

An Act to amend the *Maintenance Act* 1928.

[11th December, 1933.]

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

Short title
construction
and citation.
No. 3722.

1. This Act may be cited as the *Maintenance Act* 1933 and shall be read and construed as one with the *Maintenance Act* 1928 (hereinafter called the Principal Act) which Act and this Act may be cited together as the Maintenance Acts.

Police
magistrate
to have
exclusive
jurisdiction
under No. 3722
Parts I. and
II. in certain
areas.

2. (1) Notwithstanding anything in Part I. or Part II. of the Principal Act or in any other enactment but subject to the provisions of section six of this Act in every area to which this section applies the jurisdiction and powers exercisable by any two justices by or under the said Part I. or the said Part II. shall on from and after the date of the commencement of this Act be exercisable (as the case may be)—

(a) by a court of petty sessions consisting of a police magistrate sitting without any other justice or justices ; or

(b) by

(b) by a police magistrate sitting without any other justice or justices—

and shall not on from or after the said date be exercisable by a court of petty sessions otherwise constituted or by any other justices.

(2) The areas to which this section applies shall be—

Areas to which this section applies.

(a) the area comprised in the city of Melbourne and the municipal districts (or where so specified parts thereof) of the municipalities specified in the Schedule to this Act ;

Schedule.

(b) the areas comprised in the city of Geelong and the municipal districts of all other cities not included in paragraph (a) hereof or the said Schedule ;

(c) every area comprised in the municipal district of a borough if any part of such municipal district is within ten miles of any city included in paragraph (b) hereof, and every area comprised in any part of the municipal district of a shire if such part is within ten miles of any such city ; and

(d) the areas of such other parts of Victoria as the Governor in Council by proclamation declares from time to time to be areas to which this section extends and applies.

(3) The Principal Act shall with such adaptations as are necessary be read and construed and have effect accordingly.

Construction.
No. 3722.

(4) Every proclamation under this section—

Proclamations.

(a) shall be published in the *Government Gazette* ;

(b) shall take effect on the date of the publication of the proclamation or a later date specified therein ;

(c) may be rescinded revoked amended or varied by like proclamation ;

(d) shall so long as it is not rescinded or revoked have the like force and effect as if enacted in this Act ; and

(e) shall be laid before both Houses of Parliament as soon as may be after it is made.

3. Without affecting the generality of the provisions of sections sixty-three, sixty-seven and one hundred and ninety-five of the *Justices Act* 1928 or any other enactment,

Jurisdiction of justices under No. 3722 Parts I. and II. exercisable by police magistrates sitting alone.
No. 3708 ss. 68, 67, 195.

it

it is hereby declared that the jurisdiction and power exercisable by any two justices by or under Part I. or Part II. of the Principal Act may also, notwithstanding anything in the Principal Act, be exercised—

- (a) by a police magistrate sitting without any other justice or justices ; or
- (b) by a court of petty sessions consisting of a police magistrate sitting without any other justice or justices—

and the Principal Act shall, with such adaptations as are necessary, be read and construed and have effect accordingly.

Decision in proceedings under No. 3722 Part I. or Part II. in case of difference of opinion.
See No. 3708 s. 199.

4. In any proceedings under Part I. or Part II. of the Principal Act before a police magistrate and any other justice or justices or a court of petty sessions consisting of a police magistrate sitting with any other justice or justices, the decision of the police magistrate shall in the event of a difference of opinion be the decision of the justices or court.

Provisions as to orders of maintenance.

Power of police magistrate to vary suspend or revive order.
See No. 3722 s. 15.

5. Notwithstanding anything in Part I. of the Principal Act and without affecting the powers of courts of general sessions, when any order has been made under the said Part concerning the support of any wife or child, any police magistrate sitting without any other justice or justices, may from time to time at his discretion, subject to appeal to the court of general sessions for the bailiwick—

- (a) vary the order ; or
- (b) suspend the same temporarily as to the whole or any part of the amount directed to be paid ; or
- (c) revive wholly or in part, as to the police magistrate seems fit, any order which has been so suspended—

Comp. No. 3726 s. 96.

No. 3722 s. 15.

and may make such order as to costs as the police magistrate deems fit ; and any order so varied or revived may be enforced as and be deemed to be an order made under the provisions of the said Part I. by the police magistrate concerning the support of a wife or child : Provided that where proceedings under section fifteen of the Principal Act have been instituted in a court of general sessions by a husband or wife or on behalf of a wife or child the police magistrate before whom any proceedings under this section in relation to the same matter are being heard shall pending the hearing and determination of the proceedings before the court of general sessions abstain from adjudication of the proceedings before him and shall adjourn the hearing thereof accordingly.

6. Where

6. Where an order has been made by any court regarding the custody or control of any infant, without affecting the powers of such court any court of petty sessions however constituted may make such order as the court thinks fit regarding the right of access to the infant having regard to the welfare of the infant and to the conduct of the parents and to the wishes as well of the mother as of the father and may alter vary or discharge such order on the application of either parent or after the death of either parent on the application of any guardian under Part VII. of the *Marriage Act 1928* and may make such order as to costs as the court thinks fit.

Power of court of petty sessions to make order as to right of access to child.
Comp. No. 3720 s. 145.

No. 3726 Part VII.

7. The provisions of Part IV. of the Principal Act as amended by this Act shall extend and apply to the enforcement in Victoria of an order confirmed under any law reciprocal to the Imperial Act intituled the *Maintenance Orders (Facilities for Enforcement) Act 1920* by a court in any State or Territory of the Commonwealth of Australia or in any territory in respect of which a mandate is being exercised by the Government of the Commonwealth or in the Dominion of New Zealand and of any order made by any court in any such State or Territory of the Commonwealth or in any such territory in respect of which a mandate aforesaid is being exercised or in the said Dominion to enforce such maintenance order and any summons or process or warrant issued by such court for the enforcement of such order may be served or executed in Victoria; and the provisions of the said Part IV. shall with the necessary adaptations be read and construed accordingly; and, in particular, without affecting the generality of the foregoing, in section fifty-nine of the Principal Act at the end of the interpretation of "Order" there shall be inserted the expression "and also includes such an order or judgment confirmed under any law reciprocal to the Imperial Act intituled the *Maintenance Orders (Facilities for Enforcement) Act 1920* by a court in any State or Territory of the Commonwealth of Australia or in any territory in respect of which a mandate is being exercised by the Government of the Commonwealth or in the Dominion of New Zealand".

Extension of No. 3722 Part IV. to orders confirmed under any law of another State &c. reciprocal to 10 & 11 Geo. V. c. 33.

Amendment of No. 3722 s. 59.

Amendment of No. 3722 ss. 62, 70.

8. In section sixty-two and in paragraph (i.) of subsection (1) of section seventy of the Principal Act the words "not being a court of record" (wherever occurring) are hereby repealed.

As to service in Victoria of summons issued in another State and as to documents received from another State by collector.

9. In

Amendment of
No. 3722 s. 78.
Enforcement of
order made
under No. 3722
Part IV.

9. In sub-section (1) of section seventy-eight of the Principal Act after the words "distress by imprisonment for" there shall be inserted the words "or, without ordering any such distress, by imprisonment for".

Extension of
No. 3722
Part V. to
mandated
territories.

10. (1) Where the Governor in Council is satisfied that reciprocal provisions are in force in any territory in respect of which a mandate is being exercised by the Government of the Commonwealth of Australia for the enforcement within such territory of maintenance orders made by courts within Victoria the Governor in Council may by proclamation published in the *Government Gazette* declare such territory to be a reciprocating State for the purposes of Part V. of the Principal Act and thereupon such territory shall become a reciprocating State within the meaning of the said Part V.

Amendments of
No. 3722.

(2) The Principal Act is hereby amended as follows:—

Interpretation.

(a) In section eighty-five—

"Governor."
No. 3722 s. 85.

(i) at the end of the interpretation of "Governor" there shall be inserted the words "and also includes the person administering the government of any territory in respect of which a mandate is being exercised by the Government of the Commonwealth of Australia"; and

"Reciprocating
State."
Ib.

(ii) at the end of the interpretation of "Reciprocating State" there shall be inserted the words "and also means any territory in respect of which a mandate is being exercised by the Government of the Commonwealth of Australia and—

(a) in which there is in force legislation containing provisions substantially similar to those contained in or for carrying out objects substantially similar to the objects of this Part; and

(b) which has been declared under this Part to be a reciprocating State for the purposes of this Part"; and

(b) In

(b) In sub-section (1) of section ninety-five —

No. 3722 s. 95
(1).

(i) after the word "Victoria" there shall be inserted the words "or that in any territory in respect of which a mandate is being exercised by the Government of the Commonwealth of Australia there is in force legislation containing provisions substantially similar to those contained in this Part" ; and

(ii) after the words "such part" (wherever occurring) there shall be inserted the words "or such territory (as the case may be)".

SCHEDULE.

Section 2.

City of Box Hill.
City of Brighton.
City of Brunswick.
City of Camberwell.
City of Caulfield.
City of Coburg.
City of Collingwood.
City of Essendon.
City of Fitzroy.
City of Footscray.
City of Hawthorn.
City of Kew.
City of Malvern.
City of Mordialloc.
City of Northcote.
City of Oakleigh.
City of Port Melbourne.
City of Prahran.
City of Preston.
City of Richmond.
City of Sandringham.
City of South Melbourne.

City of St. Kilda.
City of Williamstown.
City of Chelsea.
Borough of Ringwood.
Shire of Blackburn and Mitcham.
Shire of Doncaster and Templestowe.
Broadmeadows Riding of the Shire of Broadmeadows.
Cheltenham Riding of the Shire of Moorabbin.
Centre Riding of the Shire of Dandenong.
Southern Riding of the Shire of Eltham.
Heidelberg Riding of the Shire of Heidelberg.
Central Riding of the Shire of Braybrook.
Central Riding and East Riding of the Shire of Werribee.