

DESERTED WIVES AND CHILDREN (AMENDMENT) ACT.

Act No. 33, 1931.

An Act to amend the Deserted Wives and Children Act, 1901, and the Deserted Wives and Children Amending Act, 1913, and certain other Acts; and for purposes connected therewith. [Assented to, 21st August, 1931.] George V.
No. 33, 1931.

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:—

1. (1) This Act shall be construed with the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, and may be cited as the "Deserted Wives and Children (Amendment) Act, 1931." Short title.
&c.

(2) The Deserted Wives and Children Act, 1901, as so amended, is hereinafter referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Deserted Wives and Children Act, 1901-1931.

2. The Principal Act is amended as follows:—

- (a) by omitting from section two the words "‘child’ includes an illegitimate child and ‘master’ includes mistress" and by inserting in lieu thereof the words "child does not include an illegitimate child";

(b)

Further amend-
ment of Act
No. 17, 1901.
Sec. 2.
(Interpreta-
tion.)

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Sec. 4.

Justice may
issue
summons or
warrant.

(b) by omitting section four and by inserting in lieu thereof the following new section :—

4. In any case where any husband or father—

- (a) has deserted his wife or child ; or
- (b) has left his wife or child without means of support ; or
- (c) is about to remove out of New South Wales without making adequate provision for the support of his wife or child and with the intention of deserting or leaving without support his wife or child,

any justice may, upon complaint on oath being made by such wife or by the mother of such child or by any reputable person on behalf of such wife or child, issue his summons requiring such husband or father to appear before two justices to show cause why he should not support such wife or child, or, upon being satisfied by oath of the fact of such desertion or leaving without support or intention to remove as alleged, may in any case in which the circumstances seem to him to require it, issue his warrant for the apprehension of such husband or father.

Sec. 5.

Service of
summons or
notice.

(c) by omitting section five and by inserting in lieu thereof the following new section :—

5. (1) Every summons or notice under this Act may be served on the defendant personally, or if he cannot conveniently be met with, then by leaving it for him at his last or most usual place of abode with some person apparently of or above the age of sixteen years.

(2) Service of a summons or notice in manner aforesaid may be proved by the oath of the person who served it or by affidavit or otherwise.

Sec. 7.

(Hearing and
consequent
orders.)

(d) (i) by inserting in paragraph (a) of subsection one of section seven after the words " means of support " the words " or that the defendant is about to remove out of New South Wales without making adequate provision for her support " ;

(ii)

- (ii) by inserting in paragraph (b) of the same subsection after the words "means of support" the words "or that the defendant is about to remove out of New South Wales without making adequate provision for the support of such child";
- (iii) by inserting in subsection two of the same section after the word "weekly" the word "fortnightly";
- (iv) by inserting in subsection two of the same section after the words "justices may order" the words "An order adjudging an allowance to be paid for the use of a wife or for the support of a child may be made to take effect as from a date not earlier than three months immediately preceding the date of the order";
- (v) by omitting from subsection three of the same section the words "or leaving without support alleged" and by inserting in lieu thereof the words "the leaving without support or the removal alleged";
- (vi) by omitting subsection four of the same section and by inserting the following subsection in lieu thereof:—
- (4) No order shall be made on the application of a wife if it shall be proved that she has committed adultery:
- Provided that the husband has not condoned, or connived at, or by his wilful neglect or misconduct conduced to such adultery.
- (vii) by inserting after subsection four of the same section the following new subsection:—
- (5) Where the hearing of a complaint is adjourned for any period exceeding one week the justices may order the husband or father to pay to the wife a weekly sum for the maintenance of the wife and any child or children in her custody until the final determination of the case:

Provided

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Provided that the order directing such payment shall not remain in operation for more than three months from the date on which it was made.

Any such order may be enforced in like manner as if it were a final order.

Further amendment of Act No. 17, 1901, s. 8

Security for payment of amount may be ordered.

3. (1) The Principal Act is further amended by omitting section eight and by inserting the following sections in lieu thereof:—

8. (1) Where an order under the last preceding section is made for the support of any wife or child any two justices may, from time to time, while the order remains in force, upon notice given in such manner as the justices shall direct, require the defendant to attend before them at the time and place specified in the notice, and there to show cause why he should not be ordered to enter into a recognizance with or without sureties for the due performance for a period not exceeding twelve months at any one time of such order.

(2) In default of the defendant immediately entering into the recognizance with the required sureties, if any, the justices may commit the defendant to gaol, there to remain for any period not exceeding twelve months or until the recognizance has been entered into or the said order complied with, for the period specified in the recognizance.

(3) Any justice, on due proof that any condition of the recognizance has not been complied with, may ex parte forfeit the recognizance.

(4) Any justice may, where the circumstances appear to require it, issue a warrant directing the apprehension of the defendant, and that he be brought before two justices for the purposes of this section, whether notice has been given to him or not.

Justices may attach annuity.

8A. (1) Where an order under section seven is made for the support of a wife the justices making the order may, instead of or in addition to any other order for relief under this Act, authorise and direct some person to demand and receive any annuity or other income payable to the husband,

or

or any moneys received or receivable or held by any person in trust to be paid periodically or by instalments or otherwise, to or for such husband, or such portion of such annuity or income or other moneys as the justices think fit, and to appropriate the proceeds towards such sum or allowance in such manner as they may direct.

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(2) While an order under section seven for the support of a wife remains in force any two justices may, from time to time, upon application made by the wife, by their order give the like authority and direction as is referred to in subsection one of this section.

(3) Notice of the application shall be given in such manner as the justices shall direct to all parties to be affected thereby.

(4) Every payment made in pursuance of any such direction or order shall be as valid as if made to the husband or by his authority, and such direction or order shall protect and indemnify any person acting in pursuance thereof.

4. The Principal Act is further amended—

Further amendment of Act No. 17, 1901.

- (a) (i) by omitting from section nine the words “if the justices besides being satisfied that the wife or child is in fact left without means of support, and that the defendant is able to contribute to the support of such wife or child, are also satisfied” and by inserting in lieu thereof the words “if the justices are satisfied that the wife or child is in fact left without means of support or”;
- (ii) by omitting from the same section the words “by their said order” and by inserting in lieu thereof the words “in and by any order made under section seven or at any time during the currency of the said order”;
- (iii) by inserting in the same section after the word “goods” wherever occurring the words “chattels or securities”;

(iv)

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

(2) While an order under section seven for the support of a wife or child remains in force any two justices may, if they are satisfied that the defendant has deserted such wife or child, from time to time upon application made by or on behalf of the wife or child, and upon notice given in such manner as the justices shall direct to all parties to be affected thereby, by their order give the like authority and direction.

Sec. 10.

(b) (i) by inserting in section ten, after the words “any two justices may” the words “at any time, either upon notice to the defendant or ex parte”;

(ii) by inserting in the same section after the word “goods” the words “chattels or securities”;

Substituted
s. 11.

(c) by omitting section eleven and by inserting in lieu thereof the following new section:—

Disobedience
of order.

11. (1) On complaint on oath being made to any justice that any person has disobeyed or not complied with an order made under this Act such justice may summon such person or issue his warrant for the apprehension of such person to answer such complaint.

(2) Any two justices may at any time in a summary way inquire into any such complaint, and may enforce compliance with the order by the committal of the offender to prison for a period of one day for every four shillings or part of four shillings found to be due, including the costs incidental to the hearing of the complaint, unless the said order be complied with; but no offender shall be detained for a longer period than twelve months, and the period of detention shall in every case be subject to the provisions of section ninety-four of the Justices Act, 1902.

Subject

Subject to the provisions of section 16A of the Prisons Act, 1899, the period of imprisonment served by an offender in accordance with the provisions of this subsection shall not be deemed to discharge the arrears for the non-payment of which he has been committed, but during such period the order for payment of maintenance shall be deemed to be suspended. No. 33, 1931.

No offender shall be liable to be imprisoned a second time for any arrears for which he shall have actually suffered imprisonment as provided in this subsection, but such arrears shall thereafter be a civil debt only, recoverable in any court of competent jurisdiction by the complainant to whom such arrears are due.

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

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

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

(4) Any justice to whom an application is made for a direction that the warrant be executed,

executed, may postpone the execution of the warrant upon such terms and conditions as he thinks fit, and if the offender breaks any term or condition upon which such a postponement is made, the justice may then direct the execution of the warrant.

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

(6) Where an order made under section seven contains a provision committing the legal custody of a child to the wife or other person, every person who makes default in complying with such order shall without prejudice to any other remedy open to such wife or other person, be liable to a penalty not exceeding fifty pounds, and to a further penalty of not exceeding one pound per day for each day he makes default in complying with the order.

Such penalty may be recovered in a summary way under the provisions of the Justices Act, 1902.

(7) Where it appears that the person against whom any proceedings under subsection six of this section are proposed to be instituted was not either directly or indirectly a party to the proceedings upon which the order under section seven was made, or would probably be unaware of the fact that such order for legal custody has been made, the justices to whom application is made for the issue of process may, if they think fit, or if the circumstances appear to so require, order that such person shall first be served with a copy of a minute of the order made under section seven.

5. The Principal Act is further amended by omitting section thirteen and by inserting in lieu thereof the following new section :—

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Further amend-
ment of Act
No. 17, 1901.
Substituted
s. 13.

13. Any justice, on being satisfied by oath that any husband or father cannot be found or is about to remove out of New South Wales, or has so removed to defeat any of the provisions of this Act or any order made hereunder, may issue his warrant for the apprehension of such husband or father to be dealt with under this Act.

Warrant
may issue in
certain
cases.

6. The Principal Act is further amended by inserting the following new sections after section thirteen :—

Further amend-
ment of Act
No. 17, 1901.
New ss. 13A, 13B.

13A. (1) Where an order has been made under section seven for the support of a wife or child and it is made to appear upon oath to a police or stipendiary magistrate that default has been made by the defendant in making the payments directed by the order, and that an amount of more than ten pounds is due thereunder, the magistrate may grant a certificate in the prescribed form stating the amount due under the order at the date thereof without requiring notice of the application to be given to the defendant.

Certificate of
amount due
and judgment
thereon.

(2) The person entitled to receive the money ordered to be paid may file or cause to be filed such certificate in the Supreme Court or in any District Court having jurisdiction within the district wherein the defendant resides or wherein any real property of his is situate, and the Prothonotary or the registrar of such District Court, as the case may be, shall enter judgment for such person for the amount stated to be due in the certificate together with the fees paid therefor and for filing the same and entering the judgment.

Such judgment may be enforced in any manner in which a final judgment in an action may be enforced.

Rules of court may prescribe the practice and procedure in the Supreme Court and in District Courts to be observed in connection with the filing of certificates and entering up of judgments thereon in pursuance of this section, and the fees to be paid.

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Jurisdiction
not ousted by
proceedings
in divorce,
&c.

13B. Orders may be made and enforced under this Act, notwithstanding that proceedings may have been instituted under the Matrimonial Causes Act, 1899, by a husband or a wife, or that an order has been made in the proceedings:

Provided that no order shall be made under this Act for the maintenance or support of a wife who at the date of the application is entitled to payment of alimony under an order made by the Supreme Court in its Matrimonial Causes jurisdiction or where at the date of the application a petition for alimony has been filed and is then pending.

Further amend-
ment of Act No.
17, 1901.Sec. 14.
(Evidence.)

7. The Principal Act is further amended—

(a) by omitting from section fourteen the words “but no admission or statement then made by such wife or husband shall be used upon any other occasion” and by inserting in lieu thereof the words “and any evidence then given by such wife or husband may be used in any court in proceedings to which such wife and husband are parties and in which she or he is a competent and compellable witness, or in proceedings for perjury committed while such evidence is given, but on no other occasion”;

Sec. 15 (1).

(b) by omitting from subsection one of section fifteen the words “upon proof of the falsity of the averments contained in the said affidavit” and by inserting in lieu thereof the words “upon proof of the falsity of the statements made in such evidence or of the falsity of the averments contained in the said affidavit”;

Sec. 15 (2).

(c) by omitting subsection two of section fifteen.

Further amend-
ment of Act
No. 17, 1901.

Sec. 21.

8. The Principal Act is further amended—

(a) (i) by omitting from section twenty-one the words “the application” and by inserting in lieu thereof the words “application by or on behalf”;

(ii) by omitting from the same section the words “any order made under section seven”

seven” and by inserting in lieu thereof the words “suspend or discharge any order made under Part II of this Act”;

(iii) by inserting at the end of the same section the following new subsections :—

(2) An application under this section shall be heard and determined by justices sitting at a place agreed upon by the parties or by justices sitting at the place where the order, the subject of the application for variation, suspension, or discharge was made if the parties or either of them are resident within the district, and if not, by justices sitting at a place in the district where the respondent resides :

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

(3) The justices may take into consideration all the circumstances of the case and the conduct and circumstances of the parties since the date of the order.

Where the justices are satisfied that any evidence relating to the conduct and circumstances of the parties prior to the date of the order was not available at the original hearing they may admit such evidence.

(4) An order may be varied, suspended, or discharged as from a date prior to the application, and may be varied or suspended from time to time.

(5) Where any two justices are satisfied that a husband and wife have resumed cohabitation and that the husband is supporting her, the justices shall, upon the application of the husband or wife, discharge any order made under this Act for the support of the wife.

(6) Where two justices are satisfied that a wife who has obtained any order under this Act for her support has since the date of the order

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order committed adultery, the justices shall discharge the order as from the date upon which they find that the act of adultery was committed :

Provided that the justices may, if they think fit,—

- (a) refuse to discharge the order if in their opinion the adultery was conducted to by the failure of the husband to make such payments as in the opinion of the justices he was able to make under the order ; and
- (b) in the event of the order being discharged, make a new order that the legal custody of the children of the marriage shall continue to be committed to the wife, and that the husband shall pay either weekly, fortnightly, or monthly, and to such person and in such manner as the justices may order, such allowance as they think reasonable for the support of the said children.

In making such an order the justices shall have regard primarily to the welfare of the children.

(7) The justices may entertain an application to vary, suspend, or discharge an order notwithstanding that the applicant is in default in complying therewith if they are satisfied that there are good and sufficient reasons for such default.

- (b) by inserting after section twenty-one the following new sections :—

21A. (1) Any person feeling aggrieved by any order or varied order made, or by the dismissal of a complaint or the refusal of any application under this Act, may appeal to a Court of Quarter Sessions in the manner provided by section one hundred and twenty-two of the Justices Act, 1902, and the provisions of the said Act applicable to appeals to quarter sessions shall apply to such appeal.

(2)

New ss. 21A,
21B, 21C.

Appeal.

(2) Where a defendant has not been served with a summons and the justices proceed *ex parte* in pursuance of subsection two of section six, the defendant may, if he desires to appeal to quarter sessions from the order made, give notice of appeal within twenty-one days after the order came to his knowledge.

21b. Where an order has been made for the support of a child, and the justices direct that the father shall have access to the child at such times and on such conditions as they think fit, any two justices may at any time vary or rescind any such directions.

Access to children.

If any such direction is disobeyed, the order for support may be varied in such manner as the justices think fit.

21c. One complaint may contain the allegation that a father has deserted or left without means of support more than one child, and one order may be made in respect of more than one child, but it shall specify the amount payable in respect of each child.

One complaint only necessary.

21d. If it appears upon the hearing of a complaint that a father has left his child without means of support, the justices shall make such orders as to the custody and maintenance of the child as may appear to them to be just, having regard primarily to the welfare of the child, and an order may be made notwithstanding that the father is willing to receive and maintain such child in his own home or elsewhere.

Welfare of child to be primarily regarded.

9. The Principal Act is further amended by inserting after section twenty-four the following new sections:—

Further amendment of Act No. 17, 1901, new ss. 25, 26.

25. In any order under this Act the justices may order the payment of such costs by such persons being parties to the proceedings as they think fit.

Costs.

26. The Minister may appoint either generally or in a particular case one or more officers of the Public Service to appear on behalf of a deserted wife or child in any proceeding under this Act.

Appearance by officers of Public Service.

Any

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Any such officer shall be entitled to appear and be heard on any such application.

Professional costs may be allowed in respect of any such appearance.

Where such costs are allowed to the person for whom such an officer appears they shall, when recovered, be paid to the Consolidated Revenue Fund.

Amendment of Act No. 9, 1913.

Sec. 4.

Sec. 5.

Amendment of Act No. 27, 1899.
Sec. 16A.

10. (1) The Deserted Wives and Children Amending Act, 1913, is amended—

- (a) by omitting section four;
- (b) by omitting section five.

(2) The Prisons Act, 1899, is amended—

- (a) by omitting from subsection one of section 16A inserted by the Deserted Wives and Children Amending Act, 1913, the words “sections eight or eleven of the Deserted Wives and Children Act, 1901, or sections five, fifteen, or eighteen of the Infant Protection Act, 1904,” and by inserting in lieu thereof the words “Part II of the Deserted Wives and Children Act, 1901–1931, or Part X of the Child Welfare Act, 1923”;
- (b) (i) by inserting in paragraph (a) of subsection three of the same section after the figures “1901” the hyphen and figures “–1931”;
- (ii) by omitting from the same paragraph the words and figures “Infant Protection Act, 1904,” and by inserting in lieu thereof the words and figures “Child Welfare Act, 1923”;
- (iii) by omitting from paragraph (b) of the same subsection the words and figures “section five or section fifteen of the Infant Protection Act, 1904,” and by inserting in lieu thereof the words and figures “Part X of the Child Welfare Act, 1923.”

Amendment of Act No. 75, 1902.

Sec. 4.

11. The Fines and Forfeited Recognizances Recovery Act, 1902, is amended—

- (a) by inserting in the proviso to section four after the words “articles of the peace” the words
“or

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“or for the due performance of an order made under the Deserted Wives and Children Act, 1901-1931;

- (b) by inserting next after section sixteen the following new section :--

16A. Any moneys recovered by the Sheriff in respect of a recognizance conditioned to secure the due performance of an order made under the Deserted Wives and Children Act, 1901-1931, shall, after deduction therefrom of the fees and expenses of the sheriff, be paid by him to the person entitled to payment under the order.

New s. 16A.
Payment in cases of recognizance to secure performance of orders made under the Deserted Wives and Children Act, 1901-1931.
