

DESERTED WIVES AND CHILDREN ORDINANCE, 1912. ⁽¹⁾

No. 22 of 1912.

An Ordinance to amend and Consolidate the Enactments relating to Deserted Wives and Children.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the “*Deserted Wives and Children Ordinance, 1912.*”⁽¹⁾ Short title and commencement.

It shall commence on a day to be fixed by the Lieutenant-Governor by proclamation published in the *Gazette*.⁽¹⁾

It is divided into the following Parts:— Division of Ordinance.

- Part I.—Preliminary.
- Part II.—Jurisdiction of Justices.
- Part III.—Evidence.
- Part IV.—Protection Order.
- Part V.—Supplemental.

2.—(1.) The following enactments are repealed:— Repeal.

4 Vic. No. 5 (Queensland adopted) intituled “An Act to provide for the Maintenance of Deserted Wives and Children.”

22 Vic. No. 6 (Queensland adopted) intituled “An Act to amend the Act for the Maintenance of Deserted Wives and Children.”

(1) Particulars of this Ordinance are as follows:—

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
16. 7. 1912	(a)	7. 5. 1913 (Papua Govt. Gaz. of 7. 5. 1913)

(a) No notice of non-disallowance has been published in Papua Govt. Gaz.

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Saving.

(2.) Any order made or direction given under either of the enactments hereby repealed shall remain in force and be dealt with as if this Ordinance had been in force when they were so made or given and they had been made or given thereunder.

Interpretation.

3. In this Ordinance unless the context or subject matter otherwise indicates or requires—

“two justices” or “justices” means two justices of the peace or a magistrate;

“child” includes an illegitimate child.

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 of the peace 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 thinks fit—

(1) where it appears that such husband father or mother is about to remove out of the Territory or to a remote part thereof; or

(2) 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.

5.—(1.) Every summons under this Ordinance may be served upon 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 two justices hearing the case as proof of the due service of the summons.

Justice may issue summons or warrant.

Q. 4 Vic. No. 5, ss. 1, 7, 8.

Q. 22 Vic. No. 6, s. 1.

N.S.W. No. 17 of 1901, s. 4.

Service of summons.

Q. 22 Vic. No. 6,

s. 2.

N.S.W. *Ib.* s. 5.

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*.

Justice may proceed *ex parte*.
Q. 4 Vic. No. 5, s. 2; Q. 22 Vic. No. 6, s. 2.
N.S.W. No. 17 of 1901, s. 6.

(2.) In every case where a warrant has been issued and the defendant cannot after strict inquiry and search be found to be taken thereon the two justices may in like manner on proof thereof proceed in the case *ex parte*.

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:

The hearing and order.
Q. 4 Vic. No. 5, ss. 2, 7, 8;
N.S.W. *Ib.* s. 7.

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.

Proviso.
Q. *Ib.* s. 4;
N.S.W. *Ib.* s. 7.

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 for any period not exceeding six months or until such recognizance has been entered into or the said order complied with.

Security for payment of amount may be ordered.
Q. 22 Vic. No. 6, s. 3; N.S.W. *Ib.* s. 8(1.)

(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 some person to demand and receive any annuity or other income payable to the husband or any money 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.

Penalty.
S.A. No. 641 of 1895, s. 91.

Justices may attach annuity.
Q. *Ib.* s. 10;
N.S.W. *Ib.* s. 8 (2.)

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Seizure of
defendant's
goods.

Q. 4 Vic. No. 5,
s. 3; N.S.W.
No. 17 of 1901,
s. 9.

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 to demand and receive his rents or such portion of the said goods and 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 the Territory and has left the Territory the like order may be made and authority given by such justices although no warrant or summons has been issued.

Further order
may be made.

Q. *Ib.* s. 9;
N.S.W. *Ib.*
s. 10.

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 receipt of the sum or allowance ordered and for investing and applying the proceeds of the goods or rents ordered and directed to be sold or collected and 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.

Disobedience of
order may be
punished.

Q. *Ib.* s. 9;
N.S.W. *Ib.* s. 11,
altered.

11. Any two justices may at any time in a summary way inquire into any disobedience of or non-compliance with any such order or with any order made by the Central Court⁽²⁾ or a Judge thereof under this Ordinance varying such order and for such purpose may summon and examine all proper parties and witnesses and may enforce compliance or may punish disobedience of or non-compliance with any such order by the committal of the offender to gaol for any period not exceeding six months or by imposing upon him a fine not exceeding Fifty pounds.

Penalty.

S.A. No. 641 of
1895, s. 125.

Warrant may
issue in certain
cases.

Q. 22 Vic. No. 6,
s. 1; N.S.W.
Ib. s. 13.

12. Any justice on being satisfied by oath that any husband father or mother is about to remove out of the Territory or to remote parts thereof to defeat any of the provisions of this Ordinance or any order made thereunder may issue his warrant for the apprehension of such husband father or mother to be dealt with under this Ordinance.

Justices may
vary order.

Q. *Ib.* s. 12;
N.S.W.
Ib. s. 21;
compare Q. 4
Vic. No. 5, s. 11.

13. Any two justices from time to time may upon the 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 alter vary or discharge any order made for the support of any wife or child.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

14. Every proceeding under this Ordinance for omissions acts defaults or offences to which any penalty is attached and all applications for orders where no other method of proceeding is provided shall be had and taken and may be heard and determined in a summary way under the provisions of any Ordinance for the time being in force relating to duties of justices with respect to summary convictions and orders and all convictions and orders may be enforced as in such Ordinance is or may be provided.

Summary
procedure.

15. There shall be an appeal from any order or any order altering varying or discharging any order or any refusal of an order under this Part of this Ordinance to the Central Court⁽²⁾ or a Judge thereof.

Appeals.

Proceedings in such appeal shall be in manner appointed by any Ordinance in force regulating appeals from the decision of justices.

PART III.—EVIDENCE.

16. In all proceedings under this Ordinance the wife and the husband shall be competent and compellable witnesses but no admission or statement then made shall be used upon any other occasion.

Wives and
husbands may
be called.
Q. 22 Vic. No. 6,
s. 8; N.S.W.
No. 17 of 1901,
s. 14.

17. 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.

Proof of
marriage.
Q. 4 Vic. No. 5,
s. 4; N.S.W.
Ib. s. 15(1.)

Any order made in any such way may be rescinded by any two justices upon proof of the falsity of the averments contained in the said affidavit.

18. 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 Ordinance be deemed to have been deserted without reasonable cause.

Constructive
desertion.
Q. 22 Vic. No. 6,
s. 6; N.S.W.
Ib. s. 16.

19. When 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 *primâ facie* be deemed to have deserted such wife or child.

Evidence of
desertion.
Q. Ib. s. 7;
N.S.W. Ib. s. 17.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

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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 shall think fit.

Proof of paternity of illegitimate child. S.A. No. 641 of 1895, s. 86; S.A. No. 996 of 1909, s. 29; compare Q. 4 Vic. No. 5, s. 8.

20.—(1.) Upon the hearing of a complaint against any person in respect of the maintenance of an illegitimate child if it be alleged in the complaint that such person is the father of such child the justices may adjudge him to be the father thereof on the evidence of the mother alone without any corroboration unless and until the defendant has on his oath denied the allegations in the complaint.

(2.) If the defendant has on his oath denied the allegations in the complaint he shall not be adjudged the father unless and until the evidence of the mother be corroborated in some material particular.

(3.) The cross-examination of such defendant shall be confined to the facts or alleged facts of the case then before the justices.

Defendant to be compellable witness in certain cases. S.A. No. 996 of 1909, s. 13.

21. On the hearing of any complaint in which the defendant is alleged to be the father of an illegitimate child the defendant shall be compellable to give evidence and may be summoned as a witness for that purpose; and such defendant shall not be excused from giving evidence on the ground that the answer to any question or such evidence might prove or tend to prove him guilty of the matter alleged or charged against him:

Provided that such question or evidence is in the opinion of the justices hearing the complaint relevant to the matter of such complaint.

PART IV.—PROTECTION ORDER.

Wife may apply for protection order. Q. 22 Vic. No. 6, s. 4; N.S.W. No. 17 of 1901, s. 19(1.)

22.—(1.) A wife deserted by her husband may at any time after such desertion apply ex parte to the Central Court⁽²⁾ 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.

Effect of order. Q. *Ib.* s. 4; N.S.W. *Ib.* s. 19(2.)

(2.) While such order continues in force such wife shall with respect to such personal property and to all contracts in reference

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

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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 femme 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.

23.—(1.) After the making of any such order the husband or any of his creditors or any person claiming under him may at any time apply on notice to the wife to the Central Court⁽²⁾ 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.

Rescission of order.
Q. 22 Vic. No. 6, s. 4; N.S.W. No. 17 of 1901, s. 20.

(2.) If such order is rescinded the husband shall have and be subject to the same rights and liabilities as if such order had not been made.

Effect of rescission.

PART V.—SUPPLEMENTAL.

24. No action shall lie against any justice for anything done or commanded by him in pursuance of the provisions of this Ordinance 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 anything done in pursuance of this Ordinance he may plead the general issue and give this Ordinance and the special matter in evidence.

Limitation of actions against justices.
Q. 4 Vic. No. 5, s. 15; N.S.W. *Ib.* s. 22.

25. The amount of every fine imposed under this Ordinance shall be appropriated as to one moiety thereof as the justices shall direct either wholly for the use of the wife or child in respect of whose support the original order has been made and the other moiety thereof shall be paid to the Treasurer for the public revenue of the Territory.

Application of penalties.
Q. *Ib.* s. 16, altered.

26. Nothing in this Ordinance shall take away or diminish the common law liability of a husband in respect of contracts made by a wife deserted by her husband without reasonable cause.

Saving of common law liability.
Q. 22 Vic. No. 6, s. 5; N.S.W. *Ib.* s. 24.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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