

NORFOLK



ISLAND

INFANTS' MAINTENANCE AND PROTECTION ACT 1913

[Consolidated as at 20 May 2005
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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Infants' Maintenance and Protection Act 1913

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the Infants' Maintenance and Protection Act 1913.

Definitions

2. In this Act, unless the context requires another meaning —
- “the Court” means the Court of Petty Sessions;
 - “expenses” includes any sum payable for the maintenance and education of the infant, and any other expenses payable under this Act;
 - “preliminary expenses” means the expenses of the maintenance of the mother during a period of one month 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 three months immediately succeeding its birth.

PART 2 — PROCEEDINGS BEGUN BEFORE BIRTH

Complaint by or on behalf of woman

3. 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 in writing, any reputable person on her behalf, may make complaint in writing on oath to a Magistrate or the Clerk of the Court of Petty Sessions 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 evidence on oath, either oral or an affidavit, in corroboration in some material particular of the allegation as to the paternity of the infant.

The Magistrate or the Clerk of the Court of Petty Sessions, as the case requires, may thereupon summon the man to appear before the Court to answer such complaint; or, if the circumstances seem to require it, may issue a warrant for his apprehension.

Order by Court for maintenance of child

4. The Court shall hear and determine so much of such complaint as relates to the paternity of the infant, and may —
- (a) order the defendant to deposit with the Court a sum not exceeding \$20 for preliminary expenses; and

- (b) further order the defendant to enter into a recognisance 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 four months from the birth of the infant, and on such days as the court, at any time not later than three months from the said birth, determines, and of which at least fourteen days' 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 three 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 recognisances, and the unexpended portion of any moneys paid by the defendant as preliminary expenses shall be repaid to him.

Corroborating evidence

5. The Court shall not make any such order against the defendant unless it be proved by the evidence of some duly qualified medical practitioner that the woman is quick with child, and unless her evidence be corroborated in some material particular, or if the Court be satisfied that at the time the infant was begotten the mother was a common prostitute.

Default of compliance with any order

6. 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.

When recognisances forfeited for benefit of mother and infant

7. If upon the day on which the defendant is bound to show cause as aforesaid, 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 recognisances 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.

Order for maintenance and education of infant

8. 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.

PART 3 — PROCEEDINGS BEGUN AFTER BIRTH**Complaint by or on behalf of mother**

9. Where the father of an illegitimate infant leaves it without means of support, the mother of the infant, or any reputable person on behalf of the infant, may make complaint on oath to a Magistrate or the Clerk of the Court of Petty Sessions; and shall, when making such complaint, produce evidence on oath, either oral or on affidavit, in corroboration in some material particular of any allegation in such complaint as to the paternity of the infant; and upon such complaint being made, the Magistrate or the Clerk of the Court of Petty Sessions, as the case requires, 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.

Case for further order for maintenance of infant

10. The Court shall hear and determine the complaint, and may make an order for the payment by the defendant of a sum for the maintenance and education of the infant.

In any order so made 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 \$20 shall be paid by the defendant.

PART 4 — GENERAL PROVISIONS**Complainant may be required to give evidence**

11. Where any complaint has been made under this 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 Act with her consent by any 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 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.

Order may be made for funeral expenses on death of mother or infant

12. In any order made under this Act after the birth of an infant 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 infant, and the funeral expenses of the infant if it has died prior to the making of the order.

Court may make further order

13. In any order under this Act, the Court may further order the payment of such costs by such persons as it thinks fit.

Period of effect of order

14. Every order adjudging any sum to be paid for the maintenance of an infant 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 fourteen years, or has, if a female, attained the age of sixteen years, or until the death of such infant if such death occurs within the respective periods above mentioned.

Provided that the Court may in the order direct that the payments to be made under it in respect of a male infant shall continue until the infant attains the age of sixteen years, in which case such order shall be in force until that period.

Provided also that for the purpose of recovering money previously due under an order it shall always remain of full force and validity.

Recognisance for other than preliminary expenses

15. When an order is made under this Act for the payment of any expenses other than preliminary expenses the Court may, immediately after pronouncing its decision, require the defendant to enter into a recognisance with sureties for the due performance, for a period not exceeding twelve months, of such order, and in default of the defendant's immediately entering into such recognisance with the required sureties the Court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognisance has been entered into or the said order complied with.

Court may make order for regular payment

16. Where an order has been made under this Act for the payment of expenses, or of moneys secured under recognisances, 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 the 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 insuring 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.

Court may order seizure and sale of goods to secure payment

17. In making any order under this Act, the Court may further, by the 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 portions of the said goods or rents as the Court thinks fit, and to appropriate the proceeds towards the payment of the expenses aforesaid in such manner as it from time to time directs, and if it appears on oath that the defendant has theretofore usually resided in Norfolk Island, and has left the said island, the like order may be made and authority given by such court although no warrant or summons has been issued.

Court may enforce compliance with order

18. The Court may at any time, in a summary way, inquire into any alleged disobedience of or non-compliance with any order made 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 to prison for a period not exceeding twelve months, or until such order has been complied with, or by the infliction of a penalty not exceeding \$50.

Court may vary an order on application

19. 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 may direct to all parties be affected thereby, vary any order made under this Act.

Service of summons or notice

20. (1) Every summons or notice under this Act may be served on the defendant or person to be served 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 or notice may make an affidavit stating the mode and time and place of such service, and such affidavit may be received by the Court as proof of the due service of the summons or notice.

Court may proceed in the case *ex parte*

21. (1) If a defendant against whom a summons has been issued does not appear in accordance therewith, the Court, 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 Court may in like manner proceed in the case *ex parte*.

Warrant may be issued

22. A Magistrate or the Clerk of the Court of Petty Sessions on being satisfied by oath that any defendant is about to remove out of Norfolk Island, to defeat any of the provision of this Act or any order made hereunder, may issue his warrant for the apprehension of such defendant to be dealt with under this Act.

Recognisance may be forfeited by order of the Court

23. (1) Any recognisance entered into in pursuance of this Act may be forfeited by order of the Court after notice served on the persons who were parties to the recognisance, and affording them an opportunity to be heard in opposition to the forfeiture.

(2) On the forfeiture as aforesaid of any such recognisance, the Court shall issue to a bailiff of the Court a writ in the form of the Schedule hereto; and such bailiff shall, under the authority of such writ, proceed forthwith to levy and recover such forfeited recognisance on the goods and chattels of the parties thereto by distress and sale thereof.

SCHEDULE**Writ to Bailiff**

TO Bailiff of the Court of Petty Sessions.
 YOU are hereby required and commanded that of all the goods and chattels of all and singular the following persons, namely [names and description of parties to recognisance] you cause to be levied all and singular the debts and sums of money due or charged, as may appear by the copy of recognisance annexed hereto namely —

| Names of parties. | Sums due or charged |
|-------------------|---------------------|
| | |

Witness , Magistrate
 The day of , 20 .
 [Annexures. Copy of recognisance and copy of order forfeiting it.]

NOTES

The *Infants' Maintenance Protection Act 1913* comprises the Infants' Maintenance and Protection Law 1913 as amended. Particulars of the Infants' Maintenance and Protection Law 1913 and of the amending Acts are set out in the following table —

| Law or Act | Year and Number | Date posted at Court House, Norfolk Island | Date notified in Norfolk Island Government Gazette | Date of Commencement |
|--|-----------------|--|--|---|
| <i>Infants' Maintenance and Protection Law, 1913</i> | 1913, 17 | | | 24 December 1913 (published in Government Gazette of NSW, No. 25; proclaimed to commence 24.12.1913) |
| <i>Infants' Maintenance and Protection Act 1931</i> | 1931, 12 | 26 February 1932 | | 26 July 1932 |
| <i>Ordinances Revision Act 1934</i> | 1934, 8 | 17 July 1934 | | 17 July 1934 |
| <i>Administration Act 1936</i> | 1936, 14 | 16 December 1936 | | 16 December 1936 |
| <i>Ordinances Revision Act 1964</i> | 1964, 6 | | 30 June, 1964 | 30 June 1964 |
| <i>Ordinances Revision (Decimal Currency) Act 1980</i> | 1980, 31 | | 15 January 1981 | 15 January 1981 |

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

| Provision affected | How affected | |
|--------------------|--------------|----------------------------|
| 1 | am | 2, 1963; 6, 1964 |
| 2 | am | 14, 1936; 6, 1964 |
| 3 | am | 8, 1934; 6, 1964; 31, 1980 |
| 4 | am | 14, 1936 |
| 9 | am | 6, 1964 |
| 10 | am | 31, 1980 |
| 11 | am | 6, 1964 |
| 12 | am | 12, 1931; 6, 1964 |
| 13 | am | 6, 1964 |
| 15 | am | 6, 1964 |
| 16 | am | 6, 1964 |
| 17 | am | 6, 1964 |
| 18 | am | 6, 1964; 31, 1980 |
| 19 | am | 6, 1964 |
| 20 | am | 6, 1964 |
| 22 | am | 6, 1964 |
| 23 | am | 6, 1964 |
| Schedule | am | 14, 1936; 6, 1964 |

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