

60° VICTORIA, 1896.

---



---

## A BILL

To provide for the payment of the past and future maintenance of Destitute Persons by their relatives, and for the recovery from the inmates of charitable institutions of the cost of their maintenance therein.

---



---

**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:—

1. (I) This Act shall apply to and in respect of—
- (a) inmates of any of the institutions mentioned in Schedule One to this Act, and
  - (b) persons for whose admission into any of the institutions mentioned in Schedule One an order has been granted, and
  - (c) children boarded out in pursuance of the State Children's Relief Act of 1881, and
  - (d) inmates of any of the institutions mentioned in Schedule Two, which persons are in this Act referred to as "destitute persons."

Application of Act  
and definition of  
"destitute persons."

(II) Provided that the Governor may by proclamation in the *Gazette* declare that any charitable institution therein named shall be included in those mentioned in Schedule One or Schedule Two to this Act, and thereupon that institution shall be deemed to be included in those mentioned in that Schedule.

*Destitute Persons.*

2

2. The relatives hereinafter mentioned of any destitute person shall be liable to maintain or contribute to his maintenance in the following order:—

*Liability of relatives for maintenance of destitute person.*

- (a) where the destitute person is an adult male or female, the husband, wife, father, mother, grandparents, children, and grandchildren shall be liable. And brothers shall be liable where the destitute person is an adult female of good character;
- (b) where the destitute person is a legitimate child, the father, mother, stepfather, stepmother, and grandparents shall be liable;
- (c) where the destitute person is an illegitimate child, the putative father, mother's husband, and mother shall be liable.

3. If it appears to any justice, on information given in writing by an authorised person, that any destitute person has no money or property or has not money or property sufficient for and applicable to his maintenance, and that any of his said relatives is able to maintain him or contribute to his maintenance, the justice may make application in writing to the relative aforesaid for the payment in such manner, at such times, and to such person as the justice may think fit of such sums as in the discretion of the justice ought to be paid by the relative for or towards the past maintenance during the preceding twelve months, or the future maintenance of the destitute person.

*Application by justice to relatives for maintenance of destitute person.*

4. (I) Upon information being given to a justice as aforesaid, there shall be lodged with the justice the affidavit or statutory declaration hereinafter mentioned, together with as many true copies of the same as there are persons sought to be made liable.

*Application for maintenance to be supported by affidavit.*

(II) The affidavit or declaration shall be made by an authorised person setting forth the following facts, to the best of his knowledge, information, and belief, namely:—

- (a) the particulars of the destitute person's money and property (if any), and that the same is not sufficient for or applicable to his past and future maintenance;
- (b) the degrees of relationship to the destitute person of the person alleged to be liable; and
- (c) that the persons alleged to be liable are able to maintain or contribute to the past or future maintenance of the destitute person.

The affidavit or declaration may also set forth as aforesaid the names of any other relatives of the destitute person who are alleged to be liable, as aforesaid and able to contribute to his maintenance and such other facts as may be thought desirable.

5. (I) If any of the sums aforesaid be not paid in pursuance of the application, any justice on complaint by an authorised person may issue a summons requiring the person to whom application has been made to appear before the magistrates or justices hereinafter mentioned, to show cause why he should not pay the said sum or should not maintain or contribute to the past and future maintenance of the destitute person.

*Issue of summons in default of compliance with application by justice. State Children's Act (S. Aust.), 1895, ss. 81, 82.*

(II) Where the destitute person is one of the persons mentioned in subsections (a), (b), or (c) of section one of this Act, the summons shall be returnable before a stipendiary magistrate having jurisdiction within the metropolitan police district, who shall hear and determine the complaint wherever the defendant may reside, and wherever the destitute person may be.

*Where summons returnable.*

Where the destitute person is one of the persons mentioned in subsection (d) of section one of this Act the summons shall be returnable before a police or stipendiary magistrate, or any two justices in petty sessions, having jurisdiction within the police district in which the destitute person then is.

(III)

*Destitute Persons.*

3

(III) A copy of the affidavit or declaration lodged with the justice as aforesaid shall be served with any summons or warrant issued to or against any person summoned under this or the next following section to show cause as aforesaid. And the affidavit or declaration or the copy served shall at the hearing of the complaint be evidence of the matters therein stated.

Copy affidavit to be served with summons.

6. At the time and place appointed for the hearing of the complaint the Court may adjourn the hearing, and may further adjourn it from time to time, and may at the original or any adjourned hearing summon any relatives alleged to be liable for the maintenance of the destitute person to appear at the time appointed for any adjourned hearing, to show cause why they should not maintain or contribute to the past and future maintenance of the destitute person.

Hearing may be adjourned.  
State Children's Act (S. Aust.), 1895, s. 83.

7. (i) Subject to the provisions of this Act the Court may, at the original or any adjourned hearing, on being satisfied that the destitute person has not any money or property sufficient for and applicable to his past or future maintenance, and that any person summoned is a relative of the destitute person, and is liable and able to maintain or contribute to his maintenance, make an order directing the said relative to pay to such person as the Court may name in that behalf such sum as may be considered proper—

Order may be made for payment of past and future maintenance.  
*Ibid.* s. 83.

- (a) towards the past maintenance of the destitute person during the preceding twelve months, payable by instalments or otherwise; and
- (b) towards the future maintenance of the destitute person, payable weekly or monthly, and not to be less than two nor more than ten shillings a week:

Provided that where a person is called upon to show cause why he should not maintain or contribute to the past or future maintenance of an illegitimate child as its putative father, he shall not be adjudged to be liable upon the evidence of the mother, unless it be corroborated in some material particular, nor if about the time the child was begotten the mother was a common prostitute, or cohabited with more than one man.

In complaint against putative father evidence of mother to be corroborated.

(II) In making an order under this section the Court shall have regard to the order in which the relatives of a destitute person are hereinbefore expressed to be liable for his maintenance. And if an order is made against two or more persons the sums or proportions payable by each shall be fixed by the Court.

Order in which relatives are liable.

8. The Court, making any maintenance order, may, by the same or a subsequent order, on complaint by the authorised person who initiated the proceedings that any relative of the destitute person liable under the order has made default thereunder, or intends to evade compliance therewith, request the said relative to find good and sufficient sureties or security, to the satisfaction of the Court, for the due compliance with the order, and the said Court may, in default of such sureties or security being found, commit the said relative to gaol for any period not exceeding *six* months if the order for security be not sooner complied with:

The Court may require security to be given.  
State Children's Relief Act (S. Aust.), 1895, s. 91.

Provided that any one justice may, upon being satisfied that the security has been duly made and perfected, order the discharge of the relative from gaol.

9. Any justice, on the complaint of a relative of a destitute person against whom a maintenance order has been made, may summon any persons alleged in the complaint to be relatives of the destitute person and liable for his maintenance, to appear before any Court having jurisdiction to make a maintenance order in respect of the destitute person, and shall give notice thereof to the authorised person who obtained the maintenance order or made the original complaint.

Order may be varied in further inquiry.  
State Children Act, (S. Aust.), 1895, s. 92.

At .

*Destitute Persons.*

4

At the time and place appointed for the hearing of the complaint, or at any adjourned hearing, the said Court may make further inquiry as to the means and ability of the complainant, and as to the relationship of the destitute person to the persons summoned, and as to their several abilities to maintain or contribute to the past or future maintenance of the destitute person.

And the Court may make an order—

- (a) increasing, reducing, or varying the instalments or periodical sums to be thenceforth paid by the complainant; or
- (b) suspending for a specified time the operation of or annulling the previous order; or
- (c) directing that the persons summoned shall thenceforth pay for or contribute to the past or future maintenance of the destitute person subject to the provisions of section seven of this Act;

or may make such other order not inconsistent with the provisions of this Act as may appear just.

10. Subject to the provisions of the order any member of the police force shall, if so authorised in writing by the Inspector-General of Police, demand, collect, and receive from any person liable to pay the same all moneys due under any maintenance order, and pay them to the person authorised in the order to receive the same; and the receipt in writing of any member of the said force, authorised as aforesaid, for moneys so paid to him shall be a sufficient discharge for the same.

Collection by the police of moneys due under orders.  
State Children Act (S. Aust.), 1895, s. 93.

11. (i) If any money payable under a maintenance order is in arrear for one month any police or stipendiary magistrate or any two justices may issue a warrant empowering some person named in the warrant to receive the whole or so much of the rents, profits, and income of the real and personal estate of the person against whom the order has been made, or to sell the estate and interest of the said person in the said real and personal estate, or such part thereof as the magistrate or justices may direct.

Warrant to recover arrears.  
State Children Act (S. Aust.), 1895, ss. 95, 96, 97, 98, 99, 100, and 101.

(ii) The warrant may be registered in the same way as a writ of *feri facias*, and shall from the time of registration bind the estate or interest of the person against whom the order has been made in his real estate and chattel real property.

Warrant when registered to bind land.

(iii) Any sale under the warrant may be by public auction or private contract for cash or on credit, or partly for cash and partly on credit, and subject to such special or other conditions as the person empowered as aforesaid may deem expedient.

Sale under warrant.

(iv) The person empowered as aforesaid may execute to the purchaser all such conveyances, assignments, transfers, or other assurances of the property sold as the person against whom the order was made might, but for this Act, have executed, and the property shall thereupon vest in the purchaser accordingly; and the Registrar-General shall forthwith register such transfers, and cause such certificates of title to be issued and cancelled, and entries to be made and acts done as may be necessary for giving effect to the sale.

Assurances to purchaser.

(v) No notice or demand whatsoever shall be requisite before issuing any warrant under this section, or before exercising any of the powers thereby conferred.

No previous demand for warrant required.

The warrant shall, so far as regards any purchaser or person dealing with the person empowered as aforesaid be conclusive evidence that the power to sell is vested in the said person.

(vi) The payment to the person empowered as aforesaid shall be a good discharge to any tenant, purchaser, or other person for all moneys paid by him pursuant to the warrant.

Discharge to person paying.

(vii)

*Destitute Persons.*

5

(VII) Any rents, profits, and income, and the proceeds of any sale received under a warrant shall be applied first in payment of the costs of collection or sale; next, in payment of the costs of obtaining the warrant; thirdly, in paying any money due under the maintenance order; and the balance shall be applied towards the future maintenance of the destitute person, or in such other manner as the magistrate or justices may direct.

Application of moneys received.

12. Any money expended out of the Consolidated Revenue Fund in or towards the maintenance of any destitute person while he is an inmate of any institution mentioned in Schedule One to this Act shall be deemed a debt due by the destitute person to the Crown, and may be sued for and recovered by the authorised person in any Court of competent jurisdiction. And any money so recovered shall be paid by the authorised person into the Consolidated Revenue Fund.

Destitute person may be sued for maintenance.

13. (I) Where proceedings under the last preceding section have been taken by an authorised person, he may give notice to any person having or supposed to have the care, custody, or control of any money or property of or belonging or payable to the destitute person, not to pay or part with the possession of the said money or property until the proceedings have been determined. And upon receipt of the notice the money and property shall become and be attached in the hands of the person having the care, custody, or control thereof, who shall be compellable to give evidence on the hearing as to all matters relating to or concerning the said money or property.

Attachment of money or property of destitute persons.

(II) If the judgment or order of the Court before whom the proceedings are heard is that the debt sued for, or any part thereof, be recovered from the destitute person, or if the verdict is in favour of the authorised person, the Court or any judge thereof may order and direct that the money or property attached, or any part thereof, shall be paid or handed over to the authorised person, and the person having the care, custody, or control thereof shall pay or hand over the same accordingly, and shall be thereby discharged from all liability to the owner thereof, or any person claiming under him, in respect of the money or property so paid or handed over; and except as to such portion of the money or property attached as the Court or judge may, within *one* month from the service of the notice of attachment, order to be so paid or handed over, the attachment shall be determined.

Order for payment and delivery of money and property attached.

(III) Any person who has received a notice of attachment may, before the hearing of the proceedings or the expiration of *one* month from the service of the notice, whichever first happens, obtain from the Court in which the proceedings are pending or any judge thereof an order setting aside the attachment in whole or in part.

Order setting aside attachment.

(IV) Any person who has received a notice of attachment which has not been determined or set aside may plead the notice in bar to any action, suit, or other proceeding which may be thereafter instituted against him for the recovery of the money or property by the owner or any person claiming under him.

Notice of attachment may be pleaded.

(V) Any person who, after the receipt of a notice of attachment which has not been determined or set aside—

Persons contravening notice personally liable.

(a) pays or hands over any money or property attached otherwise than according to the order of a Court made under this section, or

(b) neglects or refuses to comply with the order made, shall be personally liable to pay to the authorised person the amount of money or the value of the property attached or ordered to be paid or handed over.

14. Any person aggrieved by any order made by a magistrate or by justices under this Act may appeal therefrom to the next Court of Quarter Sessions in the manner provided in the Criminal Law Amendment Act of 1883 for appeals from summary convictions.

Appeal to Quarter Sessions.

*Destitute Persons.*

- 
15. In this Act, unless the context otherwise requires— Definitions.  
 “**Authorised person**” means—  
 (a) in reference to any institution mentioned in Schedule One, or to any destitute person included in the persons mentioned in subsections (a), (b), or (c) of section one of this Act, the Director of Government Asylums for the Infirm, or any person authorised by him in writing to act on his behalf under this Act, and  
 (b) in reference to any institution mentioned in Schedule Two, or to any destitute person included in the persons mentioned in subsection (d) of section one of this Act, such person as may be authorised in that behalf by the Governor, and notified in the *Gazette*.  
 “**Child**” means any person under the age or apparently under the age of sixteen years in the case of a boy, and under the age of eighteen years in the case of a girl.  
 “**Court**” means the magistrate or justices or the Court having jurisdiction in the matter referred to.  
 “**Destitute person**” has the meaning attached to the expression in section one of this Act.  
 “**Justice**” means Justice of the Peace.  
 “**Maintenance**” includes clothing, support, training, and education.  
 “**Maintenance order**” means an order made by a magistrate or by justices for the payment of money by a relative in respect of the past or future maintenance of a destitute person.
16. This Act may be cited as the “**Destitute Persons Act, Short title.**”  
 1896.”

---

**SCHEDULES.**

---

**SCHEDULE ONE.**

Newington Asylum for the Infirm and Destitute.  
 Rookwood Asylum for the Infirm and Destitute.  
 Macquarie-street Asylum, Parramatta, for the Infirm and Destitute.  
 George-street Asylum, Parramatta, for the Infirm and Destitute.  
 Cottage Homes for Aged Married Couples, Parramatta.  
 Cottage Homes for State Children, at Pennant Hills and Mittagong.  
 Receiving Depôt for State Children, Ormond House, Paddington.

---

**SCHEDULE TWO.**

Any benevolent asylum, hospital, or other charitable institution subsidised from the Consolidated Revenue Fund.

---