

Chapter 279.
Maintenance Orders Enforcement Act 1970.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 279.

Maintenance Orders Enforcement Act 1970.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Maintenance Orders Enforcement Act 1970,

Being an Act to make provision for the enforcement of certain maintenance orders made in and outside Papua New Guinea.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act unless the contrary intention appears—

“**the Clerk**”, in relation to a Court, means the Clerk of the appropriate Court;

“**the Collector**” means the Collector of Maintenance holding office under this Act, and includes a Deputy Collector of Maintenance exercising the powers or performing the functions of the Collector of Maintenance under this Act;

“**complainant**”, in relation to a maintenance order or proceeding in connection with a maintenance order, means the person for whose benefit the order was made;

“**Court**” means a District Court;

“**defendant**”, in relation to a maintenance order or proceedings in connection with a maintenance order, means the person liable to make payments under that order;

“**Magistrate**” means a Magistrate of a District Court;

“**maintenance order**” means an order for the payment of moneys for or towards the maintenance of a wife, husband or child, and includes—

- (a) an order under Section 3 of the *Deserted Wives and Children Act* 1951; and

- (b) an order for the payment of confinement expenses under Section 53, 58 or 59 of the *Child Welfare Act 1961*; and
- (c) an order for the maintenance of a child under Section 54, 55, 58 or 59 of the *Child Welfare Act 1961*; and
- (d) an order for the payment of funeral expenses under Section 60 of the *Child Welfare Act 1961*; and
- (e) an order for the maintenance of a ward under Section 69 of the *Child Welfare Act 1961*; and
- (f) [*Repealed.*]
- (g) a maintenance order made under the *Matrimonial Causes Act 1959* of Australia, as in force from time to time; and
- (h) an order for the payment of costs in connection with any such order; and
- (i) where any such order has been varied, the order as so varied; and
- (j) any such order that has been discharged if arrears are recoverable under the order;

“**the regulations**” means any regulations made under this Act;

“**this Act**” includes the regulations.

2. COLLECTOR AND DEPUTY COLLECTOR.

(1) For the purposes of this Act, there shall be a Collector of Maintenance, who shall be appointed by the Minister by notice in the National Gazette.

(2) The Minister may, by notice in the National Gazette, appoint a person to be a Deputy Collector of Maintenance.

(3) Subject to any directions of the Collector, a Deputy Collector of Maintenance may exercise any power or perform any duty or function of the Collector.

(4) The Collector shall—

- (a) keep proper accounts of all moneys received, remitted or paid by him under this Act; and
- (b) subject to this Act pay moneys received by him under this Act to the persons entitled to those moneys,

and has such other powers, authorities, duties and functions as are prescribed.

PART II. – ENFORCEMENT OF ORDERS MADE IN PAPUA NEW GUINEA.

Division 1.

Interpretation, etc.

3. APPLICATION OF PART II.

(1) This Part does not apply to or in respect of any order made under the *Matrimonial Causes Act 1963*.

(2) This Part is in addition to and not in derogation of any other law relating to the enforcement of maintenance orders.

Division 2.

Imprisonment, Recognizance, etc.

4. IMPRISONMENT FOR DISOBEDIENCE OF ORDER.

(1) Where the defendant, being a male person, has disobeyed or failed to comply with a maintenance order and a sum of money (in this section referred to as “**arrears**”) due under the order is unpaid, application to commit the defendant to prison may be made to the Court by or on behalf of the person for whose benefit the order was made.

(2) Subject to Section 66, on application under Subsection (1), the Court may order that the defendant be committed to prison for such period, not exceeding 12 months, as the Court thinks proper.

(3) For the purposes of Subsection (1), the arrears shall be taken to include any amount that the defendant is ordered to pay in respect of the costs of the application.

(4) The defendant is not liable to be committed to prison in respect of his failure to pay any arrears—

(a) if he has previously served a term of imprisonment in respect of his failure to pay them; or

(b) if he is, by virtue of an order made under Section 6, deemed to have served a term of imprisonment in respect of his failure to pay them.

(5) The fact that a defendant is not liable to be committed to prison in respect of his failure to pay any arrears does not affect the recovery of them under any other section of this Act

(6) The period of detention in prison of a person under an order under Subsection (2) is subject to the provisions of Sections 202 and 203 of the *District Courts Act 1963* as if the amount of the arrears were the amount of a fine imposed by the Court.

(7) Where the arrears in respect of which an application has been made to the Court under Subsection (1) are paid after the service of a copy of the application on the defendant and before the Court makes an order for the issue of a warrant

committing the defendant to prison, the Court may order the defendant to pay the costs of and incidental to the application.

(8) Section 168 of the *District Courts Act 1963* applies to and in relation to an order under Subsection (2) as if it were a conviction referred to in Subsection (1) of that section.

(9) Where a person is entitled to receive payments under each of two or more maintenance orders against the same defendant, one application may be made under Subsection (1) in respect of the arrears due and unpaid under each of those orders.

(10) Where a person makes one application to the Court in respect of the arrears due and unpaid under each of two or more maintenance orders, the Court shall, in determining the period for which the defendant is to be committed to prison, have regard to the amount ascertained by aggregating the arrears and subtracting from the total sum the amount of any arrears, or the sum of the amounts of any arrears, in respect of which the defendant is not liable to be committed to prison as if it were the amount of the arrears due under one maintenance order.

5. RESTRICTION ON COMMITMENT.

(1) A Court shall not commit a defendant to prison under Section 4 if it is satisfied—

- (a) that the defendant—
 - (i) does not have the means and ability to comply with the order under which the moneys are due and unpaid; and
 - (ii) has not had, since the order was made, the means and ability; and
 - (iii) could not by reasonable effort have had that means and ability; or
- (b) that for any other reason the order ought not to be enforced by imprisonment.

(2) Where, on the hearing of an application under Section 4 to commit a defendant to prison for the non-payment of a particular sum of money due under a maintenance order, the Court becomes aware that the Court had previously refused to commit the defendant to prison for the non-payment of that sum of money (in this subsection referred to as “**the original sum**”) or of a sum of money (in this subsection referred to as “**the part of the original sum**”) included in the original sum, the Court shall have regard only to the amount by which the sum due and unpaid exceeds the original sum or the part of the original sum, as the case may be, unless it is satisfied that since the previous refusal the means and ability of the defendant to pay the original sum or the part of the original sum have so altered as to make it reasonable for him to be committed to prison for its non-payment.

6. POSTPONING ISSUE OF WARRANT.

(1) Where the Court makes an order under Section 4 committing a person to prison, the Court on making the order, or a Magistrate at any time after the Court has made the order, may, on such conditions as it or he thinks proper—

- (a) postpone the issue or execution of a warrant of commitment under the order for a specified period; or
- (b) order that a warrant of commitment be issued, or, if a warrant of commitment has been issued but the person has not been imprisoned under the warrant, revoke the warrant and order that another warrant of commitment be issued, committing the person to prison for a period specified in the order, being a period less than the period for which the person has been ordered under Section 4 to be committed to prison; or
- (c) order that the defendant pay the amount found to be due and unpaid, together with any costs of the application that the defendant is ordered to pay, by instalments specified in the order,

and may further order that if the defendant fails to comply with any of the conditions, or to pay such an instalment, a Magistrate may direct the issue or execution of the warrant.

(2) Where a Magistrate issuing a warrant, or directing the execution of a warrant, under Subsection (1) is satisfied that the defendant has paid part of the amount (in this subsection referred to as “**the amount due**”) in respect of which the warrant is being or was issued, the Magistrate shall, by virtue of this subsection, issue the warrant, or amend the warrant already issued, so as to provide for the committal of the defendant to prison for a number of days that bears as nearly as possible the same proportion to the number of days that the defendant was ordered to serve in prison as the balance of the amount due bears to the amount due.

(3) Where the Court orders, under Subsection (1)(b), that a warrant of commitment be issued committing a person to prison for a period—

- (a) the Court shall specify the arrears of maintenance in respect of which the person, if he is imprisoned under the warrant, is deemed to have served a term of imprisonment for the purposes of Section 4(4); and
- (b) if the order was made on conditions to be complied with by the person— the Court may at any time after the person has failed to comply with such a condition further order that a warrant of commitment be issued committing the person to prison for the balance of the period for which the person has been ordered under Section 4 to be committed to prison.

7. RECOVERY OF ARREARS IN THE NATIONAL COURT.

(1) Where the Clerk is satisfied that a sum of money due and payable under a maintenance order is unpaid, he may issue a certificate stating the amount due and payable under the maintenance order at the date of the certificate.

(2) A certificate under Subsection (1) shall not be issued stating that an amount is due and payable under a maintenance order unless evidence that the amount is due and payable and has not been paid is given to the Clerk by affidavit.

(3) A certificate under Subsection (1) may be filed in the National Court.

(4) Where a certificate is filed under Subsection (3), the Registrar of the National Court shall enter judgement in that Court in favour of the person for whose benefit the sum is payable and against the person by whom the sum is payable for an amount equal to the sum of the amount stated in the certificate and the fees paid for the certificate, for filing it in the National Court and for entering the judgement.

(5) Where the Registrar of the National Court enters judgement under Subsection (4), he shall promptly send written notice of the entry of the judgement to the Clerk and to the person to whom payments under the maintenance order are required to be made.

(6) A judgement entered in the National Court under Subsection (4) has the same force and effect, for all purposes, as a judgement entered in that Court on the hearing and determination of an action by that Court.

(7) A judgement entered in pursuance of the filing of a certificate under Subsection (1) in respect of a maintenance order shall not be enforced—

- (a) unless an affidavit is filed stating the amount due and unpaid under the judgement when the affidavit is sworn; and
- (b) unless that affidavit, or another affidavit that has been filed, states that, when the affidavit was sworn, no proceedings were pending in any other court for the recovery of any of the arrears of maintenance included in the amount of the judgement and that, since the date of the certificate, the liability of the defendant to pay any of those arrears of maintenance had not been affected by the discharge, suspension or variation of the maintenance order; and
- (c) unless the affidavit or each of the affidavits was sworn on, or as nearly as practicable before, the day on which it is so filed.

(8) A certificate may be granted under this section stating the sum of the amounts due and unpaid under two or more maintenance orders if—

- (a) the person entitled to receive payment under each of the maintenance orders is the same person; and
- (b) the person required to make payments under each of the orders is the same person.

8. RECOGNIZANCES.

(1) On making a maintenance order or at any time while a maintenance order is in force, the Court may, on application made by or on behalf of the person for whose benefit the maintenance order was made, order the defendant to enter into a recognizance, with or without sureties, to the satisfaction of the Clerk for the due

performance of his obligations under the maintenance order during a specified period, being a period not exceeding 12 months.

(2) An order shall not be made under this section unless the Court is satisfied—

- (a) that the defendant, by his conduct, has shown that he is likely to make default in complying with the maintenance order; or
- (b) that the defendant has persistently failed to comply with the maintenance order.

(3) Where the Court makes an order under this section it may also, unless the defendant personally enters into the recognizance immediately after the order is made, commit the defendant to prison until—

- (a) the expiration of a term, not exceeding 12 months, specified by the Court; or
- (b) he enters into the recognizance; or
- (c) he performs his obligations under the maintenance order in respect of the period for which he would be required to perform those obligations under the proposed recognizance,

whichever first happens.

(4) Where a defendant fails to comply with his obligations under a recognizance entered into under this section, the recognizance may be forfeited by a Magistrate.

(5) Any moneys recovered as a result of the forfeiture under Subsection (4) shall be applied, firstly, for or towards payment of any costs ordered to be paid by the defendant in the proceedings for the order under Subsection (1), to the extent to which those costs have not already been paid, secondly, for or towards the costs incurred in having the recognizance forfeited and moneys recovered as a result of the forfeiture and, thirdly, for or towards the payment of any maintenance due or to become due under the maintenance order.

9. RELEASE ON RECOGNIZANCE OF PERSON IN PRISON.

(1) Where a defendant has been committed to prison for disobeying or failing to comply with a maintenance order, the Minister may, by written order, direct the release of the defendant from prison on his entering into a recognizance—

- (a) in such an amount, and with or without sureties, as is specified in the order; and
- (b) conditioned for his complying with the maintenance order and paying weekly, fortnightly or otherwise periodically, as specified in the order, an amount specified in the order in respect of the arrears of maintenance due under the maintenance order; and
- (c) containing such other conditions as the Minister thinks proper.

(2) Where a person who has been released under this section fails to comply with a condition of the recognizance entered into under this section, a Court may order that the recognizance of the person and of his sureties (if any) be forfeited, and may further order that the defendant be committed to prison for the unexpired portion of the term for which he was originally committed to prison.

(3) Any moneys recovered as a result of the forfeiture of the recognizance under Subsection (2) shall be applied in like manner as moneys received as a result of the forfeiture of a recognizance under Section 8(4) are required by Section 8(5) to be applied.

10. EXECUTION AGAINST PROPERTY, ETC.

(1) Where a maintenance order has been made, the Court, on application made by or on behalf of the person for whose benefit moneys are payable under the order, may by order direct a specified person, during a period specified in the order and to the extent necessary to satisfy the order—

- (a) to seize and sell any goods, chattels and securities belonging to the defendant; and
- (b) to demand and receive any annuity, rents or other income (not being earnings of the defendant for the purposes of Division 3) payable to the defendant or credited to the defendant in a bank account,

and to apply any moneys so received, firstly, towards payment of his costs and charges and secondly towards payment of the amount payable under the maintenance order.

(2) A person specified for the purposes of Subsection (1) has full power and authority to do all acts and things incidental to the matters that he is authorized and directed to do.

(3) A person who refuses to comply with a demand made on him under this section by a person directed to make that demand is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(4) One application may be made to the Court under Subsection (1) in respect of two or more maintenance orders where—

- (a) the person entitled to receive payment under each of those maintenance orders is the one person; and
- (b) the person required to make payments under each of those maintenance orders is the one person.

Division 3.**Attachment of Earnings.****11. INTERPRETATION OF DIVISION 3.**

¹(1) In this Division, unless the contrary intention appears—

“attachment of earnings order” means an order under Section 12;

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

- (a) by way of wages or salary (including any allowance in the nature of wages or salary and 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;

“employer”, in relation to the defendant, means a person and any authority or instrumentality of the State by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the defendant;

“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 VI.2 of the *Income Tax Act 1959*; and
- (b) any sum of a kind referred to in Section 113 of the pre-Independence *Income Tax Act 1959* 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 superannuation or retirement benefit scheme; and
- (c) any sums of a kind referred to in Section 114 of the pre-Independence *Income Tax Act 1959* 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

¹ Section 11 amended by No. 49 of 1976, s1.

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—

- (a) the last preceding pay-day; or
- (b) 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—

- (a) the last preceding pay-day; or
- (b) where there is no last preceding pay-day—the date on which the employer became, or last became, the defendant’s employer;

“the protected earnings rate” means 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 thinks it reasonable that the net earnings of the defendant on any pay-day should not be reduced by a payment under the order.

(2) In this Division—

- (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 directly or through another person or for transmission to another person; and
- (b) a reference to proceedings relating to an order includes a reference to proceedings in which the order may be made.

12. APPLICATION OF DIVISION 3.

This Division 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.

13. ATTACHMENT OF EARNINGS ORDER.

(1) Subject to this Division, a person entitled to receive payments under a maintenance order may apply to the Court for an attachment of earnings order.

(2) An application under Subsection (1) may be made *ex parte* and without specifying the name of any employer of the defendant.

(3) 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—

- (i) there was due under the maintenance order and unpaid an amount equal to not less than, in the case of an order for weekly payments, four payments or, in the case of any other order for periodical payments, two payments; or
 - (ii) there was due under the maintenance order, and unpaid for not less than four weeks, an amount in respect of costs or an amount payable otherwise than by way of periodical payments; or
- (b) that the defendant has persistently failed to comply with the requirements of the order,

the Court may, in its discretion, by 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 Section 14.

(4) The Court shall not make an attachment of earnings order if it appears to the Court that the failure of the defendant to make payments under the maintenance order was not due to his wilful refusal or culpable neglect.

(5) 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.

(6) The rate to be specified as a normal deduction rate shall be the rate at which the Court thinks 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.

(7) An attachment of earnings order shall also specify the protected earnings rate.

(8) An attachment of earnings order shall provide that payments under the order are to be made to the Collector.

(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.

14. PAYMENTS UNDER ORDER.

(1) An employer to whom is directed, 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 Collector—

- (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.

(2) A payment made by the employer under Subsection (1) is a valid discharge to him as against the defendant to the extent of the amount paid.

15. ENFORCEMENT OF MAINTENANCE ORDER.

(1) Where proceedings are brought in the Court to enforce a maintenance order, the Court may, instead of making any other order, make an attachment of earnings order.

(2) 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.

16. DISCHARGE, SUSPENSION OR VARIATION OF ORDER.

(1) On the application of the defendant or a person entitled to receive payments under a maintenance order, the Court may, in its discretion, make an order discharging, suspending or varying the attachment of earnings order previously made by the Court in relation to that maintenance order.

(2) 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.

17. CESSATION OF ORDER.

(1) An attachment of earnings order ceases to have effect—

- (a) on the issuing of a writ or other process, or the making of an order, for the enforcement of the maintenance order in relation to which the attachment of earnings order applies; or
- (b) on the discharge of the attachment of earnings order; or
- (c) subject to Subsection (2), on the discharge or variation of the maintenance order.

(2) Where the Court discharges a maintenance order and it appears to the Court that arrears under the order will remain to be recovered under the order, the Court may, in its discretion, in addition to discharging the order, direct that the attachment of earnings order shall not cease to have effect until those arrears have been paid.

(3) Where an attachment of earnings order ceases to have effect, the Clerk shall promptly serve written notice accordingly on the person to whom the order was directed.

(4) 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 Subsection (3) is served on him.

18. EMPLOYER TO COMPLY WITH ORDER.

Notwithstanding anything in any other law, but subject to this Division, a person to whom an attachment of earnings order is directed must comply with the order.

19. PROCEDURE WHERE TWO OR MORE ORDERS IN FORCE.

(1) Subject to this section, 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 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 making any payment under any earlier order.

(2) 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 directed to the employer in respect of the defendant, an attachment of earnings order under the *Matrimonial Causes Act 1963* also directed to the employer in respect of the defendant, the manner in which the employer shall comply with the order under this Act is as directed in Schedule 2 to that Act.

(3) For the purposes of Subsections (1) and (2), 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 on which the order came into force.

20. NOTICE OF PAYMENT UNDER ORDER.

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

21. NOTICE OF CESSATION OF EMPLOYMENT.

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 written notice accordingly to the Collector without delay—

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

22. DETERMINATION AS TO EARNINGS.

(1) The Court shall, on application by the person to whom an attachment of earnings order is directed by the defendant or by the person in whose favour an attachment of earnings 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.

(2) A person to whom an attachment of earnings order is directed who makes an application under Subsection (1), 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.

(3) Subsection (2) 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.

23. SERVICE OF DOCUMENTS UNDER DIVISION 3.

²(1) A copy of an order or other document that is required or permitted to be served under this Division on a person other than an incorporated company, society or association may be served on the person—

- (a) by delivering the document to the person personally; or
- (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 16 years; or
- (c) by post.

(2) A copy of an order or other document that is required or permitted to be served under this Division on an incorporated company, society or association 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 Papua New Guinea or with a person who is apparently employed at that place and is apparently over the age of 16 years; or
- (b) by post.

24. OFFENCES.

(1) A person who—

- (a) fails to comply with a requirement of this Division, or of an order under this Division, that is applicable to him; or
- (b) in any statement or notice furnished to the Court under this Division or in compliance with an order made under this Division 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.

Penalty: A fine not exceeding K200.00.

(2) It is a defence if a person charged with an offence against Subsection (1)(a) proves that he took all reasonable steps to comply with the requirement or order.

² Section 23 amended by No. 49 of 1976, s2.

25. DISMISSAL OF DEFENDANT.

(1) 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.

Penalty: A fine not exceeding K200.00.

(2) In any proceedings for an offence against Subsection (1), 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 is on that person to prove that he was not actuated by the reason alleged in the charge.

(3) Where a person is convicted by the Court of an offence against Subsection (1), the Court may order that the employee be reimbursed an amount determined by the Court to be the amount of any wages lost by him, and may also direct that the employee be reinstated in his old position or in a similar position.

(4) Where the Court has made an order under Subsection (3), a certificate under the hand of the Clerk 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 judgement of that last-mentioned court.

Division 4.***Miscellaneous.*****26. DEFENCE TO PROCEEDINGS TO ENFORCE MAINTENANCE ORDER.**

Where proceedings are taken in a Court under this Part in respect of the failure of the defendant to make payments under a maintenance order during a specified period in accordance with the maintenance order, the Court shall not make an order (other than an order dismissing the proceedings) or issue a warrant or other process to enforce the maintenance order if the defendant satisfies the Court that during that period he adequately supported the person for whose benefit the maintenance order was made.

**PART III. – RECIPROCAL ENFORCEMENT OF ORDERS MADE OUTSIDE
PAPUA NEW GUINEA.**

Division 1.

Interpretation and Administration.

27. INTERPRETATION OF PART III.

(1)³ ⁴In this Part, unless the contrary intention appears—

“certified copy”—

- (a) in relation to a maintenance order or other order of a court (not being an order made under the *Matrimonial Causes Act 1963*)— means a copy of the order certified to be a true copy by an officer of the court that made the order, or a copy of such a copy certified to be a true copy by an officer of a court in or by which the order has been registered or confirmed or, in the case of an overseas order, by the Attorney-General; and
- (b) in relation to a maintenance order or other order made under the *Matrimonial Causes Act 1963*—means—
 - (i) a certificate of the order issued under the rules made under that Act; or
 - (ii) if the order is included in a decree nisi—a copy of the decree nisi; or
 - (iii) a copy of such a certificate or of the decree nisi in which the order is included certified to be a true copy by an officer of a court in which the order has been registered under that Act; and
- (c) in relation to a record of the evidence of a witness in proceedings before a court—means a copy of the record certified to be a true copy by an officer of that court;

“Collector” means the Collector of Maintenance or a Deputy Collector of Maintenance appointed or acting under this Act;

“collector’s certificate”—

- (a) in relation to a Papua New Guinea order or an overseas order enforceable in Papua New Guinea—means a certificate in accordance with or to the effect of the prescribed form signed by the Collector; and

³ Section 27(1) amended by No. 49 of 1976, s3; Section 27(1) (definition of “court of summary jurisdiction”) repealed by No. 49 of 1976, s3; Section 27(1) (definition of “justice”) repealed by No. 49 of 1976, s3; Section 27(1) (definition of “State”) repealed; Section 27(1) (definition of “State order”) repealed.

⁴ Section 27(1) amended by No. 49 of 1976, s3; Section 27(1) (definition of “court of summary jurisdiction”) repealed by No. 49 of 1976, s3; Section 27(1) (definition of “justice”) repealed by No. 49 of 1976, s3; Section 27(1) (definition of “State”) repealed; Section 27(1) (definition of “State order”) repealed.

- (b) in relation to an overseas order—means a certificate in accordance with or to the effect of the form prescribed by the reciprocal country as corresponding to the form of collector’s certificate prescribed for the purposes of this Part;

“**country**” includes a State, province or other part of a country, or a territory of such a country;

“**country having restricted reciprocity**” means a reciprocating country that has, by virtue of the regulations, restricted reciprocity with Papua New Guinea;

“**court**”, in relation to any order made or to be made or any act, matter or thing done or to be done in any place outside Papua New Guinea, means a court or magistrate, or a justice or justices, or any other person or persons, exercising judicial powers in that place;

“**depositions**”, in relation to a witness in any proceedings, means the record, or a certified copy of the record, of the evidence of that witness in those proceedings;

“**officer**”, in relation to a court, includes a person, or one of the persons, constituting the court;

“**overseas order**”, in relation to a reciprocating country, means—

- (a) in the case where the regulations provide that maintenance orders made in that country are enforceable in Papua New Guinea in accordance with Division 3 on or after a date specified in the regulations—a maintenance order made on or after that date in that country by a court of competent jurisdiction; and
- (b) in any other case—a maintenance order made in that country by a court of competent jurisdiction, whether before or after the country is so specified;

“**Papua New Guinea order**” means an order made in Papua New Guinea—

- (a) by a District Court; or
- (b) by the National Court and registered, for the purposes of enforcement in a District Court under the *Matrimonial Causes Act 1963*;

“**reciprocating country**” means a country that is for the time being declared by the regulations to be a reciprocating country for the purposes of this Part;

(2) A reference in this Part to a certified copy of an order shall, where the order has been varied or otherwise affected by a provisional order of one court that has effect by virtue of its being confirmed (whether with or without modification) by another court, be read as including a reference to both a certified copy of the provisional order and a certified copy of the confirming order.

(3) A reference in this Part to an order made by a court shall be deemed to include a reference to an order made by another court on an appeal in connection with proceedings that originated in the first-mentioned court.

(4) For the purposes of this Part, a person working in a place, whether temporarily or permanently, shall be deemed to be resident in that place as well as in the place where he is in fact resident.

(5) A reference in this Part to the depositions of a witness shall be read as a reference—

- (a) in a case where the witness gave evidence in Papua New Guinea—to a record of the depositions certified as correct by the court before which the evidence was given; and
- (b) in any other case—to a record of the depositions certified as required by the law in force in the place where the evidence was given or to the depositions taken down when the evidence was given or a certified copy of the depositions so taken down.

28. POWERS, ETC., OF COLLECTOR.

(1) The Collector may do all things necessary or convenient to be done for the enforcement in Papua New Guinea of maintenance orders enforceable in Papua New Guinea by virtue of this Part.

(2) The Collector shall—

- (a) receive moneys payable to him in pursuance of orders enforceable under this part and moneys remitted to him by Collectors for States and authorities in reciprocating countries, and give receipts for moneys so received; and
- (b) remit to Collectors for States and to the proper authorities in reciprocating countries moneys received by him in respect of maintenance orders made for the benefit of persons residing in those States or in those countries and payable to or for the benefit of those persons, together with proper accounts in respect of those moneys; and
- (c) pay other moneys received by him to the persons entitled to them.

(3) In all proceedings under this Part, the Collector is entitled to appear, to be heard, to give evidence and to call, examine and cross-examine witnesses.

Division 2.***State Maintenance Orders.***29 - 38⁵. [**REPEALED.**]***Division 3.******Overseas Maintenance Orders.*****39. ENFORCEMENT OF PAPUA NEW GUINEA MAINTENANCE ORDERS IN RECIPROCATING COUNTRIES.**

(1)⁶ ⁷Where a Papua New Guinea order is presently enforceable in Papua New Guinea and it appears to the Collector that the defendant is resident in, or proceeding to, a reciprocating country, the Collector may send to the Attorney-General—

- (a) three certified copies of the Papua New Guinea order; and
- (b) a collector's certificate relating to the Papua New Guinea order; and
- (c) such information and material (if any) as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
- (d) a written request that the Attorney-General seek to have the Papua New Guinea order made enforceable in that reciprocating country,

and the Attorney-General shall, on receipt of those documents, transmit, or cause to be transmitted, the documents referred to in Paragraphs (a), (b) and (c) to the reciprocating country concerned, with a written request that the Papua New Guinea order be made enforceable in that country.

(2) Where, in pursuance of a request under Subsection (1), a Papua New Guinea order is made enforceable in a reciprocating country—

- (a) the order ceases to be enforceable in Papua New Guinea; and
- (b) the order remains unenforceable in Papua New Guinea until it ceases to be enforceable in that reciprocating country; and
- (c) any warrant or other process under this Act arising out of the order and previously issued in Papua New Guinea, but not executed, ceases to have effect.

(3) This section does not apply to or in relation to an order of a kind referred to in Paragraph (b) or (d) of the definition of "maintenance order" in Section 1, or an order under Section 54 of the *Child Welfare Act 1961*, where the order relates to an

⁵ Section 27(1) amended by No. 49 of 1976, s3; Section 27(1) (definition of "court of summary jurisdiction") repealed by No. 49 of 1976, s3; Section 27(1) (definition of "justice") repealed by No. 49 of 1976, s3; Section 27(1) (definition of "State") repealed; Section 27(1) (definition of "State order") repealed.

⁶ Section 39(1) amended by No. 49 of 1976, s5.

⁷ Section 39(1) amended by No. 49 of 1976, s5.

illegitimate child or to the mother of an illegitimate child, unless the defendant appeared in the proceedings in which the court adjudged him to be the father of the child, or was duly served with a summons to appear in those proceedings or consented to the making of the order made in those proceedings.

40. PROVISIONAL ORDER AGAINST RESIDENT OF RECIPROCATING COUNTRY.

(1) On application made to the Court for a maintenance order for the maintenance of a wife, husband or child against a person and on proof that that person is resident in, or proceeding to, a reciprocating country, the Court may, in the absence of that person, make any order that it could have made if a summons had been duly served on him or her and he or she had failed to appear at the hearing.

(2) An order made under Subsection (1) is provisional only and has no effect until confirmed (with or without modification) by a competent court in a reciprocating country in which the defendant is resident at the time of the confirmation, and shall be expressed accordingly.

(3) Where the Court makes an order under Subsection (1), the Clerk shall send to the Collector—

- (a) the depositions of the witnesses; and
- (b) three certified copies of the order; and
- (c) a statement of the grounds on which the making of the order could have been opposed if the defendant had appeared at the hearing.

(4) On receiving the documents, the Collector shall send them, together with any information and material that the Collector possesses for facilitating the identification and ascertaining the whereabouts of the defendant, to the Attorney-General for transmission to the reciprocating country referred to in Subsection (1).

(5) Where such a provisional order has come before a court in a reciprocating country for confirmation and the order has been remitted by that court to the Court for taking further evidence, the Court shall, after notice has been given to such persons and in such manner as the Court thinks proper, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the reciprocating country.

(6) Where, on the taking of the further evidence under Subsection (5), it appears to the Court that the order ought not to have been made, the Court may rescind the order and, if it thinks fit, may make a fresh provisional order under Subsection (1).

(7) Where the Court takes evidence in pursuance of a request of another court made under Subsection (5), the Court may, for the purposes of Subsection (6), have regard to the evidence given at the hearing in that other court.

(8) Where a court in a reciprocating country in which the defendant is for the time being resident confirms (with or without modification) a provisional order made under this section, the order has effect in Papua New Guinea as so confirmed.

(9) Where a court in a reciprocating country confirms (with or without modification) a provisional order made under this section, then in any proceedings arising out of or relating to the order it shall be presumed, unless the contrary is proved, that the defendant was resident in that reciprocating country at the time when the order was confirmed.

41. CANCELLATION OF REGISTRATION.

Where—

- (a) under the law of a reciprocating country, a Papua New Guinea order is enforceable in that country; and
- (b) the Collector is satisfied that there are reasonable grounds for believing that the defendant is not resident in, or proceeding to, that country or it appears to the Collector that there is some other good reason why the order should no longer be enforceable in that country,

the Attorney-General may, at the request of the Collector, send to an appropriate authority in that reciprocating country a written request that the order be made no longer enforceable in that reciprocating country and, for the purposes of this Act, on the sending of the request the order ceases to be enforceable in the reciprocating country.

42. REGISTRATION OF OVERSEAS ORDERS.

(1) Where the Attorney-General receives—

- (a) a certified copy of an overseas order; and
- (b) a certificate signed by an officer of a court or other authority in the reciprocating country relating to the order and containing—
 - (i) a statement that the order is, at the date of the certificate, enforceable in the reciprocating country; and
 - (ii) a statement as to the amount of any arrears due under the order, distinguishing any amount in respect of which the defendant has been imprisoned,

the Attorney-General shall, if it appears to him that there are reasonable grounds for believing that the defendant is resident in or proceeding to Papua New Guinea, send the documents received by him to the Collector.

(2) In the case of an overseas order in the nature of an affiliation order or an overseas order consequent on such an order, the Attorney-General shall not send the documents relating to the order to the Collector if it appears to him from those documents that the defendant did not appear in the proceedings in which the order was made or consent to the making of the order.

(3) In the case of an overseas order originating in a country having restricted reciprocity, the Attorney-General shall not send the documents relating to the order to the Collector unless the Attorney-General is satisfied that the order is a

maintenance order of such a kind as can be made under the law of Papua New Guinea.

(4) Where the Collector receives the documents referred to in Subsection (1) from the Attorney-General, he shall transmit the documents to the Clerk with a request that the order be registered in the Court.

(5) Where a request is made under Subsection (4), the Clerk shall register the order by filing in the Court a certified copy of the order and the certificate relating to the order and noting the fact and date of the registration on that certified copy.

(6) Until the registration is cancelled, an overseas order registered under Subsection (5) is enforceable in Papua New Guinea, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.

(7) On the registration of an overseas order, the Collector shall notify an officer of the court or other authority in the reciprocating country accordingly and cause a certified copy of the order to be served on the defendant, together with a notice of the registration of the order in Papua New Guinea—

- (a) specifying the amount (if any) of the arrears due under the order; and
- (b) stating that payments under the order are to be made to the Collector; and
- (c) giving an address at which payments may be made.

43. CONFIRMATION OF PROVISIONAL OVERSEAS ORDER.

(1) Where—

- (a) an overseas order (other than an order in the nature of an affiliation order or an order consequent on such an order) has no effect under the law of the reciprocating country in which it is made until confirmed by a court outside that reciprocating country (whether or not it appears from the order that it may be confirmed by the Court); and
- (b) a certified copy of the order and the depositions of the witnesses in the proceedings in which the order was made, together with a statement of the grounds on which the making of the order could have been opposed if the defendant had appeared at the hearing, have been received by the Attorney-General; and
- (c) it appears to the Attorney-General that—
 - (i) there are reasonable grounds for believing the defendant is resident in, or is proceeding to, Papua New Guinea; and
 - (ii) the order will have effect under the law of a reciprocating country if it is confirmed by the Court,

the Attorney-General shall send the documents received by him to the Collector.

(2) In the case of a provisional order made in a country having restricted reciprocity, the Attorney-General shall not send the documents relating to the order to the Collector unless the Attorney-General is satisfied that the order is of such a kind as could be made (otherwise than as a provisional order) under the law of Papua New Guinea.

(3) After receipt of the documents by the Collector, a summons may, on the application of the Collector, be issued by the Clerk calling on the defendant to appear before the Court to show cause why the order should not be confirmed.

(4) At the hearing it is open to the defendant to raise any ground of opposition that he could have raised in the original proceedings or any ground of opposition that he could have raised had the proceedings, on which the provisional overseas order was made, been heard in Papua New Guinea, and the statement referred to in Subsection (1)(b) is conclusive evidence that the grounds referred to in the statement are the grounds of opposition that could have been raised in the original proceedings.

(5) If the defendant has been served in Papua New Guinea with the summon and does not appear at the hearing, or if the defendant appears at the hearing but fails to satisfy the Court that the order ought not to be confirmed, the Court may—

- (a) confirm the provisional order (with or without modification); or
- (b) discharge the provisional order; or
- (c) adjourn the proceedings and remit the provisional order to the court that made it, with a request that that court take further evidence and further consider its provisional order.

(6) Where a provisional order is confirmed under this section (with or without modification), the order as so confirmed has effect in Papua New Guinea as if it were an order to the like effect made by the Court.

(7) If, at the hearing, the Court is of opinion that it is necessary to remit the case to the court that made the provisional order for the taking of further evidence, the case may be so remitted.

44 - 46⁸. [**REPEALED.**]

47. CANCELLATION OF REGISTRATION.

(1) Where—

- (a) an overseas order is registered or confirmed under this Division; and
- (b) the Collector receives a written request made by an officer of the court that made the order or some other competent authority in the reciprocating country that the order be no longer enforceable in Papua New Guinea,

⁸ Section 39(1) amended by No. 49 of 1976, s5.

the Collector shall send the request to the Clerk who shall file the request and, if the order is registered under this Division, cancel the registration of the order by noting the fact and date of the cancellation on the certified copy of the order filed in the Court.

- (2) Where a request has been filed under Subsection (1)–
 - (a) the overseas order ceases to be enforceable in Papua New Guinea; and
 - (b) the order remains unenforceable in Papua New Guinea until it is registered, or again registered, in Papua New Guinea; and
 - (c) any warrant or other process under this Act arising out of the order and previously issued in Papua New Guinea, but not executed, ceases to have effect.

48. PROCEEDINGS FOR ENFORCEMENT.

(1) Where an overseas order is enforceable in Papua New Guinea by virtue of this Division–

- (a) all proceedings may be taken for the enforcement of the order; and
- (b) the provisions of this Act, so far as they are applicable and with such modifications as are necessary, apply to and in relation to proceedings for the enforcement of the order,

as if it were a Papua New Guinea order of the kind referred to in Paragraph (a) of the definition of “Papua New Guinea order” in Section 27(1).

(2) The Collector may take any proceedings that are authorized by Subsection (1).

(3) Where proceedings are taken by the Collector under this section for the enforcement of an order (being an order of the kind referred to in Paragraph (a) of the definition of “maintenance order” in Section 1), unless the Court is satisfied by evidence to the contrary the Court shall presume–

- (a) that the moneys due and payable under the order–
 - (i) if the order has ceased to be in force–were, when the moneys became due and payable, required for the maintenance of the person for whose benefit the order was made; or
 - (ii) in any other case–are required for the maintenance of that person; and
- (b) that no moneys have been paid under the order since its registration in Papua New Guinea other than any moneys that have been paid to the Collector.

49. APPLICATION FOR ORDER OF VARIATION, ETC.

(1) Where an overseas order is enforceable in Papua New Guinea by virtue of this Division, the defendant may make a written application to the Court for an order

discharging, suspending or varying the overseas order, and the Court has jurisdiction to hear and determine the application.

(2) Where a Papua New Guinea order is enforceable under the law of a reciprocating country in which the defendant is for the time being resident, the complainant may make a written application to the Court for an order varying, or, if the order has been suspended, reviving, the order.

(3) The applicant shall cause a copy of an application under this section to be served on the Collector personally or by post not less than 14 days before the hearing of the application.

(4) As far as practicable, the Court shall hear and determine an application under this section as if it were similar to an application for discharge, suspension, variation or revival, as the case may be, of a Papua New Guinea order.

50. DISCHARGE, ETC., OF ORDER MADE IN ABSENCE OF DEFENDANT.

Where—

- (a) an application is made under Section 49 by a defendant for the discharge, suspension or variation of an overseas order; and
- (b) the defendant did not appear at the hearing of the proceedings on which the overseas order was made, or was not served in the manner referred to in Section 63(3), in the country in which the order was made, with a summons issued in pursuance of the complaint on which the order was made; and
- (c) the application is made within six months after service on the defendant of notice of registration of the order in Papua New Guinea,

the defendant may, in addition to raising any matter that he may raise under any other law of Papua New Guinea, raise any ground of opposition that he could have raised had the proceedings on which the overseas order was made been heard in Papua New Guinea.

51. LAW TO BE APPLIED.

In an application under Section 49, the law to be applied is the law of Papua New Guinea.

52. CERTAIN ORDERS PROVISIONAL ONLY.

(1) Where the Court proposes to make an order on an application under Section 49 and a court in the reciprocating country will, if the order is provisional only, have jurisdiction to confirm the order, the order is provisional only and has no effect until confirmed (with or without modification) by such a court, and shall be expressed accordingly.

(2) Where a provisional order is made in accordance with this section, the Collector shall send a certified copy of the provisional order, together with the depositions of the witnesses, to an officer of a court in the reciprocating country having jurisdiction to confirm the provisional order.

(3) Where a court in the reciprocating country confirms (with or without modification) a provisional order made on an application under Section 49, the order has effect in Papua New Guinea as so confirmed.

(4) Notwithstanding this section, if a provisional order made on an application under Section 49(2) is confirmed (with or without modification) by a court of a reciprocating country (not being the country specified in the order) in which the defendant is resident at the time of the confirmation, the order has effect in Papua New Guinea as so confirmed.

53. PROVISIONAL ORDER REMITTED BY COURT IN RECIPROCATING COUNTRY.

(1) Where a provisional order made in accordance with Section 52 is remitted by a court in a reciprocating country to the Court for the taking of further evidence, the Court shall, after notice has been given to such persons and in such manner as the Court thinks proper, proceed to take the evidence, and cause the depositions of the witnesses to be sent to the court in the reciprocating country.

(2) If on the taking of the further evidence, it appears to the Court that the order ought not to have been made, the Court may rescind the order and, if it thinks fit, make a fresh provisional order on the application under Section 49.

54. CONFIRMATION IN PAPUA NEW GUINEA OF PROVISIONAL ORDERS MADE IN RECIPROCATING COUNTRIES.

(1) Where the Collector receives—

(a) a certified copy of—

(i) a provisional order made by a court in a reciprocating country discharging, suspending, varying or reviving a Papua New Guinea order enforceable in that country; or

(ii) a provisional order made by a court in a reciprocating country discharging, suspending, varying or reviving an overseas order made in that country and enforceable in Papua New Guinea by virtue of this Division; and

(b) the depositions of the witnesses who gave evidence at the hearing of the application on which the provisional order was made,

the Collector shall, on behalf of the party on whose application the provisional order was made in the reciprocating country, apply to the Court for an order confirming the provisional order.

(2) The Collector shall cause a copy of the application under this section to be served on the respondent to the application not less than seven days before the hearing of the application.

(3) On the hearing of the application, the Court may—

- (a) confirm the provisional order (with or without modification); or
- (b) discharge the provisional order; or
- (c) adjourn the proceedings and remit the provisional order to the court that made it with a request that the court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this section (with or without modification), the order as so confirmed has effect in Papua New Guinea as if it were an order to the same effect made by the Court.

55. DECLARATION OF RECIPROCATING COUNTRIES.

(1) Where the Minister is satisfied that the law of a country makes provision for the enforcement in that country of maintenance orders made in another country and that under that law Papua New Guinea orders may be made enforceable in that country, regulations may be made under this Act declaring that country to be a reciprocating country for the purposes of this Part.

(2) If it appears to the Minister that the jurisdiction of the courts of a country so declared, or to be so declared, to make maintenance orders extends to the making of orders that are not of the same kind as orders that may be made in Papua New Guinea, the regulations may provide that that country has restricted reciprocity with Papua New Guinea.

(3) The regulations may specify, in relation to the country declared by the regulations to be a reciprocating country, a date, that may be before or after, or the same day, as the date on which the regulations come into operation, and may provide that maintenance orders made in that country on or after that date are enforceable in Papua New Guinea in accordance with this Division.

(4) Where a country that has been a reciprocating country ceases to be a reciprocating country—

- (a) a maintenance order made in that country and enforceable in Papua New Guinea by virtue of this Division ceases to be so enforceable; and
- (b) any warrant or other process under this Act arising out of any such order and previously issued in Papua New Guinea, but not executed, ceases to have effect,

but this subsection does not affect the validity of anything done under this Act for the enforcement of a maintenance order while that country was a reciprocating country.

Division 4.
Miscellaneous.

56. PAYMENTS TO COLLECTOR.

While a maintenance order is enforceable in Papua New Guinea under this Part, all moneys directed by the order to be paid are payable to the Collector at the prescribed address and the receipt of the Collector for any such moneys is a sufficient discharge of the liability of a person to pay those moneys in accordance with the order.

57⁹. [REPEALED.]

58. CHANGES IN STATE OR OVERSEAS ORDERS.

¹⁰(1) Where the Collector receives from an appropriate officer in a reciprocating country a certified copy of an order (other than a provisional order), or a written notice giving particulars of an event or other matter, made, occurring or arising in that reciprocating country, and affecting, in a manner appearing from the certified copy or notice, the operation of a Papua New Guinea order enforceable in that reciprocating country, or overseas order enforceable in Papua New Guinea under this Part, the Collector shall—

- (a) file the certified copy or notice in the Court; and
- (b) if the complainant or defendant is resident in Papua New Guinea, cause a copy of the certified copy or notice to be served on the complainant or defendant, as the case may be.

(2) Where a certified copy or notice is filed under Subsection (1) in relation to a maintenance order, the order, event or matter has the like effect in Papua New Guinea as it appears from the certified copy or notice to have in the reciprocating country.

(3) Subsections (1) and (2) do not apply in relation to an order made in a reciprocating country affecting a maintenance order in a manner adverse to the defendant unless it appears from the documents received by the Collector that the defendant appeared on the hearing of the proceedings.

59. CONVERSION OF CURRENCY.

(1) In this section, “**the prescribed date**” means—

- (a) in relation to a maintenance order registered under this Part or a certificate with respect to the arrears payable under a maintenance order sought to be so registered—the day on which the order is registered; or

⁹ Section 57 repealed by No. 49 of 1976 s9.

¹⁰ Section 58 amended by No. 49 of 1976, s10.).

- (b) in relation to a provisional order confirmed under this Part—the day on which the order is confirmed; or
- (c) in relation to an order or notice referred to in Section 58(1)—the day on which the certified copy of the order or the notice is filed in the Court in accordance with that subsection.

(2) For the purposes of this Part, an overseas order (including a provisional order) or a certificate or notice originating in a reciprocating country that refers to an amount of money (including an amount of arrears) expressed in the currency of a reciprocating country shall be deemed to refer to the amount that was the equivalent amount in Papua New Guinea currency on the prescribed date on the basis of the telegraphic transfer rate of exchange prevailing on that date.

(3)^{11 12}For the purposes of this section, a certificate signed by the Collector and purporting to be based on information obtained by him from the Central Bank, that on a specified date, a specified amount in Papua New Guinea currency was the equivalent of a specified amount in another currency on the basis of the telegraphic transfer rate of exchange prevailing on that date is evidence of the matter stated in the certificate.

(4) Where a certificate in accordance with Subsection (3) has been filed in the Court in relation to an order, certificate or notice, each copy of that order, certificate or notice served on any person shall be accompanied by a copy of the first-mentioned certificate.

(5) Where, under Section 28, the Collector is required to remit an amount of money to a country outside Papua New Guinea, he shall remit such amount in the currency of that country as he is able to remit by the expenditure of that first-mentioned amount.

60. TRANSLATION OF ORDERS, RECORDS, ETC.

(1)^{13 14}Where a certified copy of an order of a court (including a provisional order), a record of the evidence of a witness or any other document arising out of, or relating to, proceedings in a court is not in the English language, it shall not be used for the purpose of registering an order under this Part, or received in evidence in proceedings under this Part, unless it is accompanied by a translation of the document into the English language certified under the hand of an officer of that court to be a correct translation, or bearing the seal of that court.

(2) In a case to which subsection (1) applies—

- (a) the translation may be received in evidence to the same extent as the document of which it is a translation and, unless the contrary is proved, shall be deemed to be a correct translation; and

¹¹ Section 59(3) amended by No. 49 of 1976, s11.

¹² Section 59(3) amended by No. 49 of 1976, s11.

¹³ Section 60(1) amended by No. 49 of 1976, s12.

¹⁴ Section 60(1) amended by No. 49 of 1976, s12.

- (b) all notations made on the document shall be made also on the translation; and
- (c) any copy of the document served on any person shall be accompanied by a copy of the translation.

61. CERTIFICATE OF PAYMENTS.

¹⁵In any proceedings under or for the purposes of this Part, a certificate signed by the Collector or an officer of a reciprocating country in which a maintenance order was made or is enforceable, concerning amounts paid or unpaid under a maintenance order is evidence of the facts stated in the certificate.

62. EVIDENCE OF CERTAIN DOCUMENTS, ETC.

(1) For the purposes of this Part and in proceedings under or arising out of this Part, unless the contrary is proved, a document purporting to be—

- (a) a certified copy of an order (including a provisional order) of a court; or
- (b) the record, or a certified copy of the record, of the evidence of a witness in proceedings before a court; or
- (c) a certificate or notice of a kind referred to in this Part,

shall be taken to be such a certified copy, record, certificate or notice, and shall be admitted in evidence without proof of the signature of the person purporting to have signed it or of his official position.

(2)¹⁶ ¹⁷The depositions of a witness in proceedings before a court in a reciprocating country that have been received in Papua New Guinea for the purposes of this Part are admissible in evidence in proceedings under this Part in a court in Papua New Guinea.

63. SERVICE OF DOCUMENTS UNDER PART III.

(1) Unless the contrary appears in this Part, a document required or permitted by this Part to be served on a person shall be served on that person personally.

(2) A document required by Section 42(7), or 58 to be served on a person may be served on him—

- (a) personally; or
- (b) by post at his usual or last-known place of residence or business.

(3) A reference in this Part to a document being served on a person personally shall be read as a reference to that document being served by—

- (a) delivering a copy of the document to that person; or

¹⁵ Section 61 amended by No. 49 of 1976, s13.

¹⁶ Section 62(2) amended by No. 49 of 1976, s14.

¹⁷ Section 62(2) amended by No. 49 of 1976, s14.

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- (b) leaving a copy of the document at the usual or last-known place of residence or business of that person with some other person who apparently resides in or is employed at that place, and is apparently over the age of 16 years.

PART IV. – APPEALS.

64. APPEALS.

A person aggrieved by an order of the Court under this Act may, within 21 days after the order is made, appeal to the National Court against the order, in accordance with Part XI of the *District Courts Act 1963*.

PART V. – MISCELLANEOUS.**65. COMPLAINTS.**

(1) A complaint shall be taken not to have been duly made for the purposes of this Act unless it is made to the Clerk in writing and on oath.

(2) Where a complaint for the purposes of this Act is made to the Clerk, he may–

- (a) issue a summons requiring the defendant to attend before the Court on a date, and at a time and place, specified in the summons; or
- (b) subject to Subsection (3), issue a warrant for the apprehension of the defendant and for bringing him before the Court to answer the complaint.

(3) The Clerk shall not issue a warrant for the apprehension of a defendant under Subsection (2) unless he is satisfied, by evidence furnished to him on oath, that the whereabouts of the defendant are unknown to the complainant or that the defendant is about to move, or has moved, out of Papua New Guinea without having made adequate provision for the maintenance of the complainant.

(4) Two or more complaints made against a defendant by a complainant, whether on the complainant's own behalf or on behalf of other persons, or both on the complainant's own behalf and on behalf of other persons, may be joined in the one form of complaint.

(5) Where, under Subsection (4), two or more complaints are joined in the one form of complaint–

- (a) one summons may be issued in respect of the complaints; and
- (b) unless the Court otherwise orders, the complaints shall be heard and determined by the Court at the same time; and
- (c) two or more orders in respect of the complaints may be joined in the one form of order but, for the purposes of this Act, the order in respect of each complaint shall be deemed to be a separate order.

66. PROCEEDINGS IN ABSENCE OF DEFENDANT.

(1) Where the defendant does not appear before the Court–

- (a) at the time and place specified in a summons issued in relation to a complaint; or
- (b) at the time and place specified in an application made under Section 4(1) to commit the defendant to prison,

or on any day to which the hearing of the complaint or application is adjourned, the Court may, subject to Subsection (2), issue a warrant for the apprehension of the defendant, or it may proceed to hear and determine the complaint or application in the absence of the defendant.

(2) The Court shall not proceed as provided by Subsection (1) unless it is satisfied—

- (a) that the summons, or a copy of the application, as the case may be, was duly served on the defendant; or
- (b) that the complainant, or person making the application, as the case may be, has, after strict inquiry and search for the purpose of ascertaining the whereabouts of the defendant, been unable to effect service of the summons or of a copy of the application, as the case may be, on the defendant.

(3) Where, under Subsection (1), the Court issues a warrant for the apprehension of the defendant, the Court shall adjourn the hearing of the complaint until the defendant is brought before the Court.

(4) Where a warrant has been issued for the apprehension of the defendant (whether in the first instance or on the defendant's failing to appear) and the Court is satisfied that after strict inquiry and search the defendant cannot be found, the Court may proceed to hear the complaint in the absence of the defendant.

(5) The inquiry and search made for the defendant for the purposes of this section may be proved by evidence given orally by, or by the affidavit of, the person or persons who made the inquiry and search.

67. FORM OF APPLICATION.

An application to the Court for the purposes of this Act shall be in the prescribed form.

68. HEARING OF APPLICATION.

(1) Subject to Subsection (2) and to Section 66, where the Court is satisfied that service of a copy of an application has been effected on each person, other than the applicant, who appears to the Court to be affected by the application, the Court may hear and determine the application whether or not every person on whom such a copy was served is present at the hearing.

(2) Subsection (1) does not apply to an application of a kind that is permitted by this Act to be made *ex parte*.

69. COMPLAINTS OR APPLICATIONS MADE ON BEHALF OF OTHERS.

(1) A complaint or an application under this Act purporting to be made on behalf of a person shall, in the absence of evidence to the contrary, be deemed to be made on behalf of that person.

(2) Where a complaint or an application under this Act may be made by a person on behalf of a child, that person may make the complaint or application whether or not he has been duly authorized to do so.

70. PAYMENTS UNDER ORDERS.

(1) Subject to any order made under this Act in relation to the appropriation of moneys, moneys received under an order for the payment of moneys made under this Act by the person entitled to receive those moneys shall be deemed to be a payment made by the defendant to that person so as to discharge, to the extent of the moneys received—

- (a) firstly, any sums due and unpaid under the order (a sum due at an earlier date being discharged before a sum due at a later date); and
- (b) secondly, any costs incurred in proceedings relating to the order that were payable by the defendant in respect of any previous proceedings for the enforcement of the order.

(2) In proceedings relating to an order for the payment of moneys enforceable under this Act, the production of books purporting to be the books of account of the Court in relation to the order are evidence that the payments to which the entries in those books purport to refer have been made and that those payments are the only payments that have been made.

(3) Where—

- (a) the Collector or other person to whom the payment of moneys is directed to be made under two or more orders made against the same defendant receives from the defendant an amount that is less than the total amount payable under those orders; and
- (b) no order for the appropriation of that amount has been given by the defendant to the Collector or other person,

the Collector or other person shall, subject to Subsection (1), appropriate that amount to the payment of the sum payable under each of those orders in such manner as the Collector or other person thinks proper or as is prescribed.

71. FURTHER ORDERS.

(1) Where a maintenance order or an order under this section (in this section referred to as an “**original order**”) contains a direction with respect to the payment of moneys payable under the order, the Court may—

- (a) by a subsequent order, revoke those directions and give any other directions concerning the payment of moneys under the original order; and
- (b) make such other orders as it thinks fit—
 - (i) for regulating the disbursement of moneys paid under the original order; or
 - (ii) for regulating the investment and application of the proceeds of the sale of any goods, chattels or securities directed to be sold, or any annuity, rents or income directed to be collected, under an order made under Section 10; or

- (iii) for ensuring the proper appropriation of any such moneys.
- (2) At the discretion of the Court, an order may be made under this section—
 - (a) with or without an application for the order; and
 - (b) on notice of the application being given to the defendant against whom the original order was made or without notice being given.

72. ENFORCEMENT OF MAINTENANCE ORDERS BY COLLECTOR.

(1) Where moneys payable in accordance with a maintenance order are payable to the Collector, the Collector may, in his discretion, take, on behalf of the person entitled to those moneys, proceedings under this Act for enforcing payment of, or of recovering, those moneys.

(2) In any proceedings under this Act for the purpose of enforcing payment of moneys ordered to be paid by an order under this Act or for the recovery of any such moneys, the Collector is entitled to appear, to be heard, to give evidence and to call, examine and cross-examine witnesses.

73. SETTING ASIDE ORDER MADE IN ABSENCE OF DEFENDANT, ETC.

(1) Where the Court proceeds under Section 66 to make an order against a defendant who was not served with a summons and who did not appear at the hearing, the defendant may, within a period of 21 days from the time when the order comes to his knowledge (proof of which time is on the defendant) make application to the Court to set aside the order or to re-hear the matter of the complaint in respect of which the order was made.

(2) On proof of due service of a copy of the application on the complainant, the Court may, if it thinks it just in the circumstances of the case, set aside the order made in the absence of the defendant on such terms as to costs as it thinks proper, and proceed to hear and determine the matter of the complaint in respect of which the order was made.

(3) An order made under Subsection (2) may be made to take effect from any date on which the order set aside could have been made to take effect under the law of Papua New Guinea.

74. INQUIRY AS TO DEFENDANT'S MEANS, ETC.

- (1) In proceedings under this Act, the Court may—
 - (a) direct the defendant to attend before the Court at a specified time to be examined concerning his means and ability to comply with any order made against him under this Act; or
 - (b) direct the defendant to state to the Court or 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 than one employer, of each of his employers; and
 - (ii) particulars as to the defendant's earnings; and
 - (iii) such other particulars, being particulars that the Court considers necessary to enable the defendant to be identified by any of his employers, as the Court thinks fit to direct; or
- (c) direct a person who appears to the Court to be indebted to the defendant or to be the employer of the defendant to furnish to the Court, within the time fixed by the Court, a statement signed by him or on his behalf containing such particulars as are specified in the direction of his indebtedness to the defendant or of all the earnings of the defendant that became payable by that person during a specified period, as the case may be.

(2) A document purporting to be a statement referred to in Subsection (1) is admissible in evidence in proceedings under this Act and, unless the contrary is shown, shall be deemed without further proof to be such a statement.

(3) A person who—

- (a) without reasonable cause or excuse, refuses or fails to comply with a direction under this section that is applicable to him; or
- (b) in any statement furnished to the Court under this section, makes a statement that he knows to be false or misleading in a material particular or does not believe on reasonable grounds to be true,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

75. SERVICE OF DOCUMENTS GENERALLY.

(1) Unless otherwise provided in this Act—

- (a) a summons, copy of an application, notice or other document may be served on any person in the manner provided for the service of summonses by Section 47 of the *District Courts Act 1963*; and
- (b) a notice may be served by post addressed to the person to whom it is directed at his last-known place of residence or business.

(2) Where the Court is satisfied that for any reason service of a summons, copy of an application, notice or other document cannot be effected in a manner provided for under Subsection (1), the Court may order that the summons, notice or other document be served in a manner specified by the Court.

(3) If in any proceedings in connection with which a notice has been served in accordance with Subsection (1) or (2) it appears to the Court that the person to whom the notice is directed has not or may not have received it, the Court may direct that the notice be again served on him in such manner as it thinks proper.

(4) Service of a copy of an application or other document on a complainant who is an infant shall be effected by serving the copy or other document on—

- (a) the person who is entitled to receive, on behalf of the infant, the moneys payable under the maintenance order in relation to which the infant is the complainant; or
- (b) such other person as the Clerk specifies under Subsection (5),

but not otherwise.

(5) Where the Clerk is satisfied that, for any reason, the person who is required to effect service of a copy of an application or other document on a complainant who is an infant would otherwise be unable to serve it on the person referred to in Subsection (4)(a), the Clerk may, by writing under his hand, specify a person who, in the opinion of the Clerk, is a proper person to advise the infant in connection with the proceedings to which the application or document relates, as the person on whom a copy of the application or the other document may be served for the purpose of effecting service of it on the infant.

(6) Service of a summons or of a copy of an application to the Court under this Act shall be effected on a person to be served with the summons or copy at least 10 clear days before the day fixed for the hearing of the complaint to which the summons relates, or of the application, as the case may be.

(7) Failure to serve a summons or copy of an application on a person as required by Subsection (6) does not invalidate the proceedings to which the summons or application relates, but on application by the person the Court may adjourn the hearing of the complaint or application for such period as it thinks necessary having regard to the day on which the summons or copy was served.

(8) Where service of a document is effected on a person by posting the document to the person, service of the document shall, unless the contrary is proved, be deemed to have been effected on the person at the time when the letter containing the document would, in the ordinary course of post, be delivered at the address to which it is posted.

(9) Service of a summons, copy of an application, notice or other document in a manner authorized by this Act may be proved by the oath of the person who served it, or by affidavit, or otherwise.

76. COSTS.

In any proceedings under this Act before a court, the court may order the payment of such costs by such persons, being parties to the proceedings, as it thinks proper.

77. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be

prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular—

- (a) for prescribing forms to be used for the purposes of this Act; and
- (b) for or in relation to the practice and procedure of the Court in proceedings under this Act.

Office of Legislative Counsel, PNG