

(2) Where a parent of a child might, but for that parent's death, have made a complaint under subsection (1) of this section, the complaint may be made by or on behalf of the Minister, or by any person who has paid, or is liable to pay, the funeral expenses of the child.

(3) Where a court of summary jurisdiction, upon complaint made by or on behalf of the mother of an illegitimate child, is satisfied that the child was stillborn, or died either before attaining the age of eighteen years, or, in the case of a child for whose maintenance an order has been made in his lifetime, while the mother was entitled to receive payments under the order, and that the defendant—

(a) was the father of the child or had been adjudged to be the father of the child in any legal proceedings;

and

(b) has not made adequate provision for the funeral expenses of the child,

the court may order him to pay such amount as it thinks reasonable for or towards the funeral expenses of the child.

(4) Where the mother of an illegitimate child has died, a complaint under subsection (3) of this section may be made by or on behalf of the Minister, or by any person who has paid, or is liable to pay, the funeral expenses of the child.

(5) An order shall not be made under subsection (3) of this section in relation to a stillborn child unless the court is satisfied that the child had quickened.

(6) An order shall not be made under this section upon a complaint made more than twelve months after the stillbirth or the death of the child to whom the complaint relates.

**115.** (1) Where a court of summary jurisdiction, upon complaint made by any person, is satisfied—

(a) that the defendant is the father of an illegitimate child, whether living or not (including a child that had quickened but was stillborn) or has been so adjudged in any legal proceedings;

(b) that the mother of the child died during and in consequence of her pregnancy or in consequence of the birth of the child;

and

(c) that the defendant has not made adequate provision for the funeral expenses of the mother,

the court may order him to pay such amount for or towards the funeral expenses of the mother as it thinks reasonable.

Power to make order against father for funeral expenses of mother of illegitimate child.

**PART VI**  
**DIVISION I**

(2) An order shall not be made under this section upon a complaint made more than twelve months after the death of the mother.

Order against surviving spouse for funeral expenses of deceased person.

**116.** (1) Where a court of summary jurisdiction, upon complaint made by or on behalf of a near relative of a deceased person or by or on behalf of the Minister, is satisfied that the surviving spouse of a deceased person (which person was before his or her death entitled to receive payments for his or her maintenance from that spouse) has not made adequate provision for the funeral expenses of that person, the court may order the spouse to pay to the complainant such amount as it thinks reasonable for or towards the funeral expenses of that person.

(2) An order shall not be made under this section upon a complaint made more than twelve months after the death of the deceased person.

Order for payment of medical and like expenses.

**117.** (1) Where a court of summary jurisdiction, upon application made by or on behalf of any person for whose maintenance an order is for the time being in existence, is satisfied—

(a) that any medical, surgical, psychiatric, dental, hospital or nursing care or treatment by way of physiotherapy or chiropractic is or was reasonably required in respect of that person;

(b) that the financial position of that person is and has been such as to preclude the person from making provision for or towards the cost of that care or treatment;

and

(c) that the person against whom the order was made has not made adequate provision for or towards that cost and it is just and equitable in all the circumstances of the case that he pay, or contribute towards, that cost,

the court may order the person against whom the order was made to pay to the applicant or to the Director-General for or towards that cost such amount as it thinks reasonable.

(2) For the purposes of subsection (1) of this section, “medical care” includes—

(a) the supply of medicines, skiagrams, artificial limbs, eyes or teeth, crutches, splints, spectacles and other medical and surgical aids and curative appliances or apparatus including necessary renewals or replacements thereof;

and

(b) transport by a vehicle to a hospital or other place for medical examination or medical treatment and where necessary, transport from the hospital or place on the return journey.

(3) For the purposes of this section, but without limiting the generality of its application—

(a) a child under the age of three months in respect of whose birth an order for the payment of preliminary expenses has been made under this Act and is in existence;

and

(b) a person in respect of whom an order for the payment of a merely nominal amount is in existence,

shall be deemed to be persons for whose maintenance an order is in existence.

(4) Where an order is made under this section for the payment of moneys for or towards the cost of any care or treatment referred to in subsection (1) of this section, the court or a justice may, at any time, give such directions in writing as the court or justice thinks proper for the disbursement of the amount ordered to be paid but so that no moneys are disbursed before the care or treatment to which the payment relates has been rendered.

#### **DIVISION II—THE SUMMARY PROTECTION OF MARRIED WOMEN**

#### DIVISION II

**118.** (1) Any married woman—

(a) whose husband during the preceding six months has been guilty of—

- (i) cruelty to her or any of her children;
- (ii) persistent indecent behaviour before her children;
- (iii) adultery;
- (iv) desertion;

or

(v) wilful neglect to provide reasonable maintenance for her or any of her children;

or

(b) whose husband is a person who is, by reason of habitual intemperate drinking of intoxicating liquor or habitual use of drugs, at times dangerous to himself or others, or incapable of managing himself or his affairs,

may apply for summary protection under this Division, and an order for summary protection may be made accordingly.

(2) When a complaint has been made under this section, a justice may, in his discretion, issue his warrant for the apprehension of the husband.

(3) The court may order summary protection under this section on the grounds of desertion notwithstanding that the desertion has not continued for two years or upwards.

Summary relief  
to married  
women.

**PART VI**  
**DIVISION II**  
Constitution of  
court.

**119.** Except as otherwise specifically provided, every application under this Division shall be heard and determined by a court of summary jurisdiction constituted of a special magistrate.

Provisions of  
orders.

**120.** (1) Any order for protection under this Division may—

- (a) relieve the applicant from any obligation to cohabit with her husband;
- (b) grant to the applicant the legal custody of her children;
- (c) grant to the husband of the applicant such rights of access to the children of the applicant and her husband as the court deems proper;

or

- (d) direct the husband to pay to the applicant personally, or for her use, to any officer of the court, or any person on her behalf, such weekly or other periodical sum as the court, having regard to the means both of the husband and the wife, consider reasonable for the past or future maintenance of herself and also of all children (if any) whose custody is granted to her.

(2) The court may direct that such security be given for payments directed under subsection (1) of this section as the court thinks fit.

Complaints,  
etc.

**121.** (1) An application may be made under this Division on more than one ground in the same complaint.

(2) Costs may be ordered against a complainant in respect of any matter of complaint not established at the hearing.

No order in  
certain cases.

**122.** No order shall be made under this Division on the application of a married woman, if—

- (a) the adultery complained of has been condoned and not revived;

or

- (b) the applicant is intemperate in the use of intoxicating liquor or drugs or has committed adultery and the husband has not condoned, or connived at, or, by his cruelty, wilful neglect or misconduct, conduced to the applicant's adultery or intemperate habits.

Effect of order.

**123.** (1) No order under this Division shall affect the order of any court of superior jurisdiction.

(2) A court shall not make an order under this Division granting the custody of a child to its mother—

- (a) where there is in force an order for the legal custody of the child made by the Supreme Court of South Australia or the Supreme Court of any other State or of a Territory of the Commonwealth;
- (b) where the child is under the care and control of the Minister;
- or
- (c) unless either the applicant or the respondent was resident in the State at the time the application was made and the child is present in the State at the time the order is made.

**124.** In determining the amount that a defendant is to be ordered to pay under this Division for the maintenance of any person the court shall have regard, where practicable, to—

Means of support.

- (a) the accustomed condition in life of the person for whose maintenance the order is sought;
- (b) the earning capacity and financial position of the person for whose benefit the order is sought but the court shall not attribute to the wife of the defendant a greater earning capacity than that which could, in the opinion of the court, be exercised consistently with the proper discharge of her obligations to her family or dependants;

and

- (c) the earning capacity and financial position of the defendant.

**125.** Upon proof, in any application under this Division, that the husband has omitted to supply reasonable maintenance, wilful neglect shall be presumed, unless the husband proves the contrary.

Proof of wilful neglect.

**126.** (1) Any court of summary jurisdiction constituted of a special magistrate may, on the due application of a married woman or of her husband, and upon cause being shown upon fresh evidence to the satisfaction of the court, at any time alter, vary or discharge any order under this Division, and may, upon any such application increase or diminish the amount of any payment ordered.

Variation and discharge of order.

(2) If any married woman upon whose application an order has been made under this Division voluntarily resumes cohabitation with her husband, or commits adultery, the order shall, upon application and proof, be discharged.

**127.** In case of the conviction of a husband in any court for any offence involving cruelty to his wife or children, an application for protection under this Division may, by leave of the court, be heard immediately after the conviction without any summons.

Immediate order for relief.

**PART VI**  
**DIVISION II**  
Molestation of  
wife by  
husband.

**128.** (1) If a husband molests or interferes with or attempts to molest or interfere with his wife in her manner of living contrary to any order for relief from cohabitation he shall be guilty of an offence against this section.

(2) Where an order made under this Division commits the legal custody of a child to the mother of the child, any person who, without just cause or excuse, molests or interferes with or attempts to molest or interfere with, the child, contrary to the order for the custody or, having the care or control of the child, without just cause or excuse, refuses or fails on demand to deliver the child to the mother, shall be guilty of an offence against this section.

(3) Where an order made under this Division makes provision for access by any person to a child, any person who, without just cause or excuse, refuses to afford, or prevents, or interferes with, access to that child in accordance with that order, shall be guilty of an offence against this section.

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

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

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

(7) Any court of summary jurisdiction may exercise jurisdiction under this section whether or not it is constituted of a special magistrate.

Enforcement of  
orders made  
under this  
Division.

**129.** The payment of any sum of money ordered to be paid under this Division may be enforced in the same manner as an order for the payment of maintenance.

**DIVISION III**

**DIVISION III—JURISDICTION AND POWERS OF COURTS OF  
SUMMARY JURISDICTION**

General  
jurisdiction of  
courts of  
summary  
jurisdiction  
in respect of  
orders under  
this Part.

**130.** (1) Subject to this Act, but without limiting the jurisdiction of any court, a court of summary jurisdiction shall have jurisdiction to hear and determine any complaint and to make and to discharge, suspend or vary any order of a kind provided for in this Part.

(2) Subject to this Act, the court shall have jurisdiction to make an order under this Part by reason of facts and circumstances, whether or not those facts or circumstances, or some of them, took place before the commencement of this Act or outside this State—

(a) if the person against whom the order is sought is resident  
**in this State;**

or

(b) if the person for whose benefit the order is sought is resident  
**in this State.**

(3) Nothing in this Act shall limit or affect the operation of any provision of any other Act by which any person is or may be required to make contribution to, or payment on account of, the maintenance or support of any other person.

**131.** (1) Where, upon the hearing of a complaint under Division I or Division II of this Part upon which an order for maintenance may be made, a court of summary jurisdiction is satisfied that it would make an order for the maintenance of the complainant but for the fact—

*Orders directing  
payment of  
nominal sum  
only.*

(a) that that person is not presently without adequate means of  
**support;**

or

(b) that the defendant is not presently able to contribute to the  
support of that person,

the court may nevertheless make an order setting out its findings on the complaint and directing the payment by the defendant of a merely nominal amount in respect of that person.

(2) Proceedings shall not be taken under this Act to enforce payment of the nominal amount directed to be paid by an order where the sum due under the order is less than ten dollars but, if that amount is varied under any provision of this Part, proceedings may be taken to enforce payment of any amount payable under the order as varied.

**132.** (1) Upon *ex parte* application made to the court of summary jurisdiction at any time after complaint made against a near relative of a child for the maintenance of a child of the family the court may order the defendant to pay for the maintenance of the child such amount (being not more than six dollars per week) as the court thinks reasonable until the expiration of three months from the making of the order or until the making or refusal of an order for the maintenance of the child upon complaint under this Division (whichever first occurs).

*Ex parte order  
for maintenance  
of child.*

(2) The evidence of any person in support of the application shall be by affidavit.

**PART VI**  
**DIVISION III**

(3) Any order under this section shall be in writing signed by the justices, or the magistrate constituting the court, and if necessary, shall forthwith be sent by the court together with the affidavits in support of the application, to the clerk of the court at which proceedings in the complaint are returnable and shall, subject to subsection (1) of this section, be enforceable and all proceedings in relation thereto may be taken as if it were an order made by that court.

Interim orders  
for payment of  
maintenance.

**133.** (1) Where the hearing of a complaint under Division I or Division II of this Part is adjourned for a period of not less than seven days the court may order the defendant to pay for or towards the maintenance of the wife, husband or child to whom the complaint relates such amount as it thinks reasonable.

(2) An order under this section shall not be subject to suspension, variation or appeal and shall remain in force until the expiration of a period of three months from the date on which the order is made or until the complaint again comes before the court (whichever first occurs).

**DIVISION IV**

**DIVISION IV—PROVISIONS RELATING TO THE COMMENCEMENT AND DURATION OF ORDERS AND TO EVIDENTIARY MATTERS**

*Subdivision 1—Commencement and Duration of Orders*

Orders for  
maintenance of  
children, etc.

**134.** Except as otherwise provided in this Division—

(a) an order shall not be made under this Part in respect of a child who has attained the age of eighteen years;

and

(b) except where arrears are due thereunder and to the extent of those arrears, an order for the maintenance of a child shall cease to have effect when the child attains the age of eighteen years, dies or is adopted or the person against whom the order was made dies, whichever first occurs.

Extension of  
maintenance  
orders after  
child's  
eighteenth  
year.

**135.** (1) This section applies to any child for whose maintenance an order is or, at the time the child attained the age of eighteen years, was in existence under this Act.

(2) Where, upon application made to a court of summary jurisdiction by or on behalf of a child to whom this section applies, it appears to the court that, in the case of a child who has not attained the age of eighteen years, the child will be engaged in a course of education or training after he attains that age that will fit him for some profession, trade or occupation in which to earn his livelihood or, in the case of a child who has attained that age, the child is or will be so engaged, or in the case of any child, the child is, because of physical disability or mental incapacity, unable to earn his livelihood, the court may order—



(a) where the child has not attained the age of eighteen years—  
that the maintenance order continue and be in force for such amount and for such period not exceeding two years from the date on which he attains that age as may be specified in the order under this section;

or

(b) where the child has attained the age of eighteen years—  
that the maintenance order revive on and from a date to be specified in the order under this section (not being a date earlier than the date on which the order is made) and that the maintenance order thereafter be in force for such amount and for such period, not exceeding two years from the date so specified, as may be specified in the order made under this section.

(3) A court may, from time to time, by a subsequent order under this section extend the period specified in any previous order so made for such further period not exceeding two years from the date of expiry of the previous order as may be specified in the subsequent order.

(4) An application under this section shall be heard by a court at the place where the maintenance order was made unless—

(a) the parties to the application consent to the hearing of the application by a court sitting at another place;

or

(b) the hearing of the application is adjourned, upon the application of either party, to a court sitting at another place.

(5) The amount specified in an order under this section may include such allowance for or towards the expenses incurred or to be incurred in undertaking a course of education or training as the court thinks proper.

**136.** Unless otherwise provided by this Act an order under this Part for the maintenance of a person may, whether or not an application for that purpose has been made, be made to take effect from a past date, not being earlier than a date that the court thinks reasonable, and where an order takes effect from a past date the court may direct the past maintenance to be paid in one sum or by such instalments as the court directs.

Orders for support of wife, husband or child may include provision for past maintenance.

**137.** An order under this Part for the maintenance of a wife by her husband, or a husband by his wife shall, if not earlier discharged or terminated, cease to have effect upon the death of the wife or husband (whichever death first occurs).

Duration of order for support of wife or husband.

PART VI  
DIVISION IVRecovery of  
arrears after  
cessation of  
order.

138. (1) The fact that an order under this Act for the maintenance of a person ceases to have effect by virtue of this Act shall not prevent the enforcement of the order or the recovery of any moneys due under the order, so far as it relates to any period, or to past maintenance of a person during any period, before it ceased to have effect.

(2) Subsection (1) of this section shall not apply where the order ceased to have effect by reason of the death of the defendant.

*Subdivision 2—Evidentiary Provisions*Constructive  
desertion by  
conduct.

139. (1) Where—

(a) the conduct of a party to a marriage constitutes just cause and excuse for the other party to the marriage to live separately or apart and—

(i) occasions the other party to live separately or apart;

(ii) occasions the other party to live separately or apart and to take with him or her a child of the family from the matrimonial home;

or

(b) the conduct of a parent constitutes just cause and excuse for a child of the family to live separately or apart and occasions the child to live separately or apart,

the party or parent shall, for the purposes of this Part, be deemed to have unlawfully deserted the other party, or the other party and the child, or the child, as the case may be, notwithstanding that that party or parent may not in fact have intended the conduct to occasion the other party or the child to live separately or apart.

(2) Where—

(a) the conduct of a party to a marriage constitutes just cause and excuse for the spouse of that party to live separately or apart and—

(i) occasions the spouse to live separately or apart;

or

(ii) occasions the spouse to live separately or apart and to take a child of the family from the matrimonial home;

or

(b) the conduct of a parent constitutes just cause and excuse for a child of the family to live separately or apart and occasions the child to live separately or apart,

an offer made *bona fide* by that party or parent to provide a home for the spouse, the spouse and child or the child, as the case may be, is not of itself a sufficient answer to a complaint under Division II of