

AMENDED AND REPRINTED UNDER  
AMENDMENTS INCORPORATION ACT 1906.

DESERTED WIVES  
AND CHILDREN.

Act No. 17, 1901.

An Act to consolidate the enactments relating to  
Deserted Wives and Children. [4th October,  
1901.]

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.

1. This Act may be cited as the "Deserted Wives and Children  
Act, 1901," and consists of the following Parts:—

PART I.—*Preliminary*—ss. 1-3.

PART II.—*Jurisdiction of justices*—ss. 4-13.

PART III.—*Evidence*—ss. 14-17.

PART

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PART IV.—*Punishment for desertion*—s. 18.

PART V.—*Protection order*—ss. 19, 20.

PART VI.—*Supplemental*—ss. 21-24.

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

“justice” means justice of the peace;

“child” includes an illegitimate child; and

“master” includes mistress.

3. (1) The Acts mentioned in the Schedule to this Act are, to the Repeal. extent therein expressed, hereby repealed.

(2) Any orders made or directions given under any of the Saving. Acts hereby repealed shall remain in force and be dealt with as if this Act had been in force when they were so made or given and they had been made or given hereunder.

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PART II.

*Jurisdiction of justices.*

4. In any case where—

(a) any husband or father has deserted his wife or child, or has left such wife or child without means of support; or

(b) any mother of an illegitimate child has deserted it or left it without means of support

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, mother, or child issue his summons requiring such husband, father, or mother 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 means of support, may if he think fit—

(i) where it appears that such husband, father, or mother is about to remove out of New South Wales or to remote parts thereof; or

(ii) in any other case in which the circumstances seem to him to require it,

issue his warrant for the apprehension of such husband, father, or mother.

Justice may issue  
summons or warrant.  
4 Vic. No. 5, ss. 1, 7, 8.  
22 Vic. No. 6, s. 1.

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Service of summons.  
22 Vic. No. 6, s. 2.

5. (1) Every summons under this Act may be served on the defendant personally, or if he cannot be found then at his last or most usual known place of residence.

(2) The person serving the summons may make an affidavit stating the mode and time and place of such service, and, if personal service has not been effected, that the defendant cannot be found, and such affidavit may be received by the justices hearing the case as proof of the due service of the summons.

Justices may proceed  
ex parte.  
4 Vic. No. 5, s. 2.  
22 Vic. No. 6, s. 2.

6. (1) If a defendant against whom a summons has been issued does not appear in accordance therewith, any two justices upon proof of the service of the summons may issue a warrant for his apprehension, or may proceed in the case ex parte.

(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 justices may in like manner proceed in the case ex parte.

The hearing and  
order.  
4 Vic. No. 5, ss. 2,  
7, 8.

7. Upon the hearing the justices shall inquire into the matter of the complaint, and if they are 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, the justices shall make an order in writing directing the defendant to pay either weekly or monthly, and to such person or in such manner for the use of such wife or child as they think fit, such sum or allowance as they think proper, and where the complaint is in respect of an illegitimate child the justices may direct that the father and mother shall contribute to its support in such proportions and in such manner as the justices think fit, and if it appears that the mother only is able to contribute to the support of such child the justices may make an order against her alone :

Provided.  
*Ibid.* s. 4.

Provided that where the complaint is by a wife against her husband the justices may, upon reasonable cause shown for the desertion or leaving without support alleged, decline to make any such order.

Security for payment  
of amount may be  
ordered.  
22 Vic. No. 6, s. 3.

8. (1) When an order under the last preceding section is made for the support of any wife or child, the justices may, immediately after pronouncing their 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 immediately entering into such recognizance with the required sureties the justices may commit the defendant to gaol, there to remain for any period not exceeding twelve months, or until such recognizance has been entered into or the said order complied with.

Justices may attach  
annuity.  
*Ibid.* s. 10.

(2) When an order under the said section is made for the support of a wife the justices making such order may, instead of or in addition to any other relief or remedy hereunder, authorise and direct  
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some person to demand and receive any annuity or other income payable to the husband, 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; and every payment made in pursuance of such direction shall be as valid as if made to the husband or by his authority, and such direction shall protect and indemnify any person acting in pursuance thereof.

9. In any case 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 that the defendant has deserted such wife or child, they may by their 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 portion of the said goods or rents, as the justices think fit, and to appropriate the proceeds towards the payment of the sum or allowance aforesaid in such manner as they from time to time direct, 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 justices although no warrant or summons has been issued.

Seizure of  
defendant's goods.  
4 Vic. No. 5, s. 3.

10. Where any order has been made for the support of a wife or child, any two justices may in a summary way and with or without any application for that purpose make such orders in writing as they think necessary for better securing the payment and regulating the receipt of the sum or allowance ordered, 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 sum or allowance to the support of such wife or child, or for causing such child to be properly brought up and educated.

Further orders may  
be made.  
*Ibid.* s. 9.

11. Any justice may at any time in a summary way inquire into any alleged disobedience of, or non-compliance with, any such order, or with any order made by any Court of Quarter Sessions 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 the order has been complied with, or by the infliction of a fine not less than five pounds nor more than fifty pounds.

Disobedience of order  
may be punished.  
*Ibid.*

12. Where any order has been made for the support of any child any two justices may with the consent of the mother if she can be found, or without the consent of either parent if the child is without means of support or the parent having the care of such child

Education of child.  
22 Vic. No. 6, s. 11.

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is of vicious or abandoned character or an habitual drunkard, cause such child to be placed in the Destitute Children's Asylum or in any other public establishment approved of by them, the directors or managers of which are willing to receive such child, there to remain subject to the rules and regulations of such asylum or establishment. Thereupon and thereafter any two justices may by orders in writing direct the sum or allowance ordered for the support of such child to be paid to some officer of such asylum or establishment, and may for that purpose exercise every power given by sections ten and eleven to one or two justices.

Warrant may issue  
in certain cases.  
22 Vic. No. 6, s. 1.

13. Any justice on being satisfied by oath that any husband, father, or mother 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 husband, father, or mother to be dealt with under this Act.

## PART III.

*Evidence.*

Wives and husbands  
may be called.  
*Ibid.* s. 8.

14. In all proceedings under this Act the wife and the husband shall be competent and compellable witnesses, but no admission or statement then made by such wife or husband shall be used upon any other occasion.

Proof of marriage.  
4 Vic. No. 5, s. 4.

15. (1) Any woman who complains that she has been deserted by her husband or left by him without means of support shall, upon the hearing, produce direct evidence of her marriage to the defendant, or if she is unable to produce such evidence to the satisfaction of the justices, shall make affidavit before them setting forth the time, place, and circumstances of the marriage. Any order made in any such case may be rescinded by any two justices upon proof of the falsity of the averments contained in the said affidavit.

Proof of paternity.  
*Ibid.* s. 8.

(2) No man shall in any case be taken to be the father of an illegitimate child upon the oath of the mother only.

Constructive  
desertion.  
22 Vic. No. 6, s. 6.

16. A wife compelled to leave her husband's residence under reasonable apprehension of danger to her person, or under other circumstances which may reasonably justify her withdrawal from such residence shall, for the purposes of this Act, be deemed to have been deserted without reasonable cause.

Evidence of  
desertion.  
*Ibid.* s. 7.

17. Where any husband has quitted his wife or any parent his child for a period exceeding sixty days, during seven at the least of which such wife or child has been left by such husband or parent without means of support, such husband or parent shall prima facie be deemed to have deserted such wife or child.

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Nothing in this section shall prevent any justices from adjudging the fact of desertion on other evidence, or on proof of abandonment for a less period than sixty days if they think fit.

## PART IV.

*Punishment for desertion.*

18. Any parent, being able to maintain his child, who wilfully and without lawful or reasonable cause or excuse deserts any such child under the age of sixteen years, and leaves it without means of support, shall be guilty of a misdemeanour, and shall be liable to imprisonment for a term not exceeding one year.

Offence of desertion.  
22 Vic. No. 6, s. 9.

## PART V.

*Protection order.*

19. (1) A wife deserted by her husband may, at any time after such desertion, apply ex parte to the Supreme Court or District Court, or to any Judge thereof, for an order to protect any personal property which she may acquire after such desertion against her husband or his creditors or any person claiming under him. Such order shall in all cases be made on such Court or Judge being satisfied by affidavit of the fact of such desertion, and that the same was without reasonable cause, and shall contain a statement of the day of such desertion, and shall have the effect of protecting all personal property, acquired by such wife at any time after such desertion, from her husband and his creditors and all persons claiming under him.

Wife may apply for  
protection order.  
*Ibid.* s. 4.  
22 Vic. No. 18, s. 31.

(2) While such order continues in force such wife shall with respect to such personal property as aforesaid, and to all contracts in reference thereto, and to all other contracts entered into by her after the making of such order and not relating to real estate, be regarded in all respects as a feme sole, and if the husband or any of his creditors or any person claiming under him, without the permission of the wife, seizes, takes, or holds possession of any property protected as aforesaid, such wife may sue such husband, creditor, or other person for the restoration of the specific property so seized, held, or taken, and may recover in such suit, in the event of such property not being restored, a sum equal to double the value of the same with double costs of suit.

Effect of order.  
22 Vic. No. 6, s. 4.

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**Rescission of order.** 20. (1) After the making of any such order the husband, or  
 22 Vic. No. 6, s. 4. any of his creditors or any person claiming under him, may at any  
 22 Vic. No. 18, s. 31. time apply on notice to the wife to the Supreme Court or District  
 Court, or to any Judge thereof, that such order may be rescinded, and  
 the same shall be rescinded in all cases where it is proved to the  
 satisfaction of such Court or Judge, by affidavit or oral evidence or  
 both, that such wife was not deserted without reasonable cause, or  
 that since the making of the order she and her husband have cohabited  
 or resided together.

**Effect of rescission.** (2) If such order is rescinded, the husband shall have and  
 22 Vic. No. 6, s. 4. be subject to the same rights and liabilities as if such order had not  
 been made.

## PART VI.

*Supplemental.*

**Justices may vary order.** 21. Any two justices from time to time may, upon the  
 22 Vic. No. 6, s. 12. application of any wife or child or of the husband or parent, and upon  
 notice, given in such manner as the justices shall direct, to all parties  
 to be affected thereby, vary any order made for the support of any wife  
 or child.

**Limitation of actions against justices.** 22. No action shall lie against any justice for any thing done  
 4 Vic. No. 5, s. 15. or commanded by him in pursuance of the provisions of this Act unless  
 there is direct proof of corruption or malice, and unless such action is  
 commenced within three months after the cause of action arose;  
 and if any justice is sued for any thing done in pursuance of this Act,  
 he may plead the general issue, and give this Act and the special  
 matter in evidence.

**Application of penalties.** 23. The amount of every fine imposed under this Act shall be  
*Ibid.* s. 16. appropriated and applied as follows, that is to say : one moiety thereof  
 as the justices direct, either wholly for the use of the wife or child  
 in respect of whose support the original order has been made, or  
 partly for that use and partly for the use of the informer or party  
 prosecuting ; and the other moiety shall be paid to the Treasurer for the  
 public uses of New South Wales.

**Saving of common law liability.** 24. Nothing in this Act shall take away or diminish the  
 22 Vic. No. 6, s. 5. common law liability of a husband in respect of contracts made by a  
 wife deserted by her husband without reasonable cause.

# Act No. 18, 1901.

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## *Net-fishing (Port Hacking).*

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### SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
4 Vic. No. 5 ...	An Act to provide for the Maintenance of Deserted Wives and Children.	The whole.
22 Vic. No. 6 ...	An Act to amend the Act for the Maintenance of Deserted Wives and Children.	The whole.
22 Vic. No. 18 ...	District Courts Act of 1858 ... ..	Section 31.

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