



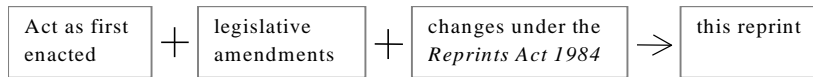
Western Australia

# **Legal Representation of Infants Act 1977**

**Reprint 2: The Act as at 7 October 2011**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, modifying or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Reprinted under the  
*Reprints Act 1984* as  
at 7 October 2011

Western Australia

## Legal Representation of Infants Act 1977

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Western Australia

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## Legal Representation of Infants Act 1977

**An Act to make provision for the legal representation of infants in legal proceedings.**

**1. Short title**

This Act may be cited as the *Legal Representation of Infants Act 1977*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

**3. Application of Act**

- (1) The provisions of this Act shall apply to —
- (a) the Supreme Court of Western Australia; and
  - (b) The District Court of Western Australia; and
  - (ba) the State Administrative Tribunal; and
  - (c) the Family Court of Western Australia in the non-federal jurisdictions of that court; and
  - (ca) the Magistrates Court in relation to its civil jurisdiction; and

**s. 4**

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- (d) the Children's Court, in relation to applications made under the *Children and Community Services Act 2004*; and
  - (e) such other courts exercising jurisdiction in the State as the Governor may from time to time by proclamation declare.
- (2) A proclamation made for the purposes of this section may be varied or revoked by a subsequent proclamation.

*[Section 3 amended by No. 54 of 2004 s. 176; No. 34 of 2004 Sch. 2 cl. 18(2); No. 59 of 2004 s. 141.]*

**4. Rules and regulations**

- (1) Where by any Act regulations or rules of court may be made for regulating and prescribing the practice and procedure and other matters and things incidental thereto or for conducting the business of a court to which this Act applies, that power shall be construed as including the power to make such regulations or rules for the purposes of this Act.
- (2) The Governor may make regulations for carrying out this Act, where no rules of court apply.

**5. Guardians *ad litem*, appointment of by court**

- (1) Where in any legal proceedings it appears to the court —
- (a) that the interests of a person who is an infant are or may be affected by those proceedings and that the infant is not a party to those proceedings; and
  - (b) that the infant ought to be separately represented,

the court may, at any stage of the proceedings, appoint a fit and proper person who consents to act as guardian *ad litem* of the infant to be the guardian *ad litem* of the infant for the purposes of the proceedings or any part of those proceedings, or direct that an application be made for the appointment of such a guardian.

- (2) An appointment under this section may be made by the court upon application by another party to the proceedings or a person who consents to act as the guardian *ad litem* or without any application being made, and the court may adjourn a hearing in order that such an appointment may be made.
- (3) An application under this section may be made *ex parte*.
- (4) An application for the appointment of a guardian *ad litem*, whether or not made pursuant to direction of the court, must be supported by evidence proving that the person proposed as guardian *ad litem* consents and is a proper person to act as such and has no interest in the proceedings adverse to that of the infant.
- (5) Before making an appointment under this section, the court shall inquire into the guardianship of the infant for purposes other than those of this Act, and, where it appears to the court that the infant is pursuant to, or for the purposes of, any other law of this State or any law of the Commonwealth under the guardianship of the CEO as defined in section 3 of the *Children and Community Services Act 2004*, the court shall not make an appointment under this section unless and until the court has caused notice to be served on the CEO and given the CEO an opportunity to be heard on the question of such an appointment.
- (6) The court may order that notice of an application under this section need not be served on the infant, and may give directions concerning —
  - (a) the persons to whom notice shall be given, and the manner of the giving of that notice; and
  - (b) the continuation of the proceedings, including directions concerning the giving of notice to the guardian *ad litem* of the infant of the date on which and the place at which the hearing or adjourned hearing shall be conducted.
- (7) Where an infant for whom a guardian *ad litem* has been appointed under this section does not intervene in any proceedings the infant is nevertheless entitled to be represented

at any hearing relating to those proceedings by a solicitor or counsel who may cross-examine witnesses and address the court, but is not entitled to adduce evidence.

- (8) A guardian *ad litem* appointed under this section must act by a solicitor.
- (9) Where an infant for whom a guardian *ad litem* has been appointed under this section is not a party to the proceedings, any judgment in those proceedings which would not otherwise have been binding on the infant shall not be deemed to be binding on that infant by virtue only of the fact that the guardian *ad litem* was so appointed.

*[Section 5 amended by No. 121 of 1984 s. 30; No. 57 of 1997 s. 79; No. 34 of 2004 Sch. 2 cl. 18(3).]*

**6. Removal of guardian *ad litem* by court**

- (1) A court may of its own motion or on the application of a party to the proceedings or any other person remove a guardian *ad litem* appointed under this Act, and may stay proceedings until a guardian *ad litem* in place of the one removed has been appointed.
- (2) An application under this section shall be by summons which, unless the court otherwise orders, shall be served on the guardian *ad litem* whose removal is sought.

**7. Costs**

Where, pursuant to this Act, an infant is represented in any proceedings the court may order the costs, or any portion of the costs, of such representation to be paid, where appropriate, by a party to those proceedings, or out of any fund in which the infant has an interest, or to be charged to the Suitors' Fund established under the *Suitors' Fund Act 1964*.

*[Section 7 amended by No. 49 of 1996 s. 64.]*



## Notes

- <sup>1</sup> This reprint is a compilation as at 7 October 2011 of the *Legal Representation of Infants Act 1977* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Legal Representation of Infants Act 1977</i>	43 of 1977	7 Nov 1977	1 Jan 1978 (see s. 2 and <i>Gazette</i> 23 Dec 1977 p. 4671)
<i>Acts Amendment (Department for Community Services) Act 1984 Pt. VI</i>	121 of 1984	19 Dec 1984	1 Jan 1985 (see s. 2 and <i>Gazette</i> 28 Dec 1984 p. 4197)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 79</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<b>Reprint 1: The <i>Legal Representation of Infants Act 1977</i> as at 16 May 2003</b> (includes amendments listed above)			
<i>Children and Community Services Act 2004 Sch. 2 cl. 18</i>	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>State Administrative Tribunal Act 2004 s. 176</i>	54 of 2004	23 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<b>Reprint 2: The <i>Legal Representation of Infants Act 1977</i> as at 7 Oct 2011</b> (includes amendments listed above)			

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