

# MARRIED WOMEN'S PROTECTION ORDINANCE 1939-1959.\*

## An Ordinance relating to the Summary Protection of Married Women.

### PART I.—PRELIMINARY.

Short title.  
Short title  
amended:  
No. 17, 1938,  
s. 4.

1. This Ordinance may be cited as the *Married Women's Protection Ordinance 1939-1959*.\*

Definitions.

2. In this Ordinance, unless the contrary intention appears—

“child” means any boy or girl under the age of eighteen years; and, in the absence of positive evidence as to age, means any boy or girl who, in the opinion of the Court, is apparently under the age of eighteen years;

“Court” means a Court of Summary Jurisdiction;

“order” means an order for protection made under this Ordinance.

Repeal.

3. “The Married Women's Protection Act, 1896” of the State of South Australia (No. 664 of 1896) in its application to the Territory is repealed.

Constitution  
of Court.

4. All Courts of Summary Jurisdiction shall have jurisdiction under this Ordinance, but no order shall be made, varied or discharged unless the Court is constituted by a Stipendiary Magistrate or by a Special Magistrate and not less than two Justices of the Peace.

Summary relief  
to married  
women.

5.—(1.) Any married woman—

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

(i) cruelty to her or any of her children;

(ii) persistent indecent behaviour before her children;

(iii) adultery;

\* The *Married Women's Protection Ordinance 1939-1959* comprises the *Married Women's Protection Ordinance 1939* as amended. Particulars of the Principal Ordinance and of the amending Ordinance are set out in the following table:—

Ordinance.	Number and Year.	Date notified in <i>Commonwealth Gazette</i> .	Date of Assent by Administrator.	Date of Commencement.
<i>Married Women's Protection Ordinance 1939</i> ..	No. 27, 1939	7th December, 1939	..	7th December, 1939
<i>Married Women's Protection Ordinance 1959</i> ..	No. 13, 1959	..	19th June, 1959	19th June, 1959

(iv) desertion; or

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

or

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

may apply for, and the Court may order, summary protection under this Ordinance.

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

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

6 An order may—

Provisions of orders.

(a) relieve the applicant from any obligation to cohabit with her husband;

(b) grant to the applicant the legal custody of her children;

(c) grant to the husband of the applicant such rights of access to the children of the applicant and her husband as the Court deems proper;

(d) direct the husband to pay to the applicant personally, or for her use, to any officer of the Court, or third person on her behalf, such weekly or other periodical sum as the Court, having regard to the means both of the husband and the wife, considers reasonable for the past or future maintenance of herself and also of all children (if any) whose custody is granted to her, such sum to be secured in such manner (if any) as is directed by the Court.

7 Any one or more of the matters mentioned in sections five and six of this Ordinance may be dealt with in or by the same complaint or order, but costs may be ordered against any informant in respect of any matter of complaint charged in the complaint and not established at the hearing.

Extent of orders.

8. An order shall not be made on the application of a married woman, if any adultery complained of has been condoned and not revived, or, provided the husband has not condoned, or connived at, or, by his cruelty, wilful neglect or

No order in certain cases.

misconduct, conducted to the drunken habits or adultery, if it is proved that the applicant is of drunken habits or has committed adultery.

Effect of orders.

9.—(1.) An order shall not affect the order of any Court of superior jurisdiction.

(2.) An order shall not dissolve any marriage.

(3.) Every order for relief from the obligation to cohabit while in force shall have the effect in all respects of a decree of judicial separation.

Proof of wilful neglect.

10. On proof, on any application under this Ordinance, that the husband has omitted to provide reasonable maintenance for his wife or any of her children, wilful neglect so to provide shall, unless the husband proved the contrary, be presumed.

Variation and discharge of order.

11.—(1.) A Court may, on the due application of a married woman or of her husband, and upon cause being shown upon fresh evidence to the satisfaction of the Court, at any time alter, vary or discharge any relevant order, and may, upon any such application, increase or diminish the amount of any payment ordered.

(2.) If any married woman upon whose application an order has been made voluntarily resumes cohabitation with her husband, or commits adultery, the Court shall, upon application and proof of the voluntary cohabitation or the adultery, discharge the order.

Immediate order for relief.

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

Penalty for molesting, &c.

13.—(1.) Any husband who molests or interferes with or attempts to molest or interfere with his wife in her manner of living contrary to any order for relief from cohabitation, or who molests or interferes with or attempts to molest or interfere with any child contrary to any order for custody, shall be guilty of an offence.

Penalty: Twenty pounds or imprisonment for six months.

(2.) Any Court may exercise jurisdiction under this section, notwithstanding that it is not constituted as provided by section four of this Ordinance.

13A.—(1.) The payment of any sum of money ordered to be paid under this Ordinance may be enforced under the provisions of the *Justices Ordinance 1928-1957* or this section.

Enforcement of maintenance orders.

Inserted by No. 13, 1959, s. 3.

(2.) Where—

- (a) an order for the past or future maintenance of a wife or child has been made under this Ordinance;
- (b) default has been made by the defendant in making the payments directed by the order; and
- (c) an amount of more than Ten pounds is due under the order,

the person to whom the defendant is directed to make payments under the order may apply to a Court for a certificate as to the amount due under the order at the date of the certificate.

(3.) If, after hearing an application under the last preceding sub-section, the Court is satisfied as to the matters specified in paragraphs (a), (b) and (c) of the last preceding sub-section, the Court may grant the certificate applied for.

(4.) A certificate so granted may be filed in a Local Court.

(5.) Where a certificate has been so filed, the Local Court shall enter judgment for the person to whom the defendant is directed to make payments under the order for the amount stated to be due in the certificate, together with the fees paid for the certificate and for filing the certificate and entering judgment.

(6.) The judgment so entered may be enforced in any manner in which a final judgment in an action may be enforced.

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

Power of Court to require security for compliance with order.

Provided that the Court may determine upon the sufficiency of any proposed sureties or security, and in what manner the security shall be given, and any justice, upon being satisfied that the security has been duly made and perfected, may order the discharge of such person from gaol.

Forms.

15. The forms in the Schedule to this Ordinance may be used in accordance with the notes thereto and shall be valid and sufficient for the purposes of this Ordinance.

THE SCHEDULE.

Section 5.

FORM 1.

Married Women's Protection Ordinance 1939.

COMPLAINT AGAINST HUSBAND.

The complainant of \_\_\_\_\_ states that her husband (a)  
 has been guilty of—  
 (i) Cruelty to informant on the \_\_\_\_\_ day of \_\_\_\_\_,  
 19 \_\_\_\_\_, at (d) \_\_\_\_\_ and on the  
 day of \_\_\_\_\_ 19 \_\_\_\_\_, at (d) \_\_\_\_\_.  
 (ii) Cruelty to (b) \_\_\_\_\_ and (b) \_\_\_\_\_ children  
 of the informant, on the \_\_\_\_\_ day of \_\_\_\_\_  
 at (d) \_\_\_\_\_ and on the \_\_\_\_\_ day of  
 19 \_\_\_\_\_, at (d) \_\_\_\_\_.  
 (iii) Habitual drunkenness during the period from the  
 day of \_\_\_\_\_, 19 \_\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_;  
 (iv) Indecent behaviour before the children of the informant during the  
 period from the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
 to the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
 (v) Adultery with (c) \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_  
 \_\_\_\_\_, 19 \_\_\_\_\_, at (d) \_\_\_\_\_ and with (c)  
 \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_,  
 19 \_\_\_\_\_, at (d) \_\_\_\_\_ :  
 (vi) Desertion on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_;  
 (vii) Wilful neglect to provide reasonable maintenance for informant on  
 the \_\_\_\_\_ day of \_\_\_\_\_  
 (viii) Wilful neglect to provide reasonable maintenance for informant's  
 children (b) \_\_\_\_\_ and (b) \_\_\_\_\_ on the  
 \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ :  
 And the complainant applies for summary protection under the Ordinance.  
 (Signature of Complainant.)  
 Laid before me at \_\_\_\_\_, this \_\_\_\_\_ day of  
 \_\_\_\_\_, 19 \_\_\_\_\_ .  
 Justice of the Peace.

NOTE.

- (a) Fill in name, address and occupation of the husband.
  - (b) Fill in names of children.
  - (c) Fill in, if known, the names of persons with whom the adultery is charged.
  - (d) Fill in places.
- Strike out all references to matters of complaint which are not intended to be established.

Section 5.

FORM 2.

Married Women's Protection Ordinance 1939.

SUMMONS.

To \_\_\_\_\_ of \_\_\_\_\_  
 As complaint has been laid by your wife that you have been guilty of  
 [here copy the matter of complaint as set out in the complaint], you are  
 summoned to appear on \_\_\_\_\_ at \_\_\_\_\_ at  
 o'clock, before the Court of Summary Jurisdiction there sitting to answer  
 an application for protection under the Ordinance.  
 Given under my hand at \_\_\_\_\_ this \_\_\_\_\_ day of  
 \_\_\_\_\_, 19 \_\_\_\_\_, before me  
 J.P.

THE SCHEDULE—continued.

FORM 3.

Section 6.

Married Women's Protection Ordinance 1939.

ORDER.

On the application of (a) for protection under this Ordinance, the Court finds that her husband (b) has been guilty of—

- Cruelty to her on the (d) day of :
- Cruelty to her children on the (d) day of :
- Habitual drunkenness during the period from the day of to the day of :
- Indecent behaviour before her children during the period from the day of to the day of :
- Adultery on the (d) day of :
- Desertion on the day of :
- Wilful neglect to provide reasonable maintenance for her on the day of :
- Wilful neglect to provide reasonable maintenance for her children (e) on the day of .

The Court doth [here set out order in one or more of following paragraphs, as the case may require]—

- (i) Relieve the informant from any obligation to cohabit with the said [here set out Christian and surname of husband]:
- (ii) Grant to informant the legal custody of her children (c) :
- (iii) Grant to the said [Christian and surname of husband] the following rights of access to the children of the informant and the said , namely [here set out times and places, as far as possible, when access is allowed].
- (iv) Direct the said [Christian and surname of husband] to pay to [here set out informant or name of other person to whom moneys is to be paid] the sum of [here set out amount] per [here set out week or other period], such sum to be paid to the said [name of person to whom money is to be paid] on [here set out day on which money is to be paid, if so ordered] for the maintenance of the said informant [and, if custody of children granted, add "and of her children whose custody is granted to her."]

Dated at this day of (e) , 19 .

Special Stipendiary Magistrate.

NOTE.

- (a) Fill in name and address of complainant.
  - (b) Fill in name, address and occupation of the husband.
  - (c) Fill in names of children.
  - (d) Fill in dates and places.
  - (e) Strike out whichever is inapplicable.
- Strike out all references to matters of complaint which are not intended to be established.