



# MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1960

[Consolidated as at 26 February 2013  
on the authority of the Administrator  
and in accordance with the  
*Enactments Reprinting Act 1980*]

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## Maintenance Orders (Facilities for Enforcement) Act 1960

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An Act to facilitate the enforcement in Norfolk Island of maintenance orders made outside Norfolk Island and the enforcement outside Norfolk Island of maintenance orders made in Norfolk Island.

### Short title

1. This Act may be cited as the *Maintenance Orders (Facilities for Enforcement) Act 1960*.

### Commencement

2. This Act shall come into operation on a date to be fixed by the Administrator by notice in the Gazette.

### Repeal and savings

3. (1) The *Maintenance Orders (Facilities for Enforcement) Act 1923* and the *Maintenance Orders (Facilities for Enforcement) Act 1928* are repealed.

(2) An order or provisional order made, registered or confirmed under the *Maintenance Orders (Facilities for Enforcement) Act 1923*, or under that Act as amended, and in force immediately before the commencement of this Act, shall be deemed to have been made, registered or confirmed, as the case may be, under this Act.

### Definitions

4. In this Act, unless the contrary intention appears —
- “certified copy”, in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;
  - “dependants” means such persons as a person against whom a maintenance order is made liable to maintain according to the law in force in the place in which the order is made;
  - “maintenance order” means an order, other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife, former wife or other dependants of the person against whom the order is made;
  - “proper authority”, in relation to a reciprocating State, means the person, officer or authority specified in the Regulations as the proper authority for that reciprocating State;
  - “reciprocating State” means a State, Territory, country or part of a country that is specified by the Regulations to be a reciprocating State for the purpose of this Act;
  - “the appropriate court” means —
    - (a) where an order to be registered or confirmed was made by a court of superior jurisdiction – the Supreme Court of Norfolk Island; and

- (b) where an order to be registered or confirmed was made by a court other than a court of superior jurisdiction – the Court of Petty Sessions of Norfolk Island.

### **Reciprocal Arrangements**

5. The Regulations may specify that a State or Territory of the Commonwealth or any other country or part of a country (including a territory, protectorate, colony or a territory administered under the trusteeship system of the United Nations) that has made, or proposes to make, reciprocal arrangements for the enforcement, within that State, Territory, country or part of a country of maintenance orders made by courts within Norfolk Island is a reciprocating State for the purposes of this Act.

### **Enforcement in Norfolk Island of maintenance orders made elsewhere**

6. (1) Where —
- (a) a maintenance order has, whether before or after the commencement of this Act, been made against a person by a court in a reciprocating State; and
  - (b) a certified copy of the order has been transmitted by the proper authority in that reciprocating State to the Administrator,

the Administrator shall send a certified copy of the order to the officer in charge of records of the appropriate court.

(2) On receipt of the copy, the officer shall register the order in a book kept for that purpose.

- (3) From the date of the registration of the order —
- (a) the order has the same force and effect;
  - (b) subject to the provisions of this Act, all proceedings may be taken on the order; and
  - (c) the appropriate court in which the order is registered has power to enforce the order,

as if the order had originally been made in the court in which it is registered.

### **Transmission of maintenance orders made in Norfolk Island**

7. Where a court in Norfolk Island has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to the satisfaction of the court that the person against whom the order was made is resident in a reciprocating State, the court shall cause a certified copy of the order to be sent to the Administrator for transmission to the proper authority in that reciprocating State.

**Power to make provisional orders of maintenance against persons resident elsewhere**

8. (1) Where —
- (a) an application is made to the Court of Petty Sessions of Norfolk Island for a maintenance order against any person;
  - (b) it is proved to the satisfaction of the court that that person is resident in a reciprocating State; and
  - (c) after hearing the evidence the court is satisfied as to the justice of the application,

the court may, in the absence of that person, make any order that it might have made if a summons had been duly served on that person and he had failed to appear at the hearing.

(2) An order made under the last preceding subsection is provisional only, and has no effect unless and until confirmed by a competent court in a reciprocating State.

(3) The evidence of a witness who is examined on an application in pursuance of this section shall be put into writing and shall be read over to or by him and shall be signed by him.

(4) Where an order is made under this section, the court shall send to the Administrator for transmission to the proper authority in the reciprocating State in which the person against whom the order is made is alleged to reside —

- (a) the depositions taken on the hearing of the application;
- (b) a certified copy of the order;
- (c) a statement of the grounds on which the making of the order might, in the opinion of the court, have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing; and
- (d) such information as the court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(5) Where an order under this section has come for confirmation before a court in a reciprocating State, and the order has by that court been remitted to the court that made the order for the purpose of taking further evidence, the court that made the order shall after giving notice to such persons and in such manner as to the court seems just, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(6) If, upon the hearing of the further evidence, it appears to the court that the order ought not to have been made, the court may rescind the order, but, in any other case, the depositions shall be sent to the Administrator and dealt with in like manner as the original depositions.

(7) The confirmation of an order made under this section does not affect any power of a court to vary or rescind that order, but, on the making of a varying or rescinding order, the court shall send a certified copy of the varying or rescinding order to the Administrator for transmission to the proper authority in the reciprocating State in which the original order was confirmed, and, in the case of an order varying the original order, the varying order does not have any effect unless and until confirmed in like manner as the original order.

(8) The applicant has the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

**Power of court to confirm maintenance order made elsewhere**

9. (1) Where —
- (a) a maintenance order has been made by a court in a reciprocating State;
  - (b) the order is provisional only and has no effect unless and until confirmed by a court in Norfolk Island;
  - (c) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the Administrator; and
  - (d) it appears to the Administrator that the person against whom the order was made is resident in Norfolk Island,

the Administrator shall send the certified copy, depositions and statements to the officer in charge of the records of the appropriate court, with a requisition that a summons be issued calling upon the person to show cause, at a time and place specified in the summons, why the order should not be confirmed.

(2) Upon receipt of the certified copy, depositions, statement and requisition, the court shall cause such a summons to be issued and served upon the person.

(3) A summons so issued may be served in Norfolk Island in the same manner as if the proceedings had originally commenced in Norfolk Island and the summons were a summons issued in the proceedings.

(4) At the hearing it is open to the person on whom the summons was served to raise any defence that he might have raised in the original proceedings if he had been a party to the proceedings, but no other defence.

(5) A statement from the court that made the provisional order of the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings is evidence that those grounds are grounds on which objection may be taken.

(6) If, at the hearing, the person served with the summons does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modification as to the court, after hearing the evidence, seems just.

(7) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court that made the provisional order for the taking of further evidence, the court may so remit the case in the prescribed manner and adjourn the proceedings for that purpose.

(8) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court that made the order for the purpose of taking further evidence, the court may so remit the case in the prescribed manner and adjourn the proceedings for that purpose.

(9) Where a provisional order has been confirmed under this section, the person bound by the order has the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

(10) Where a provisional order has been confirmed under this section, the like proceedings may be taken for the enforcement of the order as if it were a maintenance order made by the court confirming the order.

### **Manner of enforcing order to be prescribed**

10. A court in which an order has been registered under this Act or by which an order has been confirmed under this Act and the officers of the court shall take such action for enforcing the order as is prescribed.

### **Proof of documents signed by officers of courts**

11. A document purporting to be signed by a Judge or officer of a court in a reciprocating State shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

### **Depositions to be evidence**

12. Depositions taken in a court in a reciprocating State for the purpose of this Act shall be deemed to be evidence in proceedings before the court in Norfolk Island to which the Administrator has forwarded them

### **Regulations**

13. The Commonwealth Minister may make Regulations, not inconsistent with this Act, prescribing all matters which are, by this Act, required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act.

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#### **NOTES**

The *Maintenance Orders (Facilities for Enforcement) Act 1960* as shown in this consolidation comprises Act No. 19 of 1960 as first reprinted in *The Laws of Norfolk Island 1914 - 1964*.

<b>Enactment</b>	<b>Number and year</b>	<b>Date of commencement</b>	<b>Application saving or transitional provision</b>
<i>Maintenance Orders (Facilities for Enforcement) Act 1960</i>	19, 1960	1.2.61	
<i>[Previously consolidated as at 14 September 2004]</i>			
<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]</i>	14, 2012	28.12.12	

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