section, be voidable.

Marriage of
persons within
prohibited
degrees of
affinity.

20.—(1.) Where two persons who are within the prohibited degrees of affinity wish to marry one another, they may apply, in writing, to a Judge for permission to do so.

(2.) If the Judge is satisfied that the circumstances of the particular case are so exceptional as to justify the granting of the permission sought, he may, by order, permit the applicants to marry one another.

(3.) Where persons marry in pursuance of permission granted under this section, the validity of their marriage is not affected by the fact that they are within the prohibited degrees of affinity.

(4.) The Governor-General may arrange with the Governor of a State for the performance by Judges of the Supreme Court of that State of functions under this section.

(5.) In this section, “ Judge ” means—

- (a) a Judge in respect of whom an arrangement made under the last preceding sub-section is applicable; or
- (b) a Judge of the Supreme Court of a Territory to which this Act applies.

(6.) The Governor-General may make regulations making provision for or in relation to the practice and procedure in and in connexion with applications under this section, including provision for or in relation to the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation and the payment of expenses of witnesses.

Voidable
marriages.

21.—(1.) Subject to this Act, a marriage that takes place after the commencement of this Act, not being a marriage that is void, is voidable, where, at the time of the marriage—

- (a) either party to the marriage is incapable of consummating the marriage;
- (b) either party to the marriage is—
 - (i) of unsound mind; or
 - (ii) a mental defective;
- (c) either party to the marriage is suffering from a venereal disease in a communicable form; or
- (d) the wife is pregnant by a person other than the husband, and not otherwise.

(2.) For the purposes of this section, “ mental defective ” means a person who, owing to an arrested or incomplete development of mind, whether arising from inherent causes or induced by

disease or injury, requires oversight, care or control for his own protection or for the protection of others and is, by reason of that fact, unfitted for the responsibilities of marriage.

22.—(1.) Except as expressly provided in this Part, nothing in this Part affects the validity or invalidity of a marriage that took place before the commencement of this Act.

Validity, &c.,
of certain
marriages not
affected.

(2.) A provision of this Act does not affect the validity or invalidity of a marriage where it would not be in accordance with the common law rules of private international law to apply that provision in relation to that marriage.

PART V.—JURISDICTION.

23.—(1.) Subject to this Act, a person may institute a matrimonial cause under this Act in the Supreme Court of a State or of a Territory to which this Act applies.

Jurisdiction
in matrimonial
causes.

(2.) Subject to the succeeding provisions of this section, the Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Supreme Court of each Territory to which this Act applies, to hear and determine—

- (a) matrimonial causes instituted under this Act; and
- (b) matrimonial causes (not being matrimonial causes to which section one hundred and fifteen of this Act applies) continued in accordance with Part XIII. of this Act.

(3.) The jurisdiction with which the Supreme Court of a State is invested by this section is subject to the conditions and restrictions specified in sub-section (2.) of section thirty-nine of the *Judiciary Act* 1903–1959 so far as they are applicable.

(4.) Proceedings for a decree of dissolution of marriage or for a decree of nullity of a voidable marriage shall not be instituted under this Act except by a person domiciled in Australia

(5.) Proceedings for a decree of nullity of a void marriage or for a decree of judicial separation, restitution of conjugal rights or jactitation of marriage shall not be instituted under this Act except by a person domiciled or resident in Australia.

(6.) Where, in proceedings for a decree of dissolution or nullity of marriage, the court finds that the parties to the marriage were, or one of those parties was, at the time when the proceedings were instituted, domiciled, according to the principles of the common law, in Australia, it shall include in the decree a statement to that effect.

(7.) Without prejudice to the application of sub-sections (4.) and (5.) of this section in relation to proceedings in the Supreme Court of a Territory to which this Act applies, jurisdiction under

this Act in a matrimonial cause instituted under this Act is not conferred on the Supreme Court of such a Territory unless at least one of the parties to the proceedings—

- (a) is, at the date of the institution of the proceedings, ordinarily resident in the Territory; or
- (b) has been resident in the Territory for a period of not less than six months immediately preceding that date.

(8.) Jurisdiction under this Act in a matrimonial cause of the kind referred to in paragraph (b) of sub-section (2.) of this section is not conferred on a court other than the court in which the cause was instituted.

Special provisions as to wife's domicile.

24.—(1.) For the purposes of this Act, a deserted wife who was domiciled in Australia either immediately before her marriage or immediately before the desertion shall be deemed to be domiciled in Australia.

(2.) For the purposes of this Act, a wife who is resident in Australia at the date of instituting proceedings under this Act and has been so resident for the period of three years immediately preceding that date shall be deemed to be domiciled in Australia at that date.

Law to be applied.

25.—(1.) The jurisdiction conferred on a court, or with which a court is invested, by this Act shall be exercised in accordance with this Act.

(2.) Subject to this Act, a court exercising jurisdiction under this Act in proceedings for a decree of nullity of marriage, judicial separation, restitution of conjugal rights or jactitation of marriage shall proceed and act and give relief as nearly as may be in conformity with the principles and rules applied in the ecclesiastical courts in England immediately before the commencement of the Imperial Act known as The Matrimonial Causes Act 1857.

(3.) Where it would be in accordance with the common law rules of private international law to apply the laws of any country or place (including a State or Territory of the Commonwealth), the court shall apply the laws of that country or place.

Staying and transferring of proceedings.

26.—(1.) Where it appears to a court in which a matrimonial cause has been instituted under this Act that a matrimonial cause has been instituted in another court having jurisdiction under this Act, the court may, in its discretion stay the cause for such time as it thinks fit.

(2.) Where it appears to a court in which a matrimonial cause has been instituted under this Act (including a matrimonial cause in relation to which the last preceding sub-section applies) that it is in the interests of justice that the cause be dealt with in another court having jurisdiction to hear and determine that cause, the court may transfer the cause to the other court.

(3.) The court may exercise its powers under this section at any time and at any stage, and either with or without application by any of the parties.

(4.) Where a matrimonial cause is transferred from a court in pursuance of this section—

- (a) all documents filed of record in that court shall be transmitted by the Registrar or other proper officer of that court to the Registrar or other proper officer of the court to which the cause is transferred; and
- (b) the court to which the cause is transferred shall proceed as if the cause had been originally instituted in that court and as if the same proceedings had been taken in that court as had been taken in the court from which the cause was transferred, but all subsequent proceedings shall be in accordance with the practice and procedure of the court to which the cause is transferred.

27. All courts having jurisdiction under this Act shall severally act in aid of and be auxiliary to each other in all matters under this Act.

Courts to act in aid of each other.

PART VI.—MATRIMONIAL RELIEF.

Division 1.—Dissolution of Marriage.

28. Subject to this Division, a petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be based on one or more of the following grounds:—

Grounds for dissolution of marriage.

- (a) that, since the marriage, the other party to the marriage has committed adultery;
- (b) that, since the marriage, the other party to the marriage has, without just cause or excuse, wilfully deserted the petitioner for a period of not less than two years;
- (c) that the other party to the marriage has wilfully and persistently refused to consummate the marriage;
- (d) that, since the marriage, the other party to the marriage has, during a period of not less than one year, habitually been guilty of cruelty to the petitioner;
- (e) that, since the marriage, the other party to the marriage has committed rape, sodomy or bestiality;
- (f) that, since the marriage, the other party to the marriage has, for a period of not less than two years—
 - (i) been a habitual drunkard; or

- (ii) habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation, or has, for a part or parts of such a period, been a habitual drunkard and has, for the other part or parts of the period, habitually been so intoxicated;
- (g) that, since the marriage, the petitioner's husband has, within a period not exceeding five years—
 - (i) suffered frequent convictions for crime in respect of which he has been sentenced in the aggregate to imprisonment for not less than three years; and
 - (ii) habitually left the petitioner without reasonable means of support;
- (h) that, since the marriage, the other party to the marriage has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a period of five years or more, and is still in prison at the date of the petition;
- (i) that, since the marriage and within a period of one year immediately preceding the date of the petition, the other party to the marriage has been convicted, on indictment, of—
 - (i) having attempted to murder or unlawfully to kill the petitioner; or
 - (ii) having committed an offence involving the intentional infliction of grievous bodily harm on the petitioner or the intent to inflict grievous bodily harm on the petitioner;
- (j) that the other party to the marriage has habitually and wilfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the petitioner—
 - (i) ordered to be paid under an order of, or an order registered in, a court in the Commonwealth or a Territory of the Commonwealth; or
 - (ii) agreed to be paid under an agreement between the parties to the marriage providing for their separation;
- (k) that the other party to the marriage has, for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under this Act;

- (l) that the other party to the marriage—
- (i) is, at the date of the petition, of unsound mind and unlikely to recover; and
 - (ii) since the marriage and within the period of six years immediately preceding the date of the petition, has been confined for a period of, or for periods aggregating, not less than five years in an institution where persons may be confined for unsoundness of mind in accordance with law, or in more than one such institution;
- (m) that the parties to the marriage have separated and thereafter have lived separately and apart for a continuous period of not less than five years immediately preceding the date of the petition, and there is no reasonable likelihood of cohabitation being resumed;
- (n) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

29. A married person whose conduct constitutes just cause or excuse for the other party to the marriage to live separately or apart, and occasions that other party to live separately or apart, shall be deemed to have wilfully deserted that other party without just cause or excuse, notwithstanding that that person may not in fact have intended the conduct to occasion that other party to live separately or apart.

Constructive
desertion.

30.—(1.) Where husband and wife are parties to an agreement for separation, whether oral, in writing or constituted by conduct, the refusal by one of them, without reasonable justification, to comply with the other's *bona fide* request to resume cohabitation constitutes, as from the date of the refusal, wilful desertion without just cause or excuse on the part of the party so refusing.

Refusal to
resume
cohabitation.

(2.) For the purposes of the last preceding sub-section, "reasonable justification" means reasonable justification in all the circumstances, including the conduct of the other party to the marriage since the marriage, whether that conduct took place before or after the agreement for separation.

31. Where a party to a marriage has been wilfully deserted by the other party, the desertion shall not be deemed to have been terminated by reason only that the deserting party has become incapable of forming or having an intention to continue the desertion, if it appears to the court that the desertion would probably have continued if the deserting party had not become so incapable.

Desertion
continuing
after insanity.

Restriction on dissolution of marriage on ground of wilful refusal to consummate.

32. A decree of dissolution of marriage shall not be made upon the ground specified in paragraph (c) of section twenty-eight of this Act unless the court is satisfied that, as at the commencement of the hearing of the petition, the marriage had not been consummated.

Aggregation of concurrent sentences.

33. Where—

- (a) a person has been sentenced to imprisonment in respect of each of two or more crimes that, in the opinion of the court hearing the petition, arose substantially out of the same acts or omissions; and
- (b) the sentences were ordered to be served, in whole or in part, concurrently,

then, in reckoning for the purposes of paragraph (g) of section twenty-eight of this Act the period for which that person has been sentenced in the aggregate, any period during which two or more of those sentences were to be served concurrently shall be taken into account once only.

Restriction on dissolution of marriage on ground of failure to pay maintenance.

34. A decree of dissolution of marriage shall not be made upon the ground specified in paragraph (j) of section twenty-eight of this Act unless the court is satisfied that reasonable attempts have been made by the petitioner to enforce the order or agreement under which the maintenance was ordered or agreed to be paid.

Restriction on dissolution of marriage on ground of insanity.

35. A decree of dissolution of marriage shall not be made upon the ground specified in paragraph (l) of section twenty-eight of this Act unless the court is satisfied that, at the commencement of the hearing of the petition, the respondent was still confined in an institution referred to in that paragraph and was unlikely to recover.

Provisions relating to ground of separation.

36.—(1.) For the purposes of paragraph (m) of section twenty-eight of this Act, the parties to a marriage may be taken to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties, whether constituting desertion or not.

(2.) A decree of dissolution of marriage may be made upon the ground specified in paragraph (m) of section twenty-eight of this Act notwithstanding that there was in existence at any relevant time—

- (a) a decree of a court suspending the obligation of the parties to the marriage to cohabit; or
- (b) an agreement between those parties for separation.

Court to refuse to make decree on ground of separation in certain circumstances.

37.—(1.) Where, on the hearing of a petition for a decree of dissolution of marriage on the ground specified in paragraph (m) of section twenty-eight of this Act (in this section referred to

as “ the ground of separation ”), the court is satisfied that, by reason of the conduct of the petitioner, whether before or after the separation commenced, or for any other reason, it would, in the particular circumstances of the case, be harsh and oppressive to the respondent, or contrary to the public interest, to grant a decree on that ground on the petition of the petitioner, the court shall refuse to make the decree sought.

(2.) Where, in proceedings for a decree of dissolution of marriage on the ground of separation, the court is of opinion that it is just and proper in the circumstances of the case that the petitioner should make provision for the maintenance of the respondent or should make any other provision for the benefit of the respondent, whether by way of settlement of property or otherwise, the court shall not make a decree on that ground in favour of the petitioner until the petitioner has made arrangements to the satisfaction of the court to provide the maintenance or other benefits upon the decree becoming absolute.

(3.) The court may, in its discretion, refuse to make a decree of dissolution of marriage on the ground of separation if the petitioner has, whether before or after the separation commenced, committed adultery that has not been condoned by the respondent or, having been so condoned, has been revived.

(4.) Where petitions by both parties to a marriage for the dissolution of the marriage are before a court, the court shall not, upon either of the petitions, make a decree on the ground of separation if it is able properly to make a decree upon the other petition on any other ground.

38.—(1.) Where proceedings are brought upon the ground specified in paragraph (n) of section twenty-eight of this Act, proof that, for a period of seven years immediately preceding the date of the petition, the other party to the marriage was continually absent from the petitioner and that the petitioner has no reason to believe that the other party was alive at any time within that period is sufficient to establish the ground of the petition unless it is shown that the other party to the marriage was alive at a time within that period.

Provisions relating to presumption of death.

(2.) A decree upon the ground specified in paragraph (n) of section twenty-eight of this Act shall be in the form of a decree of dissolution of marriage by reason of presumption of death.

39. A decree of dissolution of marriage shall not be made upon a ground specified in any of paragraphs (a) to (k), inclusive, of section twenty-eight of this Act, if the petitioner has condoned, or has connived at, the ground.

Condonation or connivance to be an absolute bar to relief.

40. A decree of dissolution of marriage shall not be made if the petitioner, in bringing or prosecuting the proceedings, has been guilty of collusion with intent to cause a perversion of justice.

Collusion to be an absolute bar.

Discretionary
bars.

41. The court may, in its discretion, refuse to make a decree of dissolution of marriage upon a ground specified in any of paragraphs (a) to (d), inclusive, of section twenty-eight of this Act, if, since the marriage—

- (a) the petitioner has committed adultery that has not been condoned by the respondent or, having been so condoned, has been revived;
- (b) the petitioner has been guilty of cruelty to the respondent;
- (c) the petitioner has wilfully deserted the respondent before the happening of the matters constituting the ground relied upon by the petitioner or, where that ground involves matters occurring during, or extending over, a period, before the expiration of that period; or
- (d) the habits of the petitioner have, or the conduct of the petitioner has, conduced or contributed to the existence of the ground relied upon by the petitioner.

Court not to
make decree
of dissolution
where petition
for decree of
nullity before
it.

42. Where both a petition for a decree of nullity of a marriage and a petition for a decree of dissolution of that marriage are before a court, the court shall not make a decree of dissolution of the marriage unless it has dismissed the petition for a decree of nullity of the marriage.

Petition within
three years
of marriage.

43.—(1.) Subject to this section, proceedings for a decree of dissolution of marriage shall not be instituted within three years after the date of the marriage except by leave of the court.

(2.) Nothing in this section shall be taken to require the leave of the court to the institution of proceedings for a decree of dissolution of marriage on one or more of the grounds specified in paragraphs (a), (c) and (e) of section twenty-eight of this Act, and on no other ground, or to the institution of proceedings for a decree of dissolution of marriage by way of cross-proceedings.

(3.) The court shall not grant leave under this section to institute proceedings except on the ground that to refuse to grant that leave would impose exceptional hardship on the applicant or that the case is one involving exceptional depravity on the part of the other party to the marriage.

(4.) In determining an application for leave to institute proceedings under this section, the court shall have regard to the interests of any children of the marriage and to the question whether there is any reasonable probability of a reconciliation between the parties before the expiration of the period of three years after the date of the marriage.

(5.) Where, at the hearing of proceedings that have been instituted by leave of the court under this section, the court is satisfied that the leave was obtained by misrepresentation or concealment of material facts, the court may—

- (a) adjourn the hearing for such period as the court thinks fit; or

(b) dismiss the petition on the ground that the leave was so obtained.

(6.) Where, in a case to which the last preceding sub-section applies, there is a cross-petition, if the court adjourns or dismisses the petition under that sub-section, it shall also adjourn for the same period, or dismiss, as the case may be, the cross-petition, but if the court, having regard to the provisions of this section, thinks it proper to proceed to hear and determine the cross-petition, it may do so, and in that case it shall also proceed to hear and determine the petition.

(7.) The dismissal of a petition or a cross-petition under sub-section (5.) or (6.) of this section does not prejudice any subsequent proceedings on the same, or substantially the same, facts as those constituting the ground on which the dismissed petition or cross-petition was brought.

(8.) Nothing in this section prevents the institution of proceedings, after the period of three years from the date of the marriage, based upon matters which have occurred within that period.

(9.) In this section, a reference to the leave of the court shall be deemed to include a reference to leave granted by a court on appeal.

44.—(1.) A party to a marriage, whether husband or wife, may, in a petition for a decree of dissolution of the marriage on the ground that the other party to the marriage has committed adultery with a person, or on grounds including that ground, claim damages from that person on the ground that that person has committed adultery with the other party to the marriage and, subject to this section, the court may award damages accordingly. Claim for damages.

(2.) The court shall not award damages against a person where the adultery of the respondent with that person has been condoned, whether subsequently revived or not, or if a decree of dissolution of the marriage on the ground of the adultery of the respondent with that person, or on grounds including that ground, is not made.

(3.) Damages shall not be awarded under this Act in respect of an act of adultery committed more than three years before the date of the petition.

(4.) The court may direct in what manner the damages awarded shall be paid or applied and may, if it thinks fit, direct that they shall be settled for the benefit of the respondent or the children of the marriage.

(5.) No action for criminal conversation lies, whether under this Act or otherwise.

45.—(1.) Where, in a petition for a decree of dissolution of marriage or in an answer to such a petition, a party to the marriage is alleged to have committed adultery with a specified Joinder of adulterer, &c.

person, whether or not a decree of dissolution of marriage is sought on the ground of the adultery, that person shall, except as provided by the rules, be made a party to the proceedings.

(2.) Where, in a petition for a decree of dissolution of marriage or in an answer to such a petition, a party to the marriage is alleged to have committed rape or sodomy on or with a specified person, whether or not a decree of dissolution of marriage is sought on the ground of the rape or sodomy, that person shall, except as provided by the rules, be served with notice that the allegation has been made and is thereupon entitled to intervene in the proceedings.

(3.) Where a person has been made a party to proceedings for a decree of dissolution of marriage in pursuance of sub-section (1.) of this section, the court may, on the application of that person, after the close of the case for the party to the marriage who alleged the adultery, if it is satisfied that there is not sufficient evidence to establish that that person committed adultery with the other party to the marriage, dismiss that person from the proceedings.

Re-marriage.

46. Where a decree of dissolution of marriage under this Act has become absolute, a party to the marriage may marry again as if the marriage had been dissolved by death.

Division 2.—Nullity of Marriage.

Ground for
decree of nullity
of marriage.

47. Subject to this Division, a petition under this Act for a decree of nullity of marriage may be based on the ground that the marriage is void or on the ground that the marriage is voidable at the suit of the petitioner.

Who may
institute
proceedings.

48. A decree of nullity of marriage shall not be made—

- (a) on the ground that the marriage is voidable by virtue of paragraph (a) of sub-section (1.) of section twenty-one of this Act—upon the petition of the party suffering from the incapacity to consummate the marriage, unless that party was not aware of the existence of the incapacity at the time of the marriage;
- (b) on the ground that the marriage is voidable by virtue of paragraph (b) or (c) of sub-section (1.) of that section—upon the petition of the party suffering from the disability or disease; or
- (c) on the ground that the marriage is voidable by virtue of paragraph (d) of sub-section (1.) of that section—upon the petition of the wife.

Incapacity to
consummate
marriage.

49.—(1.) A decree of nullity of marriage shall not be made on the ground that the marriage is voidable by virtue of paragraph (a) of sub-section (1.) of section twenty-one of this Act

unless the court is satisfied that the incapacity to consummate the marriage also existed at the time when the hearing of the petition commenced and that—

- (a) the incapacity is not curable;
- (b) the respondent refuses to submit to such medical examination as the court considers necessary for the purpose of determining whether the incapacity is curable; or
- (c) the respondent refuses to submit to proper treatment for the purpose of curing the incapacity.

(2.) A decree of nullity of marriage shall not be made on the ground that the marriage is voidable by virtue of paragraph (a) of sub-section (1.) of section twenty-one of this Act where the court is of opinion that—

- (a) by reason of—
 - (i) the petitioner's knowledge of the incapacity at the time of the marriage;
 - (ii) the conduct of the petitioner since the marriage; or
 - (iii) the lapse of time; or
- (b) for any other reason,

it would, in the particular circumstances of the case, be harsh and oppressive to the respondent, or contrary to the public interest, to make a decree.

50. A decree of nullity of marriage shall not be made on the ground that the marriage is voidable by virtue of paragraph (b), (c) or (d) of sub-section (1.) of section twenty-one of this Act unless the court is satisfied that—

Restrictions on certain grounds.

- (a) the petitioner was, at the time of the marriage, ignorant of the facts constituting the ground;
- (b) the petition was filed not later than twelve months after the date of the marriage; and
- (c) marital intercourse has not taken place with the consent of the petitioner since the petitioner discovered the existence of the facts constituting the ground.

51.—(1.) A decree of nullity under this Act of a voidable marriage annuls the marriage from and including the date on which the decree becomes absolute.

Effect of decree of nullity of a voidable marriage.

(2.) Without prejudice to the operation of the last preceding sub-section in other respects, a decree of nullity under this Act of a voidable marriage does not render illegitimate a child of the parties born since, or legitimated during, the marriage.

Division 3.—Judicial Separation.

Grounds for
judicial
separation.

52. Subject to this Division, a petition under this Act by a party to a marriage for a decree of judicial separation may be based on one or more of the grounds specified in paragraphs (a) to (l) (inclusive) of section twenty-eight of this Act.

Application of
provisions of
Division 1.

53. The provisions of sections twenty-nine to thirty-five (inclusive) and sections thirty-nine to forty-five (inclusive) of this Act apply to and in relation to a decree of judicial separation and proceedings for such a decree and, for the purposes of those provisions as so applying, a reference in those provisions to a decree of dissolution of marriage shall be read as a reference to a decree of judicial separation.

Effect of
decree.

54. A decree of judicial separation relieves the petitioner from the obligation to cohabit with the other party to the marriage while the decree remains in operation, but, except as provided by this Division, does not otherwise affect the marriage or the status, rights and obligations of the parties to the marriage.

Effect on
rights to sue,
devolution of
property, &c.

55.—(1.) While a decree of judicial separation is in operation, either party to the marriage may bring proceedings in contract or in tort against the other party.

(2.) Where a party to a marriage dies intestate as to any property while a decree of judicial separation is in operation, that property shall devolve as if that party had survived the other party to the marriage.

(3.) Where upon, or in consequence of, the making of a decree of judicial separation a husband is ordered to pay maintenance to his wife, and the maintenance is not duly paid, the husband is liable for necessaries supplied for the wife's use.

Exercise of
joint powers
not affected.

56. Nothing in this Division prevents a wife, during separation under a decree of judicial separation, from joining in the exercise of any power given to herself and her husband jointly.

Decree of
judicial
separation not
to bar sub-
sequent pro-
ceedings for
dissolution
of marriage.

57.—(1.) A decree of judicial separation does not prevent the institution by either party to the marriage of proceedings for a decree of dissolution of marriage.

(2.) The court may, in any proceedings for a decree of dissolution of marriage on the same, or substantially the same, facts as those on which a decree of judicial separation has been made, treat the decree of judicial separation as sufficient proof of the facts constituting the ground on which that decree was made.

(3.) Notwithstanding the last preceding sub-section, the court shall not grant a decree of dissolution of marriage without receiving evidence by the petitioner in support of the petition.

58.—(1.) Where, after a decree of judicial separation has been made, the parties have voluntarily resumed cohabitation, either party may apply for an order discharging the decree.

Discharge of decree on resumption of cohabitation.

(2.) Upon such an application, the court shall, if both parties consent to the order, or if the court is otherwise satisfied that the parties have voluntarily resumed cohabitation, make an order discharging the decree.

59. The provisions of sections fifty-four to fifty-eight (inclusive) of this Act apply to and in relation to a decree of judicial separation made before the commencement of this Act by a court in Australia as well as to such a decree made after the commencement of this Act.

Application of Division to decrees made before commencement of this Act.

Division 4.—Restitution of Conjugal Rights.

60. A petition under this Act by a party to a marriage for a decree of restitution of conjugal rights may be based on the ground that the parties to the marriage, whether or not they have at any time cohabited, are not cohabiting and that, without just cause or excuse, the party against whom the decree is sought refuses to cohabit with, and render conjugal rights to, the petitioner.

Ground for decree of restitution of conjugal rights.

61. An agreement for separation, whether entered into before or after the commencement of this Act, does not constitute a defence to proceedings under this Act for a decree of restitution of conjugal rights.

Agreement for separation.

62. The court shall not make a decree of restitution of conjugal rights unless it is satisfied—

Sincerity of petitioner.

- (a) that the petitioner sincerely desires conjugal rights to be rendered by the respondent and is willing to render conjugal rights to the respondent; and
- (b) that a written request for cohabitation, expressed in conciliatory language, was made to the respondent before the institution of the proceedings, or that there are special circumstances which justify the making of the decree notwithstanding that such a request was not made.

63. Where the court makes a decree of restitution of conjugal rights on the petition of a husband, the petitioner shall, as soon as practicable after the making of the decree, and at such other times as the rules so require, give to the respondent notice, in accordance with the rules, of the provision made by the petitioner, or which the petitioner is willing to make, with respect to a home for the purpose of enabling the respondent to comply with the decree.

Notice as to home.

64. A decree of restitution of conjugal rights is not enforceable by attachment.

Enforcement of decree.

Division 5.—Jactitation of Marriage.

Ground for
decree of
jactitation
of marriage.

65. A petition under this Act for a decree of jactitation of marriage may be based on the ground that the respondent has falsely boasted and persistently asserted that a marriage has taken place between the respondent and the petitioner.

Decree to be
in discretion
of court.

66. Notwithstanding anything contained in this Act, the court may, in its discretion, refuse to make a decree of jactitation of marriage.

Division 6.—General.

Facts, &c.,
occurring before
commencement
of Act or outside
Australia.

67.—(1.) A decree may be made, or refused, under this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencement of this Act or outside Australia.

(2.) For the purposes of this section, the provisions of sections twenty-nine, thirty and thirty-one of this Act shall be deemed to extend to matters which occurred before the commencement of this Act.

Institution of
proceedings.

68.—(1.) Subject to the next succeeding sub-section, a matrimonial cause of a kind referred to in paragraph (a) or (b) of the definition of “matrimonial cause” in sub-section (1.) of section five of this Act shall be instituted by petition.

(2.) A respondent may, in the answer to the petition, seek any decree or declaration that the respondent could have sought in a petition.

(3.) Proceedings of a kind referred to in paragraph (c) of the definition of “matrimonial cause” in sub-section (1.) of section five of this Act that are in relation to proceedings under this Act for a decree or declaration of a kind referred to in paragraph (a) or (b) of that definition—

(a) may be instituted by the same petition as that by which the proceedings for that decree or declaration are instituted; and

(b) except as permitted by the rules or by leave of the court, shall not be instituted in any other manner.

(4.) The court shall, so far as is practicable, hear and determine at the same time all proceedings instituted by the one petition.

Duty of
court.

69. Except as provided by this Act, the court, upon being satisfied of the existence of any ground in respect of which relief is sought, shall make the appropriate decree.

Decree nisi
in first
instance.

70. A decree of dissolution of marriage or nullity of a voidable marriage under this Act shall, in the first instance, be a decree *nisi*.

71.—(1.) Where there are children of the marriage in relation to whom this section applies, the decree *nisi* shall not become absolute unless the court, by order, has declared—

Decree absolute where children under sixteen years, &c.

- (a) that it is satisfied that proper arrangements in all the circumstances have been made for the welfare and, where appropriate, the advancement and education of those children; or
- (b) that there are such special circumstances that the decree *nisi* should become absolute notwithstanding that the court is not satisfied that such arrangements have been made.

(2.) In this section, “children of the marriage in relation to whom this section applies” means—

- (a) the children of the marriage who are under the age of sixteen years at the date of the decree *nisi*; and
- (b) any children of the marriage in relation to whom the court has, in pursuance of the next succeeding sub-section, ordered that this section shall apply.

(3.) The court may, in a particular case, if it is of opinion that there are special circumstances which justify its so doing, order that this section shall apply in relation to a child of the marriage who has attained the age of sixteen years at the date of the decree *nisi*.

72.—(1.) Subject to this section, where the last preceding section applies in relation to a decree *nisi*, the decree *nisi* becomes absolute by force of this section at the expiration of—

When decree becomes absolute.

- (a) a period of three months from the making of the decree; or
- (b) a period of twenty-eight days from the making of an order under sub-section (1.) of the last preceding section,

whichever is the later.

(2.) Subject to this section, where the last preceding section does not apply in relation to a decree *nisi*, the decree *nisi* becomes absolute by force of this section upon the expiration of a period of three months from the making of the decree.

(3.) Where a decree *nisi* has been made in any proceedings, the court of first instance (whether or not it made the decree), or a court in which an appeal has been instituted, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this sub-section—

- (a) having regard to the possibility of an appeal or further appeal, make an order extending the period at the expiration of which the decree *nisi* will become absolute; or

- (b) if it is satisfied that there are special circumstances which justify its so doing, make an order reducing the period at the expiration of which the decree *nisi* will become absolute.

(4.) Where an appeal is instituted (whether or not it is the first appeal) before a decree *nisi* has become absolute, then, notwithstanding any order in force under the last preceding sub-section at the time of the institution of the appeal but subject to any such order made after the institution of the appeal, the decree *nisi*, unless reversed or rescinded, becomes absolute by force of this section—

- (a) at the expiration of a period of twenty-eight days from the day on which the appeal is determined or discontinued; or

- (b) on the day on which the decree would have become absolute under sub-section (1.) or (2.) of this section if no appeal had been instituted,

whichever is the later.

(5.) A decree *nisi* shall not become absolute by force of this section where either of the parties to the marriage has died.

(6.) In this section, “ appeal ”, in relation to a decree *nisi*, means—

- (a) an appeal, application for leave to appeal or intervention, against or arising out of—

(i) the decree *nisi*; or

(ii) an order under the last preceding section in relation to the proceedings in which the decree *nisi* was made; or

- (b) an application under section seventy-four or seventy-five of this Act for rescission of the decree or an appeal or application for leave to appeal arising out of such an application.

Certificate as to
decree absolute.

73.—(1.) Where a decree *nisi* becomes absolute the Registrar or other proper officer of the court by which the decree was made shall prepare and file a memorandum of the fact and of the date upon which the decree became absolute.

(2.) Where a decree *nisi* has become absolute, any person is entitled on application to the Registrar or other proper officer of the court by which the decree was made and on payment of the appropriate fee, to receive a certificate signed by the Registrar or other proper officer that the decree *nisi* has become absolute.

(3.) A certificate given under the last preceding sub-section is, in all courts (whether exercising federal jurisdiction or not) and for all purposes, evidence of the matters specified in the certificate.

74. Notwithstanding anything contained in this Division, where a decree *nisi* has been made in proceedings for a decree of dissolution of marriage, the court may, at any time before the decree becomes absolute, upon the application of either of the parties to the marriage, rescind the decree on the ground that the parties to the marriage have become reconciled.

Rescission of decree *nisi* where parties reconciled, &c.

75. Where a decree *nisi* has been made but has not become absolute, the court by which the decree was made may, on the application of a party to the proceedings, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstance, rescind the decree and, if it thinks fit, order that the proceedings be reheard.

Rescission of decree *nisi* on ground of miscarriage of justice.

PART VII.—INTERVENTION.

76. In any proceedings under this Act, where the court requests him to do so, the Attorney-General may intervene in, and contest or argue any question arising in, the proceedings.

Intervention by Attorney-General on request from court.

77. In proceedings under this Act for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights, or in relation to the custody or guardianship of children, where the Attorney-General has reason to believe that there are matters relevant to the proceedings that have not been, or may not be, but ought to be, made known to the court, he may, at any time before the proceedings are finally disposed of, intervene in the proceedings.

Intervention of Attorney-General in other cases.

78.—(1.) The Attorney-General may, either generally or in relation to a matter or class of matters and either in relation to the whole of Australia or to a State or a Territory to which this Act applies, by writing under his hand, delegate all or any of his powers and functions under this Part (except this power of delegation) to the person occupying from time to time, while the delegation is in force—

Delegation by Attorney-General.

(a) the office of Solicitor-General or Crown Solicitor of the Commonwealth; or

(b) the office of Attorney-General, Solicitor-General or Crown Solicitor of a State.

(2.) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3.) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Attorney-General.

(4.) More than one delegation may be in force under this section at the one time in relation to the whole of Australia or in relation to the same part of Australia, and a delegation in relation to the whole of Australia may be in force at the same time as delegations in relation to parts of Australia.

Intervention by other persons.

79.—(1.) In proceedings under this Act for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights, where a person applies to the court for leave to intervene in the proceedings and the court is satisfied that that person may be able to prove facts relevant to the proceedings that have not been, or may not be, but ought to be, made known to the court, the court may, at any time before the proceedings are finally disposed of, make an order entitling that person to intervene in the proceedings.

(2.) An order under this section may be made upon such conditions as the court thinks fit, including the giving of security for costs.

Rescission of decree nisi in consequence of intervention.

80. Where an intervention takes place under this Part after a decree *nisi* has been made and it is proved that the petitioner has been guilty of collusion with intent to cause a perversion of justice or that material facts have not been brought before the court, the court may rescind the decree.

Proceedings not to be taken to be finally disposed of before decree absolute.

81. For the purposes of this Part, where a decree *nisi* has been made in any proceedings, the proceedings shall not be taken to have been finally disposed of until the decree *nisi* has become absolute.

Procedure on intervention.

82. A person intervening under this Part or Part VI. of this Act shall be deemed to be a party in the proceedings with all the rights, duties and liabilities of a party.

PART VIII.—MAINTENANCE, CUSTODY AND SETTLEMENTS.

Definition.

83. In this Part, “marriage” includes a purported marriage that is void.

Powers of court in maintenance proceedings.

84.—(1.) Subject to this section, the court may, in proceedings with respect to the maintenance of a party to a marriage, or of children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

(2.) Subject to this section and to the rules, the court may, in proceedings for an order for the maintenance of a party to a marriage, or of children of the marriage, pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

(3.) The court may make an order for the maintenance of a party notwithstanding that a decree is or has been made against that party in the proceedings to which the proceedings with respect to maintenance are related.

(4.) The power of the court to make an order with respect to the maintenance of children of the marriage shall not be exercised for the benefit of a child who has attained the age of twenty-one years unless the court is of opinion that there are special circumstances that justify the making of such an order for the benefit of that child.

85.—(1.) In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage—

Powers of court in custody, &c., proceedings.

- (a) the court shall regard the interests of the children as the paramount consideration; and
- (b) subject to the last preceding paragraph, the court may make such order in respect of those matters as it thinks proper.

(2.) The court may adjourn any proceedings referred to in the last preceding sub-section until a report has been obtained from a welfare officer on such matters relevant to the proceedings as the court considers desirable, and may receive the report in evidence.

(3.) In proceedings with respect to the custody of children of a marriage, the court may, if it is satisfied that it is desirable to do so, make an order placing the children, or such of them as it thinks fit, in the custody of a person other than a party to the marriage.

(4.) Where the court makes an order placing a child of a marriage in the custody of a party to the marriage, or of a person other than a party to the marriage, it may include in the order such provision as it thinks proper for access to the child by the other party to the marriage, or by the parties or a party to the marriage, as the case may be.

86.—(1.) The court may, in proceedings under this Act, by order require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of, the marriage, such a settlement of property to which the parties are, or either of them is, entitled (whether in possession or reversion) as the court considers just and equitable in the circumstances of the case.

Powers of court in proceedings with respect to settlement of property.

(2.) The court may, in proceedings under this Act, make such order as the court considers just and equitable with respect to the application for the benefit of all or any of the parties to, and the children of, the marriage of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements on the parties to the marriage, or either of them.

(3.) The power of the court to make orders of the kind referred to in this section shall not be exercised for the benefit of a child who has attained the age of twenty-one years unless the court is of opinion that there are special circumstances that justify the making of such an order for the benefit of that child.

General
powers of
court.

87.—(1.) The court, in exercising its powers under this Part, may do any or all of the following:—

- (a) order that a lump sum or a weekly, monthly, yearly or other periodic sum be paid;
- (b) order that a lump sum or a weekly, monthly, yearly or other periodic sum be secured;
- (c) where a periodic sum is ordered to be paid, order that its payment be wholly or partly secured in such manner as the court directs;
- (d) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (e) appoint or remove trustees;
- (f) order that payments be made direct to a party to the marriage, or to a trustee to be appointed or to a public authority for the benefit of a party to the marriage;
- (g) order that payment of maintenance in respect of a child be made to such person or public authority as the court specifies;
- (h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;
- (i) impose terms and conditions;
- (j) in relation to an order made in respect of a matter referred to in any of the last three preceding sections, whether made by that court or by another court and whether made before or after the commencement of this Act—
 - (i) discharge the order if the party in whose favour it was made marries again or if there is any other just cause for so doing;

- (ii) modify the effect of the order or suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event;
- (iii) revive wholly or in part an order suspended under the last preceding sub-paragraph; or
- (iv) subject to the next succeeding sub-section, vary the order so as to increase or decrease any amount ordered to be paid by the order;
- (k) sanction an agreement for the acceptance of a lump sum or periodic sums or other benefits in lieu of rights under an order made in respect of a matter referred to in any of the last three preceding sections, or any right to seek such an order;
- (l) make any other order (whether or not of the same nature as those mentioned in the preceding paragraphs of this sub-section, and whether or not it is in accordance with the practice under other laws before the commencement of this Act) which it thinks it is necessary to make to do justice;
- (m) include its order under this Part in a decree under another Part; and
- (n) subject to this Act, make an order under this Part at any time before or after the making of a decree under another Part.

(2.) The court shall not make an order increasing or decreasing an amount ordered to be paid by an order unless it is satisfied—

- (a) that, since the order was made or last varied, the circumstances of the parties or either of them, or of any child for whose benefit the order was made, have changed to such an extent as to justify its so doing; or
- (b) that material facts were withheld from the court that made the order or from a court that varied the order or material evidence previously given before such a court was false.

(3.) The court shall not make an order increasing or decreasing—

- (a) the security for the payment of a periodic sum ordered to be paid; or
- (b) the amount of a lump sum or periodic sum ordered to be secured,

unless it is satisfied that material facts were withheld from the court that made the order or from a court that varied the order or that material evidence given before such a court was false.

Execution of
deeds, &c.,
by order
of court.

88.—(1.) Where a person who is directed by an order under this Part to execute a deed or instrument refuses or neglects to do so, the court may appoint an officer of the court or other person to execute the deed or instrument in his name and to do all acts and things necessary to give validity and operation to the deed or instrument.

(2.) The execution of the deed or instrument by the person so appointed has the same force and validity as if it had been executed by the person directed by the order to execute it.

(3.) The court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

Power of court
to make orders
on dismissal
of petition.

89.—(1.) Except as provided by this section, the court shall not make an order under this Part where the petition for the principal relief has been dismissed.

(2.) Where—

(a) the petition for the principal relief has been dismissed after a hearing on the merits; and

(b) the court is satisfied that—

(i) the proceedings for the principal relief were instituted in good faith to obtain that relief; and

(ii) there is no reasonable likelihood of the parties becoming reconciled,

the court may, if it considers that it is desirable to do so, make an order under this Part, other than an order under section eighty-six of this Act.

(3.) The court shall not make an order by virtue of the last preceding sub-section unless it has heard the proceedings for the order at the same time as, or immediately after, the proceedings for the principal relief.

(4.) In this section, “principal relief” means relief of a kind referred to in paragraph (a) or (b) of the definition of “matrimonial cause” in sub-section (1.) of section five of this Act.

PART IX.—APPEALS.

No appeal
after decree
absolute.

90. An appeal does not lie from a decree of dissolution of marriage or nullity of a voidable marriage after the decree has become absolute.

91.—(1.) If, in proceedings under this Act in a court, not being proceedings by way of appeal, a question of law arises which the Judge and at least one of the parties wish to have determined by the High Court before the proceedings are further dealt with by the court, the Judge shall—

(a) state the facts in the form of a special case for the opinion of the High Court; and

(b) transmit to the High Court the special case and the documents in the proceedings, or such of them as are required for the purposes of the determination,

and a Full Court of the High Court shall hear and determine the question.

(2.) The High Court may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the court by which the case was stated.

(3.) In proceedings under this Act, a case shall not be stated to any court other than the High Court.

92.—(1.) A person aggrieved by a decree of a Judge of the Supreme Court of a State exercising the jurisdiction with which that Court is invested by this Act may, within such time as is prescribed by the rules, appeal from the decree to the Supreme Court of that State sitting as a Full Court.

Appeals from
single Judges
of State
Supreme Court.

(2.) The Supreme Court of each State is invested with federal jurisdiction to hear and determine appeals under this section.

(3.) The jurisdiction with which the Supreme Court of a State is invested by this section is subject to the conditions and restrictions specified in sub-section (2.) of section thirty-nine of the *Judiciary Act* 1903–1959 so far as they are applicable.

(4.) Upon such an appeal the Court may affirm, reverse or vary the decree the subject of the appeal and may make such decree as, in the opinion of the Court, ought to have been made in the first instance, or may, if it thinks fit, order a rehearing on such terms and conditions, if any, as it thinks just.

93. Notwithstanding anything contained in the *Judiciary Act* 1903–1959, an appeal does not lie to the High Court, except by special leave of the High Court, from a judgment, decree or order of the Supreme Court of a State given or made under this Act, whether in the exercise of original or appellate jurisdiction, including a judgment, decree or order under the Third Schedule to this Act.

Appeals to
High Court.

PART X.—RECOGNITION OF DECREES.

Decrees
under this Act
to have effect
throughout the
Commonwealth
and the
Territories.

94. A decree under this Act has effect throughout the Commonwealth and all the Territories of the Commonwealth.

Recognition
of other
decrees.

95.—(1.) A decree of dissolution or nullity of marriage—

- (a) made before the commencement of this Act by a court in Australia or made after the commencement of this Act by such a court in accordance with Part XIII. of this Act; or
- (b) made, whether before or after the commencement of this Act, by a court of a Territory of the Commonwealth other than a Territory to which this Act applies,

shall be recognized as valid in the Commonwealth and all the Territories of the Commonwealth.

(2.) A dissolution or annulment of a marriage effected in accordance with the law of a foreign country shall be recognized as valid in Australia where, at the date of the institution of the proceedings that resulted in the dissolution or annulment, the party at whose instance the dissolution or annulment was effected (or, if it was effected at the instance of both parties, either of those parties) was—

- (a) in the case of the dissolution of a marriage or the annulment of a voidable marriage—domiciled in that foreign country; or
- (b) in the case of the annulment of a void marriage—domiciled or resident in that foreign country.

(3.) For the purposes of the last preceding sub-section—

- (a) where a dissolution of a marriage was effected in accordance with the law of a foreign country at the instance of a deserted wife who was domiciled in that foreign country either immediately before her marriage or immediately before the desertion, she shall be deemed to have been domiciled in that foreign country at the date of the institution of the proceedings that resulted in the dissolution; and
- (b) a wife who, at the date of the institution of the proceedings that resulted in a dissolution or annulment of her marriage in accordance with the law of a foreign country, was resident in that foreign country and had been so resident for a period of three years immediately preceding that date shall be deemed to have been domiciled in that foreign country at that date.

(4.) A dissolution or annulment of a marriage effected in accordance with the law of a foreign country, not being a dissolution or annulment to which sub-section (2.) of this section applies, shall be recognized as valid in Australia if its validity would have been recognized under the law of the foreign country in which, in the case of a dissolution, the parties were domiciled at the date of the dissolution or in which, in the case of an annulment, either party was domiciled at the date of the annulment.

(5.) Any dissolution or annulment of a marriage that would be recognized as valid under the common law rules of private international law but to which none of the preceding provisions of this section applies shall be recognized as valid in Australia, and the operation of this sub-section shall not be limited by any implication from those provisions.

(6.) For the purposes of this section, a court in Australia, in considering the validity of a dissolution or annulment effected under the law of a foreign country, may treat as proved any facts found by a court of the foreign country or otherwise established for the purposes of the law of the foreign country.

(7.) A dissolution or annulment of a marriage shall not be recognized as valid by virtue of sub-section (2.) or (4.) of this section where, under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice.

(8.) Sub-sections (2.) to (7.) of this section apply in relation to dissolutions and annulments effected, whether by decree, legislation or otherwise, before or after the commencement of this Act.

(9.) In this section, "foreign country" means a country, or part of a country, outside the Commonwealth and the Territories of the Commonwealth.

PART XI.—EVIDENCE.

96.—(1.) For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the court.

Standard
of proof.

(2.) Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it is sufficient if the court is reasonably satisfied of the existence of that ground or fact or as to that other matter.

97.—(1.) Subject to this Part, all parties and the wives and husbands of all parties are competent and compellable witnesses in proceedings under this Act.

Evidence of
husbands and
wives.

(2.) Subject to the next succeeding sub-section, in proceedings under this Act a husband is competent, but not compellable, to disclose communications made between him and his wife during the marriage, and a wife is competent, but not compellable, to disclose communications made between her and her husband during the marriage.

(3.) Where a husband and wife are both parties to proceedings under this Act, each of them is competent and compellable to disclose communications made between them during the marriage.

(4.) The last two preceding sub-sections apply to communications made before, as well as to communications made after, the commencement of this Act.

Evidence of non-access.

98. In proceedings under this Act, either party to a marriage may give evidence proving or tending to prove that the parties to the marriage did not have sexual relations with each other at any particular time, but is not compellable to give such evidence if it would show or tend to show that a child born to the wife during the marriage was illegitimate.

Evidence as to adultery.

99.—(1.) A witness in proceedings under this Act who, being a party, voluntarily gives evidence on his own behalf or, whether he is a party or not, is called by a party may be asked, and is bound to answer, a question the answer to which may show, or tend to show, adultery by or with the witness where proof of that adultery would be material to the decision of the case.

(2.) Except as provided by the last preceding sub-section, a witness in proceedings under this Act (whether a party to the proceedings or not) is not liable to be asked, or bound to answer, a question the answer to which may show, or tend to show, that the witness has committed adultery.

Proof of marriage, &c.

100. 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 a certificate, entry or record of a birth, death or marriage alleged to have taken place whether in Australia or elsewhere.

Evidence of rape, &c.

101.—(1.) In any proceedings under this Act—

(a) evidence that a person, being a party to a marriage, was, after the marriage, convicted, whether in Australia or elsewhere, of the crime or offence of rape or any other crime or offence in which sexual intercourse with a person of the opposite sex is an element is evidence that the former person committed adultery with the person on whom the rape or other crime or offence was committed; and

- (b) evidence that a person, being a party to a marriage, was, after the marriage, convicted, whether in Australia or elsewhere, of the crime or offence of sodomy or bestiality is evidence that that person committed sodomy or bestiality.

(2.) In proceedings under this Act, a certificate of the conviction of a person for a crime or offence, on a date specified in the certificate, by a court of a State or Territory of the Commonwealth or of any part of the Queen's dominions, being a certificate purporting to be signed by the registrar or other appropriate officer of that court, is evidence of the fact and date of the conviction and, if the certificate shows that a sentence of imprisonment was imposed, of the fact that that sentence was imposed.

PART XII.—ENFORCEMENT OF DECREES.

102.—(1.) Subject to the rules, a court having jurisdiction under this Act may enforce by attachment or by sequestration an order made by it under this Act for payment of maintenance or costs or in respect of the custody of, or access to, children. Attachment.

(2.) The court shall order the release from custody of a person who has been attached under this section upon being satisfied that that person has complied with the order in respect of which he was attached and may, at any time, if the court is satisfied that it is just and equitable to do so, order the release of such a person notwithstanding that he has not complied with that order.

(3.) Where a person who has been attached under this section in consequence of his failure to comply with an order for the payment of maintenance or costs becomes a bankrupt, he shall not be kept in custody under the attachment longer than six months after he becomes a bankrupt unless the court otherwise orders.

103.—(1.) A decree made under this Act by a court having jurisdiction under this Act may, in accordance with the rules, be registered in another court having jurisdiction under this Act. Enforcement
of decrees
by other
Supreme
Courts.

(2.) A decree registered in a court under this section may, subject to the rules, be enforced as if it had been made by the court in which it is registered.

(3.) A reference in this Part to the court by which a decree was made shall be read as including a reference to a court in which the decree is registered under this section.

Recovery of moneys as judgment debt.

104.—(1.) Where a decree made under this Act orders the payment of money to a person, any moneys payable under the decree may be recovered as a judgment debt in a court of competent jurisdiction.

(2.) A decree made under this Act may be enforced, by leave of the court by which it was made and on such terms and conditions as the court thinks fit, against the estate of a party after that party's death.

Summary enforcement of orders for maintenance.

105.—(1.) Where a court has made under this Act an order for payment of maintenance, the order may be registered, in accordance with the rules, in a court of summary jurisdiction of a State or of a Territory to which this Act applies, and an order so registered may, subject to the rules, be enforced in the same manner as if it were an order for maintenance of a deserted wife made by the court of summary jurisdiction.

(2.) The several courts of summary jurisdiction of the States and of the Territories to which this Act applies are authorized to do all things necessary for the purposes of the last preceding sub-section.

(3.) In this section, “court of summary jurisdiction of a State or of a Territory to which this Act applies” has the same meaning as in section eight of this Act.

Enforcement of maintenance orders by attachment of earnings.

106. An order under this Act for the payment of maintenance may be enforced in accordance with the Third Schedule to this Act and the provisions of that Schedule have effect in relation to the enforcement of such orders.

Enforcement by other means.

107. Subject to this Act, the rules may make provision for the enforcement of decrees made under this Act by means other than those specified in the preceding provisions of this Part.

Enforcement of existing decrees.

108. A decree made in a matrimonial cause before the commencement of this Act by a court in Australia or by an officer of such a court may be enforced—

(a) in the manner in which it could be enforced if this Act had not been passed; or

(b) subject to the rules, in the manner in which a like decree made by that court under this Act may be enforced.

Power to make rules for purposes of this Part.

109.—(1.) The power to make rules conferred by sub-sections (1.) and (4.) of section one hundred and twenty-seven of this Act includes power to make rules for the purposes of sections one hundred and two, one hundred and three and one hundred and eight of this Act and for the purposes of any jurisdiction conferred by the Third Schedule to this Act on the Supreme Court of a State or of a Territory to which this Act applies.

(2.) The power to make rules conferred by sub-section (1.) of section one hundred and twenty-seven of this Act includes power to make rules for the purposes of section one hundred and five of this Act and for the purposes of any jurisdiction conferred by the Third Schedule to this Act on a court of summary jurisdiction.

(3.) The power of any authority under the law of a State or of a Territory to which this Act applies to make rules of court or other provisions in relation to the practice and procedure of courts of summary jurisdiction of that State or Territory extends, by force of this Act, to the making of rules of court or other provisions (not inconsistent with this Act or with any rules made by the Governor-General for the time being in force under this Act) for the purposes of section one hundred and five of this Act and for the purposes of any jurisdiction conferred by the Third Schedule to this Act on a court of summary jurisdiction.

(4.) Rules or other provisions made in accordance with the last preceding sub-section shall be deemed not to be statutory rules within the meaning of the *Rules Publication Act* 1903–1939.

PART XIII.—TRANSITIONAL PROVISIONS.

110. In this Part—

Definitions.

“ pending proceedings ” means proceedings which have been instituted in the Supreme Court of a State or of a Territory to which this Act applies before the date of commencement of this Act but have not been completed before that date;

“ the court ”, in relation to pending proceedings, means the court in which the proceedings were instituted.

111. Pending proceedings constituting a matrimonial cause may be continued and dealt with in accordance with and by virtue of this Part, and not otherwise.

Pending proceedings to be continued in accordance with this Part.

112.—(1.) Except as provided by this Part, the law to be applied, and the practice and procedure to be followed, in and in relation to pending proceedings, being proceedings for a decree of dissolution or nullity of marriage or of judicial separation, shall be the same as if this Act had not been passed.

Continuance of proceedings for dissolution or nullity of marriage, or judicial separation.

(2.) Without prejudice to any power that the court has, by virtue of the last preceding sub-section, to amend, or permit the amendment of, a petition, the court may, in any such proceedings, upon application by the petitioner and on such conditions, if any, as the court thinks fit, permit the petitioner to amend the petition so as to include a ground of relief provided by this Act and not already included in the petition and, where

such a ground is so included, then, in relation to that ground, the provisions of this Act applicable in relation to that ground apply as if the proceedings had been instituted under this Act.

(3.) Notwithstanding sub-section (3.) of section five of this Act, a reference in this Act to the date of the petition or the date of institution of proceedings shall, in relation to a ground of relief included, or sought to be included, in a petition by virtue of the last preceding sub-section, be read as a reference to the date on which the application for leave to amend the petition was instituted.

(4.) Where, in pending proceedings for a decree of dissolution of marriage, the facts and circumstances that have been established, whether before or after the commencement of this Act, by the petitioner in support of a ground included in the petition are such that they would have established a ground or grounds for the same relief under this Act if this Act had been in force at the date of the petition and the proceedings had been instituted under this Act, the bars to relief applicable in relation to the ground included in the petition shall be those that would be applicable in proceedings on the ground that would have been established under this Act, or, if more than one ground would have been established, such one of those grounds as most nearly corresponds to the ground included in the petition, and no other bars.

(5.) In the case of pending proceedings, being proceedings for a decree of nullity of marriage on the ground that the marriage is voidable by reason of the parties being within the prohibited degrees of consanguinity or affinity under the law of a State or of a Territory to which this Act applies, a decree of nullity of the marriage shall not be made after the commencement of this Act if the parties were not, at the time of the marriage, within one of the degrees of consanguinity or affinity set out in the Second Schedule to this Act.

(6.) A decree of dissolution or nullity of marriage or of judicial separation may be made in pending proceedings either on any basis of jurisdiction that would have been applicable to the proceedings if this Act had not been passed or on any basis of jurisdiction applicable to proceedings under Part VI. of this Act for the same relief.

(7.) A reference in this section to a bar to relief shall be read as a reference to a bar to the granting of the relief sought, whether absolute or in the discretion of the court, other than a bar arising by virtue of section forty-three of this Act.

(8.) In this section—

“ date of the petition ”, in relation to a petition, means the date on which the petition was filed in, or issued out of, a court ;

“petition” includes a writ of summons, a cross-petition, a counter-petition, a counter-claim and an answer;

“petitioner” includes a plaintiff, a cross-petitioner, a counter-petitioner, a defendant counter-claiming and a respondent seeking relief in an answer.

113.—(1.) Subject to section one hundred and fifteen of this Act, the provisions of Part III., sections twenty-nine, thirty and thirty-one (including those sections as applying to proceedings for a decree of judicial separation by virtue of section fifty-three), sections forty-six, fifty-one, fifty-four to fifty-eight (inclusive) and sixty-seven, Parts VII. to XII. (inclusive) and Part XIV. of this Act apply, so far as they are capable of application, to and in relation to pending proceedings, being proceedings for a decree of dissolution or nullity of marriage or judicial separation, as if those proceedings had been instituted under this Act and any decree made in the proceedings had been made in proceedings so instituted.

Application of this Act to pending proceedings for dissolution or nullity of marriage, or judicial separation.

(2.) Subject to section one hundred and fifteen of this Act, the provisions of sections seventy to seventy-five (inclusive) of this Act apply to and in relation to pending proceedings, being proceedings for a decree of dissolution of marriage or nullity of a voidable marriage, other than proceedings in which a decree *nisi* has been pronounced before the commencement of this Act, as if those pending proceedings had been instituted under this Act and any decree made in the proceedings had been made in proceedings so instituted.

114. Subject to the next succeeding section, pending proceedings constituting a matrimonial cause, not being proceedings for a decree of dissolution or nullity of marriage or of judicial separation, shall be deemed to have been instituted and dealt with under this Act and may be continued and dealt with under this Act.

Continuance of other pending proceedings.

115.—(1.) Notwithstanding section one hundred and eleven of this Act, where in any proceedings constituting a matrimonial cause a decree has been made before the commencement of this Act—

Special provisions as to pending appeals or existing rights to appeal.

(a) any appeal in respect of that decree may be continued or instituted;

(b) any new trial or rehearing ordered upon the hearing of such an appeal, or upon an appeal heard before the commencement of this Act, may be had and completed; and

(c) any decree may be made upon any such appeal, new trial or rehearing, and, if a decree so made is a decree *nisi*, the decree may be made or become absolute,

as if this Act had not been passed.

(2.) In this section, “ appeal ” includes—

- (a) an application for leave or special leave to appeal;
- (b) an application for a new trial or a rehearing; and
- (c) an intervention.

Special provisions relating to decrees of restitution of conjugal rights under previous law.

116.—(1.) Subject to this section, paragraph (k) of section twenty-eight of this Act shall be deemed to apply in relation to a decree of restitution of conjugal rights made by a court in Australia before the commencement of this Act in like manner as it applies in relation to decrees made under this Act.

(2.) Where there has been, whether before or after the commencement of this Act, a failure to comply with a decree referred to in the last preceding sub-section made before the date of commencement of this Act and that failure enabled, or would, if this Act had not been passed, have enabled, the party in whose favour the decree was made to institute proceedings for dissolution of marriage forthwith upon that failure, proceedings for dissolution of marriage may be instituted by that party under this Act as if the words “ for a period of not less than one year ” were omitted from paragraph (k) of section twenty-eight of this Act and as if section forty-three of this Act had no application to proceedings on the ground specified in that paragraph.

(3.) For the purposes of proceedings brought by virtue of this section (other than proceedings under the last preceding sub-section), the requirements of a decree of restitution of conjugal rights made before the commencement of this Act shall, notwithstanding that any time limited by law for compliance with those requirements has expired, be deemed to have continued so long as the decree did not, by order of a competent court, cease to have effect.

Special provisions relating to certain Western Australian marriages.

117.—(1.) Subject to this section, where, in the case of a marriage that took place before the date of commencement of this Act and subsisted immediately before that date—

- (a) the validity of the marriage would be determined, but for this Act, in relation to any of the circumstances referred to in the next succeeding paragraph, in accordance with the law of the State of Western Australia; and
- (b) at the time of the marriage—
 - (i) either of the parties to the marriage was incapable of consummating the marriage;
 - (ii) the consent of either of the parties was not a real consent because it was obtained by duress or fraud or because that party was mentally incapable of understanding the nature of the marriage contract; or

(iii) either of the parties was not of marriageable age,

the marriage is, by force of this Act, voidable.

(2.) The last preceding sub-section does not enable a decree of nullity to be made under this Act by reason of the fact that a party was not of marriageable age, where—

(a) the parties have freely cohabited as man and wife after the incapable party attained an age of capacity to marry; or

(b) the proceedings are brought by the other party and that other party was aware of the facts before the marriage.

(3.) Sub-section (1.) of this section does not enable a decree of nullity to be made under this Act by reason of duress or fraud practised on the party bringing the proceedings where that party has freely cohabited with the other party as man and wife after the duress or with full knowledge of the facts constituting the fraud.

(4.) In the case of a marriage to which this section applies a decree of nullity shall not be made—

(a) on the ground of incapacity to consummate the marriage—upon the petition of the party suffering from the incapacity, unless that party was not aware of the existence of the incapacity at the time of the marriage; or

(b) on the ground that the consent of a party was obtained by duress or fraud—except on the petition of that party.

(5.) The provisions of section forty-nine of this Act apply in relation to a marriage that is voidable under this section by reason of the incapacity of a party to consummate the marriage.

(6.) Notwithstanding anything contained in this section, where proceedings for a decree of dissolution of marriage on a ground arising from any of the matters referred to in paragraph (b) of sub-section (1.) of this section have been instituted before the commencement of this Act, the proceedings may be continued and dealt with as if the preceding provisions of this section had not been enacted.

PART XIV.—MISCELLANEOUS.

118.—(1.) Except to the extent to which the rules make provision for proceedings, or part of proceedings, to be heard in chambers, the jurisdiction of a court under this Act shall, subject to the next succeeding sub-section, be exercised in open court.

Hearings to be
in open court.

(2.) Where, in proceedings under this Act, the court is satisfied that there are special circumstances that make it desirable, in the 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 parties 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.

Proceedings to be heard without jury.

119. Proceedings under this Act constituting a matrimonial cause shall be heard and determined by the court sitting without a jury.

Transactions intended to defeat claims.

120.—(1.) In proceedings under this Act, the court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party, if it is made or proposed to be made to defeat an existing or anticipated order in those proceedings for costs, damages, maintenance or the making or variation of a settlement.

(2.) The court may order that any money or real or personal property dealt with by any such instrument or disposition may be taken in execution or charged with the payment of such sums for costs, damages or maintenance as the court directs, or that the proceeds of a sale shall be paid into court to abide its order.

(3.) The court shall have regard to the interests of, and shall make any order proper for the protection of, a *bona fide* purchaser or other person interested.

(4.) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party or of a *bona fide* purchaser or other person interested of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

(5.) In this section, “disposition” includes a sale and a gift.

Service of process.

121.—(1.) Service of process of a court under this Act may be effected—

(a) either in or outside the Commonwealth—in accordance with the rules; or

(b) in the Commonwealth, or in a Territory of the Commonwealth to which the *Service and Execution of Process Act 1901–1958* extends or has been applied—in accordance with that Act.

(2.) The court may dispense with service where the court thinks it necessary or expedient to do so.

Position of clergy as to re-marriage.

122. A minister of religion is not bound to solemnize the marriage of a person whose former marriage has been dissolved, whether in Australia or elsewhere, otherwise than by death.

123.—(1.) Except as provided by this section, a person shall not, in relation to any proceedings under this Act, print or publish, or cause to be printed or published, any account of evidence in the proceedings, or any other account or particulars of the proceedings other than—

Restrictions
on publication
of evidence.

- (a) the names, addresses and occupations of the parties and witnesses, and the name or names of the member or members of the court and of the counsel and solicitors;
- (b) a concise statement of the nature and grounds of the proceedings and of the charges, defences and counter-charges in support of which evidence has been given;
- (c) submissions on any points of law arising in the course of the proceedings, and the decision of the court on those points; or
- (d) the judgment of the court and observations made by the court in giving judgment.

(2.) The court may, if it thinks fit in any particular proceedings, order that none of the matters referred to in paragraph (a), (b), (c) or (d) of the last preceding sub-section shall be printed or published or that any matter or part of a matter so referred to shall not be printed or published.

(3.) A person who contravenes sub-section (1.) of this section, or prints or publishes, or causes to be printed or published, any matter, or part of a matter, in contravention of an order of a court under the last preceding sub-section, is guilty of an offence punishable, on conviction—

- (a) in the case of a first offence, or a second or subsequent offence prosecuted summarily—by a fine not exceeding Five hundred pounds or imprisonment for a period not exceeding six months; and
- (b) in the case of a second or subsequent offence, being an offence prosecuted on indictment—by a fine not exceeding One thousand pounds or imprisonment for a period not exceeding one year.

(4.) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Attorney-General.

(5.) The preceding provisions of this section do not apply to or in relation to—

- (a) the printing of any pleading, transcript of evidence or other document for use in connexion with proceedings in any court or the communication of any such document to persons concerned in the proceedings;
- (b) the printing or publishing of a notice or report in pursuance of the direction of a court;

(c) the printing or publishing of any publication *bona fide* intended primarily for the use of members of the legal or medical profession, being—

(i) a separate volume or part of a series of law reports; or

(ii) any other publication of a technical character; or

(d) the printing or publishing of a photograph of any person, not being a photograph forming part of the evidence in proceedings under this Act.

(6.) In this section, “court” includes an officer of a court investigating a matter in accordance with the rules and “judgment of the court” includes a report made to a court by such an officer.

Injunctions.

124. A court exercising jurisdiction under this Act may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court thinks just.

Costs.

125. In proceedings under this Act, the court may, subject to the rules, make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court thinks just.

Frivolous or vexatious proceedings.

126.—(1.) The court may, at any stage of proceedings under this Act, if it is satisfied that the proceedings are frivolous or vexatious, dismiss the proceedings.

(2.) The court may, at any stage of proceedings under this Act, if it is satisfied that the allegations made in respect of a party to the proceedings are frivolous or vexatious, order that that party be dismissed from the proceedings.

Rules.

127.—(1.) The Governor-General may make rules, not inconsistent with this Act, for or in relation to the practice and procedure of the courts having jurisdiction under this Act, or any of them, including rules—

(a) prescribing matters relating to the costs of proceedings and the assessment or taxation of those costs;

(b) prescribing the court fees to be charged in respect of proceedings under this Act or in relation to declarations, affidavits, instruments, documents, searches or extracts;

(c) authorizing a court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to the custody of children or maintenance or any other matter before the court;

(d) authorizing an officer making an investigation referred to in the last preceding paragraph to take evidence on oath or affirmation, and to obtain and receive in evidence a report from a welfare officer, and enabling

the summoning of witnesses before an officer making such an investigation for the purpose of giving evidence or producing books and documents;

- (e) regulating the procedure of a court upon receiving a report of an officer who has made an investigation referred to in paragraph (c) of this sub-section;
- (f) authorizing an officer of a court to perform and exercise, on behalf of the court or otherwise, in relation to proceedings under this Act, functions and powers not involving the exercise of the judicial power of the Commonwealth and enabling the court to review the decision of that officer in relation to the performance or exercise of any function or power;
- (g) providing for proceedings *in forma pauperis* and the remission of court fees in the case of persons authorized to proceed *in forma pauperis*; and
- (h) prescribing matters incidental to the matters specified in the preceding paragraphs of this sub-section.

(2.) Sections forty-eight, forty-nine and fifty of the *Acts Interpretation Act 1901-1957* apply to and in relation to rules made under the last preceding sub-section in like manner as they apply to and in relation to regulations.

(3.) Rules made under sub-section (1.) of this section have effect notwithstanding anything contained in any rules or other provisions made in pursuance of the next succeeding sub-section.

(4.) The power of a Judge or Judges, or of another authority, under the law of a State or of a Territory to which this Act applies to make rules of court or other provisions in relation to the practice and procedure of the Supreme Court of that State or Territory extend, by force of this Act, to the making of rules of court or other provisions (not inconsistent with this Act or with any rules made by the Governor-General for the time being in force under this Act) providing for a matter in respect of which rules may be made under sub-section (1.) of this section.

(5.) Rules or other provisions made in accordance with the last preceding sub-section, other than rules of the Supreme Court of the Australian Capital Territory, shall be deemed not to be statutory rules within the meaning of the *Rules Publication Act 1903-1939*.

(6.) Until rules or other provisions have been made in accordance with this section, and so far as rules or other provisions so made do not provide for the circumstances of any particular case, the practice and procedure, immediately prior to the commencement of this Act, of the Supreme Court of a State or of a Territory to which this Act applies (including powers of the Court as regards costs) shall, subject to this Act and the Constitution, apply, as far as practicable, to and in relation to matters arising in that Court under this Act.

THE SCHEDULES.

FIRST SCHEDULE.

Sections 12 (2), 17.

OATH OR AFFIRMATION BY MARRIAGE GUIDANCE COUNSELLOR OR MARRIAGE
CONCILIATOR.

I, A.B., do swear by Almighty God (*or solemnly and sincerely affirm and declare*) that I will not disclose to any person any communication or admission made to me in my capacity as a marriage guidance counsellor (*or marriage conciliator*) except in so far as it is necessary for me to do so for the proper discharge of my functions as a marriage guidance counsellor (*or marriage conciliator*).

SECOND SCHEDULE.

Section 19.

PROHIBITED DEGREES OF CONSANGUINITY AND AFFINITY.

Consanguinity.

Affinity.

Marriage of a man is prohibited if the woman is, or has been, his—

Ancestress
Descendant
Sister
Father's sister
Mother's sister
Brother's daughter
Sister's daughter

Wife's mother
Wife's grandmother
Wife's daughter
Wife's son's daughter
Wife's daughter's daughter
Father's wife
Grandfather's wife
Son's wife
Son's son's wife
Daughter's son's wife

Marriage of a woman is prohibited if the man is, or has been, her—

Ancestor
Descendant
Brother
Father's brother
Mother's brother
Brother's son
Sister's son

Husband's father
Husband's grandfather
Husband's son
Husband's son's son
Husband's daughter's son
Mother's husband
Grandmother's husband
Daughter's husband
Son's daughter's husband
Daughter's daughter's
husband

For the purposes of this Schedule, it is immaterial whether the relationship is of the whole blood or half-blood, or whether it is traced through, or to, any person of illegitimate birth.

THIRD SCHEDULE.

Section 106.

ENFORCEMENT OF ORDERS FOR MAINTENANCE.

1. In this Schedule, unless the contrary intention appears—

“ attachment of earnings order ” means an order under paragraph 4 of this Schedule;

“ defendant ”, in relation to a maintenance order, means the person liable to make payments under the order;

“ earnings ”, in relation to a defendant, means any sums payable to the defendant—

(a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments 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 by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment,

but not including—

(iii) pension payable to the defendant under the *Social Services Act 1947-1959*, the *Repatriation Act 1920-1959* or the *Seamen's War Pensions and Allowances Act 1940-1959*; or

(iv) pension payable to the defendant in respect of injury, disablement or disability;

“ employer ”, in relation to a defendant, means a person (including the Crown in right of the Commonwealth or a State, the Administration of a Territory to which this Act applies and any authority of the Commonwealth, of a State or of a Territory to which this Act applies) by 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 under this Act for the payment of maintenance and includes such an order that has been discharged if any arrears are recoverable under the order;

“ net earnings ”, in relation to a pay-day, means the amount of the earnings becoming payable on that pay-day, after deduction from those earnings of—

(a) any sum deducted from those earnings under Division 2 of Part VI. of the *Income Tax and Social Services Contribution Assessment Act 1936-1959*; and

(b) any sum deducted from those earnings that would be an allowable deduction under section 82H of that Act;

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

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

2. In this Schedule—

(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;

THIRD SCHEDULE—*continued*.

- (b) a reference to proceedings relating to an order includes a reference to proceedings in which the order may be made; and
- (c) a reference to costs incurred in proceedings relating to a maintenance order shall be read, in the case of a maintenance order made by the Supreme Court of a State or of a Territory to which this Act applies, as a reference to such costs as are included in an order for costs relating solely to that maintenance order.
3. Subject to this Schedule, a person entitled to receive payments under a maintenance order may apply to—
- (a) the court that made the order; or
- (b) the court in which the order is for the time being registered under section 103 or 105 of this Act,
- for an attachment of earnings order.
4. 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—four payments; or
- (ii) in any other case—two payments; or
- (b) that the defendant has wilfully and persistently failed to comply with the requirements of the order,
- the court may, in its discretion, by an order require 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 paragraph 11 of this Schedule.
5. The court shall not make an attachment of earnings order if it appears to the court, in a case to which sub-paragraph (a) of the last preceding paragraph applies, that the failure of the defendant to make payments under the maintenance order was not due to his wilful refusal or culpable neglect.
6. An attachment of earnings order shall specify 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.
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 he must or reasonably may provide, the court considers it to be reasonable that the net earnings of the defendant 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 an officer 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 does 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.
11. 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 pay-day, 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 pay-day were less than the protected earnings for the purposes of that pay-day as has not been made good on any other previous pay-day.

THIRD SCHEDULE—*continued.*

pay, so far as that excess permits, to the officer specified for the purpose in the order—

- (c) the normal deduction; and
- (d) so much of the normal deduction for the purposes of any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

12. A payment made by the employer under the last preceding paragraph is a valid discharge to him as against the defendant to the extent of the amount paid.

13. Where proceedings for attachment are brought in a court under section 102 of this Act, or where proceedings are taken in a court of summary jurisdiction to enforce an order registered in that court under section 105 of this Act, the court may, instead of making any other order, make an attachment of earnings order.

14. Where an attachment of earnings order has been made, no writ, order or warrant of commitment or attachment shall be issued or made in proceedings for the enforcement of the maintenance order that were begun before the making of the attachment of earnings order.

15. The court by which an attachment of earnings order has been made may, in its discretion, on the application of the defendant or a person entitled to receive payments under the maintenance order, make an order discharging or varying the attachment of earnings order.

16. An order varying an attachment of earnings order shall not come into force until the expiration of seven days after the date on which the order is served on the person to whom the attachment of earnings order is directed.

17. An attachment of earnings order ceases to have effect—

- (a) upon the issuing or making of a writ, order or warrant of commitment or attachment for the enforcement of the maintenance order in relation to which the attachment of earnings order applies; or
- (b) subject to the next succeeding paragraph, upon the discharge or variation of that maintenance order.

18. 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, in its discretion, direct that the attachment of earnings order shall not cease to have effect until those arrears have been paid.

19. Where an attachment of earnings order ceases to have effect, the proper officer of the court by which the order was made shall forthwith give notice accordingly to the person to whom the order was directed.

20. Where an attachment of earnings order ceases to have effect or is discharged, the person to whom the attachment of earnings order is directed does 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 the last preceding paragraph or a copy of the discharging order, as the case may be, is served on him.

21. A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other law, but subject to this Schedule, comply with the order, or, if the order is varied, with the order as varied.

22. Where, on any occasion on which earnings become payable to a defendant there are in force two or more attachment of earnings orders in relation to those earnings, the person to whom the orders are directed—

- (a) shall comply with those orders according to the respective dates on which they came into force 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 the order relates were the residue of the defendant's earnings after the making of any payment under any earlier order.

23. 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.

24. A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him or at any time after that time, has not on any occasion during the period of four weeks immediately preceding that time been the defendant's employer shall forthwith give notice in writing accordingly to the proper officer of the court that made the order.

THIRD SCHEDULE—*continued.*

25. Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or after the hearing—

(a) order the defendant to furnish to the court, within a specified period, a statement signed by the defendant specifying—

(i) the name and address of his employer, or, if he has more employers than one, of each of his employers;

(ii) particulars as to the defendant's earnings; and

(iii) such particulars as are necessary to enable the defendant to be identified by any of his employers; and

(b) order any person who appears to the court to be an employer of the defendant to give to the court, within a specified period, a statement signed by him or on his behalf containing such particulars as are specified in the order of all earnings of the defendant that became payable by that person during a specified period.

26. A document purporting to be a statement referred to in the last preceding paragraph shall, in any proceedings relating to an attachment of earnings order, be received in evidence and shall, unless the contrary is shown, be deemed without further proof to be such a statement.

27. 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 or of the defendant or of the person in whose favour the order was made, determine whether payments to the defendant of a particular class or description specified in the application are earnings for the purposes of that order.

28. A person to whom an attachment of earnings order is directed who makes an application under the last preceding paragraph 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.

29. The last preceding paragraph 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.

30. The officer to whom an employer pays any sum in pursuance of an attachment of earnings order shall pay that sum to such person entitled to receive payments under the maintenance order as is specified by the attachment of earnings order.

31. Any sum received by virtue of an attachment of earnings order by the person entitled to receive it shall be deemed to be a payment made by the defendant to that person, so as to discharge first any sums due and unpaid under the maintenance 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 maintenance order that were payable by the defendant when the attachment of earnings order was made or last varied.

32. On any occasion on which an employer makes a payment under this Schedule in respect of a defendant, the employer may retain for his own use out of any balance of the defendant's earnings remaining after the making of that payment the sum of Sixpence, or, if on that occasion the employer makes payments in pursuance of two or more attachment of earnings orders relating to the defendant, the sum of Sixpence in respect of each such payment.

33. A person who—

(a) fails to comply with any requirement of this Schedule, or of an order under this Schedule, that is applicable to him;

(b) in any statement or notice furnished to a court under this Schedule or in compliance with an order made under this Schedule makes a statement that he knows to be false or misleading in a material particular; or

(c) recklessly furnishes such a statement or notice that is false or misleading in a material particular,

is guilty of an offence punishable, on conviction, by a fine not exceeding One hundred pounds.

34. It is a defence if a person charged with an offence arising under sub-paragraph (a) of the last preceding paragraph proves that he took all reasonable steps to comply with the requirement or order.

THIRD SCHEDULE—*continued.*

35. A 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 is guilty of an offence punishable, on conviction, by a fine not exceeding One hundred pounds.

36. In any proceedings for an offence arising under the last preceding paragraph, 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 he was not actuated by the reason alleged in the charge.

37. Where a person is convicted of an offence arising under paragraph 35 of this Schedule, 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.

38. The several courts of the States are invested with federal jurisdiction, and jurisdiction is conferred on the courts of the Territories to which this Act applies, in matters arising under this Schedule.

39. The jurisdiction with which the several courts of the States are invested by the last preceding paragraph is subject to the conditions and restrictions specified in sub-section (2.) of section 39 of the *Judiciary Act 1903-1959* so far as they are applicable.

40. Notwithstanding anything contained in the *Judiciary Act 1903-1959*, an appeal does not lie to the High Court from an order of a court of summary jurisdiction under this Schedule.

41. This Schedule has effect in relation to a defendant notwithstanding any law that would otherwise prevent the attachment of his earnings or limit the amount capable of being attached.