

(2) The receipt in writing of any such member of the police force shall be a sufficient discharge for the person from whom the moneys were received of his liability to pay those moneys to the Director-General.

**160.** (1) If any person against whom a maintenance order has been made is the registered proprietor of any land, estate, or interest in land subject to the Real Property Act, 1886, as amended, the Director-General may lodge with the Registrar-General a caveat signed by the Director-General against any dealings with that land, estate or interest. Caveats.

(2) Particulars of the order shall be set out in the caveat and the Registrar-General shall forthwith register the caveat, and it shall not be lawful for the Registrar-General without the consent of the Director-General to remove or discharge the caveat—

(a) unless and until he is satisfied that all moneys due under the order have been fully paid and satisfied;

or

(b) unless he is ordered by the Supreme Court, or a Judge thereof, to remove the caveat.

**161.** If any money payable under a maintenance order is in arrear for one month, a court of summary jurisdiction may, upon the application of the Director-General or any person to whom money is payable under the maintenance order, issue a warrant authorizing the Director-General or that person to receive the whole or any part of the rents, profits, and income of the real and personal estate of the person against whom the order was made, or to take or sell the estate and interest of that person in the real or personal estate, or in such part thereof as the court may direct. Warrant to enforce payments under orders.

**162.** Every such warrant may be registered in the same manner as a writ of *feri facias*, and shall, from the time of registration, bind the estate or interest of the person liable under the order for maintenance in his real estate and chattel real property. Registration of warrant and effect thereof

**163.** Any sale under the warrant may be by public auction or private contract for cash or on credit, or partly for cash and partly on credit, and subject to any conditions that the Director-General thinks expedient. Sale under warrant.

**PART VI**  
**DIVISION VII**  
Assurances to  
purchaser.

**164.** (1) The Director-General or person authorized by the warrant to sell, may execute to the purchaser all such conveyances, assignments, memoranda of transfer, or other assurances of the property sold as the person against whom the order was made might have executed but for this Act, and the property so conveyed or assured shall vest in the purchaser accordingly.

(2) The Registrar-General shall forthwith register every such memorandum of transfer, and cause such entries to be made and acts to be done, as may be necessary for giving effect to the sale.

Issue of  
warrant  
without  
previous  
demand.

**165.** (1) No notice or demand shall be necessary before a warrant in respect of the real or personal estate of a person against whom a maintenance order has been made, or before any powers conferred by the warrant are exercised, but the court of summary jurisdiction may before issuing any such warrant, require such notice (whether by post, advertisement, or otherwise) to be given to the person against whom the maintenance order is made as the court considers just.

(2) Upon any application for the issue of a warrant, the person against whom the maintenance order was made shall be entitled to appear and be heard.

(3) The warrant shall be conclusive evidence that the power to sell is vested in the Director-General or in the person named in the warrant.

Effect of  
payment under  
warrant.

**166.** The payment to the Director-General or to the person named in any such warrant, shall be a good discharge to any tenant, purchaser, or other person for all moneys paid by him pursuant to the warrant.

Application of  
moneys  
received under  
warrant.

**167.** The rents, profits, and income, and the proceeds of any sale, received under any such warrant and the estate or interest in any real or personal estate taken under any such warrant shall be applied firstly in payment of the costs of collection or sale; secondly, in payment of the costs of obtaining the warrant; thirdly, in paying any money due under the original order; and the balance shall be applied in or towards future maintenance, or in such other manner as a court of summary jurisdiction may direct.

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**168.** (1) The court making any maintenance order may, by the same or a separate order, and any court, on complaint that any person liable upon any such order has made default thereunder, or intends to evade compliance therewith, may by a subsequent order, require the person liable for the maintenance to find such good and sufficient sureties or security as it thinks fit, that he will comply with the order made against him, and the court may, in default of such sureties or security being found, commit him to gaol for any period not exceeding six months.

Power of court to require security for compliance with order.

(2) A justice may at any time determine the sufficiency of any proposed sureties, or security, and in what manner the security is to be given, and, upon being satisfied that security has been duly made and perfected, order the discharge of that person from gaol.

**169.** (1) Where a court of summary jurisdiction is satisfied, upon complaint made by or on behalf of any person for whose benefit a maintenance order has been made, that the defendant (being a male person) has disobeyed or failed to comply with the order and that an amount of money (in this section called the "arrears of maintenance") is presently due and payable and has not been paid, the court may order that the defendant be committed to gaol in default of payment of the arrears of maintenance for such term as the court thinks proper in the circumstances, but not in any case exceeding twelve months.

Power to commit defendant to prison for failure to pay maintenance.

(2) The defendant shall not be liable to serve a term of imprisonment because of his failure to pay an amount of arrears of maintenance in respect of which he has already served a term of imprisonment pursuant to an order made under this section, but the liability to pay any such arrears shall not be discharged by imprisonment in respect thereof and the amount of any such arrears shall, until paid, remain a sum that may be recovered under any other provision of this Act.

(3) Where the court orders a person to be committed to gaol under subsection (1) of this section, the court or a justice may, upon the making of the order or at any time thereafter, order that the issue of the warrant of commitment shall be suspended upon the condition that the defendant makes such payments in respect of the arrears of maintenance as are specified by the court, and duly pays all sums becoming payable under the maintenance order or the order for costs after the order for commitment.

(4) Where the court has ordered that the issue of a warrant of commitment shall be suspended as provided in subsection (3) of this section, the complainant may apply to any justice for the issue of the warrant; and upon proof that the defendant has made default in compliance with any of the conditions on which the issue of the warrant was ordered to be suspended, the justice shall issue the warrant of commitment.

(5) Notwithstanding anything to the contrary in any Act where an order has been made under this section committing the defendant to gaol in respect of arrears of maintenance and it appears to the clerk of the court of summary jurisdiction to which application is made for the issue of a warrant of commitment that the amount of the arrears of maintenance in respect of which the commitment order was made has been reduced, the fact of such reduction shall be stated in the warrant of commitment, and the term of imprisonment for which the defendant may be committed shall be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days in the term of imprisonment as the amount paid bears to the whole arrears of maintenance.

(6) Notwithstanding anything to the contrary in any Act or in any warrant of commitment, where any person is imprisoned for non-payment of arrears of maintenance, he may pay or cause to be paid to the keeper of the gaol in which he is imprisoned—

(a) the whole of the arrears of maintenance or, having regard to subsection (5) of this section, the amount of those arrears remaining to be paid;

or

(b) any lesser amount,

and in either case the keeper shall receive the payment.

(7) Where the amount mentioned in paragraph (a) of subsection (6) of this section is paid to the keeper, the keeper shall thereupon discharge that person if he is in custody for no other cause.

(8) Where an amount mentioned in paragraph (b) of subsection (6) of this section is paid to the keeper, the term of imprisonment fixed by the commitment order shall be reduced by the number of days bearing to the total number of days in the term of imprisonment a proportion that is the same as, or most nearly approximates to, the proportion that the amount paid bears to the whole of the arrears of maintenance and on the expiration of the term as so reduced the person imprisoned shall, if in custody for no other cause, be discharged.

(9) A court shall not commit a defendant to gaol pursuant to this section if it is satisfied—

(a) that the defendant has not and has not had the means and ability and could not by reasonable effort have had the means and ability to comply with the original order;

or

(b) that for any other reason the original order or, if the order is varied, the order as so varied should not be enforced by imprisonment.

(10) Where the court referred to in subsection (1) of this section is aware that a court has previously refused to commit the defendant to gaol under this section for non-payment of a sum (in this subsection referred to as “the original sum”) included in the amount of arrears of maintenance in respect of which the complaint is made, the court shall only have regard to the amount by which the sum still due and unpaid exceeds the original sum unless it is satisfied that, since that refusal, the means and ability of the defendant to pay the original sum have so altered as to make it reasonable for him now to be committed to gaol for non-payment of the original sum.

170. Upon a complaint in respect of any alleged disobedience of, or neglect to comply with, any maintenance order, a justice may, instead of issuing a summons, issue a warrant under his hand for the apprehension of the person against whom the complaint is made, and for the detention of that person until the hearing of the complaint, unless he enters into a recognizance, with one or more sureties, in such sum as the justice directs, conditioned upon his appearance at the hearing of the complaint.

Warrant in  
first instance.

171. (1) Where a maintenance order has been made and it appears to a court of summary jurisdiction, after consideration of evidence given on oath, that default has been made by the defendant in making the payments directed by the maintenance order, the court may, upon application by or on behalf of the Director-General or any person for whose maintenance, or for whose benefit, the order was made, and subject to subsection (5) of this section, grant a certificate stating the amount due under the maintenance order at the date thereof without requiring notice of the application to be given to the defendant.

Registration of  
arrears in  
Local Court  
of Adelaide.

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DIVISION VII**

(2) The Director-General or person for whose maintenance, or for whose benefit, the maintenance order was made, may file the certificate or cause the certificate to be filed in the Local Court of Adelaide and the clerk of the court shall enter judgment for that person in the Record Book of the court for the amount stated in the certificate to be due together with the fees paid for the certificate and for filing and entering the judgment and shall forthwith send notice in writing of the entry of the judgment to the clerk of the court of summary jurisdiction at the place where payments under the maintenance order are for the time being required to be made.

(3) Subject to the following provisions of this section, the judgment may be enforced in any manner in which a final judgment in an action in the Local Court may be enforced.

(4) Where judgment is entered under this section, proceedings for enforcement of the judgment shall not be commenced unless an affidavit has been filed stating that no proceedings are pending in another court for the recovery of any of the arrears of maintenance included in the amount of the judgment and that the maintenance order has not been discharged, suspended or varied since the date of the certificate referred to in subsection (1) of this section in any way affecting any of the arrears of maintenance included in the amount of the judgment.

(5) Where a court has suspended a maintenance order and ordered that any moneys owing under the maintenance order shall not be recoverable during a period for which the order is suspended, no certificate shall be issued in respect of those moneys under this section.

(6) Subject to this Act, rules of court may be made under the Local and District Criminal Courts Act, 1926-1971, prescribing the practice and procedure to be observed in connection with the filing of certificates and the entering and enforcement of judgments in pursuance of this section.

**Disobedience  
of order and  
quitting State.**

**172.** Every person who disobeys or neglects to comply with any maintenance order made against him under this Act and goes to reside beyond the State, either permanently or temporarily, shall be guilty of a misdemeanour, punishable by imprisonment, with or without hard labour, for any period not exceeding twelve months.

**Desertion of  
child under  
certain  
circumstances a  
misdemeanour.**

**173.** Every near relative liable to maintain any child who leaves the child without, or fails to provide the child with, adequate means of support, and goes to reside either temporarily or permanently, outside the State, shall be guilty of a misdemeanour, punishable by imprisonment for any period not exceeding twelve months.

174. (1) Upon complaint on oath by any officer of the department, that he has reasonable grounds for believing that any person is about to commit a misdemeanour under this Subdivision any justice, if satisfied that there are reasonable grounds for believing that the misdemeanour has been or is about to be committed, may issue his warrant for the apprehension of the person complained against.

(2) Upon the hearing of a complaint made under this section a court of summary jurisdiction may hear and determine the matter in a summary way, and, if satisfied that the defendant was about to commit the offence mentioned in the complaint may order the defendant to find an adequate surety or security to the satisfaction of the court that he will comply with the maintenance order, or that he will not leave the child without, or will provide the child with adequate means of support.

(3) The court, in default of such a surety or security being found, may commit the defendant to gaol for any term not exceeding six months.

(4) A justice may at any time determine the sufficiency of any proposed sureties, or security, and in what manner the security is to be given, and upon being satisfied that security has been duly made and perfected, order the discharge of that person from gaol.

#### *Subdivision 2—Attachment of Earnings*

175. (1) In this subdivision, except where the context or subject matter or some other provision requires a different construction—

*Interpretation.*

“attachment of earnings order” means an order made under section 176 of this Act or such an order as varied from time to time:

“defendant”, in relation to a maintenance order or to proceedings in connection with a maintenance order, means a person against whom the order was made:

“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, any payment in lieu of leave or other emolument 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 does not include any pension, benefit or sum payable to the defendant under the Commonwealth Acts known as the *Social Services Act 1947*, as amended by subsequent Acts, the *Repatriation Act 1920*, as amended by subsequent Acts, or the *Seaman's War Pensions and Allowances Act, 1940*, as amended by subsequent Acts:

“employer”, in relation to a defendant, means a person (including the Crown whether in right of the Commonwealth or in right of the State, a Minister of the Crown, whether in right of the Commonwealth or in right of the State and any statutory authority representing the Crown whether in right of the Commonwealth or in right of the State) by whom, as a principal and not as a servant or agent, earnings are payable or likely to become payable to the defendant:

“net earnings”, in relation to a pay-day, means the amount of the earnings becoming payable by a particular employer 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 Commonwealth Act known as the *Income Tax and Social Services Contribution Assessment Act 1936*, as amended by subsequent Acts;

and

(b) any sum deducted from those earnings that would be an allowable deduction—

(i) under section 82H of that Act as so amended other than life insurance premiums, not being life insurance premiums payable in respect of superannuation;

or

(ii) under section 82HA of that Act as so amended:



“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 subdivision—

(a) a reference to a person entitled to receive payments under a maintenance order shall be read as 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;

and

(b) a reference to proceedings relating to an order shall be read as including a reference to proceedings in which the order may be made.

176. (1) An officer of the Department or a person entitled to receive payments under a maintenance order may apply in writing—

Application for attachment of earnings order.

(a) to the court that made the order;

or

(b) to any court in which the order is for the time being enforceable or in which further proceedings in relation to the order may be brought under this Act,

for an attachment of earnings order.

(2) An application under subsection (1) of this section may be made without specifying the name of any particular employer.

(3) If the court is satisfied that the defendant is a person to whom earnings are payable or are likely to become payable and that the defendant has persistently failed to comply with the requirements of the order, or 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—

(a) in the case of an order for weekly payments—four payments;

or

(b) in any other case—two payments,

the court may order 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 this Subdivision.

(4) An attachment of earnings order shall specify, either generally or in relation to any particular pay-day or pay-days, 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.

(5) An attachment of earnings order may specify a higher normal deduction rate to apply for a specified number of pay-days after the order comes into force and a lower normal deduction rate to apply to any other pay-days.

(6) 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 earnings to which the order relates should not be reduced by a payment under the order.

(7) An attachment of earnings order shall provide that payments under the order are to be made to the Director-General at his office at Adelaide.

(8) 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.