

LEGAL REPRESENTATION OF INFANTS.

No. 43 of 1977.

AN ACT to make provision for the legal representation of infants in legal proceedings.

[Assented to 7th November, 1977.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Legal Representation of Infants Act, 1977.* Short title.

2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

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Application.

3. (1) The provisions of this Act shall apply to—
- (a) the Supreme Court of Western Australia;
 - (b) The District Court of Western Australia;
 - (c) the Family Court of Western Australia in the non-federal jurisdictions of that court;
 - (d) the Children's Court, in relation to applications made under the Child Welfare Act, 1947; 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.

Rules and regulations.

4. (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.

Guardians *ad litem.*

5. (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 Director of the Department for Community Welfare of this State the court shall not make an appointment under this section unless and until the court has caused notice to be served on the Director and given him 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.

Removal of
guardian
ad litem.

6. (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.

Costs.

7. 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 the Suitors' Fund established under the Suitors' Fund Act, 1964.