

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 278.

*Infants.*

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GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), while the administration of this Act was not specifically vested in any Minister it appears likely from the determination of functions of Departments that it comes within the responsibility of the Prime Minister.

This Chapter does not refer to "the Minister", "the Departmental Head" or "the Department".

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 278.

*Infants Act.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 278.

*Infants Act.*

Being an Act to provide for the guardianship and custody of infants and infants' property and settlements, and for related purposes.

**1. Interpretation.**

In this Act, unless the contrary intention appears—

"the Court" means the National Court or a Judge;

"parent", in relation to an infant, includes a person liable to maintain the infant or entitled to his custody;

"person" includes a scholastic or charitable institution.

**2. Effect of Act.**

(1) This Act does not restrict the jurisdiction of the Court to appoint or remove a guardian or otherwise in respect of infants.

(2) This Act does not—

(a) affect the power of the Court to consult the wishes of the infant in considering what order ought to be made; or

(b) diminish the right which an infant possesses to the exercise of his or her own free choice.

**3. Rights of parents to custody.**

Subject to Section 4, the father and the mother of an infant are jointly and severally entitled to the custody of that infant.

**4. Power of Court.**

(1) On the application of the father or mother of an infant the Court may make such order as it thinks proper regarding the custody of the infant and the right of access of either parent having regard to—

(a) the welfare of the infant; and

(b) the conduct of the parents; and

(c) the wishes of each parent.

(2) The power of the Court to make an order under Subsection (1) as to the custody of, and the right of access to, an infant may be exercised notwithstanding that the parents of the infant are residing together.

(3) An order under Subsection (1)—

(a) is not enforceable while the parents continue to reside together; and

(b) ceases to have effect if the parents reside together for any continuous period of three months after it is made.

(4) Where a parent of an infant is dead, the Court may, on the application of a relative of that parent, make such order as to access to the infant by the relative as to the Court seems proper.

(5) An order made under this section may, on the application of a parent or a guardian of the infant, be varied or discharged by a subsequent order.

(6) In every case under this section, the Court may make such order respecting the costs of the mother and the liability of the father for those costs, or otherwise as to costs, as it thinks just.

(7) An order made under this section ceases to have effect when the infant in respect of which it is made attains the age of 16 years.

**5. Mother as guardian on death of father.**

(1) Where the father of an infant is dead, the mother of the infant, if surviving, is the guardian of the infant—

- (a) alone where a guardian has not been appointed by the father; or
- (b) jointly with a guardian appointed by the father.

(2) Where the mother is a guardian and—

- (a) a guardian has not been appointed by the father; or
- (b) the guardian appointed by the father is dead or refuses to act,

the Court may appoint a guardian to act jointly with the mother.

**6. Appointment of guardian by mother.**

(1) The mother of an infant may by deed or will—

- (a) appoint a person to be the guardian of the infant after the death of herself and the father of the infant (if the infant is then unmarried); or
- (b) provisionally nominate some fit person to act after her death as guardian of the infant jointly with the father of the infant.

(2) If it is shown to the satisfaction of the Court after the death of the mother that the father is for any reason unfit to be the sole guardian of his children, the Court may—

- (a) confirm the appointment of the guardian provisionally nominated under Subsection (1)(b); or
- (b) make such other order in respect of the guardianship as the Court thinks proper.

(3) A guardian whose appointment is confirmed under Subsection (2) may act as guardian of the infant jointly with the father of the infant.

(4) Where guardians are appointed by both parents they shall act jointly.

**7. Disagreement of guardians.**

(1) In the event of guardians being unable to agree on a question affecting the welfare of an infant, any of them may apply to the Court for its direction.

(2) On an application under Subsection (1) the Court may make such order regarding the matters in difference as it thinks proper.

**8. Powers of guardian.**

A guardian appointed under or acting by virtue of this Act may—

- (a) take into his custody and management, to the use of the infant, the estate of the infant until the infant attains the age of 21 years, or for any lesser period according to the terms of the appointment of the guardian ; and

- (b) bring such actions in relation to the estate of the infant as by law a guardian in common socage might have done; and
- (c) bring such other proceedings as are necessary to give effect to his powers under this section.

**9. Removal of guardian.**

The Court may, in its discretion—

- (a) remove a testamentary guardian or a guardian appointed under or acting by virtue of this Act from his office; and
- (b) if it thinks it to be for the welfare of the infant, appoint another guardian in place of the guardian removed.

**10. Divorce or judicial separation.**

(1) Where a decree for judicial separation or a decree nisi or absolute for divorce is pronounced, the Court pronouncing the decree may by the decree declare the parent (if any) by reason of whose misconduct the decree is made, to be a person unfit to have the custody of the children of the marriage.

(2) The parent declared under Subsection (1) to be unfit is not entitled as of right to the custody or guardianship of the children on the death of the other parent.

**11. Separation deed.**

(1) An agreement contained in a separation deed made between the father and mother of an infant is not invalid by reason only of its providing that the father of the infant shall give up the custody or control of the infant to the mother.

(2) A Court shall not enforce an agreement referred to in Subsection (1) if it is of opinion that it will not be for the benefit of the infant to give effect to it.

**12. Production of infant.**

(1) Where the parent of an infant applies to the Court for an order for the production of an infant and the Court is of opinion that the parent—

- (a) has abandoned or deserted the infant; or
- (b) has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the infant,

the Court may decline to make the order.

(2) If at the time of the application for an order for the production of an infant the infant is being or has been brought up by another person, the Court may, if it orders the infant to be given up to the parent, further order that the parent pay to that other person—

- (a) the whole of the costs properly incurred by him in bringing up the infant; or
- (b) such portion of the costs as seems to the Court to be just and reasonable having regard to all the circumstances of the case.

**13. Conduct of parent.**

Where a parent has—

- (a) abandoned or deserted his infant; or

- (b) allowed his infant to be brought up by another person at that person's expense for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties,

the Court shall not make an order for the delivery of the infant to the parent unless he satisfies the Court that, having regard to the welfare of the infant, he is a fit person to have custody.

**14. Infant's religious education.**

If, on an application by the parent for the production or custody of an infant, the Court is of opinion that—

- (a) the parent ought not to have the custody of the infant; and
- (b) the infant is being brought up in a different religion from that in which the parent has a legal right to require that the infant should be brought up,

the Court may make such order as it thinks proper to ensure that the infant is brought up in the religion in which the parent has a legal right to require that the infant should be brought up.

**15. Trustee for settlement.**

(1) Where a verdict is recovered or a judgement entered for an amount as damages in proceedings brought by an infant by his next friend, the Court may—

- (a) order that a settlement of the amount be made for the benefit of the infant; and
- (b) appoint a trustee for the settlement.

(2) The terms of a settlement under Subsection (1) shall be fixed by the Court or, subject to its approval, by an officer of the Court appointed to do so.

**16. Marriage settlements.**

(1) With the sanction of the Court an infant may, on or in contemplation of his marriage, make a valid and binding settlement or contract for a settlement of any of his property or of any property over which he has a power of appointment, whether in possession, reversion, remainder or expectancy.

(2) A conveyance, appointment or assignment of property referred to in Subsection (1), or a contract to make such a conveyance, appointment or assignment, executed by an infant with the sanction of the Court for the purpose of giving effect to a settlement is as effectual as if the person executing the conveyance, appointment, assignment or contract were of full age.

(3) The sanction of the Court to a settlement or contract for a settlement referred to in Subsection (1) may be given on petition presented by the infant or his or her guardian in a summary way without the institution of a suit.

(4) If there be no guardian, the Court may require a guardian to be appointed or not, as it thinks fit.

(5) The Court may, if it thinks fit, require that a person interested or appearing to be interested in the property be served with notice of the petition.

(6) This section does not apply—

- (a) to a male infant under the age of 20 years or to a female infant under the age of 17 years; or
- (b) to powers expressly declared not to be exercisable by an infant.



**17. Powers of court in relation to certain property of infants.**

(1) The Court may by order authorize and direct that all or any part of the dividends due or to become due—

(a) in respect of—

(i) any share or other interest in any company, society or association (established or to be established); and

(ii) any fund, annuity or security transferable in books kept by any company, society or association (established or to become established), transferable by deed alone or by deed accompanied by other formalities; or

(b) in respect of any money payable for the discharge or redemption of any such share, interest, fund, annuity or security,

standing in the name of any infant who is beneficially entitled, be paid to—

(c) the guardian of the infant; or

(d) if there be no guardian to any person to be named in the order,

for the benefit of the infant.

(2) The Court may authorize and direct the guardian of an infant—

(a) to surrender a lease to which the infant is entitled and to accept a new lease; or

(b) to accept the surrender of a lease and to grant a new lease; or

(c) to grant a lease of any property of the infant for building, agricultural or other purpose; or

(d) to enter into an agreement for or on behalf of the infant.



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APPENDIX.

SOURCE OF THE INFANTS ACT.

Part A.—Previous Legislation.

*Infants Act* 1956 (No. 20 of 1956)

as amended by—

*Infants (Amendment) Act* 1975 (No. 40 of 1975).

Part B.—Cross References.

Section, etc., in Revised Edition	Previous Reference <sup>1</sup> .	Section, etc., in Revised Edition.	Previous Reference <sup>1</sup> .
1	4	10	13
2	18(2), 24	11	14
3	6	12	15, 16
4	7	13	17
5	8	14	18(1)
6	9	15	19
7	10	16	20, 21, 22
8	11	17	23
9	12		

<sup>1</sup> Unless otherwise indicated, references are to the Act set out in Part A.

