

# TASMANIA.

## THE MAINTENANCE ACT, 1919.

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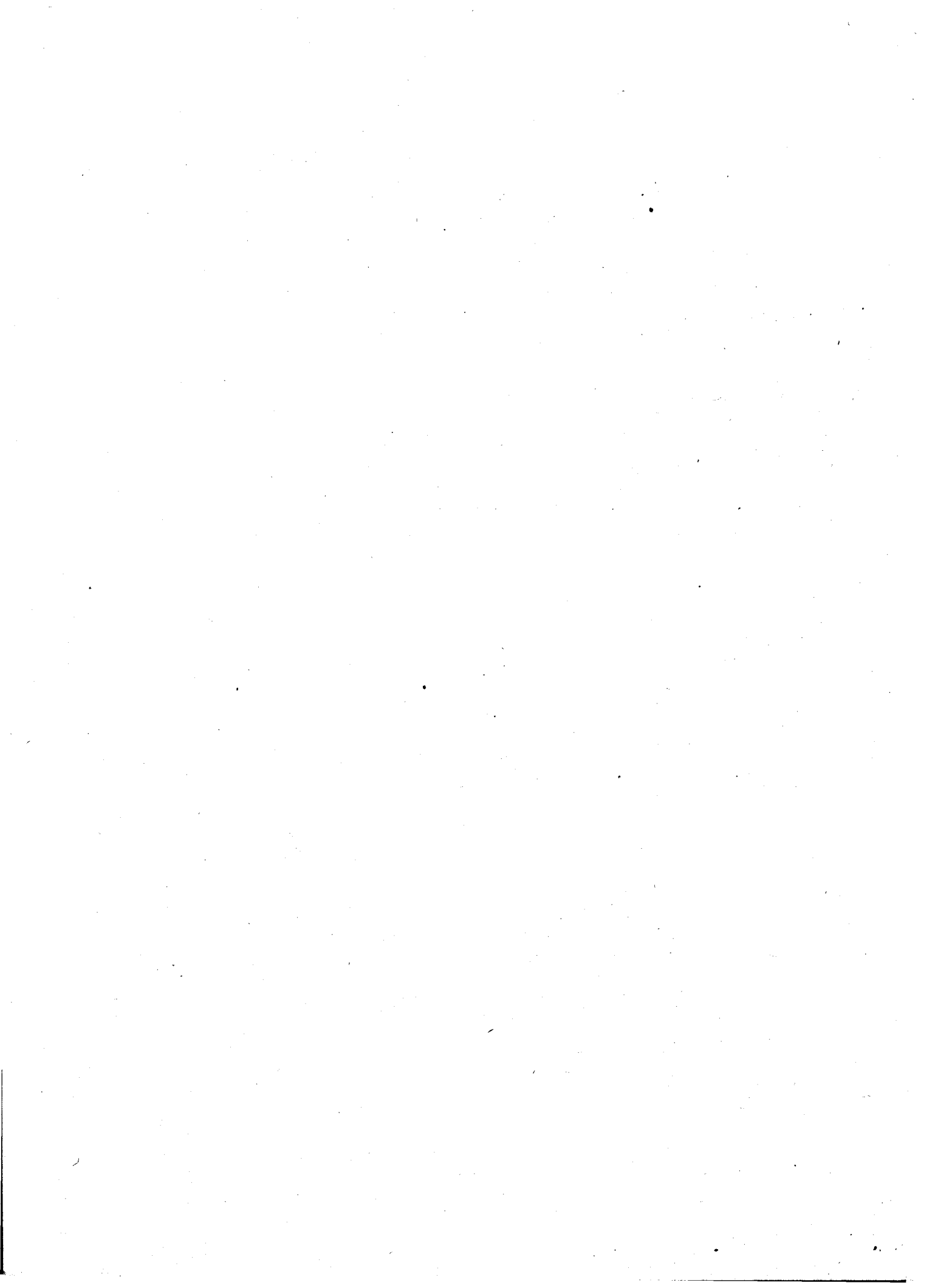
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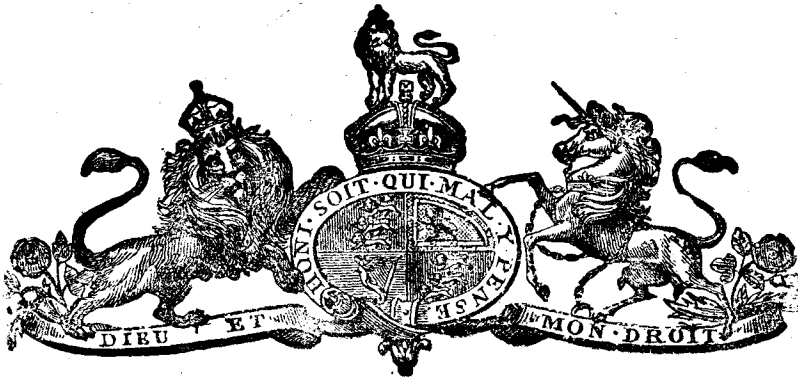
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TASMANIA.



1919.

ANNO DECIMO

GEORGII V. REGIS.

No. 62.



AN ACT to consolidate and amend "The Deserted Wives' and Children's Maintenance Act, 1873," "The Infant Life Protection Act, 1907," and "The Summary Jurisdiction (Married Persons) Act, 1909," and for other purposes. [6 January, 1920.]

A.D.  
1919.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as "The Maintenance Act, 1919."

Short title.

2 The Acts set forth in Schedule (1) to this Act are hereby repealed to the extent therein mentioned.

Extent of repeal

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Division of Act.

**3** This Act is divided in Parts, as follows:—

Part I.—Married and other Persons and Legitimate Children.

Part II.—Maintenance of Illegitimate Children.

Part III.—General.

## PART I.

## MARRIED AND OTHER PERSONS AND LEGITIMATE CHILDREN.

By and to whom orders may be applied for.  
60 Vict. No. 10, s. 2 (W.A.).  
60 Vict. No. 15, s. 3 (N.Z.).  
Ct. 37 Vict. No. 14.

**4** Any—

i. Married person whose husband or wife—

(a) Shall have been convicted of an aggravated assault upon her or him within the meaning of Section Forty of the Act (27 Victoriae, No. 5); or

(b) Shall have deserted her or him; or

(c) Shall have been guilty of cruelty or misconduct to her or him, or wilful neglect to provide reasonable maintenance for her or him or his or her infant children whom he or she is legally liable to maintain, and shall by such cruelty or neglect or other misconduct have, in the opinion of the police magistrate, rendered it unjust that the applicant should be longer compelled to live with the defendant; or

(d) Shall be guilty of habitual drunkenness; or

(e) Shall have been guilty of adultery unless the complainant has condoned or connived at, or by his or her wilful neglect or by his or her misconduct conducted to such adultery—

ii. Person purporting to act on behalf of any child whether related to or authorised by such child or not: and

iii. Woman with whom any man is proved to have cohabited for a period of Twelve months immediately previous to the act complained of, and to have deserted her, or left her without means of support, or been guilty of cruelty towards her, and caused her on that account alone to leave him (unless she shall have subsequently committed adultery with another man)—

Cf. 37 Vict. No. 14, s. 1, ss. (2).

may apply to a police magistrate for an order or orders under this part.

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5 Upon the oath of some credible person that such person has good reason to believe, upon grounds to be stated in his deposition, and that he does believe, that any husband or wife or father or mother is about to leave the State without making due provision for the maintenance of his wife or her husband or his or her child, it shall be lawful for any police magistrate, without the issue of any summons, to issue his warrant for the apprehension of such husband or such wife or parent to be dealt with as hereinafter provided.

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Where husband, &c., about to leave State warrant may issue in the first instance.  
37 Vict. No. 14, s. 3.

6—(1) In the case of an application by a married person, the said magistrate, upon an application under this part of the Act, may make an order or orders containing all or any of the provisions following, viz.—

Powers of magistrate.  
*Ibid.* (W.A.), s. 3.  
*Ibid.* (N.Z.), s. 4.

- I. A provision that the applicant shall live apart from the defendant (which provision, while in force, shall have the effect in all respects of and shall be deemed to be a decree of judicial separation on the ground of cruelty) :
- II. A provision that the legal custody of any children of the marriage between the parties shall, while under the age of Sixteen years, be committed to the applicant :
- III. A provision that the defendant shall pay to the applicant personally, or for his or her use to a clerk of petty sessions, or to a Third person on behalf of the applicant, such weekly or other periodical sum as the magistrate, having regard to means both of the husband and wife, shall consider reasonable.

(2) In the case of an application by a person purporting to act on behalf of a child—

A provision that the father or the mother of such child shall pay to such applicant, or to the clerk of petty sessions, or to some other person, such weekly or other periodical sum, and in such manner as the police magistrate shall consider reasonable, for the maintenance, education, and support of such child.

(3) In the case of an application under Subsection (3) of Section Four of this part :—

Cf. s. 1, ss. (2), of 37 Vict. No. 14.

A provision that the defendant shall pay to the applicant personally, or for her use to a clerk of petty sessions, or to a third person on her behalf, such weekly or other periodical sum as the magistrate, having regard to the means of each party, shall consider reasonable.

(4) And in any of the above cases—

- I. A provision for payment by the applicant or the defendant, or both of them, of such court fees, costs, and expenses, as the magistrate may think fit :
- II. The fact that the applicant and the defendant have made an agreement regarding the matters aforesaid, or any of them, shall not be a bar to the jurisdiction of the magistrate to

*Pape v Pape*,  
57 L.J.M.C. 3.

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make any such order as is hereby authorised, if such agreement has not been observed by the defendant, or if the amount of payments thereby provided is in the opinion of the magistrate inadequate.

Limitation of powers.

*Ibid.*(W.A.), s. 4.  
*Ibid.* (N.Z.), s. 5.

**7** No orders shall be made under Subsection (1) of Section Six of this Act if it is proved that the applicant has committed an act of adultery: Provided that the defendant has not condoned, or connived at, or by his or her wilful neglect or by his or her misconduct conduced to such act of adultery.

Magistrate may vary or discharge order.

*Ibid.* (W.A.), s. 5.  
*Ibid.* (N.Z.), s. 6.

**8** Any police magistrate may, on the application of either party, and upon cause being shown upon fresh evidence to the satisfaction of the magistrate at any time, alter, vary, or discharge any such order, and may upon any such application from time to time increase or diminish the amount of any weekly payment ordered to be made.

If any party upon whose application an order shall have been made under this part of the Act—

i. Voluntarily resumes cohabitation with the defendant: or

ii. Commits an act of adultery—

such order shall, upon proof thereof, be discharged, in so far as regards any moneys thereafter payable to or to the use of the applicant personally.

Order lapses when child sixteen or marries.  
62 Vict. No. 46, s. 3.

If child placed in institution under "The Children's Charter," (9 Geo. V. No. 15), maintenance to be paid to superintendent, secretary, or managers.

*Ibid.*, s. 15.

**9** No order for the maintenance of any child under this part of the Act shall be of any force or effect after such child attains the age of Sixteen years, or, if a female, marries, whichever event first happens.

**10** If any child for whose maintenance an order is made under this Act is at any time thereafter placed in an institution for neglected children, under the provisions of "The Children's Charter" (9 Geo. V. No. 15), then and in every such case the amount ordered to be paid for such child's maintenance shall be paid to the superintendent, secretary, or managers of such institution, as the case may be, in the same manner in all respects as if such superintendent, secretary, or managers had been named in such order instead of the person therein named; and all proceedings may be had and taken for enforcing payment to such superintendent, secretary, or managers of the sum ordered to be paid as fully and effectually as if the superintendent, secretary, or managers had been named in such order.

Magistrate may refuse an order in cases more fit for Supreme Court.  
*Ibid.* (W.A.), s. 8.

**11** If, in the opinion of the magistrate, any of the matters in question between the parties, being married persons, would be more properly dealt with by the Supreme Court, the magistrate may refuse to make an order under this part of the Act, and in such case no appeal shall lie from such decision.

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## PART II.

## MAINTENANCE OF ILLEGITIMATE INFANTS.

- 12** In this part of the Act, unless the context otherwise indicates—
- “Commissioner” means the person for the time being holding the office of Commissioner of Police, or the person for the time being appointed by the Governor in the place of the Commissioner of Police.
- “Preliminary expenses” means the expenses of the maintenance of the mother during a period of Two months 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 Two months immediately succeeding its birth.

Interpretation.  
Vic. No. 1198, s. 3.  
5 Ed. VII. No. 19, s. 4 (Q.).  
7 Ed. VII. No. 51, s. 16.  
Cf. No. 27, 1904, s. 2 (N.S.W.).

- 13**—(1) 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 Commissioner or any other reputable person on her behalf, may make complaint in writing on oath to a police 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 other evidence which tends to establish the truth of the allegations in the complaint.

Single woman with child may take proceedings against father.  
Cf. Imperial Act 35 and 33 Vict., ch. 65, s. 3.  
Cf. *ibid.* (N.S.W.), s. 4.

A police magistrate may thereupon summon the said man to appear before a police magistrate (hereinafter in this part referred to as “the Court”) to answer such complaint, or, if he thinks the circumstances require it, may issue a warrant for the apprehension of the said man.

- (2) If the complainant be pregnant, but the child has not quickened, when such summons comes on for hearing, it shall be lawful for the Court in its discretion to adjourn the hearing of the same to a certain time and place to be then appointed, and stated in the presence and hearing of the complainant and defendant, or their respective attorneys or agents, then present; and in the meantime the said Court may commit the defendant to some gaol or other custody, or suffer him to go at large upon his entering into a recognizance as per form in Schedule (2) and notice, Schedule (3), or to the like effect with or without a surety or sureties at the discretion of such police magistrate, conditioned for his appearance at the time and place to which such hearing shall be adjourned: Provided that if the defendant shall not appear at the time and place mentioned in such recognizance, the same shall thereupon become forfeited, and the police magistrate who took the recognizance, or any other police magistrate then present, shall certify upon the back of such forfeited recognizance the non-appearance of the defendant. Such certificate shall be in form in Schedule (4) to this Act, or to the like effect.

If complainant not quick with child defendant may be bound over to appear at later date.  
Cf. 19 Vict. No. 8, s. 17.

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Court may require defendant to pay preliminary expenses.  
See S.A. Act, No. 707, ss. 3, 4.  
Vic. Act, No. 1684, ss. 2, 3.  
Imperial Act, 35 and 36 Vict., c. 65, s. 4.  
*Ibid* (N.S.W.), s. 5.

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

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

Forfeiture of recognizance where defendant does not appear.  
*Ibid*. (N.S.W.), s. 6.

**14** In any case other than that provided for in Subsection (2) of Section Thirteen, the Court shall hear and determine so much of the complaint as relates to the paternity of the infant, and may—

- I. Order the defendant to deposit with the clerk of the Court a sum not exceeding Twenty Pounds for preliminary expenses, or to make such other provisions for the payment of the preliminary expenses as the Court deems satisfactory: and
- II. Further order the defendant to pay any expenses that may have been incurred in or relative to securing his appearance to answer the complaint: and
- III. 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 Three months from the birth of the infant, and on such day as any police magistrate at any time determines, and of which at least seven days previous 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 two 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 make an order under this section against the defendant—

- I Unless it be proved by the evidence of some legally-qualified medical practitioner that the child has quickened:
- II. Unless the evidence of the complainant is supported by other evidence which tends to establish the truth of the evidence given by the complainant:
- III. If the Court is 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.

**15** If upon the day on which the defendant is bound to show cause as in the preceding section, 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



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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. — A.D. 1919

**16** 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. Order after birth where the defendant does appear. *Ibid.* (N.S.W.), s. 7.

**17** In any case where the father of an illegitimate infant has left it without means of support, the mother of the infant, or the Commissioner, or any other reputable person on behalf of the infant, may make complaint on oath to a police magistrate; and upon such complaint being made, the police 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 Imperial Act, 35 and 36 Vict., c. 65, s. 3.

In any case where the mother of an illegitimate infant has left it without means of support, the Commissioner, or any reputable person on behalf of the infant, may make complaint in writing on oath to a police magistrate; and upon such complaint being made, the police 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. No man shall be deemed to be the father of any illegitimate child unless the evidence of the complainant is supported by other evidence which tends to establish the truth of the evidence given by the complainant. *Ibid.* (N.S.W.), s. 8.

**18** On the hearing of any complaint as mentioned in Section Seventeen, the Court may make— Court shall hear and determine complaint, and may make order for maintenance. *Ibid.* (N.S.W.), s. 9.

- i. An order for payment by the defendant of any expenses that may have been incurred in or relative to securing the appearance of the defendant to answer the complaint;
- ii. An order for the payment by the defendant of a sum for the maintenance and education of the infant.

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.

**19** Where any complaint has been made under this part of the 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 this part of the Act with her consent by the Commissioner 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 Woman may in certain cases be compelled to testify. *Ibid.* (N.S.W.), s. 10.

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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.

Court may order payment of funeral expenses of mother and child.  
See 35 and 36 Vict., c. 65, s. 4.  
*Ibid.* (N.S.W.), s. 11.

**20** In any order made after the birth of an infant under this part of the 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 costs.  
*Ibid.* (N.S.W.), s. 12.

**21** In any order under this part the Court may further order the payment of such costs by such persons as it thinks fit.

Mother also to contribute to expenses of maintenance.  
See N.Z. Act, 58 Vict. No. 22, s. 10.  
*Ibid.* (N.S.W.), s. 13.

**22** 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.

Period for which orders for maintenance may be made.

**23** Every order adjudging any sum to be paid for the maintenance of an infant under this part, 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 Sixteen years, or has, if a female, attained that age or married, or until the death of such infant, if such death occurs within the respective periods abovementioned: Provided also, that for the purpose of recovering money previously due under an order it shall always remain of full force and validity.

Cf. Imperial Act, 35 and 36 Vict., c. 65, s. 5.  
N.Z. Act, 58 Vict. No. 22, s. 9.  
*Ibid.* (N.S.W.), s. 14.

**24** Where an order has been made under this part of the 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.

Further orders may be made as to mode of payment of expenses.  
*Ibid.* (N.S.W.), s. 16.

**25** 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 part of the Act,

Court may vary order.  
*Ibid.* (N.S.W.), s. 19.

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**26** Any police magistrate, on being satisfied by oath that any defendant is about to remove out of Tasmania, or to remote parts thereof, to defeat any of the provisions of this part of the Act or any order made hereunder, may issue his warrant for the apprehension of such defendant to be dealt with under this Act.

**27**—(1) Every person who wilfully refuses or neglects to comply with an order made against him under this part of the Act, and goes or attempts or makes preparation to go beyond Tasmania, or to reside or is resident either permanently or temporarily beyond Tasmania, shall be deemed to be guilty of a misdemeanor, punishable by imprisonment with hard labour for a term not exceeding Twelve months.

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

**28** A committal to prison or conviction of an offence under this part of the 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.

**29**—(1) The occupier of every house or place in which an illegitimate infant is born shall, within Three days after the birth of such child, give notice thereof in writing to the registrar or deputy-registrar of births and deaths for the district.

(2) The occupier of every house or place in which an illegitimate infant under the age of Five years dies, or to which the body of an illegitimate infant who has died under the age of Five years is brought, shall, within Twenty-four hours after the death of such infant or the reception of its body, give notice in writing of such death to the registrar or a deputy registrar of births and deaths for the district.

(3) But if such house or place is not situated within any city or town, then such notice may be given either to the registrar or deputy-registrar, or to the officer in charge of the nearest police station, and may be given at any time within One week after the birth or death of such infant or the reception of its body, as the case may be.

(4) If the occupier of such house or place is the mother of the new-born infant, such notice may be given at any time within Three weeks after the birth of the infant.

(5) If any notice under this section is sent by post, it shall be posted at such time as to allow it in ordinary course of post to be delivered within the time hereinbefore specified.

(6) Nothing in this section shall be construed to impose any liability on such occupier if the court is of opinion that such occupier did not believe the illegitimate infant to be illegitimate.

(7) Nothing in this section shall be construed to repeal or otherwise affect the provisions of "The Registration of Births and Deaths Act, 1895," or any Amendment thereof.

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Warrant may issue in certain cases.

*Ibid.* (N.S.W.), s. 22.

Certain breaches of Act to be misdemeanors when offender leaves Tasmania. See N.Z., 1894, No. 22, s. 17. Vic., 1901, No. 1737, s. 4. *Ibid.* (N.S.W.), s. 23.

Committal to prison not to prevent making or operation of orders.

Notice of birth or death of illegitimate infants. Vic., No. 1198, ss. 18, 19.

*Ibid.* (Q.), s. 17

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## PART III.

## GENERAL.

Cost of bringing defendant back in certain cases to be borne by the State.  
7 Ed. VII. No. 22, s. 4.

**30** In any case where under any part of this Act—

- i. A complaint has been made that any wife has been left by her husband, or that any child has been left by its father, without means of support: and
- ii. A summons has been duly served upon such husband or father out of Tasmania directing him to appear before a police magistrate, to show cause why he should not support his wife or child: and
- iii. An application is made for a warrant to apprehend the defendant in consequence of his failing to attend in obedience to the summons so served upon him as aforesaid—

and the magistrate decides to issue the said warrant, if after making an inquiry upon evidence he be satisfied that there is a *prima facie* case against the defendant, and certify to the Attorney-General of Tasmania, such certificate being accompanied by a copy of the evidence, that the expenses relative to securing the appearance of the defendant to answer the complaint ought, in the opinion of the magistrate, to be borne by the State, such expenses shall be borne by the State unless the Attorney-General shall, within Fourteen days after receiving the certificate, have stated in writing to the magistrate his reason for thinking that there is not a *prima facie* case against the defendant, or that the expenses relative to securing the appearance of the defendant ought not to be borne by the State.

A husband or wife guilty of conduct which makes continued cohabitation only possible upon conditions which self-respect will not allow, deemed guilty of desertion.

*Moss v. Moss*,  
15 C.L.R. 241.

Security for compliance with order.

37 Vict. No. 14,  
s. 6.

7 Ed. VII. No. 22,  
s. 3 (2).

**31** Under this Act a husband or wife shall be deemed to have deserted his or her spouse where it is proved to the satisfaction of the police magistrate before whom any proceedings are instituted against a defendant in respect of such desertion, that such defendant has by his or her conduct shown that continued cohabitation is only possible for his or her spouse upon conditions which a self-respecting man or woman cannot be expected to accept.

**32** When any order is made under this Act, it shall be lawful for the police magistrate, if he thinks fit, immediately upon pronouncing his decision, to require the defendant to enter into a recognizance with a surety or sureties for the due compliance with such order; and in default of the defendant immediately entering into such recognizance with such surety or sureties as the police magistrate requires, it shall be lawful for him to commit such defendant to some gaol, there to be imprisoned, with or without hard labour as he sees fit, until such recognizance has been entered into. No person committed to a gaol as aforesaid shall be detained under such commitment for more than Six months from the time of such commitment. The provisions of this section shall extend and apply to any order directing the defendant to pay the amount of any expenses that may have been incurred, in or relative to securing his or her appearance to answer to the complaint.

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**33** Upon or after the making of any order under this Act, the police magistrate may further order, authorise, and direct some person forthwith to seize and sell the defendant's goods and to demand and receive his or her rents, annuity, or other income or such portions of the said goods or rents or annuity or other income as he thinks fit, and to appropriate the proceeds towards the payment of the expenses aforesaid in such manner as he from time to time directs; and if it appears on oath that the defendant has theretofore usually resided in Tasmania, and has left the said State, the like order may be made and authority given by such police magistrate although no warrant or summons has been issued.

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Seizure of defendant's goods, &c. *Ibid.* (N.S.W.), s. 17.  
37 Vict. No. 14, s. 7.

**34** When under this Act the police magistrate authorises and directs some person to seize and sell the defendant's goods and chattels, or to demand and receive any rents, annuity, or other income, or any moneys payable to or for the defendant as such police magistrate directs, then upon proof of the possession by any person of any goods or chattels, or of any moneys or income belonging to the defendant, it shall be lawful for such police magistrate, by an order in writing under his hand, to direct the person in whose possession the same then are to surrender such goods and chattels, or to pay such moneys or any part thereof, to the person authorised and directed by such police magistrate to receive the same, for the purpose of defraying the amount ordered to be paid for the maintenance of such wife, husband, or child.

Persons in possession of goods or moneys may be ordered to give them up. Cf. 37 Vict. No. 14, s. 9.

**35** It shall be lawful for the police magistrate by whom any order under this Act has been made, or for any other police magistrate, from time to time in a summary way (with or without any application for that purpose), to make such orders in writing as he thinks necessary for better securing the payment and regulating the receipt of the allowance directed to be made by the defendant, or for investing and applying the proceeds of the goods or rents, annuity or other income, if any, directed to be sold or collected, or for ensuring the due appropriation of such allowance to the *bona fide* purposes of maintenance, or generally for the benefit and maintenance of the applicant or the defendant's child or children, as the case may be.

Proceedings for securing the payment and application of maintenance.

**36** If it is made to appear to the satisfaction of any police magistrate by proof upon oath, without the previous issue either of a summons or warrant, that any husband, wife, or father or mother has left the State without making due provision for the maintenance of his wife or her husband or his or her child, then it shall be lawful for such police magistrate, by an order under his hand, to authorise and direct some person forthwith to seize and sell such husband's, wife's, or parent's goods and chattels, and to demand and receive his or her rents, annuity, or other income, or any money or moneys received or receivable, or held by any person or persons in trust, to be paid periodically, or by instalments or otherwise to or for such husband, wife, or parent, or such portion of the same respectively as the police magistrate thinks

Where defendant has left the State without making provision as ordered, his goods, &c., may be seized. 37 Vict. No. 14, s. 8.

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fit, and to appropriate the proceeds of such seizure and sale, or such rents or other moneys, towards the maintenance of such husband, wife, or child, in such manner as he may from time to time direct; and every payment made in pursuance of any such order shall be as valid as if made to the defendant, or to some person for him or her, and shall protect and indemnify every person acting in pursuance of such order.

Disobedience of order may be punished.  
No. 27 of 1904, (N.S.W.), s. 18

**37** The police magistrate may, at his discretion, where not otherwise provided, make such order in any particular case as the merits render desirable, and may at any time, in a summary way, inquire into any alleged disobedience of or non-compliance with any order or any orders made under any part of 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 any order whatsoever made under any part of this Act by the committal of the offender for any period not exceeding Six months (unless such order being for the payment of money, is sooner complied with), or by the infliction of a penalty not exceeding Fifty Pounds; and the like penalty may be enforced on any married person against whom a separation order has been made who assaults, threatens, abuses, or otherwise annoys his wife or her husband.

Cf. 37 Vict. No 14, s. 5.

**38**—(1) If from any cause any summons issued has not been served upon the defendant, and it is made to appear to the satisfaction of any police magistrate by the oath of some credible person that every effort has been made to serve such summons, it shall be lawful for such police magistrate to hear *ex parte* and determine any complaint under this Act and to make any such order as he sees fit in manner provided.

Court may proceed *ex parte*.  
*Ibid.* (N.S.W.), s. 21.

(2) If a defendant against whom a summons has been issued does not appear in accordance therewith, the police magistrate, upon proof of the service of the summons, may issue a warrant for his apprehension, or may proceed in the case *ex parte*.

(3) 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 police magistrate may in like manner proceed in the case *ex parte*.

Service of summons, notice, or order.  
No. 27 of 1904, s. 2 (N.S.W.).

**39**—(1) Where not otherwise provided, every summons, notice, or order under any part of 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.

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

*Maintenance.*

**40**—(1) Any person, being of sufficient means, who shall, without lawful or reasonable cause or excuse—

i. Desert his wife or child : or

ii. Leave his wife or child without means of support for a period of Three consecutive months shall be guilty of a misdemeanor, and shall, upon conviction thereof, be liable to imprisonment with hard labour for any period not exceeding One year.

(2) Proof of want of sufficient means, and of the existence of reasonable cause or excuse, shall be upon the person charged with an offence under this section.

(3) In any criminal proceeding instituted against a husband for an offence under this section, his wife shall be a competent witness against him, any Statute or Rule of Law to the contrary notwithstanding.

(4) The provisions of this section shall be applicable to the mother of any child where the father is dead or cannot be found.

**41** Any person who by any act or omission is guilty of any contravention of any of the provisions of any part of this Act shall be guilty of an offence, and, where no other penalty is expressly provided, upon conviction in a summary way, shall be liable to a penalty not exceeding Twenty-five Pounds, or to be imprisoned for any period not exceeding Six months.

All proceedings for offences against or orders under any part of this Act, and all fines, penalties, and sums of money imposed or made payable by any part of this Act, shall be heard, determined, and recovered in a summary way, by and before a police magistrate sitting alone, in the mode prescribed by "The Magistrates' Summary Procedure Act"

Subject to the provisions of Act, the provisions of "The Magistrates' Summary Procedure Act" shall apply to all proceedings under this Act, and the recovery of any moneys ordered to be paid thereunder, except that in the enforcement of arrears of payments ordered under Section Six of this Act, Section Eleven of "The Magistrates' Summary Procedure Act" shall not apply, but payment may be enforced of any such arrears as may have become due prior to the date of the complaint therefor.

Any person aggrieved by any conviction, order, or judgment made under any part of this Act may, unless otherwise provided, appeal therefrom in manner directed by "The Appeals Regulation Act."

**42** The Governor may from time to time make regulations for giving effect to any part of this Act, such regulations may impose a penalty not exceeding Twenty-five Pounds for any breach of the same, all such regulations shall be published in the "Gazette," and shall thereupon have the same effect as if they were enacted in any part of this Act.

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Wiltfully deserting or leaving without support, wife or child for Three months, misdemeanor.

Wife competent witness.

Cf. 62 Vict.

No. 46, ss. 2 & 6.

Liability of mother in certain cases.

General penalty. 5 Ed. VII. No. 19 (Q.), s. 23.

Procedure.

19 Vict. No. 8.

Appeal under 19 Vict. No. 10.

Regulations.

*Maintenance.*

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References in  
other Acts to  
Acts repealed by  
this Act.

9 Geo. V. No. 15.

No implied repeal  
of any provision  
of "The Child-  
ren's Charter."

**43** References in "The Children's Charter" or any other Act to any Act hereby repealed or any provisions thereof shall be construed as and be deemed to be references to the corresponding or similar provisions of or incorporated in this Act.

This Act shall not be deemed to impliedly repeal any provision of "The Children's Charter," except that the jurisdiction powers, and authorities exercisable by a children's court and the magistrate and justices constituting such court, with respect to or under any of the provisions of this Act by virtue of Section Twenty-seven of "The Children's Charter," shall be exercisable only by a children's court, consisting of a police magistrate or a special magistrate who is a police magistrate.

## SCHEDULES.

(1)

Date and Number of Act.	Title of Act.	Extent of Repeal.
37 Victoria No. 14	"The Deserted Wives and Children Maintenance Act, 1873"	The whole Act
62 Victoria No. 46	"The Deserted Wives and Children Maintenance Amendment Act, 1898"	The whole Act
7 Edward VII. No. 22	"The Deserted Wives and Children Maintenance Amendment Act, 1907"	The whole Act
7 Edward VII. No. 51	"The Infant Life Protection Act, 1907"	The whole Act
9 Edward VII. No. 26	"The Summary Jurisdiction (Married Persons) Act, 1909"	The whole Act



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(2)

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RECOGNIZANCE WITH A SURETY FOR THE APPEARANCE OF  
THE DEFENDANT WHERE THE CASE IS ADJOURNED. Section 13.

TASMANIA }  
TO WIT. }

BE it remembered, that on the            day of            , 19            , A.B., or  
[occupation], and L.M., of            [occupation], came before me, one of His  
Majesty's police magistrates, and severally acknowledged themselves to our Lord the  
King the several sums following, (that is to say) : the said A.B. the sum of  
Pounds, and the said L.M. the sum of            Pounds, to be made and levied of their  
several goods, chattels, and lands, respectively, to the use of our said Lord the King,  
His Heirs and Successors, if he, the said A.B., shall fail in the conditions hereunder  
written. The condition of the above-written recognizance is such, that if the said  
A.B. shall personally appear on the            day of            instant, at            o'clock  
in the            noon, at            , before such police magistrate as may then be there, to  
answer further to the complaint of C.D. against the said A.B., and to be further  
dealt with according to law, then the said recognizance to be void, or else to stand in  
full force and virtue.

   Taken and acknowledged the            day and year first  
   abovementioned at            before me.  
   P.M.

(3)

NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE  
DEFENDANT AND HIS SURETY. Section 13.

TASMANIA }  
TO WIT }

TAKE notice that you A.B. are bound in the sum of            pounds, and you  
L.H. in the sum of            pounds, that you A.B. appear personally on  
at            o'clock in the            noon,            , at            before such Police  
Magistrate as shall then be there to answer further to a certain complaint of C.D., the  
further hearing of which was adjourned to the said time and place; and unless you  
appear accordingly the recognizance entered into by you A.B., and by L.H. as your  
surety, will forthwith be levied on you and him.

Dated this            day of            19            P.M.

(4)

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE  
DEFENDANT'S RECOGNIZANCE. Section 13.

I HEREBY certify that the said A.B. has not appeared at the time and place in the  
said condition mentioned, but therein has made default by reason whereof the within  
written recognizance is forfeited.

P.M.

