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with child by the said man, and that he has made no adequate provision for the payment of the expenses aforesaid.

The magistrate or court 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.

Court may require defendant to pay preliminary expenses.

cf. S.A. Act, No. 702, ss. 3, 4; Vic. Act, No. 1,684, ss. 2, 3; 35 and 36 Vic., chap. 65, s. 4; Act No. 21, 1923, s. 70.

**96.** (1) The court shall hear and determine any complaint under section ninety-five of this Act, and may—

- (a) order the defendant to deposit with the court a sum not exceeding thirty pounds for preliminary expenses and may, in and by such order, direct that the said sum be so deposited in one amount or in instalments over a period to be specified in the order; and
- (b) order that the defendant, unless he deposit with the court in accordance with the order made under paragraph (a) of this subsection the sum awarded for preliminary expenses, be committed to prison for a period of one day for every ten shillings or part of ten shillings included in the sum so awarded or in so much thereof as has not been deposited; and
- (c) order the defendant to pay weekly and every week a sum for the expenses of the maintenance of the child after such child has reached the age of three months.

Every order made under this subsection shall specify a date not later than six months from the date of the order when the order shall lapse if the child has not been born, and when the unexpended portion of any moneys deposited by the defendant for preliminary expenses shall be repaid to him.

(2) If the mother has been delivered of a still-born child (born dead after the commencement of the sixth month of pregnancy) before the date specified in the order, the court may direct that the whole or such portion of the amount deposited, as it thinks fit, be paid out to her.

(3) The court shall not make an order under this section against the defendant unless it be proved by the evidence of some medical practitioner or by the certificate

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certificate of some medical practitioner admitted as such evidence with the consent of the defendant, 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 child was begotten the mother was a common prostitute.

(4) Where an order has been made under this section for the payment of preliminary expenses, the clerk of the court at any time during the currency of the said order may give such direction, in writing, as he thinks necessary, for the disbursement of the said expenses, provided that no more than one-half of the said amount shall be paid out prior to the birth of the child.

**97.** (1) An order made under section ninety-six of this Act, adjudging any sum to be paid for the expenses of the maintenance of a child—

Duration  
of order.  
cf. Act No.  
21, 1923,  
s. 79.

- (a) shall be of full force and validity until the child has attained the age of sixteen years, or until the death of such child if such death occurs before that age;
- (b) shall not be enforceable unless and until a certified copy of the registration of the birth of such child has been lodged with the clerk of the court at which the order was made;
- (c) shall, for the purpose of recovering money due thereunder, always remain of full force and validity.

(2) Such certified copy of registration of birth shall be filed with the record of the proceedings.

(3) The first payment under any such order shall be due and payable on the first Monday after the day on which such child attains the age of three months.

**98.** Where an order has been made under section ninety-six of this Act adjudging any sum to be paid for the expenses of the maintenance of a child, and two or more living children are born, an application to vary the order may be made under section one hundred and sixteen of this Act to provide for the expenses of the maintenance of any such additional child.

Plural births:  
variation  
of order.

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Complaint may be made against father of illegitimate child for leaving it without means of support.

cf. Act No. 17, 1901, s. 4.

Act No. 21, 1923, s. 73.

**99.** (1) In any case where the father of an illegitimate child has left such child without means of support, the mother of the child, or any officer authorised by the Minister in that behalf, or any reputable person on behalf of the child, may make complaint on oath to a magistrate or court; and upon such complaint being made, the magistrate or court may summon the father of the child to appear before the court to answer such complaint, or if the circumstances seem to require it, may issue a warrant for his apprehension.

(2) In any case where the mother of an illegitimate child has left such child without means of support any officer authorised by the Minister in that behalf or any reputable person on behalf of the child may make complaint in writing on oath to a magistrate or court, and upon such complaint being made the magistrate or court may summon the mother of the child to appear before the court to answer such complaint, or, if the circumstances seem to require it, may issue a warrant for her apprehension.

Complaint may include two or more children.

**100.** A complaint under section ninety-nine of this Act may allege that a man or a woman has left without means of support two or more children, and the court may make an order in respect of all or any of them and shall therein specify the amount payable in respect of each child.

Claim for preliminary expenses to be indicated.

**101.** (1) In any proceedings under subsection one of section ninety-nine of this Act, the complaint shall indicate whether preliminary expenses are to be claimed at the hearing.

(2) Failure to do so shall not prevent such claim being made at the hearing, subject to the right of the defendant to apply for an adjournment.

Court shall hear and determine complaint and may make order.

cf. *Ibid.* s. 74.

**102.** The court shall hear and determine any complaint under section ninety-nine of this Act, and may—

(a) make an order for the payment by the defendant—

(i) weekly and every week of a sum for the expenses of the maintenance of the child; and

(i)

- (ii) of a sum for preliminary expenses to an amount not exceeding thirty pounds in respect of each child, and may in and by such order direct that the said sum be so paid in one amount or in instalments over a period to be specified in the order:

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Provided that, in the case of plural births, the amount ordered for preliminary expenses shall not exceed thirty pounds;

- (b) order that the defendant, in default of payment in accordance with the order made under paragraph (a) of this section of the sum so awarded for preliminary expenses be committed to prison for a period of one day for every ten shillings or part of ten shillings included in the sum so awarded or in so much thereof as has not been paid.

**103.** For the purposes of subsection one of section ninety-nine of this Act any defendant who has failed to pay an adequate sum for preliminary expenses shall be deemed to have left the child without means of support.

Effect of non-payment of preliminary expenses.  
cf. Act No. 21, 1923, s. 74.

**104.** On any complaint made under section ninety-five, section ninety-nine, or section one hundred and five of this Act an order may be made notwithstanding the death of the mother of the child or of the complainant prior to the hearing.

Order where complainant dies.

**105.** (1) Where any illegitimate child has been still-born after the commencement of the sixth month of pregnancy, or having been born alive has died before attaining the age of sixteen years, and the father of such child has not paid an adequate sum—

Funeral expenses of child.  
cf. *Ibid.* s. 76.

- (a) for preliminary expenses;  
(b) for the funeral expenses of such child,

the mother of such child, or any officer authorised by the Minister in that behalf or any reputable person, on behalf of the mother, may make complaint in writing on oath to any magistrate or court that the father of such child has failed to make any such payments.

(2)

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Funeral  
expenses of  
mother.

(2) Where the mother of any illegitimate child (including a child which has been still-born after the commencement of the sixth month of pregnancy) has died during parturition, or in consequence of parturition, and the father of such child has not paid an adequate sum for the funeral expenses of the mother, any officer authorised by the Minister in that behalf or any reputable person may make complaint in writing on oath to any magistrate or court that the father has failed to pay an adequate sum for the funeral expenses of the mother of the child.

(3) Such magistrate or court may thereupon summon the father of the child to appear before a court to answer such complaint; or if the circumstances seem to require it, may issue a warrant for his apprehension.

(4) The court shall hear and determine any complaint under this section and may make an order for payment by the father of such child of—

- (a) a sum not exceeding thirty pounds for preliminary expenses;
- (b) a reasonable sum for the funeral expenses of such child or his mother.

The court may in and by any such order direct that any such sum be paid in one amount or in instalments over a period to be specified in the order.

(5) No order for preliminary expenses shall be made under this section unless the complaint be made within twelve months of the birth of such child.

(6) No order for funeral expenses shall be made unless complaint be made within twelve months of the death of such child or his mother.

(7) A complaint under this section may include all or any of the expenses mentioned herein.

(8) The court may order that the defendant, in default of payment, in accordance with the order made under subsection four of this section, of any sum so ordered, be committed to prison for a period of one day for every ten shillings or part of ten shillings included in the sum so ordered or in so much thereof as has not been paid.

(9) No order for preliminary expenses or for funeral expenses shall be made under this section unless evidence is produced in corroboration in some material particular

particular of the allegation as to the paternity of the child, or if the court be satisfied that at the time the child was begotten the mother was a common prostitute.

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(10) Where the defendant has been adjudged by any court to be the father of any such child no further proof of paternity shall be required under this section.

**106.** If it appears to the court that both the father and the mother of an illegitimate child are able to contribute to any of the expenses referred to in this Part, 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 so to contribute, it may direct payment by her alone.

Mother also to contribute to expenses.

cf. Act No. 17, 1901, s. 7; Act 56 Vic. No. 22, s. 10 (N.Z.); Act No. 21, 1923, s. 78.

**107.** (1) An order under section one hundred and two of this Act adjudging any sum to be paid for the expenses of the maintenance of a child 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 child has attained the age of sixteen years, or until the death of such child if such death occurs before that age.

Period for which orders for maintenance may be made.

cf. 35 and 36 Vic., ch. 63, s. 5; Act 58 Vic. No. 22, s. 9 (N.Z.); Act No. 21, 1923, s. 79.

(2) For the purpose of recovering money due under an order it shall always remain of full force and validity.

**108.** (1) When an order is made or deemed to have been made under this Part for payment of the expenses of maintenance the court may, at any time during the currency of the order, upon application, and upon notice of such application, given in such manner as the court shall direct, to the defendant, require the defendant to enter into a recognizance with or without 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 recognizance with the required sureties, if any, the court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order complied with for the period required by the court.

Security for payment may be ordered.

cf. Act No. 17, 1901, s. 8; Act No. 21, 1923, s. 80.

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Any such application may in the case of an order made under this Part, be made immediately or at any time after the court has pronounced its decision.

Forfeiture of recognizances.

(2) The court, on due proof that the conditions of such recognizance have not been complied with by the defendant, may ex parte forfeit such recognizance, which shall thereupon be dealt with as a forfeited recognizance in the manner provided by the Fines and Forfeited Recognizances Recovery Act, 1902.

(3) The money so secured shall be applied for the benefit of the mother or child in accordance with the order for payment of the expenses of maintenance.

Seizure of defendant's goods.  
cf. Act No. 21, 1923, s. 82; Act No. 17, 1901, ss. 8A and 9.

**109.** The court may in any order made under this Part or at any time during the currency of any order made or deemed to have been made under this Part, upon application and upon notice of such application, given in such manner and to such persons as the court shall direct, authorise and direct some person forthwith to seize and sell the defendant's goods and to demand and to receive his rents or any annuity or other income payable to him, or any money received or receivable or held by any person in trust to be paid periodically or by instalments to or for such defendant or any moneys to which he is entitled or about to become entitled, or such portion of the goods, rent, annuity, income or moneys as the court thinks fit, and to appropriate the proceeds towards the payment of the moneys ordered in such manner as it from time to time directs.

Further orders as to payment and disbursement of maintenance or expenses.  
cf. Act No. 17, 1901, s. 10; Act No. 21, 1923, s. 81.

**110.** Where an order has been made or is deemed to have been made under this Part for payment of any of the expenses referred to in this Part or of moneys secured under any recognizance the court may, by the order made under this Part, or at any time during the currency of the order made or deemed to have been made under this Part, upon application, and upon notice of such application, given in such manner and to such persons as the court shall direct, make such orders as it thinks necessary for better securing the payment and regulating the receipt and disbursement of the expenses or moneys or for investing and applying the proceeds of the goods or rents ordered to be sold or collected or any annuity or money payable to the defendant

or

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.

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**111.** (1) A copy of any order made under section one hundred and nine or section one hundred and ten of this Act, certified by the clerk of the court, shall be served on any person affected thereby: Provided that if the defendant has removed from the State of New South Wales, it shall not be necessary to serve a copy of the said order on him.

Service  
of orders.

(2) Any person who neglects or refuses to comply with any such order served on him shall be guilty of an offence against this Act.

(3) If it appears that the defendant has theretofore usually resided in New South Wales and has left the said State, orders may be made and authority given under the provisions of section one hundred and nine or of section one hundred and ten of this Act, although notice of such application has not been given to the defendant.

Authority  
when  
defendant  
has left  
State.

**112.** Where any proceedings are taken under this Part, in respect of any of the expenses referred to in this Part payable in relation to an illegitimate child, of which the defendant is alleged to be the father, no order shall be made—

Evidence  
necessary  
for order for  
maintenance.  
cf. Act No.  
21, 1923,  
s. 93.

- (a) upon the evidence of the mother, unless her evidence be corroborated in some material particular; or
- (b) if the court is satisfied that at the time the child was begotten the mother was a common prostitute.

**113.** (1) Where a complaint for preliminary expenses or for the expenses of maintenance under this Part has been dismissed by a court or where an order of a court made on any such complaint has been quashed or an order of dismissal of any such complaint has been confirmed by a court of quarter sessions on appeal, a further complaint may be made in respect of the same child, provided that such complaint contains an allegation that fresh evidence material to the question of the paternity of the

Evidence  
necessary  
for  
orders for  
preliminary  
expenses or  
expenses of  
mainten-  
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said child is available, which was not available upon the hearing of the previous complaint, or upon the hearing of the appeal.

(2) The court shall receive and consider the evidence recorded at the original hearing or on appeal as well as the fresh evidence submitted.

(3) If at the conclusion of the evidence submitted by the complainant no fresh evidence material to the question of paternity has been produced, the complaint shall be dismissed.

Disobedience  
of order  
may be  
punished.  
Act No. 21,  
1923, s. 83.  
cf. Act No.  
17, 1901,  
s. 11.

**114.** (1) On complaint in writing on oath being made to a magistrate or court that any person has disobeyed or has not complied with any order made or deemed to have been made under this Part (other than an order for the deposit or payment of preliminary expenses), such magistrate or court may summon such person to answer the complaint, or if the circumstances seem to require may issue his warrant for the apprehension of such person.

(2) A court upon the hearing of the complaint may enforce compliance with the order by the committal of the offender to prison for a period of one day for every ten shillings or part of ten shillings 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.

Costs.

(3) Where it appears that the arrears have been paid since the issue of a summons or of a warrant the court may order the person 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.

Discretion  
of court  
with respect  
to arrears.

(4) The court may refuse to enforce an order or may enforce it to such extent as the court thinks fit having regard to all the circumstances of the case, particularly with reference to the inability of the offender to obtain employment, or to comply with the order owing to continued ill health.

(5)

(5) The court may direct that the warrant of committal shall lie in the office for such time as the court thinks 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 the court thinks fit to the person to whom the amount due under the order is payable.

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Warrant may lie in office.

(6) 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 offender to prison be executed, or issue a warrant in accordance with the terms of the order.

Warrant to issue on failure to pay or comply with conditions.

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

Execution of warrant may be postponed.

**115.** (1) Subject to the provisions of section 16A of the Prisons Act, 1899, the period of imprisonment served by a defendant under any order of committal made under this Part of this Act, shall not discharge the defendant from payment of any preliminary expenses or expenses of maintenance for the non-payment of which he has been committed, but during such period the order in so far as it relates to the payment of expenses of maintenance shall be suspended.

Effect of imprisonment on non-payment.

(2) No defendant shall be liable to be imprisoned a second time for non-payment of preliminary expenses or expenses of maintenance for which he shall have actually suffered imprisonment, but such moneys shall thereafter be a civil debt only, recoverable in any court of competent jurisdiction by the person to whom they are due.

(3) A committal to prison or conviction of any person for an offence under this Part shall not prevent the making or, except where otherwise expressly provided, affect the operation of any order for the payment of money or for the doing of any act by such person.

Committal to prison not to prevent making of orders.  
cf. Act No. 21, 1923, s. 89.

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Court may vary order. cf. Act No. 21, 1923, s. 84.

**116.** (1) The court from time to time may, upon application made by or on behalf of the mother or child, or father, and upon notice given in such manner to the Director and to such other persons as the court shall direct, vary, suspend, or discharge any order made or deemed to have been made under this Part.

(2) The question of the paternity of the child shall not be raised upon an application to vary, suspend or discharge an order.

Place of hearing. cf. Act No. 17, 1901, s. 21.

(3) An application under 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 order, the subject of the application, was made.

Date of variation, suspension or discharge.

(4) An order may be varied, suspended, or discharged as from a date prior to the application, and may be varied or suspended from time to time.

Default not a bar in certain cases.

(5) The court may entertain an application to vary, suspend, or discharge an order notwithstanding that the applicant is in default in complying therewith if it is satisfied that there are good and sufficient reasons for such default.

Service of summons or notice. cf. Act No. 21, 1923, s. 85.

**117.** (1) Every summons and every notice to the respondent shall be served by a constable or other person upon the person to whom it is directed personally or if he cannot conveniently be met with, then by leaving it for him at his last or most usual place of abode with some person apparently of or above the age of sixteen years and apparently residing at such place of abode.

(2) Service of a summons or notice in manner aforesaid may be proved by the oath of the person who served it or by affidavit or otherwise.

Court may proceed ex parte. *Ibid.* s. 86.

**118.** (1) If a defendant against whom a summons has been issued under this Part 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.

The

The inquiry and search made for the defendant may be proved orally or by the affidavit of the person who made such inquiry and search.

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**119.** (1) Any magistrate or court on being satisfied by complaint on oath that the whereabouts of any defendant who is not complying with any order made or deemed to have been made under this Part is not known, or that any defendant has removed or is about to remove out of New South Wales or to remote parts thereof to defeat any of the provisions of this Part or any order made or deemed to have been made thereunder may issue a warrant for the apprehension of such defendant to be dealt with according to law.

Warrant may issue in certain cases.

cf. Act No. 21, 1923, s. 87.

(2) In lieu of issuing such warrant the magistrate or court may issue a summons requiring such defendant to appear before the court to answer such complaint. Upon the appearance of such defendant he may be ordered to enter into a recognizance with or without 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 the court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order so complied with.

(3) The court on due proof that the conditions of such recognizance have not been complied with by the defendant may ex parte forfeit such recognizance, which shall thereupon be dealt with as a forfeited recognizance in the manner provided by the Fines and Forfeited Recognizances Recovery Act, 1902.

Forfeiture of recognizance.

(4) The moneys so secured shall be applied for the benefit of the mother or child in accordance with the order made or deemed to have been made under this Part.

**120.** (1) This section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Blood tests.

(2) In this section "blood test" means a test made for the purpose of ascertaining the inheritable characteristics of blood.

(3)