



ANNO QUINQUAGESIMO ET QUINQUAGESIMO  
PRIMO

# VICTORIÆ REGINÆ.

A.D. 1887.

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## No. 400.

An Act to amend the law relating to the Guardianship  
and Custody of Infants.

*[Assented to, November 16th, 1887.]*

**W**HEREAS it is expedient to amend the law relating to the Preamble.  
Guardianship and Custody of Infants—Be it therefore  
Enacted by the Governor-in-Chief of the Province of South Aus-  
tralia, with the advice and consent of the Legislative Council and  
House of Assembly of the said province, in this present Parliament  
assembled, as follows :

1. This Act may be cited as “The Guardianship of Infants Short title.  
Act, 1887.”

2. “The Infants Custody Act, 1883,” is hereby repealed. Repeal.

3. Such repeal shall not affect any order, act, matter, or thing Saving clause.  
lawfully made, done, executed, or in existence under the said Act  
hereby repealed ; and all orders and other matters or things hereto-  
fore made or done under the said repealed Act shall be as valid and  
effectual as if this Act had not been passed.

4. On the death of the father of an infant, and in case the On death of father  
mother to be guardian  
alone or jointly with  
others.  
father shall have died prior to the passing of this Act, then, from  
and after the passing of this Act, the mother, if surviving, shall be  
the guardian of such infant, either alone, when no guardian has  
been appointed by the father, or jointly with any guardian ap-  
pointed by the father. When no guardian has been appointed  
by the father, or if the guardian or guardians appointed by the  
father is or are dead, or refuses, or refuse to act, the court may,  
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if it shall think fit, from time to time appoint a guardian or guardians to act jointly with the mother.

Mother may appoint guardian in certain cases.

5. (1) The mother of any infant may, by deed or will, appoint any person or persons to be guardian or guardians of such infant after the death of herself and the father of such infant (if such infant be then unmarried); and where guardians are appointed by both parents, they shall act jointly.
- (2) The mother of any infant may, by deed or will, provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the Court after her death, if it be shown to the satisfaction of the Court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be authorised and empowered so to act as aforesaid, or may make such other order in respect of the guardianship as the Court shall think right.
- (3) In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the Court for its direction, and the Court may make such order or orders regarding the matters in difference as it shall think proper.

Powers of guardian.

6. 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 an infant as any guardian appointed by will or otherwise now has.

Court may make orders as to custody.

7. The Court may, upon the application of the mother of any infant (who may apply without a next friend), make such order as it may think fit regarding the custody of such infant, and the right of access thereto of either parent, having regard to the welfare of the infant and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise as to costs, as it may think just.

Power to Court to remove guardian.

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

Court may order trustees, &c., to pay maintenance to

9. Where any guardian, trustee, executor, or person acting in a fiduciary capacity shall, under any will, gift, or settlement, or otherwise

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wise by law be possessed of any fund for the maintenance and education of any infant, or any fund a portion of which may by law be applied to such maintenance and education, and the Court shall order the infant to be delivered to, or to remain in the custody of the mother, it shall be lawful for the Court also to order such guardian, trustee, executor, curator, or person acting in a fiduciary capacity, to pay to the mother from time to time during the continuance of such custody, for the purpose of the maintenance and education of such infant, such portion of such fund, not exceeding the portion lawfully applicable to such maintenance and education, as the court may deem proper: Provided always that on proof that any money so paid for the purpose of such maintenance and education has been misapplied, it shall be lawful for such Court to rescind, alter, or vary any order made as aforesaid.

mothers during period of custody.

**10.** No agreement contained in any separation deed made between the father and mother of an infant or infants shall be held to be invalid by reason only of its providing that the father of such infant or infants shall give up the custody or control thereof to the mother, provided always that no such agreement shall be enforced if the Court shall be of opinion that it will not be for the benefit of the infant or infants to give effect thereto.

The case of separation deed between father and mother.

**11.** In any case where a decree for judicial separation, or a decree either *nisi* or absolute for divorce shall be pronounced, the Court pronouncing such decree may thereby declare the parent by reason of whose misconduct such decree is made, to be a person unfit to have the custody of the children, if any, of the marriage, and in such case the parent so declared to be unfit shall not upon the death of the other parent be entitled as of right to the custody or guardianship of such children.

Guardianship in case of divorce or judicial separation.

**12.** Nothing in this Act contained shall restrict or affect the jurisdiction of the Supreme Court to appoint or remove guardians, or shall affect the exercise of any jurisdiction, power, or discretion vested in the Supreme Court, or any Judge thereof, under the "Matrimonial Causes Act, 1867," or any Act which may be passed to extend or amend the same.

Saving of existing jurisdiction.

**13.** In the construction of this Act the expression "the Court" shall mean the Supreme Court, or any Judge thereof, or the Local Court of Full Jurisdiction nearest to the residence of the infant.

Interpretation.

**14.** Rules for regulating the practice, forms, and procedure in any proceedings under this Act shall be made by the Judges of the Supreme Court.

Rules shall be made.

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

WM. C. F. ROBINSON, Governor.