

Matrimonial Causes

No. 60 of 1966

An Act to amend the *Matrimonial Causes Act* 1959–1965 in relation to the Enforcement of Orders for Maintenance and in relation to Decimal Currency.

[Assented to 29 October 1966]

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

- Short title and citation.** 1.—(1.) This Act may be cited as the *Matrimonial Causes Act* 1966.
- (2.) The *Matrimonial Causes Act* 1959–1965* is in this Act referred to as the Principal Act.
- (3.) The Principal Act, as amended by this Act, may be cited as the *Matrimonial Causes Act* 1959–1966.
- Commencement.** 2.—(1.) Sections 1, 2 and 3 of this Act shall come into operation on the day on which this Act receives the Royal Assent.
- (2.) The remaining provisions of this Act shall come into operation on the day on which the *Maintenance Orders (Commonwealth Officers) Act* 1966 comes into operation.
3. Section 123 of the Principal Act is amended—
- Restrictions on publication of evidence.** (a) by omitting from paragraph (a) of sub-section (3.) the words “Five hundred pounds” and inserting in their stead the words “One thousand dollars”; and
- (b) by omitting from paragraph (b) of sub-section (3.) the words “One thousand pounds” and inserting in their stead the words “Two thousand dollars”.
- Third Schedule.** 4. The Third Schedule to the Principal Act is repealed and the Schedule set out in the Schedule to this Act inserted in its stead.
- Savings.** 5.—(1.) Any order made under the Third Schedule to the Principal Act and in force immediately before the commencement of this section continues in force as if it had been made under the Third Schedule to the Principal Act as amended by this Act.
- (2.) Any proceeding instituted before the commencement of this section under the Third Schedule to the Principal Act may be continued under the Third Schedule to that Act as amended by this Act.

* Act No. 104, 1959, as amended by No. 99, 1965.

THE SCHEDULE

Section 4.

SCHEDULE INSERTED IN THE PRINCIPAL ACT BY THIS ACT

" 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 5 of this Schedule;
 - ' defendant ', in relation to a maintenance order or to proceedings in connexion with a maintenance order, means the person liable to make payments under the order;
 - ' earnings ', in relation to a defendant, means any moneys 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 in respect of or by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment,

but not including any pay or allowances as a member of the Defence Force or any moneys payable to the defendant under the *Social Services Act 1947-1966*, the *Repatriation Act 1920-1966*, the *Repatriation (Far East Strategic Reserve) Act 1956-1964*, the *Repatriation (Special Overseas Service) Act 1962-1965* or the *Seamen's War Pensions and Allowances Act 1940-1966*;
 - ' 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 an attachment of earnings order and in relation to a pay-day, means the amount of the earnings becoming payable on that pay-day to the defendant by the employer to whom the order is directed, after deduction from those earnings of—
 - (a) any sum deducted from those earnings under Division 2 of Part VI. of the *Income Tax Assessment Act 1936-1966*;
 - (b) any sum of a kind referred to in section 82H of that Act deducted from those earnings, not being a sum deducted in respect of a life insurance premium other than a life insurance premium payable under a super-annuation or retirement benefit scheme; and
 - (c) any sum of a kind referred to in section 82HA of that Act deducted from those earnings;
 - ' 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, or at the normal deduction rate so specified that is applicable to that pay-day, as the case may be, 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 an order includes, in relation to an order that has been varied, a reference to the order as so varied;
- (b) 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;
- (c) a reference to proceedings relating to an order includes a reference to proceedings in which the order may be made; and
- (d) 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 section 105 of this Act,

for an attachment of earnings order.

4. An application under the last preceding paragraph may be made *ex parte* and without specifying the name of any employer of the defendant.

5. 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 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 13 of this Schedule.

6. 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.

7. An attachment of earnings order shall specify a normal deduction rate or normal deduction rates and, where it specifies two or more such rates, it shall also specify the pay-day or pay-days to which each of those rates is applicable.

8. The rate to be specified as a normal deduction rate shall be the rate at which the court considers it to be reasonable that the earnings to which the order relates should, or should on the pay-day or pay-days to which the rate is to be applicable, as the case may be, 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.

9. 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 on any pay-day should not be reduced by a payment under the order.

10. 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.

11. 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.

12. 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.

13. 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 in relation to that pay-day as has not been made good on any other previous pay-day,
- pay, so far as that excess permits, to the officer specified for the purpose in the order—
- (c) the normal deduction in relation to that pay-day; and
 - (d) so much of the normal deduction in relation to any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

14. 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.

15. 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.

16. Where an attachment of earnings order is in force, 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 unless the court in which those proceedings were taken otherwise orders.

17. 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, suspending or varying the attachment of earnings order.

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

19. 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;
- (b) upon the discharge of the attachment of earnings order; or
- (c) subject to the next succeeding paragraph, upon the discharge or variation of that maintenance order.

20. 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.

21. Where an attachment of earnings order ceases to have effect, the proper officer of the court by which the order was made shall forthwith serve notice in writing accordingly on the person to whom the order was directed.

22. Where an attachment of earnings order ceases to have effect, 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 is served on him.

23. 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.

24. 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 in relation to those earnings; 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.

25. Where, on any occasion on which earnings become payable to a defendant, there is in force, in addition to an attachment of earnings order under this Act, a State attachment of earnings order directed to the employer in respect of the defendant, being an order that came into force before the order under this Act came into force, the employer shall—

- (a) disregard the order under this Act for the purpose of complying with the State attachment of earnings order; and
- (b) comply with the order under this Act as if the earnings to which the order relates were the residue of the defendant's earnings after the making of any payment under the State attachment of earnings order.

For the purposes of this paragraph—

- ' maintenance order ', means an order for the payment of money made under, or enforceable under, a law of a State or Territory of the Commonwealth that makes provision in relation to the maintenance of wives, children or other persons including an order for payment of expenses of any kind or for payment of costs and an order for the recoupment of moneys spent in, or provided for, the maintenance of a person or meeting expenses of any kind;
- ' State attachment of earnings order ' means an order called an attachment of earnings order made, for the purpose of enforcement of a maintenance order, in accordance with the law of a State or Territory of the Commonwealth, including an order made by virtue of the *Maintenance Orders (Commonwealth Officers) Act 1966*.

26. For the purposes of paragraphs 24 and 25 of this Schedule, where a variation of an order has come into force, the order shall be deemed to have come into force as so varied on the day upon which the order came into force.

27. A person who makes a payment in compliance with an attachment of earnings order shall give to the defendant a notice in writing specifying particulars of the payment.

28. Where a person on whom a copy of an attachment of earnings order that is directed to him is served—

- (a) is not the defendant's employer at the time when the copy of the order is served on him; or
- (b) is the defendant's employer at that time but ceases to be the defendant's employer at any time before the order ceases to have effect,

the person shall give notice in writing accordingly to the proper officer of the court that made the order and shall so give notice—

- (c) in a case to which sub-paragraph (a) of this paragraph applies—forthwith after the copy of the order is served on the person; and
- (d) in a case to which sub-paragraph (b) of this paragraph applies—forthwith after the person ceases to be the defendant's employer.

29. 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.

30. 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.

31. 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, 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. A copy of an order or other document that is required or permitted to be served on a person other than an incorporated company, society or association under this Schedule may be served on the person—

- (a) by delivering the document to the person personally;
- (b) by leaving the document at the usual place of residence or business of the person, or at the last place of residence or business of the person known to the person on whose behalf the document is being served, with a person who apparently resides in, or is employed at, that place and is apparently over the age of sixteen years; or
- (c) by properly addressing and posting (under prepaid postage) the document as a registered letter to the person at any place referred to in the last preceding sub-paragraph.

37. A copy of an order or other document that is required or permitted to be served on an incorporated company, society or association under this Schedule may be served on the company, society or association—

- (a) by leaving the document at any place of business of the company, society or association, or at any place that is the registered office of the company, society or association under the law of any State or Territory to which this Act applies, with a person who is apparently employed at that place and is apparently over the age of sixteen years; or
- (b) by properly addressing and posting (under prepaid postage) the document as a registered letter to the company, society or association at any place referred to in the last preceding sub-paragraph.

38. Service of a document in accordance with sub-paragraph (c) of paragraph 36, or sub-paragraph (b) of paragraph 37, of this Schedule shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

39. The rules may make provision for or in relation to the service on the Commonwealth, on a State, on the Administration of a Territory to which this Act applies or on a body corporate (not being an incorporated company, society or association) incorporated for a public purpose by or under a law of the Commonwealth, of a State or of such a Territory of copies of orders or other documents that are required or permitted to be so served under this Schedule.

40. A person who—

- (a) fails to comply with a 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 Two hundred dollars.

41. 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.

42. 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 Two hundred dollars.

43. 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.

44. Where a person is convicted of an offence arising under paragraph 42 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.

45. Where a court has made an order under the last preceding paragraph for the reimbursement of any wages lost by an employee, a certificate under the hand of the clerk or other proper officer of the court specifying the amount ordered to be reimbursed and the persons by whom and to whom the amount is payable, may be filed in a court having civil jurisdiction to the extent of that amount and is thereupon enforceable in all respects as a final judgment of that court.

46. 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.

47. 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 subsection (2.) of section 39 of the *Judiciary Act* 1903-1966 so far as they are applicable.

48. Notwithstanding anything contained in the *Judiciary Act* 1903-1966, an appeal does not lie to the High Court from an order of a court of summary jurisdiction under this Schedule.

49. 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."
