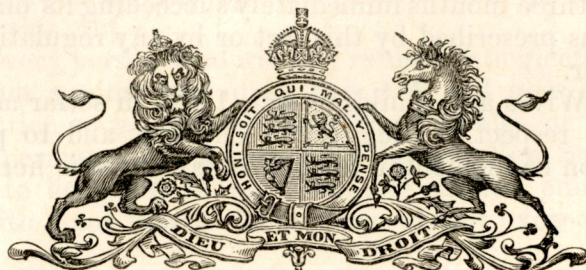


This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

*Legislative Council Chamber,
Sydney, 20th August, 1903.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO TERTIO

EDWARDI VII REGIS.

Act No. , 1903.

An Act to make further and better provision for the protection, maintenance, education, and care of infants; and to provide for the inspection, supervision, and control of places established or used for their reception and care.

BE it enacted by the King'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:—

5

PART I.

PRELIMINARY.

1. This Act may be cited as the "Infant Protection Act, 1903." Short title.

2. In this Act, unless the context or subject-matter otherwise Interpretation. indicates or requires,—

10 "Board" means State Children's Relief Board appointed under the State Children Relief Act, 1901.

Infant Protection.

“Chief officer” means the chief officer within the meaning of the Children’s Protection Act, 1902.

“Justice” means justice of the peace.

“Magistrate” means stipendiary or police magistrate.

5 “Minister” means the Colonial Secretary.

“Preliminary expenses” means the expenses of the maintenance of the mother during a period of one month immediately preceding the birth of her infant, reasonable medical and nursing expenses attendant upon the confinement of the mother, and the expenses of the maintenance of the mother and infant for three months immediately succeeding its birth.

10 “Prescribed” means prescribed by this Act or by any regulations made hereunder.

15 **3.** The Deserted Wives and Children Act, 1901, in so far as it relates to complaints in respect of illegitimate children and to proceedings consequent upon or incidental to such complaints, is hereby repealed.

Repeal of Deserted Wives and Children Act.

PART II.

MAINTENANCE OF INFANTS.

20 *Proceedings begun before birth.*

4. Where any single woman is with child by any man who has made no adequate provision for the payment of preliminary expenses of and incidental to and immediately succeeding the birth of the infant, or the expenses of the future maintenance of the infant, she, or the chief officer or any other reputable person on her behalf, may make complaint on oath to any magistrate that she is with child by the said man, and that he has made no adequate provision for the payment of the expenses aforesaid; and shall when making such complaint produce evidence on oath; either oral or on affidavit, in corroboration in some material particular of the allegation as to the paternity of the infant.

Single woman with child may take proceedings against father.

See Imperial Act 35 & 36 Vic. c. 65, s. 3.

30 The magistrate may thereupon summon the man to appear before the court to answer such complaint; or, if the circumstances seem to require it, may issue a warrant for his apprehension.

5. The court shall hear and determine so much of such complaint as relates to the paternity of the infant, and may—

Court may require defendant to pay preliminary expenses.

(a) order the defendant to deposit a sum not exceeding twenty pounds for preliminary expenses; and

See S.A. Act No. 702, ss. 3, 4; Vic. Act, No. 1,634, ss. 2 3; Imperial Act, 35 and 36 Vi., c. 65, s. 4.

(b)

Infant Protection.

(b) further order the defendant to enter into a recognizance with one or more good and sufficient sureties to the satisfaction of the court for such amount as the court determines, as a security that within four months from the birth of the infant, and on such day as any magistrate, at any time not later than three months from the said birth, determines, and of which at least fourteen days' notice shall be given to the defendant by or on behalf of the complainant, the defendant will appear and show cause why he should not make such adequate provision as the court determines for the payment of the expenses of the maintenance and education of the infant after it has reached the age of three months. Every such order shall specify a date not later than six months thereafter when the order shall lapse if the infant has not been born, and if upon such date the infant has not been born the order shall lapse and the defendant and his surety or sureties shall be deemed to be released from their recognizances, and the unexpended portion of any moneys paid by the defendant as preliminary expenses shall be repaid to him.

The court shall not find that the woman is with child by the defendant unless it be proved by the evidence of some legally qualified medical practitioner that she is quick with child, and unless her evidence be corroborated in some material particular, or if the court be satisfied that at the time the infant was begotten the mother was a common prostitute.

In default of compliance with any order as aforesaid, the court may commit the defendant to prison for any term not exceeding twelve months: Provided that upon compliance with such order, at any time during such term of imprisonment, the defendant shall be released from prison.

6. If upon the day on which the defendant is bound to show cause as aforesaid, or upon any later day to which the proceedings are adjourned he does not appear, and it is proved to the satisfaction of the court that the infant has been born, and that the order binding the defendant to show cause has not lapsed, the recognizances entered into by the defendant and sureties before the birth shall be forfeited, and the moneys paid on behalf of the mother and infant.

7. If upon the day or later day mentioned in the last preceding section the defendant appears, and it is proved to the satisfaction of the court that the infant has been born and that the order binding the defendant to show cause has not lapsed, the court shall make an order for the payment by the defendant of a sum for the maintenance and education of the infant not less than five shillings and not more than twenty shillings per week.

Proceedings

*Infant Protection.**Proceedings begun after birth.*

8. In any case where the father of an illegitimate infant has left it without means of support, the mother of the infant, or the chief officer, or any other reputable person on behalf of the infant, may
 5 make complaint on oath to a magistrate; and shall, when making such complaint, produce evidence on oath, either oral or on affidavit, in corroboration in some material particular of any allegation in such complaint as to the paternity of the infant; and upon such complaint being made, the magistrate may summon the defendant to appear
 10 before the court to answer such complaint, or, if the circumstances seem to require it, may issue a warrant for his apprehension.

Complaint may be made against father of illegitimate infant for leaving it without means of support.

(See local Act No. 17, 1901, s. 4; Imperial Act, 35 & 36 Vic., c. 65, s. 3.)

9. The Court shall hear and determine the complaint, and may make an order for the payment by the defendant of a sum for the maintenance and education of the infant not less than the rate of five
 15 shillings per week and not exceeding the rate of twenty shillings per week.

Court shall hear and determine complaint and may make order for maintenance.

In any order made under this section in respect of a complaint brought within twelve months from the birth of the infant, the court may further order that the preliminary expenses to an amount not
 20 exceeding twenty pounds shall be paid by the defendant.

Miscellaneous.

10. Where any woman has been received into an institution established for the reception of women for confinement, and wholly or partly supported by the public funds or public subscription, and has
 25 there been delivered of an infant, or where a mother and her infant, or an infant apart from its mother, have or has been received into an institution established for the reception and care of infants with or without their mothers, and supported in like manner as aforesaid, the person in charge of the institution or the chief officer may, for the
 30 purpose of identifying the father of the infant of which the mother has been delivered, or which has been received with or without its mother into the institution, require the mother to make a declaration before a magistrate respecting the paternity of the infant:

Person in charge of institution may require mother to make declaration as to paternity of infant.

c.f. S.A. Act No. 210, s. 96.

Provided that no woman shall be required to make a declaration
 35 under this section, and no magistrate shall receive such declaration unless the magistrate is satisfied that the reasonable expenses of the maintenance of the mother and infant, or of the infant, as the case may be, in the institution have not been paid by or on behalf of the mother or infant for a period of two weeks immediately preceding the making
 40 of such declaration.

The mother of any infant who being required by a person in charge of such an institution as aforesaid, or by the chief officer, to make

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make a declaration as aforesaid, shall refuse or neglect so to do, shall for every such offence, on conviction, forfeit and pay a sum not exceeding twenty-five pounds.

The mother of any infant who shall wilfully make a false declaration before a magistrate respecting the paternity of her infant shall be deemed guilty of perjury.

11. Where any complaint has been made under this Act by a woman for expenses in respect of an infant of which she is about to be or has been delivered, she may, at the hearing of the complaint, be compelled to give evidence; and where complaint has been made under the Act by the chief officer or other reputable person on behalf of a woman for such expenses, she may, at the hearing of the complaint, be compelled to give evidence if it has first been proved to the satisfaction of the court that she has made an allegation as to the paternity of the infant. The admissions of a woman in giving evidence under this section shall not be used against her in any criminal prosecution, except for perjury committed while so giving evidence.

Women may in certain cases be compelled to testify.

12. In any order made after the birth of an infant under this Act in respect of proceedings begun before or after birth, the court may further order the payment by the defendant of the funeral expenses of the mother if she has died during parturition, or in consequence of parturition, within one month from the birth of the child, and the funeral expenses of the child if it has died prior to the making of the order.

Court may order payment of funeral expenses of mother and child.

(See 35 & 36 Vic., c. 65, s. 4.)

13. In any order under this Act, the court may further order the payment of such costs by such persons as it thinks fit.

Court may order payment of costs.

14. If it appears to the court that both the father and mother of an illegitimate infant are able to contribute to any of the expenses mentioned in the preceding sections, the court, in making any order, may direct the payment of such expenses by both the father and mother in such proportions and in such manner as it thinks fit.

Mother also to contribute to expenses of maintenance.

(See Deserted Wives and Children Act No. 17, 1901, s. 7; N.Z. Act 58 Vic. No. 22, s. 10.)

15. Every order adjudging any sum to be paid for the maintenance of an infant may be made to take effect from a date not earlier than three months immediately preceding the date of the order, or, if a previous order has been made, from the date when the last preceding order ceased to have effect, and shall be of full force and validity until the infant has, if a male, attained the age of fourteen years, or has, if a female, attained the age of sixteen years, or until the death of such infant if such death occurs within the respective periods above mentioned: Provided that the court may in the order direct that the payments to be made under it in respect of a male infant shall continue until the infant attains the age of sixteen years, in which case such order shall be in force until that period: Provided also that for the purpose of recovering money previously due under an order it shall always remain of full force and validity.

Period for which orders for maintenance may be made.

(c.f. Imperial Act 35 & 36 Vic., c. 65, s. 5; N.Z. Act 58 Vic. No. 22, s. 9.)

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16. When an order is made under this Act for the payment of any expenses other than preliminary expenses the court may, immediately after pronouncing its decision, require the defendant to enter into a recognizance with sureties for the due performance, for a 5 period not exceeding twelve months of such order, and in default of the defendant's immediately entering into such recognizance with the required sureties the court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order complied with.
- 10 17. Where an order has been made under this Act for the payment of expenses, or of moneys secured under recognizances, the court may, in a summary way and with or without any application for that purpose, make such orders in writing as it thinks necessary for better securing the payment and regulating the receipt of the expenses 15 or moneys ordered to be paid, or for investing and applying the proceeds of the goods or rents ordered and directed to be sold or collected, or for ensuring the due appropriation of such expenses or moneys or for causing the child in respect of whom the order was made to be properly brought up and educated.
- 20 18. In making any order under this Act, the court may further, by the said order, authorise and direct some person forthwith to seize and sell the defendant's goods and to demand and receive his rents or such portions of the said goods or rents as the court thinks fit, and to appropriate the proceeds towards the payment of the 25 expenses aforesaid in such manner as it from time to time directs, and if it appears on oath that the defendant has theretofore usually resided in New South Wales and has left the said State, the like order may be made and authority given by such court although no warrant or summons has been issued.
- 30 19. The court may at any time, in a summary way, inquire into any alleged disobedience of or non-compliance with any order made under this Act, and for such purpose may summon and examine all proper parties and witnesses, and may enforce compliance or may punish non-compliance with such order, by the committal of the 35 offender until such order has been complied with, or by the infliction of a penalty not exceeding fifty pounds.
20. The court from time to time may, upon application made by or on behalf of the mother or infant or by or on behalf of the father, and upon notice given in such manner as the court shall direct to all 40 parties to be affected thereby, vary any order made under this Act.
21. (1) Every summons or notice under this Act may be served on the defendant personally, or by leaving the same at his last or most usual place of residence.
- (2) The person serving the summons or notice may make 45 an affidavit stating the mode and time and place of such service, and such affidavit may be received by the court as proof of the due service of the summons or notice.

Security for payment of amount may be ordered.

Deserted Wives and Children Act No. 17, 1901, s. 8.

Further orders may be made as to mode of payment of expenses.

Ibid. s. 10.

Seizure of defendant's goods.

Ibid. s. 9.

Disobedience of order may be punished.

Ibid. s. 11.

Court may vary order.

(See Deserted Wives and Children Act No. 17, 1901, s. 21.)

Service of summons or notice.

Ibid. s. 5.

Infant Protection.

22. (1) If a defendant against whom a summons has been issued does not appear in accordance therewith, the court, upon proof of the service of the summons, may issue a warrant for his apprehension, or may proceed in the case *ex parte*. Court may proceed *ex parte*.
Deserted Wives and Children Act No. 17, 1901, s. 6.
- 5 (2) In every case where a warrant has been issued, and the defendant cannot, after strict inquiry and search, be found to be taken thereon, the court may in like manner proceed in the case *ex parte*.
- 10 23. Any magistrate on being satisfied by oath that any defendant is about to remove out of New South Wales, or to remote parts thereof, to defeat any of the provisions of this Act or any order made hereunder, may issue his warrant for the apprehension of such defendant to be dealt with under this Act. Warrant may issue in certain cases.
Ibid. s. 13.
- 15 24. (1) Every person who wilfully refuses or neglects to comply with an order made against him under this Act, and goes or attempts or makes preparation to go beyond New South Wales, or to reside or is resident either permanently or temporarily beyond New South Wales, shall be deemed to be guilty of an indictable offence, punishable by imprisonment with hard labour for a term of not exceeding twelve months. Certain breaches of Act indictable when offender leaves New South Wales.
(See N.Z., 1894, No. 22, s. 17; Vic., 1901, No. 1737, s. 4.)
- 20 (2) No person convicted of an offence against this section shall be liable to any other penalty or punishment for such offence.
- 25 25. A committal to prison or conviction of an offence under this Act shall not prevent the making or operation of any order for the payment of money or the doing of any act by such person which may be lawfully made. Committal to prison not to prevent making or operation of orders.
- 30 26. Whenever the Legislature of any British possession beyond the limits of the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, and other than New South Wales, makes provision whereby the offence of desertion of children, and going to reside beyond the limits of such possession, is constituted an offence whether punishable on indictment or otherwise by imprisonment for a term of twelve months or more, then and in every such case every person accused of such offence and coming to New South Wales may be there arrested and dealt with under and pursuant to the provisions of the Act of the Imperial Parliament of Great Britain and Ireland, intituled the Fugitive Offenders Act, 1881, or any Act amending the same. Persons deserting children in other colony, &c., may be arrested in New South Wales.
(See Vic., 1901, No. 1737, s. 5; N.Z. Act, 58 Vic. No. 22, s. 23.)
44 & 45 Vic., c. 69; 7 V.S. 321.
- 40 27. Every person aggrieved by an order of a court under this Act may appeal to a court of quarter sessions against such order in the manner provided by the Justices Act, 1902, in respect of appeals to courts of quarter sessions: Provided that where an order is made by the court at any place, and a district court is held nearer to that place than a court of quarter sessions, such appeal may be made to such district court in the same manner as an appeal may be made to a court of quarter sessions under the said Act: Appeal to quarter sessions or district court.
- 45 Provided

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Provided also that where an order is made before birth respecting the paternity of an infant, and the party aggrieved by the order gives notice of intention to appeal to a court of quarter sessions or district court, as the case may be, and desires that the appeal shall not be
 5 heard before the birth of the infant, such party shall state his or her desire in the notice, and in such case the appeal shall be heard at the first court of quarter sessions or district court, as the case may be, held after a period of one month from the birth has elapsed, or at
 10 any court of quarter sessions or district court succeeding such first held court and to which the hearing is postponed, but no appeal shall in such case be heard earlier than such first held court. Where an appeal respecting the paternity of an infant is to be heard after the birth of the infant, no order shall be made under section seven of this Act until and unless such appeal has been heard and determined.

15

PART III.

CARE OF INFANTS IN INSTITUTIONS.

Control of places established or used for reception of infants.

28. The person in charge of any place established or used for the reception and care of two or more infants under the age of seven
 20 years, apart from their mothers, shall make application to the Minister in the prescribed form and manner for a license in respect of such place.

The Minister shall thereupon require the board to make inquiry and report respecting such place, and the board shall thereupon make such inquiry, through the president or chief officer, and report.

25 The Minister upon receiving a report from the board in respect of such place may grant to the person in charge a license in respect of such place.

Every license shall be granted subject to such conditions and requirements as are prescribed.

30 **29.** For the purpose of making any inquiry and report as aforesaid respecting any place, or for the purpose of ensuring that the prescribed conditions and requirements are complied with and fulfilled in respect of any licensed place, the president of the board or the chief officer may, at any time, enter the place and inspect it and the infants
 35 who are inmates thereof, and the person in charge of the place shall, during the course of such inspection, afford the president or chief officer all reasonable facilities for making such inspection.

Any person who delays, hinders, or obstructs the president or chief officer in making any such inspection as aforesaid shall be
 40 liable to a penalty not exceeding twenty-five pounds.

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30. Where, on any inspection of a licensed place, the president of the board or the chief officer finds that any of the prescribed conditions or requirements are not complied with or fulfilled, the president or chief officer may give such directions to the person in charge as to it or him seems fit in order to ensure a compliance with and fulfilment of such conditions or requirements, or the board in such case may recommend to the Minister the cancellation of the license of such place, and the Minister may thereupon cancel such license, and any infants or inmates of such place may be removed therefrom by the board and placed in such place as to the board seems fit.

Where conditions of license not observed, board may give directions or Minister may cancel license.

31. Where at any time after the expiration of a period of three months from the commencement of this Act, any place is established or used for the reception and care of two or more infants under the age of seven years apart from their mothers, and is not licensed under the provisions of this Act, the person in charge of such place shall be liable to a penalty of not exceeding twenty-five pounds, and any infants who are inmates of such place may be removed therefrom by the board and placed in such care as to the board seems fit.

Penalties on person in charge of unlicensed place.

20

PART IV.

CHILDREN'S COURTS.

32. All complaints made under this Act or in respect of children deserted and left without means of support shall be dealt with by a magistrate, in this Act termed "the court."

Complaints shall be dealt with by magistrate.

33. Upon and during the hearing of any complaint made under this Act, or any complaint in respect of a child deserted or left without means of support, no person shall be or be permitted to be present in the court except the following—

Only certain persons to be present at hearing.
Vic. Act No 1809, s. 2.

- (a) the adjudicating magistrate, the chief officer, the officers of the court, and a member of the police force;
- (b) the complainant and the defendant, and their respective barristers and solicitors;
- (c) the mother or sister, or other relative or friend of the complainant, if desired by such complainant;
- (d) any person whilst being examined as a witness; and
- (e) the mother or sister, or female friend of any female witness, if desired by such witness whilst being examined,
- unless the court shall, in the interest of justice, permit any other person to be present.

Infant Protection.

PART V.

SUPPLEMENTARY.

34. All penalties under this Act shall be imposed and recovered before the court in the same manner as penalties are imposed and 5 recovered under the Justices Act, 1902. Recovery of penalties.

35. (1) The Governor may make regulations— Governor may make regulations.

- (a) providing for the inspection of places established or used for the reception and care of infants under the age of seven years apart from their mothers ; or
- 10 (b) providing for the notification by persons in charge of such places of the reception or death of infants, and of other particulars respecting infants received into such places ;
- (c) prescribing generally the conditions and requirements subject to the observance and fulfilment of which licenses may be 15 granted and continued under this Act ; and
- (d) generally for carrying into effect the provisions of this Act.

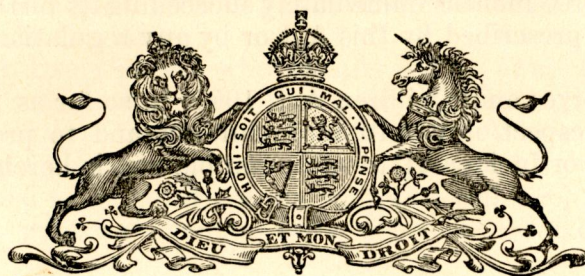
(2) All regulations made under this Act shall be published in the Gazette, and shall thereupon be in force, and shall be laid upon the table of both Houses of Parliament within fourteen days of such 20 publication, or if Parliament is not then sitting within fourteen days of the commencement of the next ensuing session.

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

*Legislative Council Chamber,
Sydney, August, 1903. }*

Clerk of the Parliaments.

New South Wales.



ANNO TERTIO

EDWARDI VII REGIS.

Act No. , 1903.

An Act to make further and better provision for the protection, maintenance, education, and care of infants; and to provide for the inspection, supervision, and control of places established or used for their reception and care.

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1. This Act may be cited as the "Infant Protection Act, 1903." Short title.
 2. In this Act, unless the context or subject-matter otherwise Interpretation. indicates or requires,—
- 10 "Board" means State Children's Relief Board appointed under the State Children Relief Act, 1901.

Infant Protection.

- “Chief officer” means the chief officer within the meaning of the Children’s Protection Act, 1902.
- “Justice” means justice of the peace.
- “Magistrate” means stipendiary or police magistrate.
- 5 “Minister” means the Colonial Secretary.
- “Preliminary expenses” means the expenses of the maintenance of the mother during a period of one month immediately preceding the birth of her infant, reasonable medical and nursing expenses attendant upon the confinement of the
- 10 mother, and the expenses of the maintenance of the mother and infant for three months immediately succeeding its birth.
- “Prescribed” means prescribed by this Act or by any regulations made hereunder.
3. The Deserted Wives and Children Act, 1901, in so far as it
- 15 relates to complaints in respect of illegitimate children and to proceedings consequent upon or incidental to such complaints, is hereby repealed.
- Repeal of Deserted Wives and Children Act.

PART II.

MAINTENANCE OF INFANTS.

20 *Proceedings begun before birth.*

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- 25 chief officer or any other reputable person on her behalf, may make complaint on oath to any magistrate that she is with child by the said man, and that he has made no adequate provision for the payment of the expenses aforesaid; and shall when making such complaint produce
- 30 evidence on oath, either oral or on affidavit, in corroboration in some material particular of the allegation as to the paternity of the infant.

The magistrate may thereupon summon the man to appear before the court to answer such complaint; or, if the circumstances seem to require it, may issue a warrant for his apprehension.

5. The court shall hear and determine so much of such com-
- 35 plaint as relates to the paternity of the infant, and may—
- (a) order the defendant to deposit a sum not exceeding twenty pounds for preliminary expenses; and

(b)

See S.A. Act No. 702, ss. 3, 4; Vic. Act, No. 1,684, ss. 2, 3; Imperial Act, 35 and 36 Vi., c. 65, s. 4.

Infant Protection.

(b) further order the defendant to enter into a recognizance with one or more good and sufficient sureties to the satisfaction of the court for such amount as the court determines, as a security that within four months from the birth of the infant, and on such day as any magistrate, at any time not later than three months from the said birth, determines, and of which at least fourteen days' notice shall be given to the defendant by or on behalf of the complainant, the defendant will appear and show cause why he should not make such adequate provision as the court determines for the payment of the expenses of the maintenance and education of the infant after it has reached the age of three months. Every such order shall specify a date not later than six months thereafter when the order shall lapse if the infant has not been born, and if upon such date the infant has not been born the order shall lapse and the defendant and his surety or sureties shall be deemed to be released from their recognizances, and the unexpended portion of any moneys paid by the defendant as preliminary expenses shall be repaid to him.

20 The court shall not find that the woman is with child by the defendant unless it be proved by the evidence of some legally qualified medical practitioner that she is quick with child, and unless her evidence be corroborated in some material particular, or if the court be satisfied that at the time the infant was begotten the mother was a common prostitute.

In default of compliance with any order as aforesaid, the court may commit the defendant to prison for any term not exceeding twelve months: Provided that upon compliance with such order, at any time during such term of imprisonment, the defendant shall be released from prison.

6. If upon the day on which the defendant is bound to show cause as aforesaid, or upon any later day to which the proceedings are adjourned he does not appear, and it is proved to the satisfaction of the court that the infant has been born, and that the order binding the defendant to show cause has not lapsed, the recognizances entered into by the defendant and sureties before the birth shall be forfeited, and the moneys paid on behalf of the mother and infant.

7. If upon the day or later day mentioned in the last preceding section the defendant appears, and it is proved to the satisfaction of the court that the infant has been born and that the order binding the defendant to show cause has not lapsed, the court shall make an order for the payment by the defendant of a sum for the maintenance and education of the infant not less than five shillings and not more than twenty shillings per week.

*Infant Protection.**Proceedings begun after birth.*

8. In any case where the father of an illegitimate infant has left it without means of support, the mother of the infant, or the chief officer, or any other reputable person on behalf of the infant, may
 5 make complaint on oath to a magistrate; and shall, when making such complaint, produce evidence on oath, either oral or on affidavit, in corroboration in some material particular of any allegation in such complaint as to the paternity of the infant; and upon such complaint
 10 being made, the magistrate may summon the defendant to appear before the court to answer such complaint, or, if the circumstances seem to require it, may issue a warrant for his apprehension.

Complaint may be made against father of illegitimate infant for leaving it without means of support.

(See local Act No. 17, 1901, s. 4; Imperial Act, 35 & 36 Vic., c. 65, s. 3.)

9. The Court shall hear and determine the complaint, and may make an order for the payment by the defendant of a sum for the maintenance and education of the infant not less than the rate of five
 15 shillings per week and not exceeding the rate of twenty shillings per week.

Court shall hear and determine complaint and may make order for maintenance.

In any order made under this section in respect of a complaint brought within twelve months from the birth of the infant, the court may further order that the preliminary expenses to an amount not
 20 exceeding twenty pounds shall be paid by the defendant.

Miscellaneous.

10. Where any woman has been received into an institution established for the reception of women for confinement, and wholly or partly supported by the public funds or public subscription, and has
 25 there been delivered of an infant, or where a mother and her infant, or an infant apart from its mother, have or has been received into an institution established for the reception and care of infants with or without their mothers, and supported in like manner as aforesaid, the person in charge of the institution or the chief officer may, for the
 30 purpose of identifying the father of the infant of which the mother has been delivered, or which has been received with or without its mother into the institution, require the mother to make a declaration before a magistrate respecting the paternity of the infant:

Person in charge of institution may require mother to make declaration as to paternity of infant.

c.f. S.A. Act No. 210, s. 96.

Provided that no woman shall be required to make a declaration
 35 under this section, and no magistrate shall receive such declaration unless the magistrate is satisfied that the reasonable expenses of the maintenance of the mother and infant, or of the infant, as the case may be, in the institution have not been paid by or on behalf of the mother or infant for a period of two weeks immediately preceding the making
 40 of such declaration.

The mother of any infant who being required by a person in charge of such an institution as aforesaid, or by the chief officer, to make

make

Infant Protection.

make a declaration as aforesaid, shall refuse or neglect so to do, shall for every such offence, on conviction, forfeit and pay a sum not exceeding twenty-five pounds.

The mother of any infant who shall wilfully make a false
5 declaration before a magistrate respecting the paternity of her infant shall be deemed guilty of perjury.

11. Where any complaint has been made under this Act by a
woman for expenses in respect of an infant of which she is about to
be or has been delivered, she may, at the hearing of the complaint, be
10 compelled to give evidence; and where complaint has been made
under the Act by the chief officer or other reputable person on behalf
of a woman for such expenses, she may, at the hearing of the complaint,
be compelled to give evidence if it has first been proved to the
satisfaction of the court that she has made an allegation as to the
15 paternity of the infant. The admissions of a woman in giving evidence
under this section shall not be used against her in any criminal
prosecution, except for perjury committed while so giving evidence.

Women may in certain cases be compelled to testify.

12. In any order made after the birth of an infant under this
Act in respect of proceedings begun before or after birth, the court
20 may further order the payment by the defendant of the funeral
expenses of the mother if she has died during parturition, or in
consequence of parturition, within one month from the birth of the
child, and the funeral expenses of the child if it has died prior to the
making of the order.

Court may order payment of funeral expenses of mother and child.

(See 35 & 36 Vic., c. 65, s. 4.)

25 13. In any order under this Act, the court may further order
the payment of such costs by such persons as it thinks fit.

Court may order payment of costs.

14. If it appears to the court that both the father and mother
of an illegitimate infant are able to contribute to any of the expenses
mentioned in the preceding sections, the court, in making any order,
30 may direct the payment of such expenses by both the father and mother
in such proportions and in such manner as it thinks fit.

Mother also to contribute to expenses of maintenance.
(See Deserted Wives and Children Act No. 17, 1901, s. 7; N.Z. Act 58 Vic. No. 22, s. 10.)

15. Every order adjudging any sum to be paid for the
maintenance of an infant may be made to take effect from a date not
earlier than three months immediately preceding the date of the order,
35 or, if a previous order has been made, from the date when the last
preceding order ceased to have effect, and shall be of full force and
validity until the infant has, if a male, attained the age of fourteen
years, or has, if a female, attained the age of sixteen years, or until the
death of such infant if such death occurs within the respective periods
40 above mentioned: Provided that the court may in the order direct
that the payments to be made under it in respect of a male infant
shall continue until the infant attains the age of sixteen years, in
which case such order shall be in force until that period: Provided
also that for the purpose of recovering money previously due under
45 an order it shall always remain of full force and validity.

Period for which orders for maintenance may be made.

(c.f. Imperial Act 35 & 36 Vic., c. 65, s. 5; N.Z. Act 58 Vic. No. 22, s. 9.)

Infant Protection.

16. When an order is made under this Act for the payment of any expenses other than preliminary expenses the court may, immediately after pronouncing its decision, require the defendant to enter into a recognizance with sureties for the due performance, for a period not exceeding twelve months of such order, and in default of the defendant's immediately entering into such recognizance with the required sureties the court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order complied with.
17. Where an order has been made under this Act for the payment of expenses, or of moneys secured under recognizances, the court may, in a summary way and with or without any application for that purpose, make such orders in writing as it thinks necessary for better securing the payment and regulating the receipt of the expenses or moneys ordered to be paid, or for investing and applying the proceeds of the goods or rents ordered and directed to be sold or collected, or for ensuring the due appropriation of such expenses or moneys or for causing the child in respect of whom the order was made to be properly brought up and educated.
18. In making any order under this Act, the court may further, by the said order, authorise and direct some person forthwith to seize and sell the defendant's goods and to demand and receive his rents or such portions of the said goods or rents as the court thinks fit, and to appropriate the proceeds towards the payment of the expenses aforesaid in such manner as it from time to time directs, and if it appears on oath that the defendant has theretofore usually resided in New South Wales and has left the said State, the like order may be made and authority given by such court although no warrant or summons has been issued.
19. The court may at any time, in a summary way, inquire into any alleged disobedience of or non-compliance with any order made under this Act, and for such purpose may summon and examine all proper parties and witnesses, and may enforce compliance or may punish non-compliance with such order, by the committal of the offender until such order has been complied with, or by the infliction of a penalty not exceeding fifty pounds.
20. The court from time to time may, upon application made by or on behalf of the mother or infant or by or on behalf of the father, and upon notice given in such manner as the court shall direct to all parties to be affected thereby, vary any order made under this Act.
21. (1) Every summons or notice under this Act may be served on the defendant personally, or by leaving the same at his last or most usual place of residence.
- (2) The person serving the summons or notice may make an affidavit stating the mode and time and place of such service, and such affidavit may be received by the court as proof of the due service of the summons or notice.

Security for payment of amount may be ordered.

Deserted Wives and Children Act No. 17, 1901, s. 8.

Further orders may be made as to mode of payment of expenses.

Ibid. s. 10.

Seizure of defendant's goods.

Ibid. s. 9.

Disobedience of order may be punished.

Ibid. s. 11.

Court may vary order.

(See Deserted Wives and Children Act No. 17, 1901, s. 21.)

Service of summons or notice.

Ibid. s. 5.

Infant Protection.

22. (1) If a defendant against whom a summons has been issued does not appear in accordance therewith, the court, upon proof of the service of the summons, may issue a warrant for his apprehension, or may proceed in the case *ex parte*. Court may proceed *ex parte*.
Deserted Wives and Children Act No. 17, 1901, s. 6.
- 5 (2) In every case where a warrant has been issued, and the defendant cannot, after strict inquiry and search, be found to be taken thereon, the court may in like manner proceed in the case *ex parte*.
- 10 23. Any magistrate on being satisfied by oath that any defendant is about to remove out of New South Wales, or to remote parts thereof, to defeat any of the provisions of this Act or any order made hereunder, may issue his warrant for the apprehension of such defendant to be dealt with under this Act. Warrant may issue in certain cases.
Ibid. s. 13.
- 15 24. (1) Every person who wilfully refuses or neglects to comply with an order made against him under this Act, and goes or attempts or makes preparation to go beyond New South Wales, or to reside or is resident either permanently or temporarily beyond New South Wales, shall be deemed to be guilty of an indictable offence, punishable by imprisonment with hard labour for a term of not exceeding twelve months. Certain breaches of Act indictable when offender leaves New South Wales.
(See N.Z., 1894, No. 22, s. 17; Vic., 1901, No. 1737, s. 4.)
- 20 (2) No person convicted of an offence against this section shall be liable to any other penalty or punishment for such offence.
- 25 25. A committal to prison or conviction of an offence under this Act shall not prevent the making or operation of any order for the payment of money or the doing of any act by such person which may be lawfully made. Committal to prison not to prevent making or operation of orders.
- 30 26. Whenever the Legislature of any British possession beyond the limits of the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, and other than New South Wales, makes provision whereby the offence of desertion of children, and going to reside beyond the limits of such possession, is constituted an offence whether punishable on indictment or otherwise by imprisonment for a term of twelve months or more, then and in every such case every person accused of such offence and coming to New South Wales may be there arrested and dealt with under and pursuant to the provisions of the Act of the Imperial Parliament of Great Britain and Ireland, intituled the Fugitive Offenders Act, 1881, or any Act amending the same. Persons deserting children in other colony, &c., may be arrested in New South Wales.
(See Vic., 1901, No. 1737, s. 5; N.Z. Act, 58 Vic. No. 22, s. 23.)
44 & 45 Vic., c. 69; 7 V.S. 321.
- 40 27. Every person aggrieved by an order of a court under this Act may appeal to a court of quarter sessions against such order in the manner provided by the Justices Act, 1902, in respect of appeals to courts of quarter sessions: Provided that where an order is made by the court at any place, and a district court is held nearer to that place than a court of quarter sessions, such appeal may be made to such district court in the same manner as an appeal may be made to a court of quarter sessions under the said Act: Appeal to quarter sessions or district court.
- 45 Provided

Infant Protection.

Provided also that where an order is made before birth respecting the paternity of an infant, and the party aggrieved by the order gives notice of intention to appeal to a court of quarter sessions or district court, as the case may be, and desires that the appeal shall not be
 5 heard before the birth of the infant, such party shall state his or her desire in the notice, and in such case the appeal shall be heard at the first court of quarter sessions or district court, as the case may be, held after a period of one month from the birth has elapsed, or at
 10 any court of quarter sessions or district court succeeding such first held court and to which the hearing is postponed, but no appeal shall in such case be heard earlier than such first held court. Where an appeal respecting the paternity of an infant is to be heard after the birth of the infant, no order shall be made under section seven of this Act until and unless such appeal has been heard and determined.

15

PART III.

CARE OF INFANTS IN INSTITUTIONS.

Control of places established or used for reception of infants.

20 **28.** The person in charge of any place established or used for the reception and care of two or more infants under the age of seven years, apart from their mothers, shall make application to the Minister in the prescribed form and manner for a license in respect of such place.

The Minister shall thereupon require the board to make inquiry and report respecting such place, and the board shall thereupon make such inquiry, through the president or chief officer, and report.

25 The Minister upon receiving a report from the board in respect of such place may grant to the person in charge a license in respect of such place.

Every license shall be granted subject to such conditions and requirements as are prescribed.

30 **29.** For the purpose of making any inquiry and report as aforesaid respecting any place, or for the purpose of ensuring that the prescribed conditions and requirements are complied with and fulfilled in respect of any licensed place, the president of the board or the chief officer may, at any time, enter the place and inspect it and the infants
 35 who are inmates thereof, and the person in charge of the place shall, during the course of such inspection, afford the president or chief officer all reasonable facilities for making such inspection.

Any person who delays, hinders, or obstructs the president or chief officer in making any such inspection as aforesaid shall be
 40 liable to a penalty not exceeding twenty-five pounds.

30.

Infant Protection.

30. Where, on any inspection of a licensed place, the president of the board or the chief officer finds that any of the prescribed conditions or requirements are not complied with or fulfilled, the president or chief officer may give such directions to the person in charge as to it or him seems fit in order to ensure a compliance with and fulfilment of such conditions or requirements, or the board in such case may recommend to the Minister the cancellation of the license of such place, and the Minister may thereupon cancel such license, and any infants or inmates of such place may be removed therefrom by the board and placed in such place as to the board seems fit.

Where conditions of license not observed, board may give directions or Minister may cancel license.

31. Where at any time after the expiration of a period of three months from the commencement of this Act, any place is established or used for the reception and care of two or more infants under the age of seven years apart from their mothers, and is not licensed under the provisions of this Act, the person in charge of such place shall be liable to a penalty of not exceeding twenty-five pounds, and any infants who are inmates of such place may be removed therefrom by the board and placed in such care as to the board seems fit.

Penalties on person in charge of unlicensed place.

20

PART IV.

CHILDREN'S COURTS.

32. All complaints made under this Act or in respect of children deserted and left without means of support shall be dealt with by a magistrate, in this Act termed "the court."

Complaints shall be dealt with by magistrate.

25 33. Upon and during the hearing of any complaint made under this Act, or any complaint in respect of a child deserted or left without means of support, no person shall be or be permitted to be present in the court except the following—

Only certain persons to be present at hearing.
Vic. Act No 1809, s. 2.

- 30 (a) the adjudicating magistrate, the chief officer, the officers of the court, and a member of the police force ;
- (b) the complainant and the defendant, and their respective barristers and solicitors ;
- (c) the mother or sister, or other relative or friend of the complainant, if desired by such complainant ;
- 35 (d) any person whilst being examined as a witness ; and
- (e) the mother or sister, or female friend of any female witness, if desired by such witness whilst being examined,
- unless the court shall, in the interest of justice, permit any other person to be present.

Infant Protection.

PART V.

SUPPLEMENTARY.

34. All penalties under this Act shall be imposed and recovered before the court in the same manner as penalties are imposed and 5 recovered under the Justices Act, 1902. Recovery of penalties.

35. (1) The Governor may make regulations—

- Governor may make regulations.
- 10 (a) providing for the inspection of places established or used for the reception and care of infants under the age of seven years apart from their mothers ; or
- (b) providing for the notification by persons in charge of such places of the reception or death of infants, and of other particulars respecting infants received into such places ;
- 15 (c) prescribing generally the conditions and requirements subject to the observance and fulfilment of which licenses may be granted and continued under this Act ; and
- (d) generally for carrying into effect the provisions of this Act.

(2) All regulations made under this Act shall be published in the Gazette, and shall thereupon be in force, and shall be laid upon the table of both Houses of Parliament within fourteen days of such 20 publication, or if Parliament is not then sitting within fourteen days of the commencement of the next ensuing session.

Infant Protection Bill, 1903.

EXPLANATION OF PROVISIONS.

PART I.

PRELIMINARY.

Clause 1.

Short title.

Clause 2.

“Court” and “magistrate.”—Outside the metropolitan police district any two justices have, at present, jurisdiction in bastardy cases. Under this Bill the jurisdiction as to hearing and determining of bastardy cases will be confined to a stipendiary or police magistrate, either when constituting a children’s court as established under this Act in a proclaimed area or when sitting merely as a stipendiary or police magistrate outside of the proclaimed area. Further, under the present law, both within and without the metropolitan police district, complaints in bastardy may be made before any justice of the peace. Under the Bill these complaints can only be made before a stipendiary or police magistrate. (See clauses 4 and 8.) This limitation, combined with the necessity for producing corroborative evidence as to the paternity when making complaints (see clause 4), will, it is hoped, largely prevent the making of unfounded complaints and the harassing of innocent persons.

“Preliminary expenses.”—This definition is an extended form of the definition of confinement expenses in the South Australian and English Acts. It includes the expenses to which the mother has been put for maintaining herself whilst incapacitated from work for one month prior to parturition and three months after, with medical and nursing expenses incidental to confinement and maintenance of the infant. Provision as to the imposition and payment of these expenses will be found in clause 5 of the Bill.

Clause 3.

As the Bill embraces a complete scheme for the recovery of the expenses of maintenance of illegitimate children, this clause repeals so much of the Deserted Wives and Children Act as relates to such children. That Act will now be confined to proceedings for desertion and maintenance of wives and legitimate children.

PART II.

MAINTENANCE OF INFANTS.

Proceedings begun before birth.

Clause 4.

This clause is to some extent based upon the Imperial enactment referred to in the margin, which allows proceedings for maintenance to be brought before the birth of a child against the putative father. The provision, however, requiring corroboration as to the paternity when making a complaint is quite new. At present it is unnecessary when making any complaint to produce evidence corroborative of the mother’s testimony as to the paternity of the child, although on the hearing of such complaint such corroborative evidence is necessary. As above indicated under note to clause 2, this provision is intended to prevent the making of unfounded complaints.

Clause 5.

Although founded upon the enactments noted in the margin, which make provision for the payment of expenses prior to and of and incidental to birth, the provisions contained in subclauses (a) and (b) are to a great extent new. The procedure which it is intended to establish by the Bill is this:—On the hearing of a complaint before birth, the only question which will be gone into will be the question of the paternity of the infant. The question of the amount of future maintenance will be determined at a later hearing after the birth. If the paternity be proved, the defendant must deposit a sum, not exceeding £20, to cover preliminary expenses. This sum may be made payable by instalments, and to such person and at such times as the court directs. (See clause 17.)

It may be mentioned here that under clause 27 an appeal is given to quarter sessions from an order fixing paternity under this clause, and such appeal must, if the defendant desires, be heard after birth.

When the court has ordered these preliminary expenses to be paid, it may further order the putative father to find sureties that he will appear on a day fixed by the court and subsequent to the birth, when the amount of the maintenance of the child (if then born) will be gone into.

The latter part of subclause (b) and the first part of the next following paragraph as to a woman being quick with child, are in the South Australian Act, and are inserted to further protect an innocent person from being made the subject of an unfounded complaint. Corroboration of the woman's testimony is also necessary on this hearing before birth as to paternity.

Clause 6

Provides for the forfeiture of the recognizance taken under clause 5 in case the defendant does not appear; and provides also for the payment of the money secured thereby on behalf of the mother and infant.

Clause 7

Provides for the case of a defendant appearing on the day fixed. At this hearing, the paternity having been already established under clause 5, the only question which will be inquired into will be the amount of the maintenance.

Proceedings begun after birth.

Clause 8.

This clause is very similar to the existing law contained in section 4 of the Deserted Wives and Children Act, except that under the present law corroboration of the complaint is not necessary. For the reasons above stated (see notes to clauses 2 and 4) provisions are made in the clause for such corroboration.

Clause 9

Provides for the hearing and determination of the complaint and the settlement of the amount of maintenance. It also provides for the payment of preliminary expenses where the complaint has been made within a year from birth. In naming the sum for maintenance, it has been necessary to allow the court a wide discretion, for whilst 5s. per week is the least sum with which it is possible to maintain an infant, many cases occur in which the circumstances of the putative father warrant a much larger sum being awarded.

Miscellaneous.

Clause 10.

At present it constantly happens that women and their infants are received into and maintained in maternity homes, or other institutions supported by public funds or private charity, and no contribution is made to defray the cost of their maintenance, although the fathers of the infants may be in a position to support them. This clause is framed for the purpose of compelling a woman in such case to disclose the paternity of the infant in order that proceedings may be taken against the father for maintenance. As, however, the only object of the clause is as above stated, that is to ensure payment by those liable and able to pay, the proviso enacts that no declaration shall be asked for or received if proper provision is being made. The Imperial Act provides that where an infant is provided for by a Board of Guardians, they may proceed against the putative father for the cost of maintenance.

Clause 11

Provides for the refusal of a woman to testify after having herself made a complaint, or in the case of a complaint having been made by another person in consequence of her allegation as to paternity. This clause is to some extent corollary to the last-preceding one, and is aimed at preventing the cost of maintenance of infants being made a charge on the public funds and public charity.

Clause 12

Is based upon section 4 of the Imperial Act.

Clause

Clause 13

Explains itself.

Clause 14

Is founded on the Deserted Wives and Children Act, and is almost identical with the provision in the present Act, referred to in the margin.

Clause 15.

Under the present law in this State, the period for which an order may be made is not fixed. The practice, however, is to make orders enure for a term not exceeding a year. This, however, appears to entail unnecessary expense and trouble, and the clause therefore provides that orders may be made which will remain in force until the infant reaches the age of 14 years in the case of a male, or 16 years in the case of a female. If for any reason it is unnecessary to continue the payment of maintenance as so ordered, application may at any time be made to vary the order under clause 20.

Clause 16

Is copied from the present Act and is intended to provide for the case of non-compliance with an order for maintenance.

Clause 17

Confers on the court necessary powers of regulating its orders.

Clause 18.

This clause is analogous to a clause under the Deserted Wives and Children Act which is directed against husbands deserting their wives, and, although possessed of property, refusing or neglecting to comply with an order for maintenance.

Clause 19

Provides for a case of disobedience of an order.

Clause 20.

Under this clause the court may at any time vary its orders.

Clause 21

Is based on section 5 of the Deserted Wives and Children Act, but provides a simpler method of proof of service than does that section.

Clauses 22 and 23

Follow the present law.

Clause 24

Is based on the New Zealand and Victorian provisions, and makes it an indictable offence to wilfully refuse or neglect to comply with an order and going or attempting to go out of the State.

Clause 25

Is intended under this that any punishment by imprisonment shall not absolve a defendant from the obligation to pay maintenance.

Clause 26

Is similar to the Victorian and New Zealand enactments noted in the margin.

Clause 27

Provides for appeals to quarter sessions from orders made under the Act. It, however, frequently happens in the country that district courts are held at places where courts of quarter sessions are not held, and provision therefore is made in the clause for appeals to a district court where it is held nearer to the place where the order was made than a court of quarter sessions. This clause also enables a defendant to have his appeal heard after birth where proceedings have been begun before birth. An appeal is in no case permitted to be held earlier than a month from birth in order that the mother may attend, if necessary.

The last sentence of the clause prevents the question of the amount of maintenance being inquired into under clause 7, and the making of an order under that clause where there has been an appeal from the order of the court settling the paternity before birth.

PART

PART III.

CARE OF INFANTS IN INSTITUTIONS.

Control of places established or used for reception of infants.

Clause 28.

This clause and clause 31 *post* are intended to provide for a system of licensing places which are used for the purpose of receiving infants apart from or with their mothers. At present the State has no control over such places unless they are entirely or partly supported by the Government, and consequently unfit places may be established or used for the purposes mentioned.

Clause 29.

This clause gives a power of State inspection in respect of places used for the reception of children, and for the giving of directions as to the conduct of such places. The power does not exist at present, and is very necessary.

Clause 30

Provides for the cancellation of the license of licensed places where the prescribed conditions have not been complied with.

Clause 31

Is auxiliary to clause 28.

PART IV.

CHILDREN'S COURTS.

Clauses 12, 13, 14, 15, and 16.

These clauses provide for the establishment of special courts for the hearing of cases specially affecting children. The provisions have two objects: the first to ensure that these matters are dealt with apart from the ordinary police court business, and in the presence only of the persons directly interested; and, secondly, that they are dealt with by a specially qualified magistrate.

PART V.

SUPPLEMENTARY.

Clause 17

Provides for the recovery of penalties.

Clause 18

Provides for the making of regulations especially in respect of the licensing of institutions under Part IV.

Legislative Council.

No. , 1903.

A BILL

To make further and better provision for the protection, maintenance, education, and care of infants; to provide for the inspection, supervision, and control of places established or used for their reception and care; and to constitute children's courts.

[DR. MACKELLAR;—22 *July*, 1903.]

BE it enacted by the King'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:—

5

PART I.

PRELIMINARY.

1. This Act may be cited as the "Infant Protection Act, 1903." Short title.
 2. In this Act, unless the context or subject-matter otherwise Interpretation. indicates or requires,—
- 10 "Board" means State Children's Relief Board appointed under the State Children Relief Act, 1901.

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C 55—A

"Chief

“Chief officer” means the chief officer within the meaning of the Children’s Protection Act, 1902.

“Court” means children’s court established under this Act, or magistrate in any place not within an area within which a children’s court has jurisdiction. 5

“Justice” means justice of the peace.

“Magistrate” means stipendiary or police magistrate.

“Minister” means the Colonial Secretary.

“Preliminary expenses” means the expenses of the maintenance of the mother during a period of one month immediately 10 preceding the birth of her infant, reasonable medical and nursing expenses attendant upon the confinement of the mother, and the expenses of the maintenance of the mother and infant for three months immediately succeeding its birth.

“Prescribed” means prescribed by this Act or by any regulations 15 made hereunder.

Repeal of Deserted Wives and Children Act.

3. The Deserted Wives and Children Act, 1901, in so far as it relates to complaints in respect of illegitimate children and to proceedings consequent upon or incidental to such complaints, is hereby repealed. 20

PART II.

MAINTENANCE OF INFANTS.

Proceedings begun before birth.

Single woman with child may take proceedings against father.

See Imperial Act 35 & 36 Vic. c. 65, s. 3.

4. Where any single woman is with child by any man who has made no adequate provision for the payment of preliminary expenses 25 of and incidental to and immediately succeeding the birth of the infant, or the expenses of the future maintenance of the infant, she, or the chief officer or any other reputable person on her behalf, may make complaint on oath to any magistrate that she is with child by the said man, and that he has made no adequate provision for the payment of the 30 expenses aforesaid; and shall when making such complaint produce evidence on oath, either oral or on affidavit, in corroboration in some material particular of the allegation as to the paternity of the infant.

The magistrate may thereupon summon the man to appear before the court to answer such complaint; or, if the circumstances seem to 35 require it, may issue a warrant for his apprehension.

Court may require defendant to pay preliminary expenses.

See S. A. Act No. 702, ss. 3, 4; Vic. Act No. 1,684, ss. 2, 3; Imperial Act, 35 and 36 Vic., c. 65, s. 4.

5. The court shall hear and determine so much of such complaint as relates to the paternity of the infant, and may—

(a) order the defendant to deposit a sum not exceeding twenty 40 pounds for preliminary expenses; and

(b) 40

(b) further order the defendant to enter into a recognizance with one or more good and sufficient sureties to the satisfaction of the court for such amount as the court determines, as a security that within four months from the birth of the infant, and on such day as any magistrate, at any time not later than three months from the said birth, determines, and of which at least fourteen days' notice shall be given to the defendant by or on behalf of the complainant, the defendant will appear and show cause why he should not make such adequate provision as the court determines for the payment of the expenses of the maintenance and education of the infant after it has reached the age of three months. Every such order shall specify a date not later than five months thereafter when the order shall lapse if the infant has not been born, and if upon such date the infant has not been born the order shall lapse and the defendant and his surety or sureties shall be deemed to be released from their recognizances, and the unexpended portion of any moneys paid by the defendant as preliminary expenses shall be repaid to him.

The court shall not find that the woman is with child by the defendant unless it be proved by the evidence of some legally qualified medical practitioner that she is quick with child, and unless her evidence be corroborated in some material particular, or if the court be satisfied that at the time the infant was begotten the mother was a common prostitute.

In default of compliance with any order as aforesaid, the court may commit the defendant to prison for any term not exceeding twelve months: Provided that upon compliance with such order, at any time during such term of imprisonment, the defendant shall be released from prison.

6. If upon the day on which the defendant is bound to show cause as aforesaid, or upon any later day to which the proceedings are adjourned he does not appear, and it is proved to the satisfaction of the court that the infant has been born, and that the order binding the defendant to show cause has not lapsed, the recognizances entered into by the defendant and sureties before the birth shall be forfeited, and the moneys paid on behalf of the mother and infant.

7. If upon the day or later day mentioned in the last preceding section the defendant appears, and it is proved to the satisfaction of the court that the infant has been born and that the order binding the defendant to show cause has not lapsed, the court shall make an order for the payment by the defendant of a sum for the maintenance and education of the infant not less than five shillings and not more than twenty shillings per week.

Proceedings

Proceedings begun after birth.

Complaint may be made against father of illegitimate infant for leaving it without means of support.

(See local Act No. 17, 1901, s. 4; Imperial Act, 35 & 36 Vic., c. 65, s. 3.)

Court shall hear and determine complaint and may make order for maintenance.

8. In any case where the father of an illegitimate infant has left it without means of support, the mother of the infant, or the chief officer, or any other reputable person on behalf of the infant, may make complaint on oath to a magistrate; and shall, when making such complaint, produce evidence on oath, either oral or on affidavit, in corroboration in some material particular of any allegation in such complaint as to the paternity of the infant; and upon such complaint being made, the magistrate may summon the defendant to appear before the court to answer such complaint, or, if the circumstances seem to require it, may issue a warrant for his apprehension. 5

9. The Court shall hear and determine the complaint, and may make an order for the payment by the defendant of a sum for the maintenance and education of the infant not less than the rate of five shillings per week and not exceeding the rate of twenty shillings per week. 15

In any order made under this section in respect of a complaint brought within twelve months from the birth of the infant, the court may further order that the preliminary expenses to an amount not exceeding twenty pounds shall be paid by the defendant. 20

Miscellaneous.

Person in charge of institution may require mother to make declaration as to paternity of infant.

c.f. S. A. Act No. 210, s. 96.

10. Where any woman has been received into an institution established for the reception of women for confinement, and wholly or partly supported by the public funds or public subscription, and has there been delivered of an infant, or where a mother and her infant, or an infant apart from its mother, have or has been received into an institution established for the reception and care of infants with or without their mothers, and supported in like manner as aforesaid, the person in charge of the institution or the chief officer may, for the purpose of identifying the father of the infant of which the mother has been delivered, or which has been received with or without its mother into the institution, require the mother to make a declaration before a magistrate respecting the paternity of the infant: 25 30

Provided that no woman shall be required to make a declaration under this section, and no magistrate shall receive such declaration unless the magistrate is satisfied that the reasonable expenses of the maintenance of the mother and infant, or of the infant, as the case may be, in the institution have not been paid by or on behalf of the mother or infant for a period of two weeks immediately preceding the making of such declaration. 35 40

The mother of any infant who being required by a person in charge of such an institution as aforesaid, or by the chief officer, to make

make a declaration as aforesaid, shall refuse or neglect so to do, shall for every such offence, on conviction, forfeit and pay a sum not exceeding twenty-five pounds.

The mother of any infant who shall wilfully make a false declaration before a magistrate respecting the paternity of her infant shall be deemed guilty of perjury.

11. Where any complaint has been made under this Act by a woman for expenses in respect of an infant of which she is about to be or has been delivered, she may, at the hearing of the complaint, be compelled to give evidence; and where complaint has been made under the Act by the chief officer or other reputable person on behalf of a woman for such expenses, she may, at the hearing of the complaint, be compelled to give evidence if it has first been proved to the satisfaction of the court that she has made an allegation as to the paternity of the infant. The admissions of a woman in giving evidence under this section shall not be used against her in any criminal prosecution, except for perjury committed while so giving evidence.

Women may in certain cases be compelled to testify.

12. In any order made after the birth of an infant under this Act in respect of proceedings begun before or after birth, the court may further order the payment by the defendant of the funeral expenses of the mother if she has died during parturition, or in consequence of parturition, within one month from the birth of the child, and the funeral expenses of the child if it has died prior to the making of the order.

Court may order payment of funeral expenses of mother and child.

(See 35 & 36 Vic., c. 65, s. 4.)

13. In any order under this Act, the court may further order the payment of such costs by such persons as it thinks fit.

Court may order payment of costs.

14. If it appears to the court that both the father and mother of an illegitimate infant are able to contribute to any of the expenses mentioned in the preceding sections, the court, in making any order, may direct the payment of such expenses by both the father and mother in such proportions and in such manner as it thinks fit.

Mother also to contribute to expenses of maintenance.

(See Deserted Wives and Children Act No. 17, 1901, s. 7; N.Z. Act 58 Vic. No. 22, s. 10.)

15. Every order adjudging any sum to be paid for the maintenance of an infant may be made to take effect from a date not earlier than three months immediately preceding the date of the order, or, if a previous order has been made, from the date when the last preceding order ceased to have effect, and shall be of full force and validity until the infant has, if a male, attained the age of fourteen years, or has, if a female, attained the age of sixteen years, or until the death of such infant if such death occurs within the respective periods above mentioned: Provided that the court may in the order direct that the payments to be made under it in respect of a male infant shall continue until the infant attains the age of sixteen years, in which case such order shall be in force until that period: Provided also that for the purpose of recovering money previously due under an order it shall always remain of full force and validity.

Period for which orders for maintenance may be made.

(cf. Imperial Act 35 & 36 Vic., c. 65, s. 5; N.Z. Act 58 Vic. No. 22, s. 9.)

Security for payment of amount may be ordered.

Deserted Wives and Children Act No. 17, 1901, s. 8.

Further orders may be made as to mode of payment of expenses.

Ibid. s. 10.

Seizure of defendant's goods.

Ibid. s. 9.

Disobedience of order may be punished.

Ibid. s. 11.

Court may vary order.

(See Deserted Wives and Children Act No. 17, 1901, s. 21.)

Service of summons or notice.

Ibid. s. 5.

16. When an order is made under this Act for the payment of any expenses other than preliminary expenses the court may, immediately after pronouncing its decision, require the defendant to enter into a recognizance with sureties for the due performance, for a period not exceeding twelve months of such order, and in default of the defendant's immediately entering into such recognizance with the required sureties the court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order complied with. 5

17. Where an order has been made under this Act for the payment of expenses, or of moneys secured under recognizances, the court may, in a summary way and with or without any application for that purpose, make such orders in writing as it thinks necessary for better securing the payment and regulating the receipt of the expenses or moneys ordered to be paid, or for investing and applying the proceeds of the goods or rents ordered and directed to be sold or collected, or for ensuring the due appropriation of such expenses or moneys or for causing the child in respect of whom the order was made to be properly brought up and educated. 15

18. In making any order under this Act, the court may further, by the said order, authorise and direct some person forthwith to seize and sell the defendant's goods and to demand and receive his rents or such portions of the said goods or rents as the court thinks fit, and to appropriate the proceeds towards the payment of the expenses aforesaid in such manner as it from time to time directs, and if it appears on oath that the defendant has theretofore usually resided in New South Wales and has left the said State, the like order may be made and authority given by such court although no warrant or summons has been issued. 20

19. The court may at any time, in a summary way, inquire into any alleged disobedience of or non-compliance with any order made under this Act, and for such purpose may summon and examine all proper parties and witnesses, and may enforce compliance or may punish non-compliance with such order, by the committal of the offender until such order has been complied with, or by the infliction of a penalty not exceeding fifty pounds. 30

20. The court from time to time may, upon application made by or on behalf of the mother or infant or by or on behalf of the father, and upon notice given in such manner as the court shall direct to all parties to be affected thereby, vary any order made under this Act. 40

21. (1) Every summons or notice under this Act may be served on the defendant personally, or by leaving the same at his last or most usual place of residence.

(2) The person serving the summons or notice may make an affidavit stating the mode and time and place of such service, and such affidavit may be received by the court as proof of the due service of the summons or notice. 45

22. (1) If a defendant against whom a summons has been issued does not appear in accordance therewith, the court, upon proof of the service of the summons, may issue a warrant for his apprehension, or may proceed in the case *ex parte*. Court may proceed *ex parte*.
Deserted Wives and Children Act No. 17, 1901, s. 6.
- 5 (2) In every case where a warrant has been issued, and the defendant cannot, after strict inquiry and search, be found to be taken thereon, the court may in like manner proceed in the case *ex parte*.
- 10 23. Any magistrate on being satisfied by oath that any defendant is about to remove out of New South Wales, or to remote parts thereof, to defeat any of the provisions of this Act or any order made hereunder, may issue his warrant for the apprehension of such defendant to be dealt with under this Act. Warrant may issue in certain cases.
Ibid. s. 13.
- 15 24. (1) Every person who wilfully refuses or neglects to comply with an order made against him under this Act, and goes or attempts or makes preparation to go beyond New South Wales, or to reside or is resident either permanently or temporarily beyond New South Wales, shall be deemed to be guilty of an indictable offence, punishable by imprisonment with hard labour for a term of not exceeding twelve months. Certain breaches of Act indictable when offender leaves New South Wales.
(See N.Z., 1894, No. 22, s. 17; Vic., 1901, No. 1737, s. 4.)
- 20 (2) No person convicted of an offence against this section shall be liable to any other penalty or punishment for such offence.
- 25 25. A committal to prison or conviction of an offence under this Act shall not prevent the making or operation of any order for the payment of money or the doing of any act by such person which may be lawfully made. Committal to prison not to prevent making or operation of orders.
- 30 26. Whenever the Legislature of any British possession beyond the limits of the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, and other than New South Wales, makes provision whereby the offence of desertion of children, and going to reside beyond the limits of such possession, is constituted an offence whether punishable on indictment or otherwise by imprisonment for a term of twelve months or more, then and in every such case every person accused of such offence and coming to New South Wales may be there arrested and dealt with under and pursuant to the provisions of the Act of the Imperial Parliament of Great Britain and Ireland, intituled the Fugitive Offenders Act, 1881, or any Act amending the same. Persons deserting children in other colony, &c., may be arrested in New South Wales.
(See Vic., 1901, No. 1737, s. 5; N.Z. Act, 58 Vic. No. 22, s. 23.)
44 & 45 Vic., c. 69; 7 V.S. 321.
- 35 27. Every person aggrieved by an order of a court under this Act may appeal to a court of quarter sessions against such order in the manner provided by the Justices Act, 1902, in respect of appeals to courts of quarter sessions: Provided that where an order is made by the court at any place, and a district court is held nearer to that place than a court of quarter sessions, such appeal may be made to such district court in the same manner as an appeal may be made to a court of quarter sessions under the said Act: Appeal to quarter sessions or district court.
- 40
45
Provided

Provided also that where an order is made before birth respecting the paternity of an infant, and the party aggrieved by the order gives notice of intention to appeal to a court of quarter sessions or district court, as the case may be, and desires that the appeal shall not be heard before the birth of the infant, such party shall state his or her desire in the notice, and in such case the appeal shall be heard at the first court of quarter sessions or district court, as the case may be, held after a period of one month from the birth has elapsed, or at any court of quarter sessions or district court succeeding such first held court and to which the hearing is postponed, but no appeal shall in such case be heard earlier than such first held court. Where an appeal respecting the paternity of an infant is to be heard after the birth of the infant, no order shall be made under section seven of this Act until and unless such appeal has been heard and determined.

PART III.

15

CARE OF INFANTS IN INSTITUTIONS.

Control of places established or used for reception of infants.

Person in charge of place established or used for reception of infants may apply for license for such place, and Minister, on report of board, may grant license.

28. The person in charge of any place established or used for the reception and care of two or more infants, apart from or with their mothers, may make application to the Minister in the prescribed form and manner for a license in respect of such place. 20

The Minister shall thereupon require the board to make inquiry and report respecting such place, and the board shall thereupon make such inquiry, through the president or chief officer, and report.

The Minister upon receiving a report from the board in respect of such place may grant to the person in charge a license in respect of such place. 25

Every license shall be granted subject to such conditions and requirements as are prescribed.

President of board or chief officer may inspect places established or used for reception of infants.

29. For the purpose of making any inquiry and report as aforesaid respecting any place, or for the purpose of ensuring that the prescribed conditions and requirements are complied with and fulfilled in respect of any licensed place, the president of the board or the chief officer may, at any time, enter the place and inspect it and the infants who are inmates thereof, and the person in charge of the place shall, during the course of such inspection, afford the president or chief officer all reasonable facilities for making such inspection. 30 35

Any person who delays, hinders, or obstructs the president or chief officer in making any such inspection as aforesaid shall be liable to a penalty not exceeding twenty-five pounds. 40

30.

30. Where, on any inspection of a licensed place, the president of the board or the chief officer finds that any of the prescribed conditions or requirements are not complied with or fulfilled, the president or chief officer may give such directions to the person in charge as to it or him seems fit in order to ensure a compliance with and fulfilment of such conditions or requirements, or the board in such case may recommend to the Minister the cancellation of the license of such place, and the Minister may thereupon cancel such license, and any infants or inmates of such place may be removed therefrom by the board and placed in such place as to the board seems fit.

Where conditions of license not observed, board may give directions or Minister may cancel license.

31. Where at any time after the expiration of a period of three months from the commencement of this Act, any place is established or used for the reception and care of two or more infants apart from their mothers, and is not licensed under the provisions of this Act, the person in charge of such place shall be liable to a penalty of not exceeding twenty-five pounds, and any infants who are inmates of such place may be removed therefrom by the board and placed in such care as to the board seems fit.

Penalties on person in charge of unlicensed place.

20

PART IV.

CHILDREN'S COURTS.

32. For the purpose of dealing with complaints made under this Act, and with complaints made in respect of children deserted and left without means of support, the Governor shall by proclamation establish in Sydney special courts to be called children's courts, and may in like manner establish such courts in other places.

Governor may establish special courts for dealing with children.

Every such court shall consist of a stipendiary or police magistrate and shall have jurisdiction within the area named in the proclamation.

33. A children's court shall be held—

- (a) within the proclaimed area, in some room or place approved of in that behalf by the Minister, and not in any police office or court-house;
- (b) in any other place at the court-house of such place, but so that the hearing or trial shall take place at an hour other than that at which the ordinary business of the court is taken, unless the Minister by writing under his hand otherwise directs.

Children's courts must not be held in ordinary courts.

Only certain persons
to be present at
hearing.
Vic. Act No 1809,
s. 2

34. Upon and during the hearing of any complaint made under this Act, or any complaint in respect of a child deserted or left without means of support, no person shall be or be permitted to be present in the court except the following—

- (a) the adjudicating magistrate, the chief officer, the officers of the court, and a member of the police force; 5
- (b) the complainant and the defendant, and their respective barristers and solicitors;
- (c) the mother or sister, or female or male friend of the complainant, if desired by such complainant; 10
- (d) any person whilst being examined as a witness; and
- (e) the mother or sister, or female friend of any female witness, if desired by such witness whilst being examined,

unless the court shall, in the interest of justice, permit any other person to be present. 15

Powers of court.

35. (1) Every children's court shall—

- (a) exclusively exercise the powers and authorities which are possessed by stipendiary or police magistrates, courts of petty sessions, or justices in respect of complaints made respecting children deserted or left without means of support; 20
- (b) hear and determine all complaints and informations under this Act.

(2) The court so established may, accordingly as it is constituted by a stipendiary or police magistrate, exercise, within the area in which it has jurisdiction and in addition to, and for the purpose only of carrying into effect the powers and authorities hereby conferred, all the powers and authorities possessed by a stipendiary or police magistrate within the said area. 25

Jurisdiction of other
courts to cease.

36. Upon the publication of a proclamation as aforesaid, the jurisdiction of every stipendiary or police magistrate, court of petty sessions, and justice as aforesaid shall, within the area named in the proclamation, cease and determine in respect of the powers and authorities hereby conferred upon the children's court, except for the purpose of carrying into effect those powers and authorities:

Provided that no conviction, order, judgment, or proceeding whatsoever shall be invalidated or in any way affected by reason of the wrongful or erroneous exercise of any jurisdiction hereby made to cease and determine. 35

PART V.

SUPPLEMENTARY.

37. All penalties under this Act shall be imposed and recovered before the court in the same manner as penalties are imposed and recovered under the Justices Act, 1902. Recovery of penalties.

38. (1) The Governor may make regulations—

- Governor may make regulations.
- (a) providing for the inspection of places established or used for the reception and care of infants apart from their mothers; or
- 10 (b) providing for the notification by persons in charge of such places of the reception or death of infants, and of other particulars respecting infants received into such places;
- (c) prescribing generally the conditions and requirements subject to the observance and fulfilment of which licenses may be
- 15 (d) generally for carrying into effect the provisions of this Act.

(2) All regulations made under this Act shall be published in the Gazette, and shall thereupon be in force, and shall be laid upon the table of both Houses of Parliament within fourteen days of such publication, or if Parliament is not then sitting within fourteen days of the commencement of the next ensuing session.

