



Australian Capital Territory

Testamentary Guardianship Act 1984 No 34

Republication No 3

Republication date: 4 February 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Testamentary Guardianship Act 1984* as in force on 4 February 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
12 September 2001



Australian Capital Territory

Testamentary Guardianship Act 1984

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Amendments incorporated to
12 September 2001



Australian Capital Territory

Testamentary Guardianship Act 1984

An Act to provide for the appointment of testamentary guardians, and for related purposes

1 Short title

This Act may be cited as the *Testamentary Guardianship Act 1984*.

2 Interpretation for Act

(1) In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

child means a person who is not and has not been married, and has not attained the age of 18 years.

exnuptial child means a child whose mother and father were not married to each other at the time the child was conceived and have not subsequently married each other, not being a child who is a legitimate child, or is to be deemed to be a legitimate child, by virtue of the *Marriage Act 1961* (Cwlth), part 6.

(2) In this Act, a reference to a **parent** of a child does not include a reference to—

- (a) the father of an exnuptial child; or
- (b) a parent whose guardianship of the child has been abrogated by—
 - (i) a judgment, decree or order of a federal court or a court of a State or Territory, being a judgment, decree or order that is in force; or
 - (ii) a judgment, decree or order of a court in an overseas country, being a judgment, decree or order that is in force and that would be recognised by a Territory court in conformity with the common law rules of private international law.

(3) In this Act, a reference to a **guardian** of a child (other than a reference to a testamentary guardian) is a reference to any guardian of the child, whether appointed—

- (a) in accordance with this Act or a law of a State or another Territory; or
- (b) by a judgment, decree or order of a federal court or a court of a State or Territory; or
- (c) in accordance with a law of an overseas country or part of an overseas country or by a judgment, decree or order of a court in an overseas country, being an appointment that would be recognised by a Territory court in conformity with the common law rules of private international law;

but does not include a reference to the C&YP chief executive or to a Minister of the Commonwealth or of a State or Territory who, under a law of the Commonwealth or of that State or Territory is, in his capacity as such a Minister, the guardian of the child.

- (4) In this Act, a reference to a *testamentary guardian* is a reference to a guardian appointed in accordance with section 4.
- (5) In this section:

C&YP chief executive means the chief executive responsible for administering the *Children and Young People Act 1999*, chapter 2 (General objects, principles and parental responsibility).

3 Application of Act

- (1) This Act applies in relation to a child—
 - (a) whether he was born in the ACT or elsewhere; and
 - (b) whether he was born before or after the commencement of this Act.
- (2) Nothing in this Act shall be taken to affect the operation of the *Adoption Act 1993*, sections 8, 43, 54 and 55.

4 Appointment of testamentary guardians

Each parent and each guardian of a child may, by will or codicil, appoint a person to be a guardian of the child or persons to be guardians of the child.

5 Appointment by persons not entitled to guardianship

An appointment of a testamentary guardian of a child by a person who was not, immediately before the person's death, a parent or guardian of the child is of no effect.

6 Time when appointment effective

An appointment of a testamentary guardian of a child takes effect—

- (a) where the appointor is survived by a parent of the child—
 - (i) if the instrument of appointment shows that the appointor intended the appointment to take effect on his or her death—on the death of the appointor; or
 - (ii) in any other case—on the death of that parent; or
- (b) where the appointor is not survived by a parent of the child—on the death of the appointor.

7 Effect of appointment

- (1) A testamentary guardian of a child has responsibility for the long-term welfare of the child and has, in relation to that child, all the powers, rights and duties that are vested by law or custom in the guardian of a child, other than—
 - (a) the right to have the daily care and control of the child; and
 - (b) the right and responsibility to make decisions concerning the daily care and control of the child.
- (2) Without limiting the application of subsection (1), a testamentary guardian of a child:

- (a) may take into his or her custody, and may manage, the real and personal property of the child (not being property held by a trustee under a trust) until he or she ceases to be the guardian of the child; and
 - (b) holds any real and personal property of the child that comes into his or her custody as trustee for the child; and
 - (c) may bring such proceedings as may be necessary to give effect to all or any of his or her powers under this section, including his or her powers as trustee for the child; and
 - (d) is responsible for accounting to the child, when the child attains the age of 18 years, for his or her custody and management of that property.
- (3) Where, at any time after an appointment of a testamentary guardian of a child takes effect—
- (a) no parent of the child is alive; and
 - (b) no judgment or order of a federal court or a court of a State or Territory granting custody or the right to have the daily care and control of the child (however expressed) to another person is in force; and
 - (c) no order relating to the child has been registered under the *Family Law Act 1975* (Cwlth), section 68; and
 - (d) no order that would, under the *Family Law Act 1975* (Cwlth), section 60A have effect for that Act as if it were an order granting custody of the child is in force;
- then the testamentary guardian has, in addition to the rights and responsibility referred to in subsections (1) and (2)—
- (e) the right to have the daily care and control of the child; and
 - (f) the right and responsibility to make decisions concerning the daily care and control of the child.

- (4) Where—
- (a) an appointment of a testamentary guardian of a child has taken effect; and
 - (b) another person or persons has or have the guardianship of that child;
- the testamentary guardian shall discharge his or her responsibility and duties and exercise his or her powers and rights in relation to that child jointly with that other person or those other persons.

8 Applications to Supreme Court

- (1) A testamentary guardian whose appointment does not, under section 6, take effect on the death of the appointor may at any time apply to the Supreme Court for an order that his or her appointment take effect forthwith.
- (2) Where an appointment of a testamentary guardian of a child has taken effect under section 6 (a) (i) or subsection (1), a parent of that child may apply to the Supreme Court for an order that the guardianship of the testamentary guardian be suspended until the death of the parent or for such period as is specified in the application.
- (3) Jurisdiction to hear and determine applications under this section is vested in the Supreme Court.
- (4) On an application under this section, the Supreme Court may make or refuse to make the order sought, and may make such other orders as it thinks just.

9 Powers of Supreme Court

- (1) Nothing in this Act shall be taken to affect the powers of the Supreme Court relating to the guardianship and custody of children.
- (2) Without limiting subsection (1), nothing in this Act shall be taken to affect the power of the Supreme Court—

- (a) to settle disputes in relation to a child between persons having the guardianship of the child; or
- (b) to appoint a guardian of a child; or
- (c) to appoint 1 of a number of persons having the guardianship of a child to be the sole guardian of that child; or
- (d) to revoke the appointment of a guardian of a child.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

3 Legislation history

The *Testamentary Guardianship Act 1984* was originally the *Testamentary Guardianship Ordinance 1984*. It became an ACT Act on self-government (11 May 1989).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

Legislation before self-government

Testamentary Guardianship Act 1984 No 34

notified 23 July 1984

commenced 23 July 1984

as amended by

Children's Services (Miscellaneous Amendments) Ordinance 1986 No 14

notified 4 June 1986

commenced 26 April 1988 (s 2 and Cwlth Gaz 1988 No S116)

Testamentary Guardianship (Amendment) Ordinance 1987 No 15

notified 1 May 1987

commenced 1 May 1987

Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1

notified 10 May 1989 (Cwlth Gaz 1989 No S164)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

Legislation after self-government

Adoption (Consequential Amendments) Act 1993 No 23 s 6

notified 8 April 1993 (Gaz 1993 No S57)

s 1, s 2 commenced 8 April 1993 (s 2 (1))

s 6 commenced 31 July 1993 (s 2 (2) and see Gaz 1993 No 28)

Endnotes

4 Amendment history

Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1

notified 15 December 1994 (Gaz 1994 No S280)
s 1, s 2 commenced 15 December 1994 (s 2 (1))
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

Children and Young People (Consequential Amendments) Act 1999 No 64 sch 2

notified 10 November 1999 (Gaz 1999 No 45)
s 1, s 2 commenced 10 Nov 1999 (s 2 (1))
sch 2 commenced 10 May 2000 (s 2 (2))

Legislation (Consequential Amendments) Act 2001 No 44 pt 382

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 382 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

4 Amendment history

Interpretation for Act

s 2 am 1986 No 14 s 11; 1994 No 97 sch pt 1; 1999 No 64 sch 2

Application of Act

s 3 am 1993 No 23 s 6

Effect of appointment

s 7 am 1987 No 15; ss renum R3 LA

Amendment of *Seat Government (Amendment) Ordinance 1930*

s 10 om 1989 No 38 sch 1

Repeal—Tenures Abolition Act 1660

s 11 om 2001 No 44 amdt 1.4022

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	Ord 1989 No 38	31 August 1991
2	Act 1993 No 23	31 August 1993

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