



ANNO VICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1975

No. 116 of 1975

An Act to amend the Guardianship of Infants Act, 1940.

[Assented to 4th December, 1975]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Guardianship of Infants Act Amendment Act, 1975". Short titles.

(2) The Guardianship of Infants Act, 1940, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Guardianship of Infants Act, 1940-1975".

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

3. Section 3 of the principal Act is amended—

(a) by striking out the definition of "infant" and inserting in lieu thereof the following definitions:— Amendment of principal Act, s. 3—
Interpretation.

"child born outside marriage" includes a child born to a married woman in consequence of sexual relations with a man other than her lawful spouse;

"infant" includes an infant born outside marriage;

and

(b) by inserting after the present contents thereof, as amended by this section (which are hereby designated subsection (1) thereof) the following subsection:—

(2) A person shall not be recognized under this Act as the father of a child born outside marriage unless he is so recognized under the provisions of the Family Relationships Act, 1975.

4. Section 4 and section 5 of the principal Act are repealed and the following section is enacted and inserted in their place:—

Repeal of ss. 4 and 5 of principal Act and enactment of section in their place—

4. Subject to this Act, and any other enactment, the mother and father of an infant shall jointly have the guardianship and custody of the infant, and each parent shall have equal powers, authority, rights and responsibilities with regard to the infant.

Rights of guardianship and custody of infant.

Repeal of
s. 6 of principal
Act and enact-
ment of section
in its place—

Power to make
orders as to
custody etc.

5. Section 6 of the principal Act is repealed and the following section is enacted and inserted in its place:—

6. (1) The court may, upon the application of a person who has a proper interest in the welfare of an infant, make such orders for the custody of, and access to, the infant as it thinks fit.

(2) The court may upon the application of any person who has the guardianship of an infant jointly with some other person (whether or not one or both of those persons are parents of the infant) make any order that it thinks proper in relation to a matter in dispute between those guardians affecting the upbringing or welfare of the infant.

(3) In exercising its powers under this section, the court shall have regard to the conduct of the parents of the infant, and of any other person who may be a party to the application.

(4) The court may vary or discharge an order made under this section.

(5) The fact that a person who seeks an order for the custody of an infant under this section is resident outside this State, or contemplates leaving this State, shall not of itself constitute a ground for denying custody of the infant to that person.

(6) The court may make such orders for costs in relation to proceedings under this section as it thinks fit.

(7) For the purposes of this section a person has a proper interest in the welfare of an infant if that person—

(a) is the mother or father of the infant;

(b) is a guardian of the infant;

or

(c) is a person who, in the opinion of the court, has in the circumstances of the case a proper interest in the welfare of the infant.

Amendment of
principal Act,
s. 7—
Provisions as
to orders.

6. Section 7 of the principal Act is amended by striking out subsections (3) and (4) and inserting in lieu thereof the following subsections:—

(3) Where the court makes an order giving the custody of an infant to a person other than a parent, the court may order either or both of the parents to pay to that person such weekly or other periodical sums towards the maintenance of the infant as the court, having regard to the means of the parents, may think reasonable.

(4) Any order made under this section may, upon the application of any person interested in the order, be varied or discharged by a subsequent order.

Amendment of
principal Act,
s. 9—
Power of court
to order repay-
ment of costs of
bringing up
infant.

7. Section 9 of the principal Act is amended by striking out the passage “by another person” and inserting in lieu thereof the passage “by a person who is not the parent of the infant”.

Repeal of
s. 14 of
principal Act.

8. Section 14 of the principal Act is repealed.

9. Section 17 of the principal Act is amended—

Amendment of
principal Act,
s. 17—
Payments of
maintenance.

(a) by striking out the passage “orders the infant to be delivered to, or to remain in the custody of one parent” and inserting in lieu thereof the passage “makes an order for the custody of the infant”;

and

(b) by striking out the passage “to pay to such parent from time to time during the continuance of such custody” and inserting in lieu thereof the passage “to pay from time to time (during the continuance of the custody) to the person to whom custody of the infant has been granted”.

10. Section 19 of the principal Act is repealed.

Repeal of
s. 19 of
principal Act.

11. The following section is enacted and inserted in the principal Act immediately after section 20 thereof:—

Enactment of
s. 20a of
principal Act—

20a. Where the court has ordered the payment of any sum towards the maintenance of an infant under this Act that order may be enforced in the same manner as a maintenance order under the Community Welfare Act, 1972-1975, in all respects as if it were a maintenance order made under that Act.

Enforcement of
maintenance
orders.

12. Section 21 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of
s. 21 of
principal Act
and enactment
of section in
its place—

21. Nothing in this Act restricts or affects—

Saving
provision.

(a) the equitable jurisdiction of the Supreme Court to appoint or remove guardians;

or

(b) the jurisdiction of any court in a matrimonial cause.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor