

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 24 March, 1960.*

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No. , 1960.

An Act to make further provisions with respect to the period of imprisonment to be served in default of compliance with certain orders under the Deserted Wives and Children Act, 1901-1958, and the Child Welfare Act, 1939-1956; to authorise the making of orders under those Acts providing for the maintenance of children after they attain the age of sixteen years where they are engaged in a course of education or training; for these and other purposes to amend those Acts, the Public Instruction (Amendment) Act, 1916-1956, the Matrimonial Causes Act, 1899-1958, and the Prisons Act, 1952-1957; and for purposes connected therewith.

Deserted Wives and Children (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Deserted Wives and Children (Amendment) Act, 1960".

Short title,
citation
and com-
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) The Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Deserted Wives and Children Act, 1901-1960.

(4) The Child Welfare Act, 1939, as amended by subsequent Acts and by this Act, may be cited as the Child Welfare Act, 1939-1960.

(5) The Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts and by this Act, may be cited as the Public Instruction (Amendment) Act, 1916-1960.

(6) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1960.

(7) The Prisons Act, 1952, as amended by subsequent Acts and by this Act, may be cited as the Prisons Act, 1952-1960.

2. The Deserted Wives and Children Act, 1901, as amended by subsequent Acts, is amended—

Amendment
of Act No.
17, 1901.

(a) by inserting next after section seven the following new section :—

New sec. 7A

7A. (1) (a) This section applies to any child in respect of whom an order (in this section called a "maintenance order") made under section seven of this Act is or at any time has been in force.

Extension
of mainten-
ance order
after child's
sixteenth
year.

(b)

Deserted Wives and Children (Amendment).

(b) Where upon an application made to any two justices by or on behalf of a child to whom this section applies it appears to the justices that, in the case of a child who has not attained the age of sixteen years, the child will be engaged in a course of education or training after he attains that age or, in the case of a child who has attained that age, the child is or will be so engaged, and that the maintenance order made in respect of the child should be continued or revived, as the case may require, with or without variation for the purpose of providing for the support of the child while he is so engaged and of meeting the expenses of the course, the justices may order—

(i) where the child has not attained the age of sixteen years, that the maintenance order continue or revive, as the case may require, and be in force for such amount and for such period not exceeding two years from the date on which he attains that age as may be specified in the order under this section; or

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

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

An

Deserted Wives and Children (Amendment).

An order made under this section shall not require payments to be made under a maintenance order after the date on which the child concerned attains the age of twenty-one years.

5 An order under this section may be enforced, appealed from, confirmed, suspended, varied or discharged in the same manner as an order made under section seven of this Act.

10 (2) An application under subsection one of this section shall be heard and determined by justices sitting at a place agreed upon by the parties or at the place where the maintenance order was made :

15 Provided that the justices may postpone the hearing of the application and direct that it shall be heard and determined by justices sitting at some other place specified by them and appoint a day for the hearing.

20 (b) by omitting from subsection one of section eight the words "the last preceding section" and by inserting in lieu thereof the words "section seven of this Act"; Sec. 8. (Security for payment of amount may be ordered.)

25 (c) (i) by omitting from subsection two of section eleven the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound"; Sec. 11. (Disobedience of order.)

30 (ii) by inserting next after subsection four of the same section the following new subsection :—
35 (4A) Where before a justice directs, under subsection three or four of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears, would have subjected such person to

Deserted Wives and Children (Amendment).

5 to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection two of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the warrant.

10 (d) (i) by inserting in subsection one of section 21A Sec. 21A. after the word "application" the words ", or by (Appeal.) any committal to prison for disobedience of or non-compliance with any order or varied order made,";

15 (ii) by inserting in the same subsection after the words "the said Act" the words ", sections one hundred and twenty-three and one hundred and twenty-four excepted,";

20 (iii) by inserting next after subsection two of the same section the following new subsection :—

(3) Where an appeal is made under this section against an order or varied order the Court of Quarter Sessions to which the appeal is made may—

25 (a) stay the order or varied order; or

(b) stay the order or varied order and make a temporary order to take effect during the pendency of the appeal.

30 A Court of Quarter Sessions making a temporary order under this subsection may exercise all the powers which justices making an order under Part II of this Act may exercise.

35 A temporary order made under this subsection may be enforced in the same manner in all respects as if it were a final order.

Deserted Wives and Children (Amendment).

3. The Child Welfare Act, 1939, as amended by subsequent Acts, is amended—

Amendment of Act No. 17, 1939.

(a) by inserting next after section fifty-nine the following new section :—

New sec. 59A.

5 59A. The provisions of section 104_A of this Act apply, mutatis mutandis, to any child or young person in the care of the Minister and in respect of whom a contribution order is or at any time has been in force, and, for the purposes of such application, a reference in that section to a maintenance order shall be read and construed as a reference to a contribution order.

Extension of contribution order after child's sixteenth year.

15 (b) (i) by omitting from paragraph (a) of subsection one of section ninety-six the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds";

Sec. 96. (Court may require defendant to pay preliminary expenses.)

20 (ii) by omitting from paragraph (b) of the same subsection the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

25 (c) (i) by omitting from subparagraph (ii) of paragraph (a) of section one hundred and two the words "thirty pounds" wherever occurring and by inserting in lieu thereof the words "one hundred pounds";

Sec. 102. (Court shall hear and determine complaint and may make order.)

 (ii) by omitting from paragraph (b) of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

30 (d) by inserting next after section one hundred and four the following new section :—

New sec. 104A.

35 104A. (1) (a) This section applies to any child or young person in respect of whom an order (in this section called a "maintenance order") adjudging any sum to be paid for expenses of maintenance and made under section ninety-six or one hundred and two of this Act is or at any time has been in force.

Extension of maintenance order after child's sixteenth year.

(b)

Deserted Wives and Children (Amendment).

5 (b) Where upon an application made
to the court by or on behalf of any child or young
person to whom this section applies it appears to
the court that the child will be engaged in a course
of education or training after he attains the age of
sixteen years, or that the young person is or will be
so engaged, and that the maintenance order should
be continued or revived, as the case may require,
with or without variation, for the purpose of
10 providing for the expenses of the maintenance of
the child or young person, as the case may be
(including the expenses of the course) while he is
so engaged, the court may order—

15 (i) in the case of a child, that the maintenance
order continue or revive, as the case may
require, and be in force for such amount
and for such period not exceeding two
years from the date on which he attains the
age of sixteen years as may be specified in
20 the order under this section ; or

25 (ii) in the case of a young person, that the
maintenance order revive as on and from
a date to be specified in the order under
this section (not being a date earlier than
the date on which the order is made) and
that the maintenance order thereafter be
in force for such amount and for such
period not exceeding two years from the
date so specified as may be specified in the
30 order so made.

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

An

Deserted Wives and Children (Amendment).

5 An order made under this section shall not require payments to be made under a maintenance order after the date on which the person for whose maintenance the payments are made attains the age of twenty-one years.

10 For the purposes only of this subsection, the definition of "Young person" in subsection one of section four of this Act shall be deemed to be amended by omitting the words "eighteen years" and by inserting in lieu thereof the words "twenty-one years".

15 (2) An application under subsection one of this section may be heard and determined by a court sitting at a place agreed upon by the parties or at the place where the maintenance order was made.

(e) (i) by omitting from subsection four of section one hundred and five the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds"; Sec. 105. (Funeral expenses of child.)

20 (ii) by omitting from subsection eight of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

25 (f) (i) by omitting from subsection two of section one hundred and fourteen the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound"; Sec. 114. (Disobedience of order may be punished.)

(ii) by inserting at the end of the same section the following new subsection :—

30 (8) Where before a justice directs, under subsection six or seven of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those
35 arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those

Deserted Wives and Children (Amendment).

5 those arrears, would have subjected such person
 to a maximum term of imprisonment less than
 the term of imprisonment in which he is liable
 under such warrant, the justice shall, by his
 warrant of commitment, revoke the term of
 imprisonment and may order such person to
 be imprisoned for a period calculated in accord-
 10 ance with subsection two of this section, having
 regard to the unsatisfied balance, instead of for
 the term originally mentioned in the warrant.

15 (g) by inserting in subsection one of section one hundred
 and twenty-two after the word "Part" where firstly
 occurring the words ", or by any committal to
 prison for disobedience of or non-compliance with
 any order or varied order of a court".

Sec. 122.
 (Appeals.)

4. The Public Instruction (Amendment) Act, 1916, as
 amended by subsequent Acts, is amended by omitting section
 nine and by inserting in lieu thereof the following section :—

Amendment
 of Act No.
 51, 1916.
 Subst. sec. 9.

20 9. The provisions of Part XII of the Child Welfare
 Act, 1939, as amended by subsequent Acts, relating to
 the maintenance of children by their relatives apply,
 mutatis mutandis, to the maintenance of children detained
 as truants under this Act as if children so detained were
 children committed to the care of the Minister to be dealt
 25 with as wards admitted to State control.

Recovery
 of cost of
 maintenance
 of children
 in
 institutions.

5. The Matrimonial Causes Act, 1899-1958, is amended
 by omitting subsection three of section 90A and by inserting
 in lieu thereof the following subsections :—

Amendment
 of Act No.
 14, 1899.
 Sec. 90A.

30 (3) (a) Upon the hearing the justices shall inquire
 into the complaint, and if they are satisfied that any sum
 due under the order is unpaid, they may order the
 defendant to pay to such person as they may think fit
 the sum unpaid, together with such further sum for costs
 as they may deem proper and in default of payment may
 35 order that the defendant be committed to prison for a
 period of one day for every pound or part of a pound
 found to be due, including the costs incidental to the
 hearing of the complaint, unless the said order be
 complied with; but no defendant shall be detained for a
 180--B longer

(Summary
 proceedings
 to enforce
 orders for
 alimony and
 mainten-
 ance.)

Deserted Wives and Children (Amendment).

longer period than twelve months, and the period of detention shall in every case be subject to the provisions of section ninety-four of the Justices Act, 1902, as amended by subsequent Acts.

5 (b) Subject to the provisions of section twenty-one of the Prisons Act, 1952, the period of imprisonment served by a defendant in accordance with the provisions of this subsection shall not be deemed to discharge the
10 arrears for the non-payment of which he has been committed, but during such period the order for payment of alimony or maintenance shall be deemed to be suspended.

15 (c) No defendant shall be liable to be imprisoned a second time for, and no writ of attachment may issue in respect of any arrears for which he shall have actually suffered imprisonment as provided in this subsection, but such arrears shall thereafter be a civil debt only, recoverable in any court of competent jurisdiction by the person to whom the arrears are due.

20 (d) Where it appears that the amount of arrears has been paid since the service of the summons or the issue of a warrant the justices may order the persons summoned or apprehended to pay the costs of and incidental to the proceedings, and such costs may be
25 recovered in a summary way under the provisions of the Justices Act, 1902, as amended by subsequent Acts.

30 (3A) The justices may direct that the warrant committing the defendant to prison shall lie in the office of the court for such time as they think proper, or may order the amount found to be due, and any costs awarded, to be paid by such instalments and upon such conditions as they think fit, to the person to whom the amount due under the order is payable.

35 Upon the production of a certificate by such person that any instalment has not been paid, or that any condition of the direction has not been complied with, and of the amount then due on the order, any justice may direct that the warrant committing the defendant to prison be executed.

(3B)

Deserted Wives and Children (Amendment).

5 (3B) Any justice to whom an application is made for a direction that the warrant be executed may postpone the execution of the warrant upon such terms and conditions as he thinks fit, and if the defendant breaks any term or condition upon which such a postponement is made, the justice may then direct the execution of the warrant.

10 (3C) Where before a justice directs, under subsection (3A) or (3B) of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears would have
15 subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period
20 calculated in accordance with subsection three of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the order.

25 (3D) A justice may refuse to enforce an order or may enforce it to such extent as the justice thinks fit having regard to all the circumstances of the case, particularly with reference to the inability of the offender to obtain employment, or to comply with the order owing to continued ill health.

30 **6.** The Prisons Act, 1952, as amended by subsequent Acts, is amended by inserting in subsection one of section twenty-one after the words "as amended by subsequent Acts," the words "or section 90A of the Matrimonial Causes Act 1899, as amended by subsequent Acts,".

Amendment of Act No. 9, 1952. Sec. 21. (Release of maintenance confines.)

35 **7.** Where before the commencement of this Act a person has been committed to prison under section eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or under Part XII or Part XVI of the Child Welfare

Transitory provisions.

Deserted Wives and Children (Amendment).

Welfare Act, 1939, as amended by subsequent Acts, and that person is at or at any time after that commencement detained in prison by reason of that committal, the period of imprisonment to be served by that person after that commencement
5 under the warrant for that committal shall, subject to this section, be a period of one day for every pound or part of a pound of the unsatisfied balance owing under the order concerned instead of the period that the person would but for this section have been liable to serve under that warrant
10 after that commencement.

No person shall pursuant to any such warrant be detained in prison for a longer period than twelve months.

In this subsection, "unsatisfied balance", in relation to any order, means the amount of the arrears found to be due by
15 the person against whom the order was made when he was committed to prison by the justices or court, as the case may be, under section eleven, or Part XII or Part XVI, aforesaid. less the sum of—

- 20 (a) any payments by way of reduction of those arrears made by or on behalf of that person; and
(b) where the person against whom the order was made has, in respect of those arrears, been detained in prison before the commencement of this Act, ten shillings for each day for which he was so detained.

25 This section does not apply in respect of any person committed to prison before the commencement of this Act under section eleven, or Part XII or Part XVI, aforesaid, where that person is detained in prison after that commencement under a warrant issued under subsection (4A) of section
30 eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, or subsection eight of section one hundred and fourteen of the Child Welfare Act, 1939, as amended by subsequent Acts and by this Act.

No. , 1960.

A BILL

To make further provisions with respect to the period of imprisonment to be served in default of compliance with certain orders under the Deserted Wives and Children Act, 1901-1958, and the Child Welfare Act, 1939-1956; to authorise the making of orders under those Acts providing for the maintenance of children after they attain the age of sixteen years where they are engaged in a course of education or training; for these and other purposes to amend those Acts, the Public Instruction (Amendment) Act, 1916-1956, the Matrimonial Causes Act, 1899-1958, and the Prisons Act, 1952-1957; and for purposes connected therewith.

[MR. MANNIX;—9 March, 1960.]

Deserted Wives and Children (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Deserted Wives and Children (Amendment) Act, 1960".

Short title.
citation
and com-
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) The Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Deserted Wives and Children Act, 1901-1960.

(4) The Child Welfare Act, 1939, as amended by subsequent Acts and by this Act, may be cited as the Child Welfare Act, 1939-1960.

(5) The Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts and by this Act, may be cited as the Public Instruction (Amendment) Act, 1916-1960.

(6) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1960.

(7) The Prisons Act, 1952, as amended by subsequent Acts and by this Act, may be cited as the Prisons Act, 1952-1960.

2. The Deserted Wives and Children Act, 1901, as amended by subsequent Acts, is amended—

Amendment
of Act No.
17, 1901.

(a) by inserting next after section seven the following new section :—

New sec. 7A

7A. (1) (a) This section applies to any child in respect of whom an order (in this section called a "maintenance order") made under section seven of this Act is or at any time has been in force.

Extension
of mainten-
ance order
after child's
sixteenth
year.

(b)

Deserted Wives and Children (Amendment).

5 (b) Where upon an application made to
any two justices by or on behalf of a child to whom
this section applies it appears to the justices that, in
the case of a child who has not attained the age of
sixteen years, the child will be engaged in a course
of education or training after he attains that age or,
in the case of a child who has attained that age, the
child is or will be so engaged, and that the mainten-
10 ance order made in respect of the child should be
continued or revived, as the case may require, with
or without variation for the purpose of providing
for the support of the child while he is so engaged
and of meeting the expenses of the course, the
justices may order—

15 (i) where the child has not attained the age
of sixteen years, that the maintenance order
continue or revive, as the case may require,
and be in force for such amount and for
such period not exceeding two years from
20 the date on which he attains that age as
may be specified in the order under this
section; or

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

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

An

Deserted Wives and Children (Amendment).

An order made under this section shall not require payments to be made under a maintenance order after the date on which the child concerned attains the age of twenty-one years.

5 An order under this section may be enforced, appealed from, confirmed, suspended, varied or discharged in the same manner as an order made under section seven of this Act.

10 (2) An application under subsection one of this section shall be heard and determined by justices sitting at a place agreed upon by the parties or at the place where the maintenance order was made :

15 Provided that the justices may postpone the hearing of the application and direct that it shall be heard and determined by justices sitting at some other place specified by them and appoint a day for the hearing.

20 (b) by omitting from subsection one of section eight the words "the last preceding section" and by inserting in lieu thereof the words "section seven of this Act"; Sec. 8.
(Security for payment of amount may be ordered.)

25 (c) (i) by omitting from subsection two of section eleven the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound"; Sec. 11.
(Disobedience of order.)

(ii) by inserting next after subsection four of the same section the following new subsection : —

30 (4A) Where before a justice directs, under subsection three or four of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent cf. Act No. 27, 1902, s. 90 (2).
35 that the unsatisfied balance, if it had constituted those arrears, would have subjected such person to

Deserted Wives and Children (Amendment).

to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection two of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the warrant.

10 (d) (i) by inserting in subsection one of section 21A Sec. 21A. after the word "application" the words "(Appeal.) or by any committal to prison for disobedience of or non-compliance with any order or varied order made,";

15 (ii) by inserting in the same subsection after the words "the said Act" the words ", sections one hundred and twenty-three and one hundred and twenty-four excepted,";

20 (iii) by inserting next after subsection two of the same section the following new subsection :—

(3) Where an appeal is made under this section against an order or varied order the Court of Quarter Sessions to which the appeal is made may—

25 (a) stay the order or varied order; or

(b) stay the order or varied order and make a temporary order to take effect during the pendency of the appeal.

30 A Court of Quarter Sessions making a temporary order under this subsection may exercise all the powers which justices making an order under Part II of this Act may exercise.

35 A temporary order made under this subsection may be enforced in the same manner in all respects as if it were a final order.

Deserted Wives and Children (Amendment).

3. The Child Welfare Act, 1939, as amended by subsequent Acts, is amended—

Amendment
of Act No.
17, 1939.

(a) by inserting next after section fifty-nine the following new section :—

New sec.
59A.

5 59A. The provisions of section 104A of this Act apply, mutatis mutandis, to any child or young person in the care of the Minister and in respect of whom a contribution order is or at any time has been in force, and, for the purposes of such application, a reference in that section to a maintenance order shall be read and construed as a reference to a contribution order.

Extension
of contri-
bution order
after child's
sixteenth
year.

15 (b) (i) by omitting from paragraph (a) of subsection one of section ninety-six the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds";

Sec. 96.
(Court may
require
defendant
to pay
preliminary
expenses.)

20 (ii) by omitting from paragraph (b) of the same subsection the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

25 (c) (i) by omitting from subparagraph (ii) of paragraph (a) of section one hundred and two the words "thirty pounds" wherever occurring and by inserting in lieu thereof the words "one hundred pounds";

Sec. 102.
(Court
shall hear
and
determine
complaint
and may
make
order.)

30 (ii) by omitting from paragraph (b) of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

35 (d) by inserting next after section one hundred and four the following new section :—

New sec.
104A.

104A. (1) (a) This section applies to any child or young person in respect of whom an order (in this section called a "maintenance order") adjudging any sum to be paid for expenses of maintenance and made under section ninety-six or one hundred and two of this Act is or at any time has been in force.

Extension of
maintenance
order after
child's
sixteenth
year.

(b)

Deserted Wives and Children (Amendment).

5 (b) Where upon an application made
to the court by or on behalf of any child or young
person to whom this section applies it appears to
the court that the child will be engaged in a course
of education or training after he attains the age of
sixteen years, or that the young person is or will be
so engaged, and that the maintenance order should
be continued or revived, as the case may require,
with or without variation, for the purpose of
10 providing for the expenses of the maintenance of
the child or young person, as the case may be
(including the expenses of the course) while he is
so engaged, the court may order—

15 (i) in the case of a child, that the maintenance
order continue or revive, as the case may
require, and be in force for such amount
and for such period not exceeding two
years from the date on which he attains the
age of sixteen years as may be specified in
20 the order under this section ; or

25 (ii) in the case of a young person, that the
maintenance order revive as on and from
a date to be specified in the order under
this section (not being a date earlier than
the date on which the order is made) and
that the maintenance order thereafter be
in force for such amount and for such
period not exceeding two years from the
date so specified as may be specified in the
30 order so made.

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

An

Deserted Wives and Children (Amendment).

5 An order made under this section shall not require payments to be made under a maintenance order after the date on which the person for whose maintenance the payments are made attains the age of twenty-one years.

10 For the purposes only of this subsection, the definition of "Young person" in subsection one of section four of this Act shall be deemed to be amended by omitting the words "eighteen years" and by inserting in lieu thereof the words "twenty-one years".

15 (2) An application under subsection one of this section may be heard and determined by a court sitting at a place agreed upon by the parties or at the place where the maintenance order was made.

(e) (i) by omitting from subsection four of section one hundred and five the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds"; Sec. 105. (Funeral expenses of child.)

20 (ii) by omitting from subsection eight of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

25 (f) (i) by omitting from subsection two of section one hundred and fourteen the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound"; Sec. 114. (Disobedience of order may be punished.)

(ii) by inserting at the end of the same section the following new subsection : —

30 (8) Where before a justice directs, under subsection six or seven of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those

35 those

Deserted Wives and Children (Amendment).

5 those arrears, would have subjected such person
to a maximum term of imprisonment less than
the term of imprisonment in which he is liable
under such warrant, the justice shall, by his
warrant of commitment, revoke the term of
imprisonment and may order such person to
be imprisoned for a period calculated in accord-
10 ance with subsection two of this section, having
regard to the unsatisfied balance, instead of for
the term originally mentioned in the warrant.

15 (g) by inserting in subsection one of section one hundred
and twenty-two after the word "Part" where firstly
occurring the words ", or by any committal to
prison for disobedience of or non-compliance with
any order or varied order of a court".

4. The Public Instruction (Amendment) Act, 1916, as
amended by subsequent Acts, is amended by omitting section
nine and by inserting in lieu thereof the following section : —

20 9. The provisions of Part XII of the Child Welfare
Act, 1939, as amended by subsequent Acts, relating to
the maintenance of children by their relatives apply,
mutatis mutandis, to the maintenance of children detained
as truants under this Act as if children so detained were
children committed to the care of the Minister to be dealt
25 with as wards admitted to State control.

5. The Matrimonial Causes Act, 1899-1958, is amended
by omitting subsection three of section 90A and by inserting
in lieu thereof the following subsections : —

30 (3) (a) Upon the hearing the justices shall inquire
into the complaint, and if they are satisfied that any sum
due under the order is unpaid, they may order the
defendant to pay to such person as they may think fit
the sum unpaid, together with such further sum for costs
as they may deem proper and in default of payment may
35 order that the defendant be committed to prison for a
period of one day for every pound or part of a pound
found to be due, including the costs incidental to the
hearing of the complaint, unless the said order be
complied with; but no defendant shall be detained for a

Deserted Wives and Children (Amendment).

longer period than twelve months, and the period of detention shall in every case be subject to the provisions of section ninety-four of the Justices Act, 1902, as amended by subsequent Acts.

5 (b) Subject to the provisions of section twenty-one of the Prisons Act, 1952, the period of imprisonment served by a defendant in accordance with the provisions of this subsection shall not be deemed to discharge the
10 arrears for the non-payment of which he has been committed, but during such period the order for payment of alimony or maintenance shall be deemed to be suspended.

15 (c) No defendant shall be liable to be imprisoned a second time for, and no writ of attachment may issue in respect of any arrears for which he shall have actually suffered imprisonment as provided in this subsection, but such arrears shall thereafter be a civil debt only, recoverable in any court of competent jurisdiction by the person to whom the arrears are due.

20 (d) Where it appears that the amount of arrears has been paid since the service of the summons or the issue of a warrant the justices may order the persons summoned or apprehended to pay the costs of and incidental to the proceedings, and such costs may be
25 recovered in a summary way under the provisions of the Justices Act, 1902, as amended by subsequent Acts.

30 (3A) The justices may direct that the warrant committing the defendant to prison shall lie in the office of the court for such time as they think proper, or may order the amount found to be due, and any costs awarded, to be paid by such instalments and upon such conditions as they think fit, to the person to whom the amount due under the order is payable.

35 Upon the production of a certificate by such person that any instalment has not been paid, or that any condition of the direction has not been complied with, and of the amount then due on the order, any justice may direct that the warrant committing the defendant to prison be executed.

(3B)

Deserted Wives and Children (Amendment).

5 (3B) Any justice to whom an application is made for a direction that the warrant be executed may postpone the execution of the warrant upon such terms and conditions as he thinks fit, and if the defendant breaks any term or condition upon which such a postponement is made, the justice may then direct the execution of the warrant.

10 (3C) Where before a justice directs, under subsection (3A) or (3B) of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears would have
15 subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period
20 calculated in accordance with subsection three of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the order.

25 (3D) A justice may refuse to enforce an order or may enforce it to such extent as the justice thinks fit having regard to all the circumstances of the case, particularly with reference to the inability of the offender to obtain employment, or to comply with the order owing to continued ill health.

30 6. The Prisons Act, 1952, as amended by subsequent Acts, is amended by inserting in subsection one of section twenty-one after the words "as amended by subsequent Acts," the words "or section 90A of the Matrimonial Causes Act 1899, as amended by subsequent Acts,"

Amendment
of Act No.
9, 1952.
Sec. 21.
(Release of
maintenance
confinées.)

35 7. Where before the commencement of this Act a person has been committed to prison under section eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or under Part XII or Part XVI of the Child Welfare

Transitory
provisions.

Deserted Wives and Children (Amendment).

Welfare Act, 1939, as amended by subsequent Acts, and that person is at or at any time after that commencement detained in prison by reason of that committal, the period of imprisonment to be served by that person after that commencement
5 under the warrant for that committal shall, subject to this section, be a period of one day for every pound or part of a pound of the unsatisfied balance owing under the order concerned instead of the period that the person would but for this section have been liable to serve under that warrant
10 after that commencement.

No person shall pursuant to any such warrant be detained in prison for a longer period than twelve months.

In this subsection, "unsatisfied balance", in relation to any order, means the amount of the arrears found to be due by
15 the person against whom the order was made when he was committed to prison by the justices or court, as the case may be, under section eleven, or Part XII or Part XVI, aforesaid, less the sum of—

- 20 (a) any payments by way of reduction of those arrears made by or on behalf of that person; and
(b) where the person against whom the order was made has, in respect of those arrears, been detained in prison before the commencement of this Act, ten shillings for each day for which he was so detained.

25 This section does not apply in respect of any person committed to prison before the commencement of this Act under section eleven, or Part XII or Part XVI, aforesaid, where that person is detained in prison after that commencement under a warrant issued under subsection (4A) of section
30 eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, or subsection eight of section one hundred and fourteen of the Child Welfare Act, 1939, as amended by subsequent Acts and by this Act.

DESERTED WIVES AND CHILDREN (AMENDMENT) BILL, 1960.

EXPLANATORY NOTE.

THE objects of this Bill are--

- (a) to alter the period of imprisonment to be served in default of compliance with a maintenance order under the Deserted Wives and Children Act, 1901-1958, and the Child Welfare Act, 1939-1956, from one day for each ten shillings due under the order to one day for each pound due under the order ;
- (b) to empower justices or a children's court, as the case may be, to make orders under those Acts for continuing or reviving maintenance orders in respect of children engaged in a course of education or training after they have attained the age of sixteen years ;
- (c) to alter the provisions of those Acts relating to the execution of warrants committing persons to prison for disobedience or non-compliance with maintenance orders ;
- (d) to provide that maintenance orders under the Deserted Wives and Children Act, 1901-1958, shall not be automatically stayed by reason of an appeal to Quarter Sessions ;
- (e) to increase the amount of preliminary expenses payable under the Child Welfare Act, 1939-1956, from £30 to £100 ;
- (f) to substitute for the existing provisions of the Public Instruction (Amendment) Act, 1916-1956, relating to the recovery of the cost of maintenance of truants detained under that Act the provisions of Part XII of the Child Welfare Act, 1939-1956, relating to the recovery from near relatives of the cost of maintenance of children committed to the care of the Minister to be dealt with as wards ;
- (g) to substitute for the existing provisions of the Matrimonial Causes Act, 1899-1958, relating to summary proceedings to enforce orders for alimony or maintenance provisions similar to those contained in the Deserted Wives and Children Act, 1901-1958, relating to the enforcement of maintenance orders under that Act ;
- (h) to make other provisions consequent upon or ancillary to the foregoing.

PROOF

No. , 1960.

A BILL

To make further provisions with respect to the period of imprisonment to be served in default of compliance with certain orders under the Deserted Wives and Children Act, 1901-1958, and the Child Welfare Act, 1939-1956; to authorise the making of orders under those Acts providing for the maintenance of children after they attain the age of sixteen years where they are engaged in a course of education or training; for these and other purposes to amend those Acts, the Public Instruction (Amendment) Act, 1916-1956, the Matrimonial Causes Act, 1899-1958, and the Prisons Act, 1952-1957; and for purposes connected therewith.

[MR. MANNIX;—9 March, 1960.]

Deserted Wives and Children (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Deserted Wives and Children (Amendment) Act, 1960".

Short title,
citation
and com-
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) The Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Deserted Wives and Children Act, 1901-1960.

(4) The Child Welfare Act, 1939, as amended by subsequent Acts and by this Act, may be cited as the Child Welfare Act, 1939-1960.

(5) The Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts and by this Act, may be cited as the Public Instruction (Amendment) Act, 1916-1960.

(6) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1960.

(7) The Prisons Act, 1952, as amended by subsequent Acts and by this Act, may be cited as the Prisons Act, 1952-1960.

2. The Deserted Wives and Children Act, 1901, as amended by subsequent Acts, is amended—

Amendment
of Act No.
17, 1901.

(a) by inserting next after section seven the following new section :—

7A. (1) (a) This section applies to any child in respect of whom an order (in this section called a "maintenance order") made under section seven of this Act is or at any time has been in force.

Extension
of mainten-
ance order
after child's
sixteenth
year.

(b)

Deserted Wives and Children (Amendment).

5 (b) Where upon an application made to
any two justices by or on behalf of a child to whom
this section applies it appears to the justices that, in
the case of a child who has not attained the age of
sixteen years, the child will be engaged in a course
of education or training after he attains that age or,
in the case of a child who has attained that age, the
child is or will be so engaged, and that the mainten-
10 ance order made in respect of the child should be
continued or revived, as the case may require, with
or without variation for the purpose of providing
for the support of the child while he is so engaged
and of meeting the expenses of the course, the
justices may order—

15 (i) where the child has not attained the age
of sixteen years, that the maintenance order
continue or revive, as the case may require,
and be in force for such amount and for
such period not exceeding two years from
20 the date on which he attains that age as
may be specified in the order under this
section; or

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

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

An

Deserted Wives and Children (Amendment).

An order made under this section shall not require payments to be made under a maintenance order after the date on which the child concerned attains the age of twenty-one years.

5 An order under this section may be enforced, appealed from, confirmed, suspended, varied or discharged in the same manner as an order made under section seven of this Act.

10 (2) An application under subsection one of this section shall be heard and determined by justices sitting at a place agreed upon by the parties or at the place where the maintenance order was made :

15 Provided that the justices may postpone the hearing of the application and direct that it shall be heard and determined by justices sitting at some other place specified by them and appoint a day for the hearing.

20 (b) by omitting from subsection one of section eight the words "the last preceding section" and by insertin in lieu thereof the words "section seven of this Act";

Sec. 8.
(Security for payment of amount may be ordered.)

25 (c) (i) by omitting from subsection two of section eleven the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

Sec. 11.
(Disobedi-ence of order.)

(ii) by inserting next after subsection four of the same section the following new subsection :—

30 (4A) Where before a justice directs, under subsection three or four of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent

35 that the unsatisfied balance, if it had constituted those arrears, would have subjected such person to

cf. Act No. 27, 1902, s. 90 (2).

Deserted Wives and Children (Amendment).

to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection two of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the warrant.

5
10 (d) (i) by inserting in subsection one of section 21A ^{Sec. 21A.} after the word "application" the words "^(Appeal.) or by any committal to prison for disobedience of or non-compliance with any order or varied order made,";

15 (ii) by inserting in the same subsection after the words "the said Act" the words "^(Appeal.) sections one hundred and twenty-three and one hundred and twenty-four excepted,";

20 (iii) by inserting next after subsection two of the same section the following new subsection:—

(3) Where an appeal is made under this section against an order or varied order the Court of Quarter Sessions to which the appeal is made may—

25 (a) stay the order or varied order; or

(b) stay the order or varied order and make a temporary order to take effect during the pendency of the appeal.

30 A Court of Quarter Sessions making a temporary order under this subsection may exercise all the powers which justices making an order under Part II of this Act may exercise.

35 A temporary order made under this subsection may be enforced in the same manner in all respects as if it were a final order.

Deserted Wives and Children (Amendment).

3. The Child Welfare Act, 1939, as amended by subsequent Acts, is amended—

Amendment of Act No. 17, 1939.

(a) by inserting next after section fifty-nine the following new section :—

New sec. 59A.

5 59A. The provisions of section 104A of this Act apply, mutatis mutandis, to any child or young person in the care of the Minister and in respect of whom a contribution order is or at any time has been in force, and, for the purposes of such application, a reference in that section to a maintenance order shall be read and construed as a reference to a contribution order.

Extension of contribution order after child's sixteenth year.

15 (b) (i) by omitting from paragraph (a) of subsection one of section ninety-six the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds";

Sec. 96. (Court may require defendant to pay preliminary expenses.)

20 (ii) by omitting from paragraph (b) of the same subsection the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

25 (c) (i) by omitting from subparagraph (ii) of paragraph (a) of section one hundred and two the words "thirty pounds" wherever occurring and by inserting in lieu thereof the words "one hundred pounds";

Sec. 102. (Court shall hear and determine complaint and may make order.)

 (ii) by omitting from paragraph (b) of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

30 (d) by inserting next after section one hundred and four the following new section :—

New sec. 104A.

35 104A. (1) (a) This section applies to any child or young person in respect of whom an order (in this section called a "maintenance order") adjudging any sum to be paid for expenses of maintenance and made under section ninety-six or one hundred and two of this Act is or at any time has been in force.

Extension of maintenance order after child's sixteenth year.

(b)

Deserted Wives and Children (Amendment).

5 (b) Where upon an application made
to the court by or on behalf of any child or young
person to whom this section applies it appears to
the court that the child will be engaged in a course
of education or training after he attains the age of
sixteen years, or that the young person is or will be
so engaged, and that the maintenance order should
be continued or revived, as the case may require,
with or without variation, for the purpose of
10 providing for the expenses of the maintenance of
the child or young person, as the case may be
(including the expenses of the course) while he is
so engaged, the court may order—

15 (i) in the case of a child, that the maintenance
order continue or revive, as the case may
require, and be in force for such amount
and for such period not exceeding two
years from the date on which he attains the
age of sixteen years as may be specified in
20 the order under this section ; or

25 (ii) in the case of a young person, that the
maintenance order revive as on and from
a date to be specified in the order under
this section (not being a date earlier than
the date on which the order is made) and
that the maintenance order thereafter be
in force for such amount and for such
period not exceeding two years from the
date so specified as may be specified in the
30 order so made.

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

An

Deserted Wives and Children (Amendment).

An order made under this section shall not require payments to be made under a maintenance order after the date on which the person for whose maintenance the payments are made attains the age of twenty-one years.

For the purposes only of this subsection, the definition of "Young person" in subsection one of section four of this Act shall be deemed to be amended by omitting the words "eighteen years" and by inserting in lieu thereof the words "twenty-one years".

(2) An application under subsection one of this section may be heard and determined by a court sitting at a place agreed upon by the parties or at the place where the maintenance order was made.

(e) (i) by omitting from subsection four of section one hundred and five the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds";

Sec. 105.
(Funeral expenses of child.)

(ii) by omitting from subsection eight of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

(f) (i) by omitting from subsection two of section one hundred and fourteen the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

Sec. 114.
(Disobedience of order may be punished.)

(ii) by inserting at the end of the same section the following new subsection : —

(8) Where before a justice directs, under subsection six or seven of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those

cf. Act No. 27, 1902, s. 90 (2).

Deserted Wives and Children (Amendment).

5 those arrears, would have subjected such person
to a maximum term of imprisonment less than
the term of imprisonment in which he is liable
under such warrant, the justice shall, by his
warrant of commitment, revoke the term of
imprisonment and may order such person to
be imprisoned for a period calculated in accord-
ance with subsection two of this section, having
regard to the unsatisfied balance, instead of for
10 the term originally mentioned in the warrant.

(g) by inserting in subsection one of section one hundred and twenty-two after the word "Part" where firstly occurring the words " , or by any committal to prison for disobedience of or non-compliance with any order or varied order of a court".

Sec. 122.
(Appeals.)

4. The Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts, is amended by omitting section nine and by inserting in lieu thereof the following section :—

Amendment
of Act No.
51, 1916.
Subst. sec. 9.

9. The provisions of Part XII of the Child Welfare Act, 1939, as amended by subsequent Acts, relating to the maintenance of children by their relatives apply, mutatis mutandis, to the maintenance of children detained as truants under this Act as if children so detained were children committed to the care of the Minister to be dealt with as wards admitted to State control.

Recovery
of cost of
maintenance
of children
in
institutions.

5. The Matrimonial Causes Act, 1899-1958, is amended by omitting subsection three of section 90A and by inserting in lieu thereof the following subsections :—

Amendment
of Act No.
14, 1899.
Sec. 90A.

(3) (a) Upon the hearing the justices shall inquire into the complaint, and if they are satisfied that any sum due under the order is unpaid, they may order the defendant to pay to such person as they may think fit the sum unpaid, together with such further sum for costs as they may deem proper and in default of payment may order that the defendant be committed to prison for a period of one day for every pound or part of a pound found to be due, including the costs incidental to the hearing of the complaint, unless the said order be complied with; but no defendant shall be detained for a

(Summary
proceedings
to enforce
orders for
alimony and
mainten-
ance.)

Deserted Wives and Children (Amendment).

longer period than twelve months, and the period of detention shall in every case be subject to the provisions of section ninety-four of the Justices Act, 1902, as amended by subsequent Acts.

5 (b) Subject to the provisions of section twenty-one of the Prisons Act, 1952, the period of imprisonment served by a defendant in accordance with the provisions of this subsection shall not be deemed to discharge the
10 arrears for the non-payment of which he has been committed, but during such period the order for payment of alimony or maintenance shall be deemed to be suspended.

15 (c) No defendant shall be liable to be imprisoned a second time for, and no writ of attachment may issue in respect of any arrears for which he shall have actually suffered imprisonment as provided in this subsection, but such arrears shall thereafter be a civil debt only, recoverable in any court of competent jurisdiction by the person to whom the arrears are due.

20 (d) Where it appears that the amount of arrears has been paid since the service of the summons or the issue of a warrant the justices may order the persons summoned or apprehended to pay the costs of and incidental to the proceedings, and such costs may be
25 recovered in a summary way under the provisions of the Justices Act, 1902, as amended by subsequent Acts.

30 (3A) The justices may direct that the warrant committing the defendant to prison shall lie in the office of the court for such time as they think proper, or may order the amount found to be due, and any costs awarded, to be paid by such instalments and upon such conditions as they think fit, to the person to whom the amount due under the order is payable.

35 Upon the production of a certificate by such person that any instalment has not been paid, or that any condition of the direction has not been complied with, and of the amount then due on the order, any justice may direct that the warrant committing the defendant to prison be executed.

(3B)

Deserted Wives and Children (Amendment).

5 (3B) Any justice to whom an application is made for a direction that the warrant be executed may postpone the execution of the warrant upon such terms and conditions as he thinks fit, and if the defendant breaks any term or condition upon which such a postponement is made, the justice may then direct the execution of the warrant.

10 (3C) Where before a justice directs, under subsection (3A) or (3B) of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears would have
15 subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period
20 calculated in accordance with subsection three of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the order.

25 (3D) A justice may refuse to enforce an order or may enforce it to such extent as the justice thinks fit having regard to all the circumstances of the case, particularly with reference to the inability of the offender to obtain employment, or to comply with the order owing to continued ill health.

30 6. The Prisons Act, 1952, as amended by subsequent Acts, is amended by inserting in subsection one of section twenty-one after the words "as amended by subsequent Acts," the words "or section 90A of the Matrimonial Causes Act 1899, as amended by subsequent Acts,"

Amendment of Act No. 9, 1952. Sec. 21. (Release of maintenance confines.)

35 7. Where before the commencement of this Act a person has been committed to prison under section eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or under Part XII or Part XVI of the Child Welfare

Transitory provisions.

Deserted Wives and Children (Amendment).

Welfare Act, 1939, as amended by subsequent Acts, and that person is at or at any time after that commencement detained in prison by reason of that committal, the period of imprisonment to be served by that person after that commencement
5 under the warrant for that committal shall, subject to this section, be a period of one day for every pound or part of a pound of the unsatisfied balance owing under the order concerned instead of the period that the person would but for this section have been liable to serve under that warrant
10 after that commencement.

No person shall pursuant to any such warrant be detained in prison for a longer period than twelve months.

In this subsection, "unsatisfied balance", in relation to any order, means the amount of the arrears found to be due by
15 the person against whom the order was made when he was committed to prison by the justices or court, as the case may be, under section eleven, or Part XII or Part XVI, aforesaid, less the sum of—

- 20 (a) any payments by way of reduction of those arrears made by or on behalf of that person; and
(b) where the person against whom the order was made has, in respect of those arrears, been detained in prison before the commencement of this Act, ten shillings for each day for which he was so detained.

25 This section does not apply in respect of any person committed to prison before the commencement of this Act under section eleven, or Part XII or Part XVI, aforesaid, where that person is detained in prison after that commencement under a warrant issued under subsection (4A) of section
30 eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, or subsection eight of section one hundred and fourteen of the Child Welfare Act, 1939, as amended by subsequent Acts and by this Act.

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No 21, 1960.

An Act to make further provisions with respect to the period of imprisonment to be served in default of compliance with certain orders under the Deserted Wives and Children Act, 1901-1958, and the Child Welfare Act, 1939-1956; to authorise the making of orders under those Acts providing for the maintenance of children after they attain the age of sixteen years where they are engaged in a course of education or training; for these and other purposes to amend those Acts, the Public Instruction (Amendment) Act, 1916-1956, the Matrimonial Causes Act, 1899-1958, and the Prisons Act, 1952-1957; and for purposes connected therewith. [Assented to, 8th April, 1960.]

Deserted Wives and Children (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title,
citation
and com-
mencement.

1. (1) This Act may be cited as the "Deserted Wives and Children (Amendment) Act, 1960".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) The Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Deserted Wives and Children Act, 1901-1960.

(4) The Child Welfare Act, 1939, as amended by subsequent Acts and by this Act, may be cited as the Child Welfare Act, 1939-1960.

(5) The Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts and by this Act, may be cited as the Public Instruction (Amendment) Act, 1916-1960.

(6) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1960.

(7) The Prisons Act, 1952, as amended by subsequent Acts and by this Act, may be cited as the Prisons Act, 1952-1960.

Amendment
of Act No.
17, 1901.

2. The Deserted Wives and Children Act, 1901, as amended by subsequent Acts, is amended—

New sec. 7A.

(a) by inserting next after section seven the following new section:—

Extension
of mainten-
ance order
after child's
sixteenth
year.

7A. (1) (a) This section applies to any child in respect of whom an order (in this section called a "maintenance order") made under section seven of this Act is or at any time has been in force.

(b)

Deserted Wives and Children (Amendment).

(b) Where upon an application made to any two justices by or on behalf of a child to whom this section applies it appears to the justices that, in the case of a child who has not attained the age of sixteen years, the child will be engaged in a course of education or training after he attains that age or, in the case of a child who has attained that age, the child is or will be so engaged, and that the maintenance order made in respect of the child should be continued or revived, as the case may require, with or without variation for the purpose of providing for the support of the child while he is so engaged and of meeting the expenses of the course, the justices may order—

- (i) where the child has not attained the age of sixteen years, that the maintenance order continue or revive, as the case may require, and be in force for such amount and for such period not exceeding two years from the date on which he attains that age as may be specified in the order under this section; or
- (ii) where the child has attained the age of sixteen years, that the maintenance order revive as on and from a date to be specified in the order under this section (not being a date earlier than the date on which the order is made) and that the maintenance order thereafter be in force for such amount and for such period not exceeding two years from the date so specified as may be specified in the order so made.

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

An

Deserted Wives and Children (Amendment).

An order made under this section shall not require payments to be made under a maintenance order after the date on which the child concerned attains the age of twenty-one years.

An order under this section may be enforced, appealed from, confirmed, suspended, varied or discharged in the same manner as an order made under section seven of this Act.

(2) An application under subsection one of this section shall be heard and determined by justices sitting at a place agreed upon by the parties or at the place where the maintenance order was made :

Provided that the justices may postpone the hearing of the application and direct that it shall be heard and determined by justices sitting at some other place specified by them and appoint a day for the hearing.

Sec. 8.
(Security for payment of amount may be ordered.)

- (b) by omitting from subsection one of section eight the words "the last preceding section" and by inserting in lieu thereof the words "section seven of this Act";

Sec. 11.
(Disobedience of order.)

- (c) (i) by omitting from subsection two of section eleven the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";
- (ii) by inserting next after subsection four of the same section the following new subsection :—

(4A) Where before a justice directs, under subsection three or four of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears, would have subjected such person

to

cf. Act No.
27, 1902,
s. 90 (2).

Deserted Wives and Children (Amendment).

to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection two of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the warrant.

(d) (i) by inserting in subsection one of section 21A Sec. 21A. after the word "application" the words ", or by (Appeal.) any committal to prison for disobedience of or non-compliance with any order or varied order made,";

(ii) by inserting in the same subsection after the words "the said Act" the words ", sections one hundred and twenty-three and one hundred and twenty-four excepted,";

(iii) by inserting next after subsection two of the same section the following new subsection :—

(3) Where an appeal is made under this section against an order or varied order the Court of Quarter Sessions to which the appeal is made may—

(a) stay the order or varied order ; or

(b) stay the order or varied order and make a temporary order to take effect during the pendency of the appeal.

A Court of Quarter Sessions making a temporary order under this subsection may exercise all the powers which justices making an order under Part II of this Act may exercise.

A temporary order made under this subsection may be enforced in the same manner in all respects as if it were a final order.

Deserted Wives and Children (Amendment).

Amendment
of Act No.
17, 1939.

3. The Child Welfare Act, 1939, as amended by subsequent Acts, is amended—

New sec.
59A.

(a) by inserting next after section fifty-nine the following new section : —

Extension
of contri-
bution order
after child's
sixteenth
year.

59A. The provisions of section 104A of this Act apply, mutatis mutandis, to any child or young person in the care of the Minister and in respect of whom a contribution order is or at any time has been in force, and, for the purposes of such application, a reference in that section to a maintenance order shall be read and construed as a reference to a contribution order.

Sec. 96.
(Court may
require
defendant
to pay
preliminary
expenses.)

(b) (i) by omitting from paragraph (a) of subsection one of section ninety-six the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds";
(ii) by omitting from paragraph (b) of the same subsection the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

Sec. 102.
(Court
shall hear
and
determine
complaint
and may
make
order.)

(c) (i) by omitting from subparagraph (ii) of paragraph (a) of section one hundred and two the words "thirty pounds" wherever occurring and by inserting in lieu thereof the words "one hundred pounds";
(ii) by omitting from paragraph (b) of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

New sec.
104A.

(d) by inserting next after section one hundred and four the following new section : —

Extension of
maintenance
order after
child's
sixteenth
year.

104A. (1) (a) This section applies to any child or young person in respect of whom an order (in this section called a "maintenance order") adjudging any sum to be paid for expenses of maintenance and made under section ninety-six or one hundred and two of this Act is or at any time has been in force. (b)

Deserted Wives and Children (Amendment).

(b) Where upon an application made to the court by or on behalf of any child or young person to whom this section applies it appears to the court that the child will be engaged in a course of education or training after he attains the age of sixteen years, or that the young person is or will be so engaged, and that the maintenance order should be continued or revived, as the case may require, with or without variation, for the purpose of providing for the expenses of the maintenance of the child or young person, as the case may be (including the expenses of the course) while he is so engaged, the court may order—

- (i) in the case of a child, that the maintenance order continue or revive, as the case may require, and be in force for such amount and for such period not exceeding two years from the date on which he attains the age of sixteen years as may be specified in the order under this section ; or
- (ii) in the case of a young person, that the maintenance order revive as on and from a date to be specified in the order under this section (not being a date earlier than the date on which the order is made) and that the maintenance order thereafter be in force for such amount and for such period not exceeding two years from the date so specified as may be specified in the order so made.

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

An

Deserted Wives and Children (Amendment).

An order made under this section shall not require payments to be made under a maintenance order after the date on which the person for whose maintenance the payments are made attains the age of twenty-one years.

For the purposes only of this subsection, the definition of "Young person" in subsection one of section four of this Act shall be deemed to be amended by omitting the words "eighteen years" and by inserting in lieu thereof the words "twenty-one years".

(2) An application under subsection one of this section may be heard and determined by a court sitting at a place agreed upon by the parties or at the place where the maintenance order was made.

Sec. 105.
(Funeral
expenses
of child.)

- (e) (i) by omitting from subsection four of section one hundred and five the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds";
- (ii) by omitting from subsection eight of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

Sec. 114.
(Disobedi-
ence of
order may
be
punished.)

- (f) (i) by omitting from subsection two of section one hundred and fourteen the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";
- (ii) by inserting at the end of the same section the following new subsection :—

cf. Act No.
27, 1902,
s. 90 (2).

(8) Where before a justice directs, under subsection six or seven of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those

Deserted Wives and Children (Amendment).

those arrears, would have subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection two of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the warrant.

- (g) by inserting in subsection one of section one hundred and twenty-two after the word "Part" where firstly occurring the words " , or by any committal to prison for disobedience of or non-compliance with any order or varied order of a court".

Sec. 122.
(Appeals.)

4. The Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts, is amended by omitting section nine and by inserting in lieu thereof the following section :—

Amendment
of Act No.
51, 1916.
Subst. sec. 9.

9. The provisions of Part XII of the Child Welfare Act, 1939, as amended by subsequent Acts, relating to the maintenance of children by their relatives apply, mutatis mutandis, to the maintenance of children detained as truants under this Act as if children so detained were children committed to the care of the Minister to be dealt with as wards admitted to State control.

Recovery
of cost of
maintenance
of children
in
institutions.

5. The Matrimonial Causes Act, 1899-1958, is amended by omitting subsection three of section 90A and by inserting in lieu thereof the following subsections :—

Amendment
of Act No.
14, 1899.
Sec. 90A.

(3) (a) Upon the hearing the justices shall inquire into the complaint, and if they are satisfied that any sum due under the order is unpaid, they may order the defendant to pay to such person as they may think fit the sum unpaid, together with such further sum for costs as they may deem proper and in default of payment may order that the defendant be committed to prison for a period of one day for every pound or part of a pound found to be due, including the costs incidental to the hearing of the complaint, unless the said order be complied with; but no defendant shall be detained for a

(Summary
proceedings
to enforce
orders for
alimony and
mainten-
ance.)

Deserted Wives and Children (Amendment).

longer period than twelve months, and the period of detention shall in every case be subject to the provisions of section ninety-four of the Justices Act, 1902, as amended by subsequent Acts.

(b) Subject to the provisions of section twenty-one of the Prisons Act, 1952, the period of imprisonment served by a defendant in accordance with the provisions of this subsection shall not be deemed to discharge the arrears for the non-payment of which he has been committed, but during such period the order for payment of alimony or maintenance shall be deemed to be suspended.

(c) No defendant shall be liable to be imprisoned a second time for, and no writ of attachment may issue in respect of any arrears for which he shall have actually suffered imprisonment as provided in this subsection, but such arrears shall thereafter be a civil debt only, recoverable in any court of competent jurisdiction by the person to whom the arrears are due.

(d) Where it appears that the amount of arrears has been paid since the service of the summons or the issue of a warrant the justices may order the persons summoned or apprehended to pay the costs of and incidental to the proceedings, and such costs may be recovered in a summary way under the provisions of the Justices Act, 1902, as amended by subsequent Acts.

(3A) The justices may direct that the warrant committing the defendant to prison shall lie in the office of the court for such time as they think proper, or may order the amount found to be due, and any costs awarded, to be paid by such instalments and upon such conditions as they think fit, to the person to whom the amount due under the order is payable.

Upon the production of a certificate by such person that any instalment has not been paid, or that any condition of the direction has not been complied with, and of the amount then due on the order, any justice may direct that the warrant committing the defendant to prison be executed.

(3B)

Deserted Wives and Children (Amendment).

(3B) Any justice to whom an application is made for a direction that the warrant be executed may postpone the execution of the warrant upon such terms and conditions as he thinks fit, and if the defendant breaks any term or condition upon which such a postponement is made, the justice may then direct the execution of the warrant.

(3C) Where before a justice directs, under subsection (3A) or (3B) of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears would have subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection three of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the order.

(3D) A justice may refuse to enforce an order or may enforce it to such extent as the justice thinks fit having regard to all the circumstances of the case, particularly with reference to the inability of the offender to obtain employment, or to comply with the order owing to continued ill health.

6. The Prisons Act, 1952, as amended by subsequent Acts, is amended by inserting in subsection one of section twenty-one after the words "as amended by subsequent Acts," the words "or section 90A of the Matrimonial Causes Act 1899, as amended by subsequent Acts,"

Amendment
of Act No.
9, 1952.
Sec. 21.
(Release of
maintenance
confinées.)

7. Where before the commencement of this Act a person has been committed to prison under section eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or under Part XII or Part XVI of the Child Welfare

Transitory
provisions.

Welfare

Deserted Wives and Children (Amendment).

Welfare Act, 1939, as amended by subsequent Acts, and that person is at or at any time after that commencement detained in prison by reason of that committal, the period of imprisonment to be served by that person after that commencement under the warrant for that committal shall, subject to this section, be a period of one day for every pound or part of a pound of the unsatisfied balance owing under the order concerned instead of the period that the person would but for this section have been liable to serve under that warrant after that commencement.

No person shall pursuant to any such warrant be detained in prison for a longer period than twelve months.

In this subsection, "unsatisfied balance", in relation to any order, means the amount of the arrears found to be due by the person against whom the order was made when he was committed to prison by the justices or court, as the case may be, under section eleven, or Part XII or Part XVI, aforesaid, less the sum of—

- (a) any payments by way of reduction of those arrears made by or on behalf of that person; and
- (b) where the person against whom the order was made has, in respect of those arrears, been detained in prison before the commencement of this Act, ten shillings for each day for which he was so detained.

This section does not apply in respect of any person committed to prison before the commencement of this Act under section eleven, or Part XII or Part XVI, aforesaid, where that person is detained in prison after that commencement under a warrant issued under subsection (4A) of section eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, or subsection eight of section one hundred and fourteen of the Child Welfare Act, 1939, as amended by subsequent Acts and by this Act.

By Authority:

V. C. N. BLIGHT, Government Printer, Sydney, 1960

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 30 March, 1960.*

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No 21, 1960.

An Act to make further provisions with respect to the period of imprisonment to be served in default of compliance with certain orders under the Deserted Wives and Children Act, 1901-1958, and the Child Welfare Act, 1939-1956; to authorise the making of orders under those Acts providing for the maintenance of children after they attain the age of sixteen years where they are engaged in a course of education or training; for these and other purposes to amend those Acts, the Public Instruction (Amendment) Act, 1916-1956, the Matrimonial Causes Act, 1899-1958, and the Prisons Act, 1952-1957; and for purposes connected therewith. [Assented to, 8th April, 1960.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

HOWARD T. FOWLES,
Chairman of Committees of the Legislative Assembly.

Deserted Wives and Children (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title,
citation
and com-
mencement.

1. (1) This Act may be cited as the "Deserted Wives and Children (Amendment) Act, 1960".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) The Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Deserted Wives and Children Act, 1901-1960.

(4) The Child Welfare Act, 1939, as amended by subsequent Acts and by this Act, may be cited as the Child Welfare Act, 1939-1960.

(5) The Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts and by this Act, may be cited as the Public Instruction (Amendment) Act, 1916-1960.

(6) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1960.

(7) The Prisons Act, 1952, as amended by subsequent Acts and by this Act, may be cited as the Prisons Act, 1952-1960.

Amendment
of Act No.
17, 1901.

2. The Deserted Wives and Children Act, 1901, as amended by subsequent Acts, is amended—

New sec. 7A.

(a) by inserting next after section seven the following new section :—

Extension
of mainten-
ance order
after child's
sixteenth
year.

7A. (1) (a) This section applies to any child in respect of whom an order (in this section called a "maintenance order") made under section seven of this Act is or at any time has been in force.

(b)

Deserted Wives and Children (Amendment).

(b) Where upon an application made to any two justices by or on behalf of a child to whom this section applies it appears to the justices that, in the case of a child who has not attained the age of sixteen years, the child will be engaged in a course of education or training after he attains that age or, in the case of a child who has attained that age, the child is or will be so engaged, and that the maintenance order made in respect of the child should be continued or revived, as the case may require, with or without variation for the purpose of providing for the support of the child while he is so engaged and of meeting the expenses of the course, the justices may order—

- (i) where the child has not attained the age of sixteen years, that the maintenance order continue or revive, as the case may require, and be in force for such amount and for such period not exceeding two years from the date on which he attains that age as may be specified in the order under this section; or
- (ii) where the child has attained the age of sixteen years, that the maintenance order revive as on and from a date to be specified in the order under this section (not being a date earlier than the date on which the order is made) and that the maintenance order thereafter be in force for such amount and for such period not exceeding two years from the date so specified as may be specified in the order so made.

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

An

Deserted Wives and Children (Amendment).

An order made under this section shall not require payments to be made under a maintenance order after the date on which the child concerned attains the age of twenty-one years.

An order under this section may be enforced, appealed from, confirmed, suspended, varied or discharged in the same manner as an order made under section seven of this Act.

(2) An application under subsection one of this section shall be heard and determined by justices sitting at a place agreed upon by the parties or at the place where the maintenance order was made :

Provided that the justices may postpone the hearing of the application and direct that it shall be heard and determined by justices sitting at some other place specified by them and appoint a day for the hearing.

Sec. 8.
(Security
for payment
of amount
may be
ordered.)

(b) by omitting from subsection one of section eight the words "the last preceding section" and by inserting in lieu thereof the words "section seven of this Act";

Sec. 11.
(Disobedi-
ence of
order.)

(c) (i) by omitting from subsection two of section eleven the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

(ii) by inserting next after subsection four of the same section the following new subsection :—

cf. Act No.
27, 1902,
s. 90 (2).

(4A) Where before a justice directs, under subsection three or four of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears, would have subjected such person

to

Deserted Wives and Children (Amendment).

to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection two of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the warrant.

(d) (i) by inserting in subsection one of section 21A Sec. 21A. after the word "application" the words ", or by (Appeal.) any committal to prison for disobedience of or non-compliance with any order or varied order made,";

(ii) by inserting in the same subsection after the words "the said Act" the words ", sections one hundred and twenty-three and one hundred and twenty-four excepted,";

(iii) by inserting next after subsection two of the same section the following new subsection :—

(3) Where an appeal is made under this section against an order or varied order the Court of Quarter Sessions to which the appeal is made may—

(a) stay the order or varied order; or

(b) stay the order or varied order and make a temporary order to take effect during the pendency of the appeal.

A Court of Quarter Sessions making a temporary order under this subsection may exercise all the powers which justices making an order under Part II of this Act may exercise.

A temporary order made under this subsection may be enforced in the same manner in all respects as if it were a final order.

Deserted Wives and Children (Amendment).

Amendment
of Act No.
17, 1939.

3. The Child Welfare Act, 1939, as amended by subsequent Acts, is amended—

New sec.
59A.

(a) by inserting next after section fifty-nine the following new section :—

Extension
of contri-
bution order
after child's
sixteenth
year.

59A. The provisions of section 104A of this Act apply, mutatis mutandis, to any child or young person in the care of the Minister and in respect of whom a contribution order is or at any time has been in force, and, for the purposes of such application, a reference in that section to a maintenance order shall be read and construed as a reference to a contribution order.

Sec. 96.
(Court may
require
defendant
to pay
preliminary
expenses.)

(b) (i) by omitting from paragraph (a) of subsection one of section ninety-six the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds";
(ii) by omitting from paragraph (b) of the same subsection the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

Sec. 102.
(Court
shall hear
and
determine
complaint
and may
make
order.)

(c) (i) by omitting from subparagraph (ii) of paragraph (a) of section one hundred and two the words "thirty pounds" wherever occurring and by inserting in lieu thereof the words "one hundred pounds";
(ii) by omitting from paragraph (b) of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

New sec.
104A.

(d) by inserting next after section one hundred and four the following new section :—

Extension of
maintenance
order after
child's
sixteenth
year.

104A. (1) (a) This section applies to any child or young person in respect of whom an order (in this section called a "maintenance order") adjudging any sum to be paid for expenses of maintenance and made under section ninety-six or one hundred and two of this Act is or at any time has been in force. (b)

Deserted Wives and Children (Amendment).

(b) Where upon an application made to the court by or on behalf of any child or young person to whom this section applies it appears to the court that the child will be engaged in a course of education or training after he attains the age of sixteen years, or that the young person is or will be so engaged, and that the maintenance order should be continued or revived, as the case may require, with or without variation, for the purpose of providing for the expenses of the maintenance of the child or young person, as the case may be (including the expenses of the course) while he is so engaged, the court may order—

- (i) in the case of a child, that the maintenance order continue or revive, as the case may require, and be in force for such amount and for such period not exceeding two years from the date on which he attains the age of sixteen years as may be specified in the order under this section; or
- (ii) in the case of a young person, that the maintenance order revive as on and from a date to be specified in the order under this section (not being a date earlier than the date on which the order is made) and that the maintenance order thereafter be in force for such amount and for such period not exceeding two years from the date so specified as may be specified in the order so made.

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

An

Deserted Wives and Children (Amendment).

An order made under this section shall not require payments to be made under a maintenance order after the date on which the person for whose maintenance the payments are made attains the age of twenty-one years.

For the purposes only of this subsection, the definition of "Young person" in subsection one of section four of this Act shall be deemed to be amended by omitting the words "eighteen years" and by inserting in lieu thereof the words "twenty-one years".

(2) An application under subsection one of this section may be heard and determined by a court sitting at a place agreed upon by the parties or at the place where the maintenance order was made.

Sec. 105.
(Funeral
expenses
of child.)

- (e) (i) by omitting from subsection four of section one hundred and five the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds";
- (ii) by omitting from subsection eight of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

Sec. 114.
(Disobedi-
ence of
order may
be
punished.)

- (f) (i) by omitting from subsection two of section one hundred and fourteen the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";
- (ii) by inserting at the end of the same section the following new subsection :—

cf. Act No.
27, 1902,
s. 90 (2).

(8) Where before a justice directs, under subsection six or seven of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those

Deserted Wives and Children (Amendment).

those arrears, would have subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection two of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the warrant.

- (g) by inserting in subsection one of section one hundred and twenty-two after the word "Part" where firstly occurring the words " , or by any committal to prison for disobedience of or non-compliance with any order or varied order of a court".

Sec. 122.

(Appeals.)

4. The Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts, is amended by omitting section nine and by inserting in lieu thereof the following section :—

Amendment of Act No. 51, 1916.

Subst. sec. 9.

9. The provisions of Part XII of the Child Welfare Act, 1939, as amended by subsequent Acts, relating to the maintenance of children by their relatives apply, mutatis mutandis, to the maintenance of children detained as truants under this Act as if children so detained were children committed to the care of the Minister to be dealt with as wards admitted to State control.

Recovery of cost of maintenance of children in institutions.

5. The Matrimonial Causes Act, 1899-1958, is amended by omitting subsection three of section 90A and by inserting in lieu thereof the following subsections :—

Amendment of Act No. 14, 1899.

Sec. 90A.

(3) (a) Upon the hearing the justices shall inquire into the complaint, and if they are satisfied that any sum due under the order is unpaid, they may order the defendant to pay to such person as they may think fit the sum unpaid, together with such further sum for costs as they may deem proper and in default of payment may order that the defendant be committed to prison for a period of one day for every pound or part of a pound found to be due, including the costs incidental to the hearing of the complaint, unless the said order be complied with; but no defendant shall be detained for a

(Summary proceedings to enforce orders for alimony and maintenance.)

longer

Deserted Wives and Children (Amendment).

longer period than twelve months, and the period of detention shall in every case be subject to the provisions of section ninety-four of the Justices Act, 1902, as amended by subsequent Acts.

(b) Subject to the provisions of section twenty-one of the Prisons Act, 1952, the period of imprisonment served by a defendant in accordance with the provisions of this subsection shall not be deemed to discharge the arrears for the non-payment of which he has been committed, but during such period the order for payment of alimony or maintenance shall be deemed to be suspended.

(c) No defendant shall be liable to be imprisoned a second time for, and no writ of attachment may issue in respect of any arrears for which he shall have actually suffered imprisonment as provided in this subsection, but such arrears shall thereafter be a civil debt only, recoverable in any court of competent jurisdiction by the person to whom the arrears are due.

(d) Where it appears that the amount of arrears has been paid since the service of the summons or the issue of a warrant the justices may order the persons summoned or apprehended to pay the costs of and incidental to the proceedings, and such costs may be recovered in a summary way under the provisions of the Justices Act, 1902, as amended by subsequent Acts.

(3A) The justices may direct that the warrant committing the defendant to prison shall lie in the office of the court for such time as they think proper, or may order the amount found to be due, and any costs awarded, to be paid by such instalments and upon such conditions as they think fit, to the person to whom the amount due under the order is payable.

Upon the production of a certificate by such person that any instalment has not been paid, or that any condition of the direction has not been complied with, and of the amount then due on the order, any justice may direct that the warrant committing the defendant to prison be executed.

(3B)

Deserted Wives and Children (Amendment).

(3B) Any justice to whom an application is made for a direction that the warrant be executed may postpone the execution of the warrant upon such terms and conditions as he thinks fit, and if the defendant breaks any term or condition upon which such a postponement is made, the justice may then direct the execution of the warrant.

(3C) Where before a justice directs, under subsection (3A) or (3B) of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears would have subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection three of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the order.

(3D) A justice may refuse to enforce an order or may enforce it to such extent as the justice thinks fit having regard to all the circumstances of the case, particularly with reference to the inability of the offender to obtain employment, or to comply with the order owing to continued ill health.

6. The Prisons Act, 1952, as amended by subsequent Acts, is amended by inserting in subsection one of section twenty-one after the words "as amended by subsequent Acts," the words "or section 90A of the Matrimonial Causes Act 1899, as amended by subsequent Acts,"

Amendment
of Act No.
9, 1952.
Sec. 21.
(Release of
maintenance
confinées.)

7. Where before the commencement of this Act a person has been committed to prison under section eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or under Part XII or Part XVI of the Child Welfare

Transitory
provisions.

Deserted Wives and Children (Amendment).

Welfare Act, 1939, as amended by subsequent Acts, and that person is at or at any time after that commencement detained in prison by reason of that committal, the period of imprisonment to be served by that person after that commencement under the warrant for that committal shall, subject to this section, be a period of one day for every pound or part of a pound of the unsatisfied balance owing under the order concerned instead of the period that the person would but for this section have been liable to serve under that warrant after that commencement.

No person shall pursuant to any such warrant be detained in prison for a longer period than twelve months.

In this subsection, "unsatisfied balance", in relation to any order, means the amount of the arrears found to be due by the person against whom the order was made when he was committed to prison by the justices or court, as the case may be, under section eleven, or Part XII or Part XVI, aforesaid, less the sum of—

- (a) any payments by way of reduction of those arrears made by or on behalf of that person; and
- (b) where the person against whom the order was made has, in respect of those arrears, been detained in prison before the commencement of this Act, ten shillings for each day for which he was so detained.

This section does not apply in respect of any person committed to prison before the commencement of this Act under section eleven, or Part XII or Part XVI, aforesaid, where that person is detained in prison after that commencement under a warrant issued under subsection (4A) of section eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, or subsection eight of section one hundred and fourteen of the Child Welfare Act, 1939, as amended by subsequent Acts and by this Act.

In the name and on behalf of Her Majesty I assent to this Act.

E. W. WOODWARD,
Governor.

*Government House,
Sydney, 8th April, 1960.*