

No. 17, 1939.

(3) (a) A children's court consisting of a special magistrate shall, at the request of any person against whom an order for the expenses of maintenance which has been made or is deemed to have been made under this Part is in force or of the parties to any proceedings or contemplated proceedings under this Part direct that the child in respect of whose maintenance the order was made or the proceedings are taken or contemplated, the mother of the child and the man adjudged or alleged to be the father of the child submit to blood tests. No such direction shall be given unless the child has been born and the child, its mother and the man concerned are all living.

(b) When any such direction is given the magistrate shall in and by the direction nominate a medical practitioner to take such blood samples as may be necessary for the purpose of making the blood tests and a pathologist to make the blood tests and shall also fix a period within which the child, the mother and the man concerned shall attend such medical practitioner for the purpose of the taking of such samples.

Any period so fixed may be extended from time to time as the magistrate may think fit.

The pathologist so nominated shall be a medical practitioner whose name is on a panel of names of medical practitioners authorised to carry out blood tests under this Part, which panel shall be prepared by the Minister on the recommendation of the Director-General of Public Health.

(4) When a direction has been given by a magistrate under subsection three of this section the following provisions shall have effect:—

(a) When the hearing of a complaint under subsection one of section ninety-nine of this Act is pending—

(i) proceedings in such hearing shall be stayed until the expiration of the period or extended period fixed under subsection three of this section;

(ii) if the mother and the child referred to in the direction or either of them does not within such period or extended period

period attend the **medical practitioner** nominated in the direction and permit him to take blood samples, the complaint shall be dismissed and a further complaint shall not be allowed under section one hundred and thirteen of this Act, unless the mother gives an undertaking to submit herself and the child to blood tests;

- (iii) if the defendant to such complaint does not within such period or extended period attend the medical practitioner nominated in the direction and permit him to take blood samples the complaint shall be set down for hearing.
- (b) Where an order for expenses of maintenance made or deemed to have been made under this Part is in force—
- (i) if the mother and the child referred to in the direction or either of them do not, within such period or extended period, attend the medical practitioner nominated in the direction and permit him to take blood samples, the order shall, as from the expiration of such period or extended period, be suspended until the direction is complied with by the mother and the child; and if the direction is not so complied with within a reasonable time, the order may be discharged;
 - (ii) if the person liable under the terms of the order to pay the expenses of maintenance does not, within such period or extended period, attend the medical practitioner nominated in the direction and permit him to take blood samples the direction under subsection three of this section shall lapse.
- (c) The special magistrate may adjourn the proceedings from time to time as such special magistrate may think fit.
- (d)

No. 17, 1939.

(d) The fee of the medical practitioner nominated in the direction and the costs and expenses payable in connection with the making of the blood test shall be paid by the person at whose request the direction was given.

(5) The medical practitioner nominated in a direction given under subsection three of this section shall in the manner and within the time prescribed forward all blood samples taken by him pursuant to the direction to the pathologist nominated in the direction.

The blood tests shall be made by the pathologist nominated in the direction, and the results of such test shall be embodied in a certificate in the prescribed form.

(6) The certificate given under subsection five of this section shall be forwarded—

- (a) in any case where the direction was given by the Metropolitan Children's Court or by a magistrate exercising jurisdiction within the area named in the proclamation establishing the Metropolitan Children's Court—to the Clerk of the Metropolitan Children's Court;
- (b) in any other case—to the Clerk of Petty Sessions for the district within which the magistrate giving the direction exercises jurisdiction.

The Clerk of the Metropolitan Children's Court or the Clerk of Petty Sessions, as the case may be, shall, within seven days of the receipt by him of the certificate, send a copy of the certificate to the parties concerned.

(7) A certificate given under subsection five of this section shall be admissible as evidence in any proceedings under this Part, and shall be evidence of the facts and conclusions stated therein.

(8) The regulations may prescribe all matters necessary or convenient to be prescribed for carrying out or giving effect to this section.

Without prejudice to the generality of the foregoing provision the regulations may prescribe—

- (a) the duties of medical practitioners nominated to take blood samples, in relation to such samples;
- (b) the scale of fees to be paid to medical practitioners so nominated;

(c)

(c) the scale of costs and expenses payable in connection with the making of the blood test. No. 17, 1939.
—

121. (1) A man adjudged to be the father of a child may make an ex parte application to a magistrate to annul an order for preliminary expenses or expenses of maintenance made or deemed to have been made under this Part. Annulment
of order.

(2) If the applicant produces to the magistrate evidence by witnesses on oath, given either orally or on affidavit—

- (a) showing that evidence material to the question of the paternity of the child is available which was not produced at the time the order was made, and
- (b) disclosing the nature of such evidence and the names and addresses of the witnesses who are to be called to give such evidence,

the magistrate shall, upon such terms as he thinks fit, issue a notice directed to all persons to be affected thereby, calling upon them to show cause why the order should not be annulled.

(3) Where the person to whom such notice is directed is living elsewhere than in New South Wales the magistrate shall state a time for the hearing which will allow the person to whom the notice is directed to attend, regard being had to the distance of the place of residence from the place fixed for the hearing.

(4) An application under this section shall be heard and determined by a magistrate sitting as and constituting a children's court at a place agreed upon by the parties or at the place where the order, the subject of the application was made.

(5) The court shall entertain an application to annul an order notwithstanding that the applicant is in default in complying therewith.

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

(7) If at the conclusion of the evidence in chief submitted by the applicant, no fresh evidence material to the question of paternity has been produced, the application shall be dismissed.

(8)

No. 17, 1939.

(8) At the hearing the onus shall be upon the applicant to prove that he is not the father of the child.

(9) If the court finds that the applicant is not the father of the child such court shall so declare and annul the said order; otherwise the application shall be dismissed.

(10) If the order be annulled the defendant shall be released from payment of any amount due and unpaid under the order, but shall not be entitled to recover from any person any amount paid under and by virtue of the order.

(11) If the order be annulled the annulment shall not otherwise affect the previous operation of the order or anything duly suffered or done thereunder.

Appeals.

Act No. 21,
1923, s. 91.

122. (1) Any person affected by any order or varied order of a court or by the annulment of any order or by the dismissal of a complaint or the grant, dismissal or refusal by a court of any application under this Part may appeal in the manner provided by Part V of the Justices Act, 1902, and the provisions of that Part, so far as not inconsistent with this Act, shall mutatis mutandis apply to and in respect of such appeal.

(2) Where an order is made by the court at any place, and a district court is held nearer to that place than a court of quarter sessions and an appeal is made to a court of quarter sessions the appellant may include in the notice of appeal a request that the appeal be heard and determined at the place appointed for the holding of such district court, and in such case the appeal—

- (a) shall be heard and determined by the judge of the district court sitting as a chairman of quarter sessions;
- (b) shall be set down for hearing at the place appointed for the holding of the district court as soon as practicable after the expiration of fourteen days after the day upon which the notice of appeal was given.

(3) Where an order is made before birth respecting the paternity of a child, and the party affected by the order gives notice of intention to appeal to a court of quarter sessions, and desires that the appeal shall not be

be heard before the birth of the child, such party shall state his desire in the notice, and in such case the appeal shall be heard at the first court of quarter sessions held after a period of one month from the birth has elapsed, or at any court of quarter sessions succeeding such first held court and to which the hearing is postponed, but no appeal shall in such case be heard earlier than such first held court.

(4) At the request of either party the child shall be produced in court.

(5) Where any order has been made *ex parte* under section one hundred and eighteen of this Act the defendant may appeal as in this section provided, at any time within twenty-one days—

- (a) of the time when the fact of such order having been made first came to his knowledge;
- (b) after his return to New South Wales, if he were absent from that State when the fact of such order having been made first came to his knowledge.

The onus of proving such times shall lie upon the defendant.

123. (1) Sections sixty-one, sixty-two, sixty-four, sixty-five, sixty-six, sixty-eight, sixty-nine, seventy, seventy-one, seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-seven, eighty-nine, ninety, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-eight, one hundred and thirty-nine, one hundred and forty, one hundred and forty-one, one hundred and forty-two, one hundred and forty-three, one hundred and forty-four, one hundred and forty-five, and one hundred and fifty-three of the Justices Act, 1902, shall *mutatis mutandis* apply to proceedings under this Part of this Act, so far as such sections are not inconsistent with such Part or the Deserted Wives and Children Act, 1901-1939:

Application of Justices Act, No. 27, 1902.

cf. Act No. 21, 1923, s. 94.

Provided that subsection two of section eighty-two of the Justices Act, 1902, shall not affect the provisions relating

No. 17, 1939.

- (c) that any child or young person is or was a ward or has been committed to or is an inmate of any institution, shelter, depot, home or hostel; or
- (d) that any person is a foster parent; or
- (e) that any person is an officer;

shall be prima facie evidence of the facts alleged.

126. It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

Age of criminal responsibility. cf. 23 Geo. V, c. 12, s. 50.

127. (1) Sentence of death shall not be pronounced on or recorded against a person under the age of eighteen years, but in lieu thereof the court shall sentence him to imprisonment for life with hard or light labour.

Punishment of capital offences—children and young persons. cf. *Ibid.* s. 53.

Notwithstanding anything contained in the Crimes Act, 1900, the provisions of section four hundred and forty-two of that Act shall not be in force with respect to the sentence referred to in this subsection.

(2) The provisions of this section shall apply where the person charged is over the age of eighteen years if, at the time of the commission of the offence, the person charged had not attained the age of eighteen years.

128. The words “conviction,” “sentence” and “imprisonment” shall cease to be used in relation to children and young persons dealt with summarily, and any reference in any enactment to a person convicted, a conviction, a sentence or imprisonment shall, in the case of a child or young person, be construed as a reference to a person found guilty of an offence, a finding of guilt, an order made upon such a finding or a detention as the case may be.

Use of certain expressions to cease. cf. *Ibid.* s. 50 (1).

129. (1) Where an order to pay maintenance for the support of a child or for the use of a wife and the support of a child has been made under the Deserted Wives and Children Act, 1901-1939, or where an order to pay preliminary expenses or maintenance for the support of an illegitimate child or maintenance for the support of a child has been or is deemed to have been made under this Act, and—

Power to divert payment under existing orders to Director.

- (a) monetary assistance is being or has been given under this Act or any Act repealed by this Act in respect of any such child; or

(b)

No. 17, 1939. relating to periodical payments under such Part, or to amounts ordered to be paid under sections ninety-six, one hundred and two, and one hundred and five of this Act.

(2) A magistrate or court for the purpose of dealing with proceedings under sections ninety-five ninety-nine and one hundred and five of this Act, and for the purpose of procuring the evidence of any person able to give evidence in corroboration in some material particular of the allegation in a complaint as to the paternity of any child, shall have all the powers of a justice or justices under sections sixty-one, sixty-six, and seventy-one of the Justices Act, 1902, and the provisions of sections sixty-two and sixty-four of that Act shall, *mutatis mutandis*, apply to the forms of any summons or warrant issued by the magistrate or court under this Part.

Costs.
cf. Act No.
17, 1901,
s. 25.

124. In any order under this Part the court may order the payment of such costs by such persons, being parties to the proceedings, as it thinks fit.

PART XVII.

PROCEDURE, PENALTIES AND GENERAL PROVISIONS.

Authority of
Minister
presumed.

125. (1) In the absence of proof to the contrary, the authority of the Minister or any officer to do any act or to take any proceedings shall be presumed.

Right to
appear.
2 Geo. V,
No. 11, s. 65,
(Qld.).

(2) At the hearing of any complaint, application, proceeding or information against any child or young person or of any appeal in respect thereof, the Minister or any officer authorised in that behalf by the Minister shall be entitled to appear and to be heard.

Averments.

(3) An averment in any complaint or information made or laid under this Act—

- (a) that any proclamation or regulation has been published in the Gazette; or
- (b) that any officer has been appointed, authorised or directed by the Minister as stated in the averment; or

(c)

No. 17, 1939.

- (b) accommodation and maintenance has been or is being provided for any such child or for its mother in a hostel for expectant and nursing mothers; or
 - (c) any such child has been committed to an institution or provided with accommodation and maintenance at any home, hostel, shelter or depot,
- any officer authorised by the Minister in that behalf may apply to the court to vary the order.

(2) Upon notice of this application being given to such persons and in such manner as the court shall direct, the court may make such order as it thinks fit for variation of the order in so far as it relates to the receipt or disbursement of moneys payable under the order.

(3) In any case in which an order may be varied under subsection one of this section, the person who, under the terms of the order, is entitled to any moneys received thereunder may give to the Director an authority in or to the effect of the form in the Second Schedule to this Act, directed to the person who by the order is appointed to receive moneys paid thereunder, to pay to the Director on behalf of the Minister all moneys then held or thereafter received in pursuance of the order.

(4) The Director shall lodge the authority or cause the same to be lodged with the officer to whom it is directed.

(5) The officer to whom the authority is directed shall register the same with his records relating to the order.

(6) From the date of such lodgment of the authority and until the authority is cancelled by written notice from the Minister or any officer authorised by the Minister in that behalf, any payment made in accordance with such authority by the officer to whom the authority is directed, shall be a sufficient discharge for such officer.

(7) In any case where an authority has been lodged in pursuance of subsection four of this section, the person who signed such authority shall not be entitled, except with the consent of the Minister or any officer authorised by the Minister in that behalf to waive payment of or allow credit for, any amount due and unpaid under the order.

(8)

No. 17, 1933.

(8) Any authority to pay money to the Secretary, Child Welfare Department, given before the commencement of this Act, and still in force at such commencement, which could validly have been given if this section had been in operation at the time such authority was given, is hereby validated, and shall have effect according to its tenor as if given under this section notwithstanding that it is not in or to the effect of the form in the Second Schedule.

As from such commencement the authority shall be deemed to be an authority to pay money to the Director, on behalf of the Minister.

130. Where a person is charged before a court with an offence against this Act in respect of a child or young person who is alleged in the charge to be under any specified age and the child or young person appears to the court to be under that age, such child or young person shall be deemed to be under that age unless the contrary is proved. Presumption of age.

131. (1) Where in any proceeding against any person for an offence against this Act the child in respect of whom the offence is alleged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the court understand the nature of an oath, the evidence of such child may be received though not given upon oath if in the opinion of the court such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth. Evidence of children of tender years. cf. Act No. 21, 1923, s. 110.

(2) The evidence of such child, though not given on oath, but otherwise taken and reduced into writing as a deposition, shall be deemed to be a deposition to all intents and purposes.

(3) No person shall be convicted of the offence charged unless the testimony admitted by virtue of this section, and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused.

(4) Any child whose evidence is received as aforesaid, and who gives false evidence, shall be liable, if found guilty in a summary manner by a court, to be dealt with in accordance with section eighty-three of this Act,

No. 17, 1939. Act, but no prosecution shall be instituted under this section without the leave of the court before which such evidence was given.

(5) Where a justice is satisfied by the evidence of a medical practitioner that the attendance before a court of any child in respect of whom an offence against this Act is alleged to have been committed would be injurious or dangerous to its health, the justice may take in writing the statement of such child in pursuance of section four hundred and six of the Crimes Act, 1900, as if the child were dangerously ill, whereby his evidence would probably be lost if not forthwith taken.

(6) Where in any proceedings with relation to an offence against this Act the court is satisfied by the evidence of a medical practitioner that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would be injurious or dangerous to its health, any deposition taken under section four hundred and six of the Crimes Act, 1900, or any statement of the child taken under this section, may be read in evidence, and shall have effect in like manner as if it were proved that the child were so ill as not to be able to travel, or (in the case of any such statement) that there was no reasonable probability that the child would ever be able to travel or give evidence; but the same conditions shall apply as in the case of the reception of evidence under subsections one, two, three and four of this section.

(7) Where in any proceedings with relation to an offence against this Act the court is satisfied by the evidence of a medical practitioner that the attendance for the purpose of giving evidence before the court of any child in respect of whom the offence is alleged to have been committed would be injurious or dangerous to its health, and it is further satisfied that the evidence of the child is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Offences.

Act No. 21,
1923, s. 104.

132. (1) Any person guilty of an offence against this Act shall be liable, upon summary conviction before a court, unless some other penalty or punishment is expressly provided, to a penalty not exceeding one hundred pounds or to imprisonment for twelve months or to both penalty and imprisonment.

(2)

No. 17, 1939.

(2) Penalties imposed by this Act or by any regulation made thereunder may be recovered in a summary manner before a court.

(3) Where any person is charged with an offence against this Act it shall be a sufficient defence if the person charged satisfies the court that he had a reasonable excuse for the act or omission which constitutes the offence charged.

133. (1) If a court has reason to believe that a child or young person is, or may be, suffering from venereal disease, the court may at any time order an examination to be made of such child or young person by a medical practitioner, either male or female.

Child believed to be suffering from venereal disease.
cf. Act No. 21, 1923, s. 107.

(2) In the event of the medical practitioner reporting that any child or young person is so suffering, the court shall forthwith notify the commissioner appointed under the provisions of the Venereal Diseases Act, 1918, in writing, and the provisions of the said Act shall apply to such child or young person.

(3) If any child or young person suffering from venereal disease has been sentenced according to law and the judge has directed that such child or young person be detained in an institution, or, if any child or young person suffering from venereal disease be committed to an institution such child or young person shall not be released therefrom unless the child or young person has been examined by a medical practitioner and certified by such practitioner to be free from venereal disease or no longer liable to convey infection.

Detention until certified free from disease.

(4) Such certificate shall be obtained at the expense of the Child Welfare Department and retained by the Director.

(5) Any such child or young person who has been sentenced and directed to be detained in an institution, or who has been committed to an institution may be detained in the custody and under the control of the superintendent of the institution after he has reached the age of eighteen years and until certified in accordance with the provisions of this section.

Detention beyond age of eighteen years.

134.