

Act No. 27, 1904.

INFANT
PROTECTION.

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. [17th December, 1904.]

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:—

PART I.

PRELIMINARY.

Short title.
Interpretation.

1. This Act may be cited as the "Infant Protection Act, 1904."
2. In this Act, unless the context or subject-matter otherwise indicates or requires,—

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

"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.

"Minister" means the Minister for the time being administering the State Children Relief Act, 1901.

"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.

"Prescribed" means prescribed by this Act or by any regulations 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in respect of illegitimate children, and to proceedings consequent upon or incidental to such complaints, is hereby repealed.

PART

Infant Protection.

PART II.

MAINTENANCE OF INFANTS.

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 with her consent the chief officer or, any other reputable person on her behalf, may make complaint in writing 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.

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—

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

(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.

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.

See S.A. Act 702, s. 7.

The court shall not make an order under this section against the defendant unless it be proved by the evidence of some legally qualified medical practitioner that the woman is quick with child, and

See S.A. Act 702, s. 6.

Infant Protection.

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.

Forfeiture of
recognizance
where defendant
does not appear.

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 so secured shall be applicable for the benefit of the mother and infant.

Order after birth
where the defendant
does appear.

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.

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)

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.

In any case where the mother of an illegitimate infant has left it without means of support, the chief officer or any reputable person on behalf of the infant may make complaint in writing on oath to a magistrate, 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 her apprehension.

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

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.

In

Infant Protection.

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.

10. 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 with her consent 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.

11. 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.)

12. 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.

13. 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; and if it appears to the court that the mother only is able to so contribute, it may direct the payment by her alone.

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.)

14. 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.)

15.

Infant Protection.

Security for payment of amount may be ordered.

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

15. 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.

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

Ibid. s. 10.

16. 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.

Seizure of defendant's goods.

Ibid. s. 9.

17. 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.

Disobedience of order may be punished.

Ibid. s. 11.

18. 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.

Court may vary order.

Ibid. s. 21.

19. 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.

Service of summons or notice.

Ibid. s. 5.

20. (1) Every summons or notice under this Act may be served on the defendant personally, or, if he cannot be found, by leaving the same at his last or most usual place of residence.

Infant Protection.

(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.

21. (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.

(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*.

22. 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.

23. (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.)

(2) No person convicted of an offence against this section shall be liable to any other penalty or punishment for such offence.

24. 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.

25. 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.

26. 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

Infant Protection.

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: 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: Provided also that at the request of either party the infant shall be produced in 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.

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 shall apply for license for such place, and Minister, on report of board, may grant license.

27. 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.

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.

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

28. 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 or his deputy duly appointed by the president in that behalf 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 or his deputy all reasonable facilities for making such inspection.

Any

Infant Protection.

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

29. Where, on any inspection of a licensed place, the president of the board or the chief officer or his deputy finds that any of the prescribed conditions or requirements are not complied with or fulfilled, the president or chief officer or his deputy 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.

30. 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: Provided always that nothing in Part III of this Act shall apply when bona fide blood relationship or guardianship approved by the board exists between the said infants and the persons by whom they are cared for.

Penalties on person in charge of unlicensed place.

PART IV.

CHILDREN'S COURTS.

31. For the purposes of dealing with complaints made under this Act or in respect of children deserted and left without means of support the court shall be constituted by a magistrate.

Court shall be constituted by a magistrate.

32. 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 court except the following—

Only certain persons to be present at hearing. Vic. Act No. 1803, 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)

Act No. 28, 1904.

Hyde, Cook, and Phillip Parks.

(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.

PART V.

SUPPLEMENTARY.

Recovery of penalties.

33. 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.

Governor may make regulations

34. (1) The 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
- (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 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 publication, or if Parliament is not then sitting within fourteen days of the commencement of the next ensuing session.