

# Guardianship of Infants Act 1916 No 41

[1916-41]



New South Wales

## Status Information

### Currency of version

Current version for 15 June 2018 to date (accessed 24 November 2024 at 10:15)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Testator's Family Maintenance and Guardianship of Infants Act 1916

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 15 June 2018

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# Guardianship of Infants Act 1916 No 41



New South Wales

An Act to assure to the widow or widower and family of a testator an adequate maintenance from the estate of such testator; to amend the law relating to the guardianship of infants; and for purposes incidental thereto or consequent thereon.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Guardianship of Infants Act 1916*.

### 1A Application of Act

This Act does not apply in respect of the estate of any deceased person in relation to whom Chapter 3 of the *Succession Act 2006* applies.

### 2 Definitions

In this Act, unless the context otherwise requires:

**Court** means:

- (a) the Supreme Court, in relation to any matter (including a matter referred to in paragraph (b)), or
- (b) the District Court, in relation to a matter for which it has jurisdiction under section 134 of the *District Court Act 1973*.

**Executor** includes administrator with the will annexed.

**Minor** means a person under the age of eighteen years.

## Part 2

### 3-12 (Repealed)

## Part 3 Guardianship of minors

### 13 Rights of surviving parent as to guardianship

- (1) On the death of a parent of a minor (the **deceased parent**), a surviving parent of the minor is, subject to the provisions of this Act, to be a guardian of the minor, either alone or jointly with any guardian appointed by the deceased parent.
- (2) Where no guardian has been appointed by the deceased parent, or if the guardian or guardians appointed by the deceased parent is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the surviving parent of the minor.

#### **14 Power of parents to appoint guardians**

- (1) The parent (including a mother or father) of a minor may by deed or will appoint any person to be guardian of the minor after his or her death.
- (2) (Repealed)
- (3) Any guardian so appointed shall act jointly with the surviving parent (including the mother or father, as the case may be) of the minor so long as the surviving parent remains alive, unless the surviving parent objects to his so acting.
- (4) If the surviving parent so objects, or if the guardian so appointed considers that the surviving parent is unfit to have the custody of the minor, the guardian may apply to the court.

The court may either refuse to make an order (in which case the surviving parent shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the surviving parent, or that he shall be sole guardian of the minor.

Where the court makes an order that the guardian so appointed shall be the sole guardian of the minor, the court may make such order regarding the custody of the minor and the right of access thereto of its mother or father as, having regard to the welfare of the minor, the court may think fit, and may further order that the surviving parent shall pay to the guardian towards the maintenance and education of the minor such weekly or other periodical sum as, having regard to the means of the surviving parent, the court may consider reasonable.

The powers conferred by this subsection may be exercised at any time and shall include power to vary or discharge any order previously made in virtue of those powers.

- (5) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.
- (6) If under the preceding section a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the

surviving parent.

**15, 16 (Repealed)**

**17 Guardians may apply to court for directions**

- (1) In the event of guardians being unable to agree upon a question affecting the welfare of a minor, any of them may apply to the court for its direction, and the court may make such order regarding the matters in difference as it may think proper.
- (2) The power conferred by the foregoing provisions of this section shall include power to vary or discharge any order made under this section or made by any court under the *Infants' Custody and Settlements Act 1899-1934* and, where one of the guardians is the mother or father of a minor, shall also include power:
  - (a) to make such orders regarding the custody of a minor and the right of access thereto as, having regard to the welfare of a minor, the court may think fit, and
  - (b) to order the mother or father to pay towards the maintenance or education of a minor such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable.

**18 Power of court to remove guardian**

The court may, in its discretion, on being satisfied that it is for the welfare of the minor, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Act, and may also, if the court shall deem it to be for the welfare of the minor, appoint another guardian in place of the guardian so removed.

The powers of the court under this section extend to the removal of either parent from guardianship under this Act.

**19 Powers of guardians**

Every guardian under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be) of a minor, as any guardian appointed by will or otherwise now has.

**20 Savings**

Subject to section 20A, this Act does not restrict or affect the jurisdiction of the court to appoint or remove guardians in respect of infants.

**20A Guardianship to end at 18 years**

- (1) Guardianship of the person or of the estate of a minor, whether under an appointment by the court or otherwise, shall cease upon the minor reaching the age of eighteen years.

- (2) Where a minor has been made a ward of court, the wardship shall not continue after he reaches the age of eighteen years.
- (3) A guardian shall not be appointed, by the court or otherwise, of the person or of the estate of a person who has reached the age of eighteen years.
- (4) The court shall not make a person aged eighteen years or upwards a ward of court.

#### **21 Court may order access by grandparents**

In the event of the death before or after the passing of this Act of the parents or of one of the parents of a minor the court may order that the maternal or paternal grandparents of the minor or any one of them shall have access to the minor at such times and places as the court shall deem proper:

Provided that applications under this section shall be heard in camera.

### **Part 4 General**

#### **22 Rules**

The court may make rules for regulating the practice and procedure in any applications and proceedings under this Act, and prescribe the forms in such proceedings.

Any application under this Act shall be made in accordance with such rules.

Until such rules are made, any application under this Act shall be by motion, and the practice of the Equity Court shall apply thereto.