

**DESERTED WIVES AND CHILDREN  
(AMENDMENT) ACT.**

**Act No 21, 1960.**

**Elizabeth II, An** Act to make further provisions with respect to  
**No. 21, 1960.** the period of imprisonment to be served in default of compliance with certain orders under the Deserted Wives and Children Act, 1901-1958, and the Child Welfare Act, 1939-1956; to authorise the making of orders under those Acts providing for the maintenance of children after they attain the age of sixteen years where they are engaged in a course of education or training; for these and other purposes to amend those Acts, the Public Instruction (Amendment) Act, 1916-1956, the Matrimonial Causes Act, 1899-1958, and the Prisons Act, 1952-1957; and for purposes connected therewith. [Assented to, 8th April, 1960.]

**B**E it enacted by the Queen'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:—

Short title,  
citation  
and com-  
mencement.

**1.** (1) This Act may be cited as the "Deserted Wives and Children (Amendment) Act, 1960".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) The Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Deserted Wives and Children Act, 1901-1960.

(4)

**Deserted Wives and Children (Amendment) Act.**

**131**

(4) The Child Welfare Act, 1939, as amended by subsequent Acts and by this Act, may be cited as the Child Welfare Act, 1939-1960. No. 21, 1960.

(5) The Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts and by this Act, may be cited as the Public Instruction (Amendment) Act, 1916-1960.

(6) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1960.

(7) The Prisons Act, 1952, as amended by subsequent Acts and by this Act, may be cited as the Prisons Act, 1952-1960.

2. The Deserted Wives and Children Act, 1901, as amended by subsequent Acts, is amended— Amendment of Act No. 17, 1901.

(a) by inserting next after section seven the following new section :— New sec. 7A.

7A. (1) (a) This section applies to any child in respect of whom an order (in this section called a "maintenance order") made under section seven of this Act is or at any time has been in force. Extension of maintenance order after child's sixteenth year.

(b) Where upon an application made to any two justices by or on behalf of a child to whom this section applies it appears to the justices that, in the case of a child who has not attained the age of sixteen years, the child will be engaged in a course of education or training after he attains that age or, in the case of a child who has attained that age, the child is or will be so engaged, and that the maintenance order made in respect of the child should be continued or revived, as the case may require, with or without variation for the purpose of providing for the support of the child while he is so engaged and of meeting the expenses of the course, the justices may order—

(i) where the child has not attained the age of sixteen years, that the maintenance order continue or revive, as the case may require, and

**No. 21, 1960.**  

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and be in force for such amount and for such period not exceeding two years from the date on which he attains that age as may be specified in the order under this section; or

- (ii) where the child has attained the age of sixteen years, that the maintenance order revive as on and from a date to be specified in the order under this section (not being a date earlier than the date on which the order is made) and that the maintenance order thereafter be in force for such amount and for such period not exceeding two years from the date so specified as may be specified in the order so made.

Any two justices may from time to time, by a subsequent order made under this section, extend the period specified in any previous order so made for such further period not exceeding two years from the date of expiry of the previous order as may be specified in the subsequent order.

An order made under this section shall not require payments to be made under a maintenance order after the date on which the child concerned attains the age of twenty-one years.

An order under this section may be enforced, appealed from, confirmed, suspended, varied or discharged in the same manner as an order made under section seven of this Act.

(2) An application under subsection one of this section shall be heard and determined by justices sitting at a place agreed upon by the parties or at the place where the maintenance order was made :

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

(b)

**Deserted Wives and Children (Amendment) Act.**

133

(b) by omitting from subsection one of section eight the words "the last preceding section" and by inserting in lieu thereof the words "section seven of this Act";

No. 21, 1960.

Sec. 8.  
(Security for payment of amount may be ordered.)

(c) (i) by omitting from subsection two of section eleven the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

Sec. 11.  
(Disobedience of order.)

(ii) by inserting next after subsection four of the same section the following new subsection:—

(4A) Where before a justice directs, under subsection three or four of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears, would have subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection two of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the warrant.

cf. Act No. 27, 1902, s. 90 (2).

(d) (i) by inserting in subsection one of section 21A after the word "application" the words ", or by any committal to prison for disobedience of or non-compliance with any order or varied order made,";

Sec. 21A.  
(Appeal.)

(ii) by inserting in the same subsection after the words "the said Act" the words ", sections one hundred and twenty-three and one hundred and twenty-four excepted,";

(iii)

No. 21, 1960.  
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(iii) by inserting next after subsection two of the same section the following new subsection :—

(3) Where an appeal is made under this section against an order or varied order the Court of Quarter Sessions to which the appeal is made may—

(a) stay the order or varied order ; or

(b) stay the order or varied order and make a temporary order to take effect during the pendency of the appeal.

A Court of Quarter Sessions making a temporary order under this subsection may exercise all the powers which justices making an order under Part II of this Act may exercise.

A temporary order made under this subsection may be enforced in the same manner in all respects as if it were a final order.

Amendment  
of Act No.  
17, 1939.**3. The Child Welfare Act, 1939, as amended by subsequent Acts, is amended—**New sec.  
59A.

(a) by inserting next after section fifty-nine the following new section :—

Extension  
of contri-  
bution order  
after child's  
sixteenth  
year.

59A. The provisions of section 104A of this Act apply, mutatis mutandis, to any child or young person in the care of the Minister and in respect of whom a contribution order is or at any time has been in force, and, for the purposes of such application, a reference in that section to a maintenance order shall be read and construed as a reference to a contribution order.

Sec. 96.  
(Court may  
require  
defendant  
to pay  
preliminary  
expenses.)

(b) (i) by omitting from paragraph (a) of subsection one of section ninety-six the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds";

(ii) by omitting from paragraph (b) of the same subsection the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";

(c)

**Deserted Wives and Children (Amendment) Act.**

135

- (c) (i) by omitting from subparagraph (ii) of paragraph (a) of section one hundred and two the words "thirty pounds" wherever occurring and by inserting in lieu thereof the words "one hundred pounds";
- (ii) by omitting from paragraph (b) of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";
- (d) by inserting next after section one hundred and four the following new section :—

No. 21, 1960.

Sec. 102.  
(Court shall hear and determine complaint and may make order.)

New sec. 104A.

104A. (1) (a) This section applies to any child or young person in respect of whom an order (in this section called a "maintenance order") adjudging any sum to be paid for expenses of maintenance and made under section ninety-six or one hundred and two of this Act is or at any time has been in force.

Extension of maintenance order after child's sixteenth year.

(b) Where upon an application made to the court by or on behalf of any child or young person to whom this section applies it appears to the court that the child will be engaged in a course of education or training after he attains the age of sixteen years, or that the young person is or will be so engaged, and that the maintenance order should be continued or revived, as the case may require, with or without variation, for the purpose of providing for the expenses of the maintenance of the child or young person, as the case may be (including the expenses of the course) while he is so engaged, the court may order—

(i) in the case of a child, that the maintenance order continue or revive, as the case may require, and be in force for such amount and for such period not exceeding two years from the date on which he attains the age of sixteen years as may be specified in the order under this section; or

(ii) in the case of a young person, that the maintenance order revive as on and from a date to be specified in the order under this

**No. 21, 1960.**

this section (not being a date earlier than the date on which the order is made) and that the maintenance order thereafter be in force for such amount and for such period not exceeding two years from the date so specified as may be specified in the order so made.

The court may from time to time, by a subsequent order made under this section, extend the period specified in any previous order so made for such further period not exceeding two years from the date of expiry of the previous order as may be specified in the subsequent order.

An order made under this section shall not require payments to be made under a maintenance order after the date on which the person for whose maintenance the payments are made attains the age of twenty-one years.

For the purposes only of this subsection, the definition of "Young person" in subsection one of section four of this Act shall be deemed to be amended by omitting the words "eighteen years" and by inserting in lieu thereof the words "twenty-one years".

(2) An application under subsection one of this section may be heard and determined by a court sitting at a place agreed upon by the parties or at the place where the maintenance order was made.

**Sec. 105.**  
(Funeral  
expenses  
of child.)

- (e) (i) by omitting from subsection four of section one hundred and five the words "thirty pounds" and by inserting in lieu thereof the words "one hundred pounds";
- (ii) by omitting from subsection eight of the same section the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound";
- (f)

- (f) (i) by omitting from subsection two of section one hundred and fourteen the words "ten shillings or part of ten shillings" and by inserting in lieu thereof the words "pound or part of a pound"; No. 21, 1960. Sec. 114. (Disobedience of order may be punished.)
- (ii) by inserting at the end of the same section the following new subsection :—

(8) Where before a justice directs, under subsection six or seven of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears, would have subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection two of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the warrant. cf. Act No. 27, 1902, s. 90 (2).

- (g) by inserting in subsection one of section one hundred and twenty-two after the word "Part" where firstly occurring the words "or by any committal to prison for disobedience of or non-compliance with any order or varied order of a court". Sec. 122. (Appeals.)

4. The Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts, is amended by omitting section nine and by inserting in lieu thereof the following section :— Amendment of Act No. 51, 1916. Subst. sec. 9.

9. The provisions of Part XII of the Child Welfare Act, 1939, as amended by subsequent Acts, relating to the maintenance of children by their relatives apply, mutatis mutandis, to the maintenance of children detained as truants under this Act as if children so detained were children committed to the care of the Minister to be dealt with as wards admitted to State control. Recovery of cost of maintenance of children in institutions.

**Deserted Wives and Children (Amendment) Act.**

**No. 21, 1960.** 5. The Matrimonial Causes Act, 1899-1958, is amended by omitting subsection three of section 90A and by inserting in lieu thereof the following subsections :—

Amendment  
of Act No.  
14, 1899.

Sec. 90A.

(Summary  
proceedings  
to enforce  
orders for  
alimony and  
mainten-  
ance.)

(3) (a) Upon the hearing the justices shall inquire into the complaint, and if they are satisfied that any sum due under the order is unpaid, they may order the defendant to pay to such person as they may think fit the sum unpaid, together with such further sum for costs as they may deem proper and in default of payment may order that the defendant be committed to prison for a period of one day for every pound or part of a pound found to be due, including the costs incidental to the hearing of the complaint, unless the said order be complied with; but no defendant 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, as amended by subsequent Acts.

(b) Subject to the provisions of section twenty-one of the Prisons Act, 1952, the period of imprisonment served by a defendant 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 alimony or maintenance shall be deemed to be suspended.

(c) No defendant shall be liable to be imprisoned a second time for, and no writ of attachment may issue in respect of 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 person to whom the arrears are due.

(d) 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 persons 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, as amended by subsequent Acts.

(3A)

(3A) The justices may direct that the warrant committing the defendant 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. No. 21, 1960.

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 defendant to prison be executed.

(3B) Any justice to whom an application is made for a direction that the warrant be executed may postpone the execution of the warrant upon such terms and conditions as he thinks fit, and if the defendant breaks any term or condition upon which such a postponement is made, the justice may then direct the execution of the warrant.

(3C) Where before a justice directs, under subsection (3A) or (3B) of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears would have subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection three of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the order.

(3D) 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

**Deserted Wives and Children (Amendment) Act.**

**No. 21, 1960.** particularly with reference to the inability of the offender to obtain employment, or to comply with the order owing to continued ill health.

Amendment of Act No. 9, 1952. Sec. 21. (Release of maintenance confinees.) **6.** The Prisons Act, 1952, as amended by subsequent Acts, is amended by inserting in subsection one of section twenty-one after the words "as amended by subsequent Acts," the words "or section 90A of the Matrimonial Causes Act 1899, as amended by subsequent Acts,".

Transitory provisions.

**7.** Where before the commencement of this Act a person has been committed to prison under section eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or under Part XII or Part XVI of the Child Welfare Act, 1939, as amended by subsequent Acts, and that person is at or at any time after that commencement detained in prison by reason of that committal, the period of imprisonment to be served by that person after that commencement under the warrant for that committal shall, subject to this section, be a period of one day for every pound or part of a pound of the unsatisfied balance owing under the order concerned instead of the period that the person would but for this section have been liable to serve under that warrant after that commencement.

No person shall pursuant to any such warrant be detained in prison for a longer period than twelve months.

In this subsection, "unsatisfied balance", in relation to any order, means the amount of the arrears found to be due by the person against whom the order was made when he was committed to prison by the justices or court, as the case may be, under section eleven, or Part XII or Part XVI, aforesaid, less the sum of—

- (a) any payments by way of reduction of those arrears made by or on behalf of that person; and
- (b) where the person against whom the order was made has, in respect of those arrears, been detained in prison before the commencement of this Act, ten shillings for each day for which he was so detained.

This

**Deserted Wives and Children (Amendment) Act.**

**141**

This section does not apply in respect of any person committed to prison before the commencement of this Act under section eleven, or Part XII or Part XVI, aforesaid, where that person is detained in prison after that commencement under a warrant issued under subsection (4A) of section eleven of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, or subsection eight of section one hundred and fourteen of the Child Welfare Act, 1939, as amended by subsequent Acts and by this Act.