

Western Australia

Legal Representation of Infants Act 1977

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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*¹.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

3. Application

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

[Section 3 amended by No. 54 of 2004 s. 176; 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*

- (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-General of the department established under section 4 of the *Community Services Act 1972* the court shall not make an appointment under this section unless and until the court has caused notice to be served on the Director-General 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.

[Section 5 amended by No. 121 of 1984 s. 30; No. 57 of 1997 s. 79.]

6. Removal of guardian *ad litem*

- (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

¹ This is a compilation of the *Legal Representation of Infants Act 1977* and includes the amendments made by the other written laws referred to in the following table ^{1a}. 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)) |
| Reprint 1: The <i>Legal Representation of Infants Act 1977</i> as at 16 May 2003 (includes amendments listed above) | | | |
| <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) |

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

| Short title | Number and Year | Assent | Commencement |
|---------------------------------------------------------------------|-----------------|-------------|-----------------------------|
| <i>Children and Community Services Act 2004 s. 251</i> ² | 34 of 2004 | 20 Oct 2004 | To be proclaimed (see s. 2) |

² On the date as at which this compilation was prepared, the *Children and Community Services Act 2004* s. 251, which gives effect to Sch. 2 cl. 18, had not come into operation. It reads as follows:

“

251. Other Acts amended

Other Acts are amended as set out in Schedule 2.

”

Schedule 2 cl. 18 reads as follows:

“

Schedule 2 — Amendments to other Acts

[s. 251]

18. Legal Representation of Infants Act 1977 amended

- (1) The amendments in this clause are to the *Legal Representation of Infants Act 1977*.
- (2) Section 3(1)(d) is amended by deleting “*Child Welfare Act 1947*” and inserting instead —
“ *Children and Community Services Act 2004* ”.
- (3) Section 5(5) is amended by deleting the passage beginning “under the guardianship” and ending “given him” and inserting instead —

“

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

”

”

³ Footnote no longer applicable.