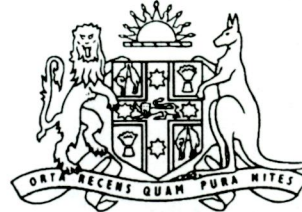


First print



New South Wales

Status of Children Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to re-enact provisions presently contained in the *Children (Equality of Status) Act 1976* concerning the status of exnuptial children and to repeal consequentially the *Children (Equality of Status) Act 1976*, and
 - (b) to enact provisions relating to parentage presumptions and parentage testing procedures that are in conformity with model provisions agreed on by the Standing Committee of Attorneys-General in October 1992, and
 - (c) to include in the proposed Act presumptions relating to artificial conception and to repeal consequentially the *Artificial Conception Act 1984*, and
 - (d) to amend consequentially the *Adoption of Children Act 1965*, the *Adoption Information Act 1990*, the *De Facto Relationships Act 1984* and the *Superannuation Act 1916*.
-

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act such as *bodily sample*, *fertilisation procedure*, *parentage testing procedure*, *prescribed court* and *prescribed overseas jurisdiction*.

Clause 4 provides that the proposed Act applies to persons regardless of whether they were born in the State or before the commencement of the proposed section, whether they are minors or whether either of their parents was domiciled in the State. However, the Act does not affect the operation of sections 35 and 36 of the *Adoption of Children Act 1965*, which deal with the status of persons who are subject to adoption orders.

Part 2 Status of children and dispositions of property

Clause 5 ensures that, for the purposes of New South Wales law, an exnuptial child has the same legal status as a child born to a married couple. The proposed section re-enacts in substance section 6 of the *Children (Equality of Status) Act 1976*.

Clause 6 provides that references in certain dispositions of property made on or after 1 July 1977 to children and other relatives are to be construed as including exnuptial children and persons claiming through exnuptial children unless a contrary intention appears in the disposition. The relevance of 1 July 1977 is that it is the date on which the *Children (Equality of Status) Act 1976* commenced. Section 7 of that Act is substantially re-enacted by the proposed section.

The proposed section also makes it clear that the rule of public policy that prevents a disposition in favour of an exnuptial child is abolished for dispositions to which the proposed section applies.

Clause 7 provides that certain dispositions made before 1 July 1977 are to be construed as if neither the *Children (Equality of Status) Act 1976* or the proposed Act had been enacted. This preserves the effect of section 8 of the *Children (Equality of Status) Act 1976*.

Clause 8 ensures that exnuptial children and their relatives can claim on the intestacy of a person who died on or after 1 July 1977. Section 9 of the *Children (Equality of Status) Act 1976* is re-enacted in substance by the proposed section.

Part 3 Establishing parentage

Division 1 Parentage presumptions

Clause 9 sets out four rebuttable presumptions arising from marriage.

The first presumption is that a child born to a woman during a marriage is a child of the parties to that marriage (subclause (1)).

The second presumption is that a child born to a woman within 44 weeks after her husband's death is a child of her deceased husband (subclause (2)).

The third presumption is that a child born to a woman within 44 weeks of her purported marriage being annulled is a child of her purported husband (subclause (3)).

The fourth presumption is that a child born to a woman after the dissolution of a marriage, but within 44 weeks after a period of resumed cohabitation (lasting not more than 3 months) following a separation, is a child of her former husband (subclause (4)).

Clause 10 sets out a rebuttable presumption that a child born to a woman who cohabited with a man to whom she was not married at any time during the period beginning not less than 44 weeks, but ending not less than 20 weeks, before the birth is the child of that man.

Clause 11 sets out a rebuttable presumption that a person is a child's parent if the person's name is entered as such in a register of births or parentage information of the Commonwealth, a State (including the Births, Deaths and Marriages Register) or Territory or a prescribed overseas jurisdiction.

Clause 12 sets out a presumption that a person is a child's parent if a prescribed court expressly or implicitly makes a finding to that effect and that finding is not altered, set aside or reversed. If the finding is made while the person is alive, the presumption is irrebuttable (subclause (2)). However, if the finding is made after the person dies, the presumption is rebuttable (subclause (3)).

Clause 13 sets out a rebuttable presumption that a man who has executed a paternity acknowledgment concerning a child under a law of the Commonwealth, a State or Territory or a prescribed overseas jurisdiction is the child's father.

Clause 14 sets out four irrebuttable presumptions arising out of the use of fertilisation procedures.

The first presumption is that a man who consents to his wife being artificially inseminated with another man's sperm is the father of any child born as a result of any pregnancy (subclause (1) (a)). The second (and related) presumption is that the man who provided the sperm for that insemination is not the father of any child born as a result of the pregnancy (subclause (2)).

The third presumption is that if a woman becomes pregnant as a result of the use of another woman's ovum, she is taken to be the mother of any child born as a result of the pregnancy (subclause (1) (b)). The fourth (and related) presumption is that the woman who provided the ovum is not the mother of any child born as a result of the procedure (subclause (3)).

Clause 15 provides that rebuttable parentage presumptions (whether arising under the proposed Act or under some other Act or rule of law) are rebuttable on the balance of probabilities.

Clause 16 provides that if two or more rebuttable presumptions conflict and are not rebutted in any proceedings, the court is to apply the presumption that appears to the court to be the more or most likely to be correct.

Clause 17 provides for the resolution of conflicts between irrebuttable presumptions and between irrebuttable and rebuttable presumptions arising under the proposed Division.

Clause 18 provides that a prosecutor cannot rely on a parentage presumption arising under the proposed Act to prove a criminal case.

Division 2 Acknowledgments of paternity

Clauses 19 and **20** re-enact in clearer language provisions presently contained in section 11 of the *Children (Equality of Status) Act 1976* concerning the making of paternity acknowledgments and the annulment of such acknowledgments by the Supreme Court.

Clause 29 provides that a person who is 18 years or more of age and who fails to comply with a parentage testing order or any other order under the proposed Part is not liable to any penalty. However, any such failure will enable the Court to draw adverse inferences.

Clause 30 provides that if a guardian or parent consents to a medical procedure or other act being carried out on a child, then any person carrying out (or assisting in the carrying out) of the procedure or act is not liable to any criminal or civil action. However, persons who are negligent will not be able to rely on this immunity from action.

Clause 31 provides that a report on the carrying out of a medical procedure or act under an order made by the Court may be admitted into evidence if it is made in accordance with the regulations. The Court is also given power to order the person who made the report (or any other person who can give relevant evidence concerning the report) to give evidence.

Clause 32 makes it an offence for a person to personate another in, or proffer another child for, a medical procedure or other act ordered by the Court under the proposed Part. The maximum penalty for the offence is 5 penalty units (currently, \$500).

Clause 33 makes it an offence for an unqualified person to take a bodily sample for a parentage testing order or an order under proposed section 27. Only medical practitioners, registered nurses and other persons belonging to a class of persons prescribed by the regulations will be able to take such samples. The maximum penalty for the offence is 2 penalty units (currently, \$200).

Clause 34 enables the Supreme Court to order that a child be separately represented in proceedings brought under the proposed Division.

Part 4 Miscellaneous

Clause 35 provides that proceedings for an offence under the proposed Act are to be dealt with by a Local Court constituted by a single Magistrate. It also makes clear that the Supreme Court will retain its powers to enforce its orders.

Clause 36 confers a general regulation-making power on the Governor.

Clause 37 repeals the *Children (Equality of Status) Act 1976* and the *Artificial Conception Act 1984*.

Status of Children Bill 1996

Explanatory note

Clause 38 is a formal provision giving effect to proposed Schedule 1 containing consequential amendments to various Acts.

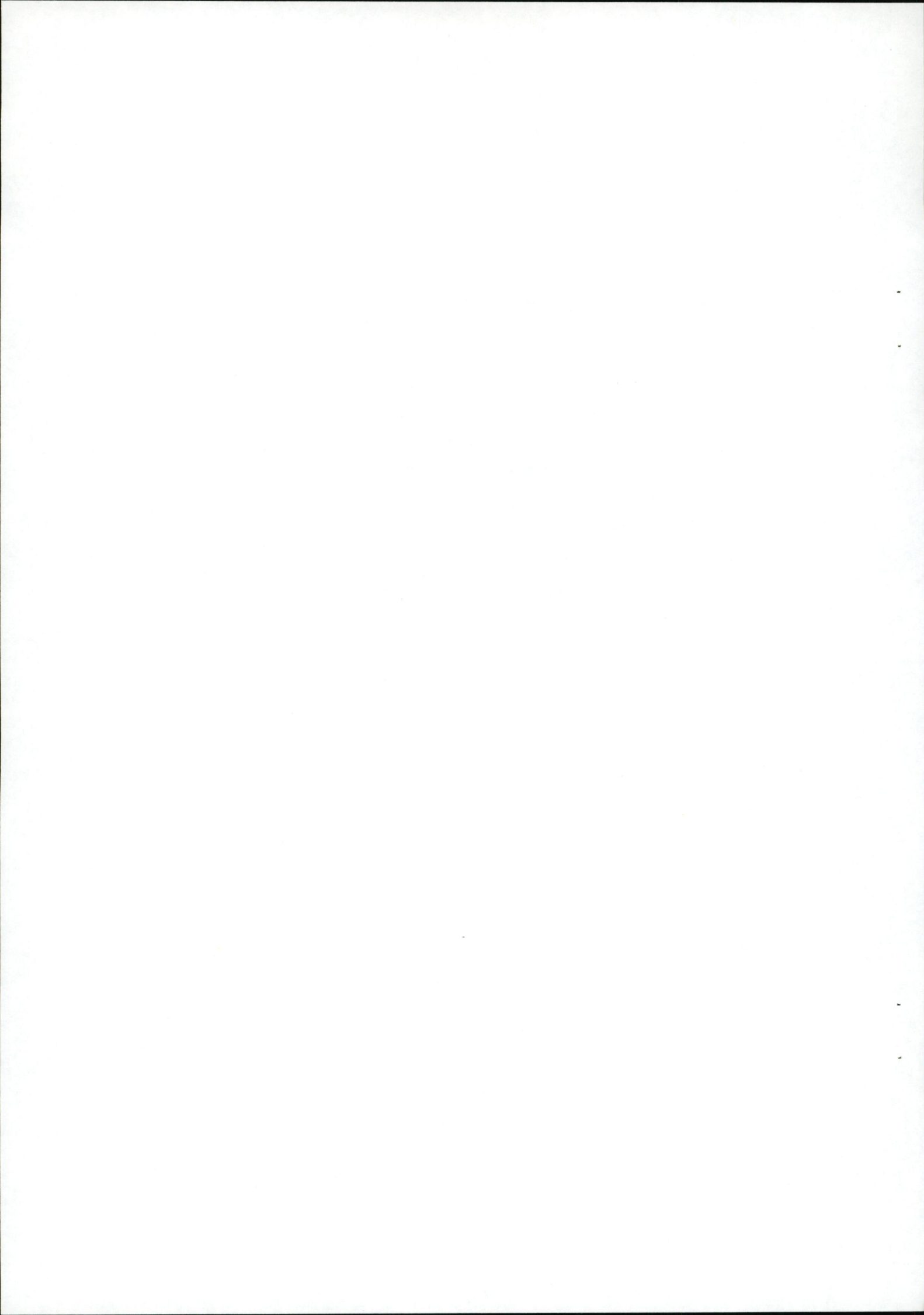
Clause 39 is a formal provision giving effect to proposed Schedule 2 containing provisions of a savings and transitional nature.

Clause 40 provides that the Minister is to conduct a review of the operation of the proposed Act 5 years after its enactment.

Schedules

Schedule 1 amends consequentially the *Adoption of Children Act 1965*, the *Adoption Information Act 1990*, the *De Facto Relationships Act 1984* and the *Superannuation Act 1916*.

Schedule 2 contains provisions of a savings and transitional nature.





New South Wales

Status of Children Bill 1996

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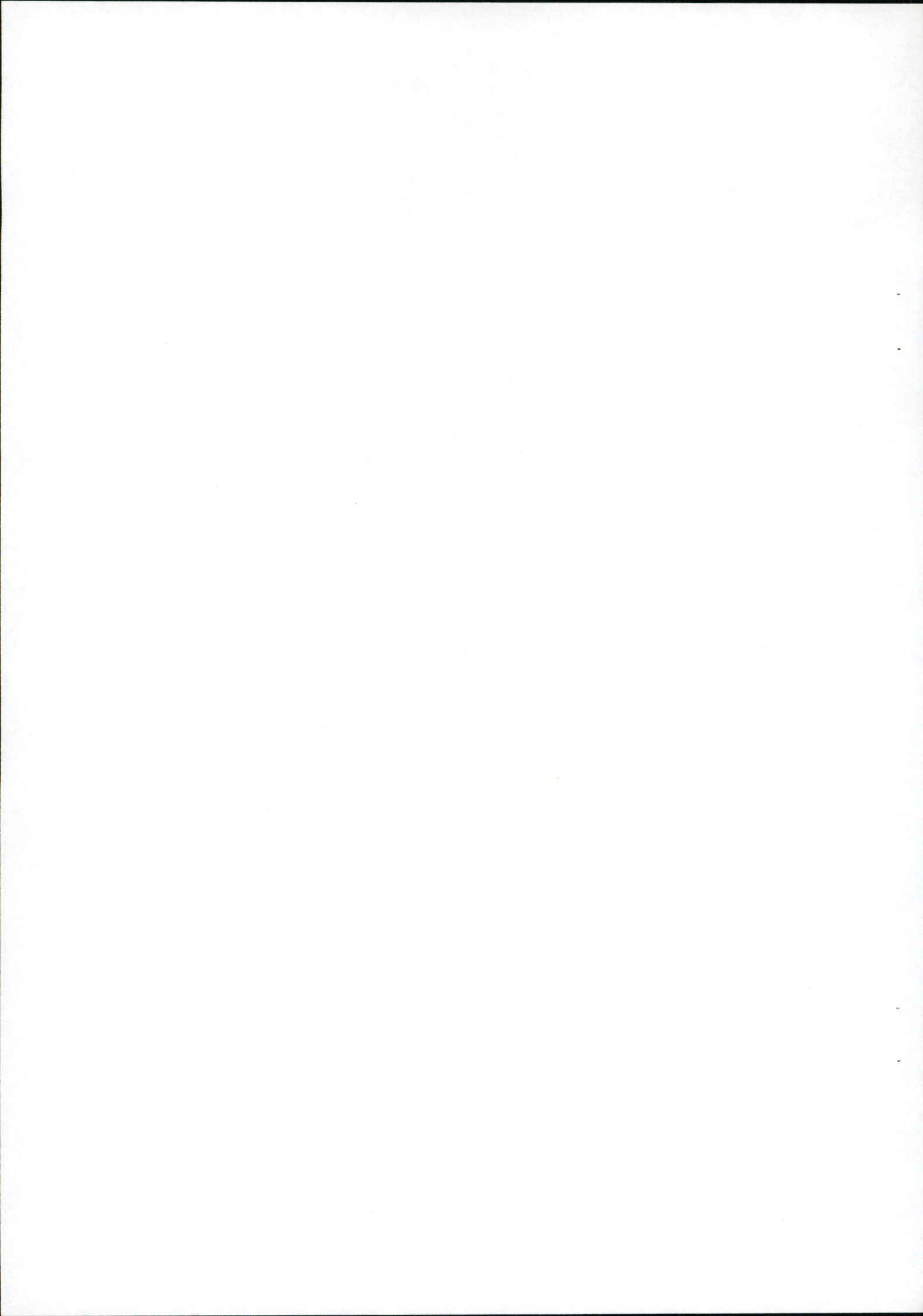
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New South Wales

Status of Children Bill 1996

No. , 1996

A Bill for

An Act to re-enact without any substantive changes provisions contained in the *Children (Equality of Status) Act 1976* concerning the removal of legal disabilities of exnuptial children; to provide for parentage presumptions and parentage testing procedures; to repeal the *Children (Equality of Status) Act 1976* and the *Artificial Conception Act 1984*; to amend consequentially various other Acts; and for related purposes.

Clause 1 Status of Children Bill 1996

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Status of Children Act 1996*.

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

Births, Deaths and Marriages Register means the Register referred to in section 43 of the *Births, Deaths and Marriages Registration Act 1995*. 10

bodily sample includes any one or more of the following:

- (a) a blood sample,
- (b) a tissue sample, 15
- (c) a sperm sample,
- (d) any other sample of material obtained from a human body.

declaration of parentage means a declaration under section 21.

Director-General means the Director-General of the Department of Community Services. 20

fertilisation procedure means:

- (a) the artificial insemination of a woman, or
- (b) the procedure of transferring to a woman's body an ovum (whether or not produced by her) fertilised outside her body, or 25
- (c) the procedure of transferring to a woman's body an ovum (whether or not produced by her) or both the ovum and sperm to enable fertilisation of the ovum to occur in her body, or
- (d) any other procedure for the assisted conception of children that is prescribed by the regulations. 30

formal paternity acknowledgment means a paternity acknowledgment executed under section 19.

husband includes a husband under a void or voidable marriage.

married includes married under a void marriage and under a voidable marriage that has been annulled by a court. 5

parentage testing order means an order made under section 26.

parentage testing procedure means a medical procedure prescribed, or included in a class of medical procedures prescribed, by the regulations for the purposes of this definition.

prescribed court means a court of any State or Territory, a federal court, or a court of a prescribed overseas jurisdiction. 10

prescribed overseas jurisdiction means any country, or part of a country, outside Australia that is prescribed by the regulations for the purposes of the provision in which the expression is used.

Registrar means the Registrar of Births, Deaths and Marriages holding office as such under Part 2 of the *Public Sector Management Act 1988*. 15

Supreme Court or **Court** means the Supreme Court of New South Wales.

wife includes a wife under a void or voidable marriage. 20

(2) A reference in this or any other Act:

- (a) to an exnuptial child or to a child or person born outside marriage (however expressed) is a reference to a child or person whose father and mother were not married to each other at the time of the conception of the child or person and who have not subsequently married each other, and 25
- (b) to a child or person born in marriage or in lawful wedlock (however expressed) is a reference to a child or person whose father and mother were married to each other at the time of the conception of the child or person or who subsequently married each other. 30

Clause 4 Status of Children Bill 1996

Part 1 Preliminary

4 Application of Act

- (1) This Act applies in respect of a person:
- (a) whether born in New South Wales or elsewhere, and
 - (b) whether born before or after the commencement of this section, and 5
 - (c) whether a minor or not, and
 - (d) whether the person or the person's father or mother is or has ever been domiciled in New South Wales or not.
- (2) Nothing in this Act affects the operation of sections 35 and 36 of the *Adoption of Children Act 1965*. 10

Part 2 Status of children and dispositions of property

5 All children are of equal status

- (1) For the purposes of any law of the State by or under which the relationship between any person and the person's father and mother (or either of them) arises, that relationship and any other relationship (whether of consanguinity or affinity) between the person and another person is to be determined regardless of whether the person's parents are or have been married to each other. 5
10
- (2) This section is subject to sections 6 and 7.

6 Construction of dispositions of property made on or after 1 July 1977

- (1) This section applies to the following dispositions only:
 - (a) dispositions made inter vivos on or after 1 July 1977 (being the date on which the *Children (Equality of Status) Act 1976* commenced), 15
 - (b) dispositions made by will or codicil executed before, on or after 1 July 1977 by a person who dies after that date.
- (2) Unless a contrary intention appears, in any disposition to which this section applies: 20
 - (a) a reference (however expressed) to the child or children of a person includes a reference to an exnuptial child of whom that person is a parent, and
 - (b) a reference (however expressed) to any person or persons related to another person (other than as a parent or child) includes a reference to anyone who is so related in fact regardless that the person related in fact, or some other person through whom the relationship is traced, is or was an exnuptial child. 25
30

- (3) The use of any of the following words (or of any word or words having the same or a similar meaning) does not of itself indicate a contrary intention for the purposes of subsection (2):
- (a) the words “legitimate” or “lawful” when used with reference to the child or children of a person or persons related to another person in some other way, 5
 - (b) the words “married”, “husband” or “wife” when used with reference to the parent or parents of a person.
- (4) Without limiting any other provision of this Act, any rule of law that a disposition in favour of an exnuptial child not conceived or born when the disposition takes effect is void as being contrary to public policy is abolished in respect of any disposition to which this section applies. 10

7 Construction of dispositions of property made before 1 July 1977 15

- (1) The following dispositions are to be construed as if the *Children (Equality of Status) Act 1976* and this Act had not been enacted:
- (a) dispositions made inter vivos before 1 July 1977,
 - (b) dispositions made by will or codicil executed by a person who died before 1 July 1977. 20
- (2) If any such disposition contains a special power of appointment, nothing in this Act:
- (a) extends the class of persons in whose favour the appointment may be made, or
 - (b) causes the exercise of the power to be construed so as to include any person who is not a member of that class. 25

8 Rights of exnuptial children and their relatives on intestacy

- (1) This section applies to rights under the intestacy of persons dying on or after 1 July 1977.

-
- (2) If any relative of an exnuptial child (including a parent of the child) dies intestate in respect of all or any of the relative's real or personal property, the child (or any of the child's issue if the child is dead) is entitled to take any interest in that property that the child (or the child's issue) would have been entitled to take if the child's parents had been married to each other when the child was born. 5
- (3) If an exnuptial child dies intestate in respect of all or any of the child's real or personal property, any relative of the child (including a parent of the child) is entitled to take any interest in that property that the relative would have been entitled to take if the parents of the child had been married to each other when the child was born. 10
- (4) Nothing in this section affects the generality of section 5. However, this section does not (despite section 5) apply to any child who is an adopted person under an adoption order made or continued in force under the *Adoption of Children Act 1965* or under an adoption recognised in the State under Part 5 of that Act. 15

Part 3 Establishing parentage

Division 1 Parentage presumptions

9 Presumptions of parentage arising from marriage

- (1) A child born to a woman during a marriage to which she is a party is presumed to be a child of the woman and her husband. 5
- (2) If a child is born to a woman within 44 weeks after her husband dies, the child is presumed to be the child of the woman and her deceased husband.
- (3) If a child is born to the woman within 44 weeks after a purported marriage to which the woman is a party is annulled, the child is presumed to be a child of the woman and her purported husband. 10
- (4) If:
- (a) the parties to a marriage separated at any time, and
 - (b) after the separation, resumed cohabitation on one occasion, and 15
 - (c) within 3 months after the resumption of cohabitation, they separated again and lived separately and apart, and
 - (d) a child is born to the woman within 44 weeks after the end of the cohabitation, but after the dissolution of the marriage, 20
- the child is presumed to be the child of the woman and her former husband.
- (5) For the purposes of this section, a marriage is dissolved by a decree of dissolution or annulled by a decree of nullity on the making of the decree nisi. 25

10 Presumption of paternity arising from cohabitation

A child born to a woman is presumed to be a man's child if, at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the man and the woman cohabit but are not married. 30

11 Presumptions of parentage arising from registration of birth

- (1) A person is presumed to be a child's parent if the person's name is entered as the child's parent in the Births, Deaths and Marriages Register or a register of births or parentage information kept under a law of the Commonwealth, another State or a Territory or a prescribed overseas jurisdiction. 5
- (2) Nothing in this section affects the operation of section 46 (recognition of foreign adoptions) of the *Adoption of Children Act 1965*.

12 Presumption of parentage arising from findings of courts 10

- (1) A person is presumed to be a child's parent if:
- (a) while the person is alive, a prescribed court has:
 - (i) found expressly that the person is the child's parent, or
 - (ii) made a finding that it could not have made unless the person was the child's parent, and 15
 - (b) the finding has not been altered, set aside or reversed.
- (2) A presumption arising under subsection (1) is irrebuttable.
- (3) A person is presumed to be a child's parent if:
- (a) after the person dies, a prescribed court has: 20
 - (i) found expressly that the person was the child's parent, or
 - (ii) made a finding that it could not have made unless the person was the child's parent, and
 - (b) the finding has not been altered, set aside or reversed. 25
- (4) In this section, a reference to a finding of a prescribed court includes:
- (a) a reference to a declaration of parentage, and
 - (b) a reference to a finding whether made before or after the commencement of this section. 30
- (5) Nothing in this section affects the operation of section 46 (recognition of foreign adoptions) of the *Adoption of Children Act 1965*.

13 Presumption of parentage arising from acknowledgments

- (1) A man is presumed to be a child's father if:
- (a) under this Act or other law of the State or a law of the Commonwealth, another State or a Territory or a prescribed overseas jurisdiction, the man executes a formal paternity acknowledgment or any other instrument acknowledging that he is the child's father, and 5
 - (b) the instrument has not been annulled or otherwise set aside.
- (2) This section extends to instruments executed before the commencement of this section. 10

14 Presumptions of parentage arising out of use of fertilisation procedures

- (1) When a married woman has undergone a fertilisation procedure as a result of which she becomes pregnant: 15
- (a) her husband is presumed to be the father of any child born as a result of the pregnancy even if he did not provide any or all of the sperm used in the procedure, but only if he consented to the procedure, and
 - (b) the woman is presumed to be the mother of any child born as a result of the pregnancy even if she did not provide the ovum used in the procedure. 20
- (2) If a woman becomes pregnant by means of a fertilisation procedure using any sperm obtained from a man who is not her husband, that man is presumed not to be the father of any child born as a result of the pregnancy. 25
- (3) If a woman becomes pregnant by means of a fertilisation procedure using an ovum obtained from another woman, that other woman is presumed not to be the mother of any child born as a result of the pregnancy. 30
- (4) Any presumption arising under subsections (1)–(3) is irrebuttable.
- (5) In any proceedings in which the operation of subsection (1) is relevant, a husband's consent to the carrying out of the fertilisation procedure is presumed. 35

- (6) In this section:
 - (a) a reference to a married woman includes a reference to a woman who is living with a man as his wife on a bona fide domestic basis although not married to him, and
 - (b) a reference (however expressed) to the husband or wife of a person:
 - (i) is, in a case where the person is living with another person of the opposite sex as his or her spouse on a bona fide domestic basis although not married to the other person, a reference to that other person, and
 - (ii) does not, in that case, include a reference to the spouse (if any) to whom the person is actually married.

15 Rebuttal of parentage presumptions

- (1) A presumption arising under this Division, or a parentage presumption arising under any other Act or rule of law, that is rebuttable, is rebuttable by proof on the balance of probabilities. 15
- (2) Every presumption arising under this Division (except for a presumption arising under section 12 (1) or 14 (1)–(3)) is a rebuttable presumption. 20

16 Conflicting rebuttable parentage presumptions

If two or more rebuttable presumptions referred to in section 15 conflict with each other and are not rebutted in any proceedings, the presumption that appears to the court to be more or most likely to be correct prevails. 25

17 Conflicts involving irrebuttable parentage presumptions

- (1) If two or more irrebuttable presumptions arising under this Division conflict with each other, the presumption that appears to the court to be more or most likely to be correct prevails.
- (2) If an irrebuttable presumption arising under this Division conflicts with a rebuttable presumption arising under this Division that is not rebutted in any proceedings, the irrebuttable presumption prevails over the rebuttable presumption. 30

18 Parentage presumptions cannot be relied on by prosecutors

Despite any other provision of this Act, a prosecutor cannot rely in any criminal proceedings on a presumption arising under this Act to prove the parentage of a child.

Division 2 Acknowledgments of paternity 5

19 Execution of instrument of acknowledgment

- (1) A man has executed an instrument acknowledging paternity of a child under this Division if:
- (a) he executes an instrument in or to the effect of a form prescribed by the regulations and the instrument is countersigned by the mother of the child, and 10
 - (b) he executes the instrument in the presence of a person belonging to a class of persons prescribed by the regulations for the purposes of this paragraph, and
 - (c) the instrument has not been annulled under this Division. 15
- (2) A person in whose presence a formal paternity acknowledgment is executed in New South Wales must:
- (a) take possession of the acknowledgment once it is executed, and
 - (b) cause the acknowledgment to be transmitted to the Registrar not later than 14 days after the date of its execution to be dealt with under the *Births, Deaths and Marriages Registration Act 1995*. 20

Maximum penalty: 2 penalty units.

20 Annulment of paternity acknowledgments 25

- (1) A formal paternity acknowledgment can be annulled only by order of the Supreme Court.
- (2) The Court may annul a formal paternity acknowledgment on the application of, or on behalf of, any of the following persons:
- (a) the person who executed the acknowledgment, 30
 - (b) the mother of the child to whom the acknowledgment relates,

- (c) the child to whom the acknowledgment relates,
 - (d) the Registrar,
 - (e) any other person who may be affected by the result of the application.
- (3) If the Court makes an annulment order, the Registrar of the Division of the Court in which the order was made must immediately cause a copy of the order to be transmitted to the Registrar of Births, Deaths and Marriages to be dealt with under the *Births, Deaths and Marriages Registration Act 1995*. 5

Division 3 Declarations of parentage 10

21 Applications for declarations in the Supreme Court

- (1) Any of the following persons may make an application to the Supreme Court for a declaration of parentage under this section:
- (a) a person who alleges that the relationship of parent and child exists between the person's child and any named person, or 15
 - (b) a person who alleges that the relationship of parent and child exists between the person and another named or identified person, or
 - (c) the Registrar when seeking a determination that the relationship of parent and child exists between a named person and another named or identified person, or 20
 - (d) the Director-General when seeking a determination that the relationship of parent and child exists between a named person and another named or identified person, or 25
 - (e) a person prescribed by the regulations who seeks a determination that the relationship of parent and child exists between a named person and another named or identified person, or
 - (f) a person who may be affected by the result who seeks a determination that the relationship of parent and child exists between a named person and another named or identified person. 30

- (2) On any such application, the Supreme Court may make a declaration that a named or identified person is a child's parent.
- (3) A declaration of parentage may be made:
- (a) whether or not the parent or the child (or both) are alive, or
 - (b) whether or not the child has been born. 5
- (4) If a declaration of parentage is made, the Registrar of the Division of the Court in which the order was made must immediately cause a copy of the declaration to be transmitted to the Registrar of Births, Deaths and Marriages to be dealt with under the *Births, Deaths and Marriages Registration Act 1995*. 10

22 Annulment of declaration of parentage

- (1) The Supreme Court may make an order annulling a declaration of parentage on the application of any person who applied or could have applied for the making of the declaration if it appears to the Court: 15
- (a) that new facts or circumstances have arisen that have not previously been disclosed to the Court, and
 - (b) those facts could not, by the exercise of reasonable diligence, have previously been disclosed to the Court.
- (2) On the making of such an order, the declaration ceases to have effect from that time. Accordingly, the annulment does not affect anything done in reliance on the declaration before the making of the order. 20
- (3) If the Court makes such an order, it may, if it thinks that it would be just and equitable to do so, make such ancillary orders (including orders varying property rights) as may be necessary to place any person affected by the annulment of the declaration, as far as practicable, in the same position as the person would have been in if the declaration had not been made. 25
- (4) If a declaration is annulled under this section, the Registrar of the Division of the Court in which the order was made must 30

immediately cause a copy of the order of annulment to be transmitted to the Registrar of Births, Deaths and Marriages to be dealt with under the *Births, Deaths and Marriages Registration Act 1995*.

Division 4 Evidence of court findings and paternity acknowledgments 5

23 Admissibility of court findings and paternity acknowledgments

- (1) In any proceedings in which the parentage of a child is in issue and a presumption under section 12 or 13 is relied on, the finding of the prescribed court or the paternity acknowledgment (or a copy of any such instrument that the court considers authentic) giving rise to the presumption is to be admitted in evidence in those proceedings. 10
- (2) In any proceedings in which the parentage of a child is in issue, the court before which the proceedings are taken may admit any evidence that tends to establish that a person is or is not a parent of the child even though that evidence is not required to be admitted by virtue of subsection (1). 15
- (3) However, subsection (2) does not apply so as to allow the admission of evidence in rebuttal of an irrebuttable presumption of law arising by virtue of this or any other Act or any rule of law. 20

Division 5 Hearings under Divisions 2 and 3

24 Conduct of hearings

- (1) The hearing of an application for a declaration of parentage or for an annulment order under Division 2 or 3 is to be in closed court. 25
- (2) The Supreme Court may adjourn the hearing of any such application to give a person the opportunity to be present or to be represented at the hearing if the Court considers that the person's interests would be affected by a declaration or an annulment order (as the case may be). 30

25 Offence: publication of identity of participants in hearing

A person must not publish the name, or the particulars relating to the identity, of any person by, or in relation to whom, an application for a declaration of parentage or for an annulment order under Division 2 or 3 is brought.

5

Maximum penalty: 10 penalty units.

Division 6 Parentage evidence

26 Orders for carrying out of parentage testing procedures

- (1) In proceedings where the parentage of a child is in issue, the Supreme Court may make an order requiring a parentage testing procedure to be carried out on any of the following persons for the purpose of obtaining information to assist in determining the parentage of the child: 10
- (a) the child, or
 - (b) a person known to be a parent of the child, or 15
 - (c) any other person, if the Court is of the opinion that the information that could be obtained if the parentage testing procedure were to be carried out in relation to the person might assist in determining the parentage of the child.
- (2) A parentage testing order may be made by the Court: 20
- (a) on the application of a party to the proceedings, or
 - (b) on the application of the Director-General, or
 - (c) on the application of a person representing the child under an order made under section 34, or
 - (d) of its own motion. 25
- (3) A parentage testing order may be made subject to terms and conditions.
- (4) In deciding whether to make a parentage testing order, the Court must: 30
- (a) consider and determine any objection made by a party to the proceedings on account of medical, religious or other grounds, and
 - (b) if it determines that an objection is valid, take the objection into account in deciding whether to make the order.

27 Orders associated with parentage testing orders

- (1) If the Supreme Court makes a parentage testing order, the Court may make such other orders as it considers necessary or desirable:
- (a) to enable the parentage testing procedure to be carried out, 5
or
 - (b) to make the parentage testing procedure more effective or reliable.
- (2) Some examples of the kinds of order that the Court can make under subsection (1) are as follows: 10
- (a) an order requiring a person to submit to a medical procedure,
 - (b) an order requiring a person to provide a bodily sample,
 - (c) an order requiring a person to surrender a bodily sample 15
previously obtained from that person or from another person (regardless of whether that other person is still living) that has been stored or otherwise preserved,
 - (d) an order requiring a person to furnish information relevant to the person's medical or family history.
- (3) The Court may also make such costs orders as it considers just in relation to costs incurred in relation to: 20
- (a) the carrying out of the parentage testing procedure or other orders made by the Court in relation to the parentage testing procedure, or
 - (b) the preparation of reports in relation to the information 25
obtained as a result of the carrying out of the parentage testing procedure.
- (4) In deciding whether to make an order under this section, the Court must:
- (a) consider and determine any objection made by a party to 30
the proceedings on account of medical, religious or other grounds, and
 - (b) if it determines that an objection is valid, take the objection into account in deciding whether to make the order.

28 Orders made against children under 18 years of age

- (1) This section applies if a parentage testing order or an order under section 27 requires a medical procedure or other act to be carried out in relation to a child who is under 18 years of age.
- (2) The procedure or act must not be carried out in relation to the child under the order unless a parent or guardian of the child consents to the medical procedure or act being carried out. 5
- (3) However, the Court may draw such inferences from a failure or refusal to consent as appear just in the circumstances.

29 Effect of non-compliance by adult with an order made under this Part 10

- (1) If a person who is 18 years or more of age contravenes a parentage testing order or an order under section 27, the person is not liable to any penalty in relation to the contravention.
- (2) However, the Court may draw such inferences as appear just in the circumstances. 15

30 No liability if parent or guardian consents

- (1) If a parent or guardian of the child consents to a medical procedure or other act being carried out in relation to the child under an order made under this Division, a person who carries out, or assists in the carrying out of, the medical procedure or act is not liable to any civil or criminal action in relation to the proper carrying out of the medical procedure or act. 20
- (2) Nothing in subsection (1) affects any liability of a person for an act done negligently, or negligently omitted to be done, in relation to the carrying out of a medical procedure or act. 25

31 Reports on parentage testing procedures

- (1) A report made in accordance with regulations made under section 36 (2) (b) may be received in evidence in any proceedings under this Act. 30

- (2) If any such report is received in evidence in any proceedings under this Act, the Supreme Court may make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the Court and give evidence in relation to the report. 5
- (3) An order under subsection (2) may be made by the Court:
- (a) on the application of a party to the proceedings, or
 - (b) on the application of the Director-General, or
 - (c) on the application of a person representing a child under an order made under section 34, or 10
 - (d) of its own motion.

32 Offence: Personating another in or proffering another child for a parentage testing procedure

A person must not:

- (a) undergo a parentage testing procedure under a parentage testing order or other procedure ordered under section 27 for the purpose of personating the person who is required by the order to undergo the procedure, or 15
- (b) proffer a child for the purpose of undergoing a parentage testing procedure under a parentage testing order or other procedure ordered under section 27 knowing that the child is not the child named in the order. 20

Maximum penalty: 5 penalty units.

33 Offence: Taking of bodily sample by unqualified persons

- (1) A person must not take any bodily sample purportedly for the purpose of giving effect to a parentage testing order or an order under section 27 unless the person is a qualified person. 25

Maximum penalty: 2 penalty units.

- (2) For the purposes of this section, *qualified person* means:
- (a) a medical practitioner, or 30
 - (b) a registered nurse, or
 - (c) any other person belonging to a class of persons prescribed by the regulations for the purposes of this section.

34 Court orders for separate representation of child

- (1) This section applies to proceedings under this Division concerning a child.
- (2) If it appears to the Supreme Court that the child ought to be separately represented, the Court may order that the child is to be separately represented, and may also make such orders as it considers necessary to secure that representation. 5
- (3) The Supreme Court may make an order for separate representation:
 - (a) on the application of any person, or 10
 - (b) of its own motion.

Part 4 Miscellaneous

35 Proceedings for offences

- (1) Proceedings for an offence under this Act are to be dealt with before a Local Court constituted by a Magistrate sitting alone.
- (2) Nothing in this section affects the jurisdiction or power of the Supreme Court to enforce its orders. 5

36 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 10
- (2) Without affecting the generality of subsection (1), the regulations may make provision with respect to any of the following matters:
 - (a) the carrying out of parentage testing procedures under parentage testing orders, 15
 - (b) the preparation of reports in relation to the information obtained as the result of the carrying out of such procedures.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units. 20

37 Repeal of Children (Equality of Status) Act 1976 No 97 and Artificial Conception Act 1984 No 3

The Children (Equality of Status) Act 1976 and the Artificial Conception Act 1984 are repealed.

38 Amendments of Acts 25

Each Act specified in Schedule 1 is amended as set out in that Schedule.

39 Savings and transitional provisions

Schedule 2 has effect.

Clause 40 Status of Children Bill 1996

Part 4 Miscellaneous

40 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. 5
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of Acts

(Section 38)

1.1 Adoption of Children Act 1965 No 23

Section 31A Notice of consents to certain putative fathers

Omit section 31A (1) (c) and (d). Insert instead:

(c) is presumed to be the father of the child by the operation of Division 1 of Part 3 of the *Status of Children Act 1996*, or

(d) is a party to proceedings as a consequence of which the person may be presumed to be the father of the child by the operation of section 12 of the *Status of Children Act 1996*, or

5

10

1.2 Adoption Information Act 1990 No 63

Omit “under the *Children (Equality of Status) Act 1976*” from section 8 (2) (b).

Insert instead “under Division 1 of Part 3 of the *Status of Children Act 1996*”.

15

1.3 De Facto Relationships Act 1984 No 147

Omit “, pursuant to the *Artificial Conception Act 1984*,” from section 3 (2) (b).

Insert instead “by operation of section 14 (presumptions of parentage arising out of use of fertilisation procedures) of the *Status of Children Act 1996*”.

20

1.4 Superannuation Act 1916 No 28

Omit “*Children (Equality of Status) Act 1976*” from the definition of *Child* in section 3 (1).

Insert instead “*Status of Children Act 1996*”.

25

Schedule 2 Savings and transitional provisions

(Section 39)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 5
this Act
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on or from the date of assent to the Act concerned or a later day. 10
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication. 20

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

repealed status Act means the *Children (Equality of Status) Act 1976*. 25

repealed presumption Act means the *Artificial Conception Act 1984*.

repeal date means the date on which the repealed Act is repealed.

3 Paternity acknowledgments executed under repealed status Act

- (1) A paternity acknowledgment that was executed in accordance with section 11 of the repealed status Act and in force immediately before the repeal date is taken to be a formal paternity acknowledgment executed under section 19 of this Act. 5
- (2) An order annulling a paternity acknowledgment made under section 11 of the repealed status Act and in force immediately before the repeal date is taken to be an annulment order made under section 20 of this Act. 10

4 Declarations of paternity and maternity under repealed status Act

- (1) A declaration of paternity or maternity made under section 13 or 15 of the repealed status Act and in force immediately before the repeal date is taken to be a declaration of parentage made under section 21 of this Act. 15
- (2) An order annulling a declaration made under section 13 or 15 of the repealed status Act and in force immediately before the repeal date is taken to be an annulment order made under section 22 of this Act. 20

5 Previous court determinations

Nothing in any provision of this Act affects any determination concerning the parentage or status of a child made by a court before the commencement of the provision. 25

6 References to the repealed status Act and repealed presumption Act

- (1) A reference in any instrument made under any Act, or any document of any kind, to the repealed status Act or a provision of the repealed status Act is to be read as a reference to this Act or the equivalent provision of this Act. 30

Status of Children Bill 1996

Schedule 2 Savings and transitional provisions

- (2) A reference in any other Act or in any instrument made under any Act, or any document of any kind, to the repealed presumption Act or a provision of the repealed presumption Act is to be read as a reference to this Act or the equivalent provision of this Act.

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New South Wales

Status of Children Act 1996 No 76

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New South Wales

Status of Children Act 1996 No 76

Act No 76, 1996

An Act to re-enact without any substantive changes provisions contained in the *Children (Equality of Status) Act 1976* concerning the removal of legal disabilities of exnuptial children; to provide for parentage presumptions and parentage testing procedures; to repeal the *Children (Equality of Status) Act 1976* and the *Artificial Conception Act 1984*; to amend consequentially various other Acts; and for related purposes. [Assented to 29 October 1996]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Status of Children Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

Births, Deaths and Marriages Register means the Register referred to in section 43 of the *Births, Deaths and Marriages Registration Act 1995*.

bodily sample includes any one or more of the following:

- (a) a blood sample,
- (b) a tissue sample,
- (c) a sperm sample,
- (d) any other sample of material obtained from a human body.

declaration of parentage means a declaration under section 21.

Director-General means the Director-General of the Department of Community Services.

fertilisation procedure means:

- (a) the artificial insemination of a woman, or
- (b) the procedure of transferring to a woman's body an ovum (whether or not produced by her) fertilised outside her body, or
- (c) the procedure of transferring to a woman's body an ovum (whether or not produced by her) or both the ovum and sperm to enable fertilisation of the ovum to occur in her body, or
- (d) any other procedure for the assisted conception of children that is prescribed by the regulations.

formal paternity acknowledgment means a paternity acknowledgment executed under section 19.

husband includes a husband under a void or voidable marriage.

married includes married under a void marriage and under a voidable marriage that has been annulled by a court.

parentage testing order means an order made under section 26.

parentage testing procedure means a medical procedure prescribed, or included in a class of medical procedures prescribed, by the regulations for the purposes of this definition.

prescribed court means a court of any State or Territory, a federal court, or a court of a prescribed overseas jurisdiction.

prescribed overseas jurisdiction means any country, or part of a country, outside Australia that is prescribed by the regulations for the purposes of the provision in which the expression is used.

Registrar means the Registrar of Births, Deaths and Marriages holding office as such under Part 2 of the *Public Sector Management Act 1988*.

Supreme Court or ***Court*** means the Supreme Court of New South Wales.

wife includes a wife under a void or voidable marriage.

- (2) A reference in this or any other Act:
- (a) to an exnuptial child or to a child or person born outside marriage (however expressed) is a reference to a child or person whose father and mother were not married to each other at the time of the conception of the child or person and who have not subsequently married each other, and
 - (b) to a child or person born in marriage or in lawful wedlock (however expressed) is a reference to a child or person whose father and mother were married to each other at the time of the conception of the child or person or who subsequently married each other.

4 Application of Act

- (1) This Act applies in respect of a person:
 - (a) whether born in New South Wales or elsewhere, and
 - (b) whether born before or after the commencement of this section, and
 - (c) whether a minor or not, and
 - (d) whether the person or the person's father or mother is or has ever been domiciled in New South Wales or not.
- (2) Nothing in this Act affects the operation of sections 35 and 36 of the *Adoption of Children Act 1965*.

Part 2 Status of children and dispositions of property

5 All children are of equal status

- (1) For the purposes of any law of the State by or under which the relationship between any person and the person's father and mother (or either of them) arises, that relationship and any other relationship (whether of consanguinity or affinity) between the person and another person is to be determined regardless of whether the person's parents are or have been married to each other.
- (2) This section is subject to sections 6 and 7.

6 Construction of dispositions of property made on or after 1 July 1977

- (1) This section applies to the following dispositions only:
 - (a) dispositions made inter vivos on or after 1 July 1977 (being the date on which the *Children (Equality of Status) Act 1976* commenced),
 - (b) dispositions made by will or codicil executed before, on or after 1 July 1977 by a person who dies after that date.
- (2) Unless a contrary intention appears, in any disposition to which this section applies:
 - (a) a reference (however expressed) to the child or children of a person includes a reference to an exnuptial child of whom that person is a parent, and
 - (b) a reference (however expressed) to any person or persons related to another person (other than as a parent or child) includes a reference to anyone who is so related in fact regardless that the person related in fact, or some other person through whom the relationship is traced, is or was an exnuptial child.

- (3) The use of any of the following words (or of any word or words having the same or a similar meaning) does not of itself indicate a contrary intention for the purposes of subsection (2):
 - (a) the words “legitimate” or “lawful” when used with reference to the child or children of a person or persons related to another person in some other way,
 - (b) the words “married”, “husband” or “wife” when used with reference to the parent or parents of a person.
- (4) Without limiting any other provision of this Act, any rule of law that a disposition in favour of an exnuptial child not conceived or born when the disposition takes effect is void as being contrary to public policy is abolished in respect of any disposition to which this section applies.

7 Construction of dispositions of property made before 1 July 1977

- (1) The following dispositions are to be construed as if the *Children (Equality of Status) Act 1976* and this Act had not been enacted:
 - (a) dispositions made inter vivos before 1 July 1977,
 - (b) dispositions made by will or codicil executed by a person who died before 1 July 1977.
- (2) If any such disposition contains a special power of appointment, nothing in this Act:
 - (a) extends the class of persons in whose favour the appointment may be made, or
 - (b) causes the exercise of the power to be construed so as to include any person who is not a member of that class.

8 Rights of exnuptial children and their relatives on intestacy

- (1) This section applies to rights under the intestacy of persons dying on or after 1 July 1977.

- (2) If any relative of an exnuptial child (including a parent of the child) dies intestate in respect of all or any of the relative's real or personal property, the child (or any of the child's issue if the child is dead) is entitled to take any interest in that property that the child (or the child's issue) would have been entitled to take if the child's parents had been married to each other when the child was born.
- (3) If an exnuptial child dies intestate in respect of all or any of the child's real or personal property, any relative of the child (including a parent of the child) is entitled to take any interest in that property that the relative would have been entitled to take if the parents of the child had been married to each other when the child was born.
- (4) Nothing in this section affects the generality of section 5. However, this section does not (despite section 5) apply to any child who is an adopted person under an adoption order made or continued in force under the *Adoption of Children Act 1965* or under an adoption recognised in the State under Part 5 of that Act.

Part 3 Establishing parentage

Division 1 Parentage presumptions

9 Presumptions of parentage arising from marriage

- (1) A child born to a woman during a marriage to which she is a party is presumed to be a child of the woman and her husband.
- (2) If a child is born to a woman within 44 weeks after her husband dies, the child is presumed to be the child of the woman and her deceased husband.
- (3) If a child is born to the woman within 44 weeks after a purported marriage to which the woman is a party is annulled, the child is presumed to be a child of the woman and her purported husband.
- (4) If:
 - (a) the parties to a marriage separated at any time, and
 - (b) after the separation, resumed cohabitation on one occasion, and
 - (c) within 3 months after the resumption of cohabitation, they separated again and lived separately and apart, and
 - (d) a child is born to the woman within 44 weeks after the end of the cohabitation, but after the dissolution of the marriage,the child is presumed to be the child of the woman and her former husband.
- (5) For the purposes of this section, a marriage is dissolved by a decree of dissolution or annulled by a decree of nullity on the making of the decree nisi.

10 Presumption of paternity arising from cohabitation

A child born to a woman is presumed to be a man's child if, at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the man and the woman cohabit but are not married.

11 Presumptions of parentage arising from registration of birth

- (1) A person is presumed to be a child's parent if the person's name is entered as the child's parent in the Births, Deaths and Marriages Register or a register of births or parentage information kept under a law of the Commonwealth, another State or a Territory or a prescribed overseas jurisdiction.
- (2) Nothing in this section affects the operation of section 46 (recognition of foreign adoptions) of the *Adoption of Children Act 1965*.

12 Presumption of parentage arising from findings of courts

- (1) A person is presumed to be a child's parent if:
 - (a) while the person is alive, a prescribed court has:
 - (i) found expressly that the person is the child's parent, or
 - (ii) made a finding that it could not have made unless the person was the child's parent, and
 - (b) the finding has not been altered, set aside or reversed.
- (2) A presumption arising under subsection (1) is irrebuttable.
- (3) A person is presumed to be a child's parent if:
 - (a) after the person dies, a prescribed court has:
 - (i) found expressly that the person was the child's parent, or
 - (ii) made a finding that it could not have made unless the person was the child's parent, and
 - (b) the finding has not been altered, set aside or reversed.
- (4) In this section, a reference to a finding of a prescribed court includes:
 - (a) a reference to a declaration of parentage, and
 - (b) a reference to a finding whether made before or after the commencement of this section.
- (5) Nothing in this section affects the operation of section 46 (recognition of foreign adoptions) of the *Adoption of Children Act 1965*.

13 Presumption of parentage arising from acknowledgments

- (1) A man is presumed to be a child's father if:
 - (a) under this Act or other law of the State or a law of the Commonwealth, another State or a Territory or a prescribed overseas jurisdiction, the man executes a formal paternity acknowledgment or any other instrument acknowledging that he is the child's father, and
 - (b) the instrument has not been annulled or otherwise set aside.
- (2) This section extends to instruments executed before the commencement of this section.

14 Presumptions of parentage arising out of use of fertilisation procedures

- (1) When a married woman has undergone a fertilisation procedure as a result of which she becomes pregnant:
 - (a) her husband is presumed to be the father of any child born as a result of the pregnancy even if he did not provide any or all of the sperm used in the procedure, but only if he consented to the procedure, and
 - (b) the woman is presumed to be the mother of any child born as a result of the pregnancy even if she did not provide the ovum used in the procedure.
- (2) If a woman becomes pregnant by means of a fertilisation procedure using any sperm obtained from a man who is not her husband, that man is presumed not to be the father of any child born as a result of the pregnancy.
- (3) If a woman becomes pregnant by means of a fertilisation procedure using an ovum obtained from another woman, that other woman is presumed not to be the mother of any child born as a result of the pregnancy.
- (4) Any presumption arising under subsections (1)–(3) is irrebuttable.
- (5) In any proceedings in which the operation of subsection (1) is relevant, a husband's consent to the carrying out of the fertilisation procedure is presumed.

-
- (6) In this section:
- (a) a reference to a married woman includes a reference to a woman who is living with a man as his wife on a bona fide domestic basis although not married to him, and
 - (b) a reference (however expressed) to the husband or wife of a person:
 - (i) is, in a case where the person is living with another person of the opposite sex as his or her spouse on a bona fide domestic basis although not married to the other person, a reference to that other person, and
 - (ii) does not, in that case, include a reference to the spouse (if any) to whom the person is actually married.

15 Rebuttal of parentage presumptions

- (1) A presumption arising under this Division, or a parentage presumption arising under any other Act or rule of law, that is rebuttable, is rebuttable by proof on the balance of probabilities.
- (2) Every presumption arising under this Division (except for a presumption arising under section 12 (1) or 14 (1)–(3)) is a rebuttable presumption.

16 Conflicting rebuttable parentage presumptions

If two or more rebuttable presumptions referred to in section 15 conflict with each other and are not rebutted in any proceedings, the presumption that appears to the court to be more or most likely to be correct prevails.

17 Conflicts involving irrebuttable parentage presumptions

- (1) If two or more irrebuttable presumptions arising under this Division conflict with each other, the presumption that appears to the court to be more or most likely to be correct prevails.
- (2) If an irrebuttable presumption arising under this Division conflicts with a rebuttable presumption arising under this Division that is not rebutted in any proceedings, the irrebuttable presumption prevails over the rebuttable presumption.

18 Parentage presumptions cannot be relied on by prosecutors

Despite any other provision of this Act, a prosecutor cannot rely in any criminal proceedings on a presumption arising under this Act to prove the parentage of a child.

Division 2 Acknowledgments of paternity

19 Execution of instrument of acknowledgment

- (1) A man has executed an instrument acknowledging paternity of a child under this Division if:
 - (a) he executes an instrument in or to the effect of a form prescribed by the regulations and the instrument is countersigned by the mother of the child, and
 - (b) he executes the instrument in the presence of a person belonging to a class of persons prescribed by the regulations for the purposes of this paragraph, and
 - (c) the instrument has not been annulled under this Division.
- (2) A person in whose presence a formal paternity acknowledgment is executed in New South Wales must:
 - (a) take possession of the acknowledgment once it is executed, and
 - (b) cause the acknowledgment to be transmitted to the Registrar not later than 14 days after the date of its execution to be dealt with under the *Births, Deaths and Marriages Registration Act 1995*.

Maximum penalty: 2 penalty units.

20 Annulment of paternity acknowledgments

- (1) A formal paternity acknowledgment can be annulled only by order of the Supreme Court.
- (2) The Court may annul a formal paternity acknowledgment on the application of, or on behalf of, any of the following persons:
 - (a) the person who executed the acknowledgment,
 - (b) the mother of the child to whom the acknowledgment relates,

- (c) the child to whom the acknowledgment relates,
 - (d) the Registrar,
 - (e) any other person who may be affected by the result of the application.
- (3) If the Court makes an annulment order, the Registrar of the Division of the Court in which the order was made must immediately cause a copy of the order to be transmitted to the Registrar of Births, Deaths and Marriages to be dealt with under the *Births, Deaths and Marriages Registration Act 1995*.

Division 3 Declarations of parentage

21 Applications for declarations in the Supreme Court

- (1) Any of the following persons may make an application to the Supreme Court for a declaration of parentage under this section:
- (a) a person who alleges that the relationship of parent and child exists between the person's child and any named person, or
 - (b) a person who alleges that the relationship of parent and child exists between the person and another named or identified person, or
 - (c) the Registrar when seeking a determination that the relationship of parent and child exists between a named person and another named or identified person, or
 - (d) the Director-General when seeking a determination that the relationship of parent and child exists between a named person and another named or identified person, or
 - (e) a person prescribed by the regulations who seeks a determination that the relationship of parent and child exists between a named person and another named or identified person, or
 - (f) a person who may be affected by the result who seeks a determination that the relationship of parent and child exists between a named person and another named or identified person.

- (2) On any such application, the Supreme Court may make a declaration that a named or identified person is a child's parent.
- (3) A declaration of parentage may be made:
 - (a) whether or not the parent or the child (or both) are alive, or
 - (b) whether or not the child has been born.
- (4) If a declaration of parentage is made, the Registrar of the Division of the Court in which the order was made must immediately cause a copy of the declaration to be transmitted to the Registrar of Births, Deaths and Marriages to be dealt with under the *Births, Deaths and Marriages Registration Act 1995*.

22 Annulment of declaration of parentage

- (1) The Supreme Court may make an order annulling a declaration of parentage on the application of any person who applied or could have applied for the making of the declaration if it appears to the Court:
 - (a) that new facts or circumstances have arisen that have not previously been disclosed to the Court, and
 - (b) those facts could not, by the exercise of reasonable diligence, have previously been disclosed to the Court.
- (2) On the making of such an order, the declaration ceases to have effect from that time. Accordingly, the annulment does not affect anything done in reliance on the declaration before the making of the order.
- (3) If the Court makes such an order, it may, if it thinks that it would be just and equitable to do so, make such ancillary orders (including orders varying property rights) as may be necessary to place any person affected by the annulment of the declaration, as far as practicable, in the same position as the person would have been in if the declaration had not been made.
- (4) If a declaration is annulled under this section, the Registrar of the Division of the Court in which the order was made must

immediately cause a copy of the order of annulment to be transmitted to the Registrar of Births, Deaths and Marriages to be dealt with under the *Births, Deaths and Marriages Registration Act 1995*.

Division 4 Evidence of court findings and paternity acknowledgments

23 Admissibility of court findings and paternity acknowledgments

- (1) In any proceedings in which the parentage of a child is in issue and a presumption under section 12 or 13 is relied on, the finding of the prescribed court or the paternity acknowledgment (or a copy of any such instrument that the court considers authentic) giving rise to the presumption is to be admitted in evidence in those proceedings.
- (2) In any proceedings in which the parentage of a child is in issue, the court before which the proceedings are taken may admit any evidence that tends to establish that a person is or is not a parent of the child even though that evidence is not required to be admitted by virtue of subsection (1).
- (3) However, subsection (2) does not apply so as to allow the admission of evidence in rebuttal of an irrebuttable presumption of law arising by virtue of this or any other Act or any rule of law.

Division 5 Hearings under Divisions 2 and 3

24 Conduct of hearings

- (1) The hearing of an application for a declaration of parentage or for an annulment order under Division 2 or 3 is to be in closed court.
- (2) The Supreme Court may adjourn the hearing of any such application to give a person the opportunity to be present or to be represented at the hearing if the Court considers that the person's interests would be affected by a declaration or an annulment order (as the case may be).

25 Offence: publication of identity of participants in hearing

A person must not publish the name, or the particulars relating to the identity, of any person by, or in relation to whom, an application for a declaration of parentage or for an annulment order under Division 2 or 3 is brought.

Maximum penalty: 10 penalty units.

Division 6 Parentage evidence

26 Orders for carrying out of parentage testing procedures

- (1) In proceedings where the parentage of a child is in issue, the Supreme Court may make an order requiring a parentage testing procedure to be carried out on any of the following persons for the purpose of obtaining information to assist in determining the parentage of the child:
 - (a) the child, or
 - (b) a person known to be a parent of the child, or
 - (c) any other person, if the Court is of the opinion that the information that could be obtained if the parentage testing procedure were to be carried out in relation to the person might assist in determining the parentage of the child.
- (2) A parentage testing order may be made by the Court:
 - (a) on the application of a party to the proceedings, or
 - (b) on the application of the Director-General, or
 - (c) on the application of a person representing the child under an order made under section 34, or
 - (d) of its own motion.
- (3) A parentage testing order may be made subject to terms and conditions.
- (4) In deciding whether to make a parentage testing order, the Court must:
 - (a) consider and determine any objection made by a party to the proceedings on account of medical, religious or other grounds, and
 - (b) if it determines that an objection is valid, take the objection into account in deciding whether to make the order.

27 Orders associated with parentage testing orders

- (1) If the Supreme Court makes a parentage testing order, the Court may make such other orders as it considers necessary or desirable:
 - (a) to enable the parentage testing procedure to be carried out, or
 - (b) to make the parentage testing procedure more effective or reliable.
- (2) Some examples of the kinds of order that the Court can make under subsection (1) are as follows:
 - (a) an order requiring a person to submit to a medical procedure,
 - (b) an order requiring a person to provide a bodily sample,
 - (c) an order requiring a person to surrender a bodily sample previously obtained from that person or from another person (regardless of whether that other person is still living) that has been stored or otherwise preserved,
 - (d) an order requiring a person to furnish information relevant to the person's medical or family history.
- (3) The Court may also make such costs orders as it considers just in relation to costs incurred in relation to:
 - (a) the carrying out of the parentage testing procedure or other orders made by the Court in relation to the parentage testing procedure, or
 - (b) the preparation of reports in relation to the information obtained as a result of the carrying out of the parentage testing procedure.
- (4) In deciding whether to make an order under this section, the Court must:
 - (a) consider and determine any objection made by a party to the proceedings on account of medical, religious or other grounds, and
 - (b) if it determines that an objection is valid, take the objection into account in deciding whether to make the order.

28 Orders made against children under 18 years of age

- (1) This section applies if a parentage testing order or an order under section 27 requires a medical procedure or other act to be carried out in relation to a child who is under 18 years of age.
- (2) The procedure or act must not be carried out in relation to the child under the order unless a parent or guardian of the child consents to the medical procedure or act being carried out.
- (3) However, the Court may draw such inferences from a failure or refusal to consent as appear just in the circumstances.

29 Effect of non-compliance by adult with an order made under this Part

- (1) If a person who is 18 years or more of age contravenes a parentage testing order or an order under section 27, the person is not liable to any penalty in relation to the contravention.
- (2) However, the Court may draw such inferences as appear just in the circumstances.

30 No liability if parent or guardian consents

- (1) If a parent or guardian of the child consents to a medical procedure or other act being carried out in relation to the child under an order made under this Division, a person who carries out, or assists in the carrying out of, the medical procedure or act is not liable to any civil or criminal action in relation to the proper carrying out of the medical procedure or act.
- (2) Nothing in subsection (1) affects any liability of a person for an act done negligently, or negligently omitted to be done, in relation to the carrying out of a medical procedure or act.

31 Reports on parentage testing procedures

- (1) A report made in accordance with regulations made under section 36 (2) (b) may be received in evidence in any proceedings under this Act.

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- (2) If any such report is received in evidence in any proceedings under this Act, the Supreme Court may make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the Court and give evidence in relation to the report.
- (3) An order under subsection (2) may be made by the Court:
- (a) on the application of a party to the proceedings, or
 - (b) on the application of the Director-General, or
 - (c) on the application of a person representing a child under an order made under section 34, or
 - (d) of its own motion.

32 Offence: Personating another in or proffering another child for a parentage testing procedure

A person must not:

- (a) undergo a parentage testing procedure under a parentage testing order or other procedure ordered under section 27 for the purpose of personating the person who is required by the order to undergo the procedure, or
- (b) proffer a child for the purpose of undergoing a parentage testing procedure under a parentage testing order or other procedure ordered under section 27 knowing that the child is not the child named in the order.

Maximum penalty: 5 penalty units.

33 Offence: Taking of bodily sample by unqualified persons

- (1) A person must not take any bodily sample purportedly for the purpose of giving effect to a parentage testing order or an order under section 27 unless the person is a qualified person.

Maximum penalty: 2 penalty units.

- (2) For the purposes of this section, *qualified person* means:
- (a) a medical practitioner, or
 - (b) a registered nurse, or
 - (c) any other person belonging to a class of persons prescribed by the regulations for the purposes of this section.

34 Court orders for separate representation of child

- (1) This section applies to proceedings under this Division concerning a child.
- (2) If it appears to the Supreme Court that the child ought to be separately represented, the Court may order that the child is to be separately represented, and may also make such orders as it considers necessary to secure that representation.
- (3) The Supreme Court may make an order for separate representation:
 - (a) on the application of any person, or
 - (b) of its own motion.

Part 4 Miscellaneous

35 Proceedings for offences

- (1) Proceedings for an offence under this Act are to be dealt with before a Local Court constituted by a Magistrate sitting alone.
- (2) Nothing in this section affects the jurisdiction or power of the Supreme Court to enforce its orders.

36 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without affecting the generality of subsection (1), the regulations may make provision with respect to any of the following matters:
 - (a) the carrying out of parentage testing procedures under parentage testing orders,
 - (b) the preparation of reports in relation to the information obtained as the result of the carrying out of such procedures.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

37 Repeal of Children (Equality of Status) Act 1976 No 97 and Artificial Conception Act 1984 No 3

The Children (Equality of Status) Act 1976 and the Artificial Conception Act 1984 are repealed.

38 Amendments of Acts

Each Act specified in Schedule 1 is amended as set out in that Schedule.

39 Savings and transitional provisions

Schedule 2 has effect.

40 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of Acts

(Section 38)

1.1 Adoption of Children Act 1965 No 23

Section 31A Notice of consents to certain putative fathers

Omit section 31A (1) (c) and (d). Insert instead:

- (c) is presumed to be the father of the child by the operation of Division 1 of Part 3 of the *Status of Children Act 1996*, or
- (d) is a party to proceedings as a consequence of which the person may be presumed to be the father of the child by the operation of section 12 of the *Status of Children Act 1996*, or

1.2 Adoption Information Act 1990 No 63

Omit “under the *Children (Equality of Status) Act 1976*” from section 8 (2) (b).

Insert instead “under Division 1 of Part 3 of the *Status of Children Act 1996*”.

1.3 De Facto Relationships Act 1984 No 147

Omit “, pursuant to the *Artificial Conception Act 1984*,” from section 3 (2) (b).

Insert instead “by operation of section 14 (presumptions of parentage arising out of use of fertilisation procedures) of the *Status of Children Act 1996*”.

1.4 Superannuation Act 1916 No 28

Omit “*Children (Equality of Status) Act 1976*” from the definition of *Child* in section 3 (1).

Insert instead “*Status of Children Act 1996*”.

Schedule 2 Savings and transitional provisions

(Section 39)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on or from the date of assent to the Act concerned or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

repealed status Act means the *Children (Equality of Status) Act 1976*.

repealed presumption Act means the *Artificial Conception Act 1984*.

repeal date means the date on which the repealed Act is repealed.

3 Paternity acknowledgments executed under repealed status Act

- (1) A paternity acknowledgment that was executed in accordance with section 11 of the repealed status Act and in force immediately before the repeal date is taken to be a formal paternity acknowledgment executed under section 19 of this Act.
- (2) An order annulling a paternity acknowledgment made under section 11 of the repealed status Act and in force immediately before the repeal date is taken to be an annulment order made under section 20 of this Act.

4 Declarations of paternity and maternity under repealed status Act

- (1) A declaration of paternity or maternity made under section 13 or 15 of the repealed status Act and in force immediately before the repeal date is taken to be a declaration of parentage made under section 21 of this Act.
- (2) An order annulling a declaration made under section 13 or 15 of the repealed status Act and in force immediately before the repeal date is taken to be an annulment order made under section 22 of this Act.

5 Previous court determinations

Nothing in any provision of this Act affects any determination concerning the parentage or status of a child made by a court before the commencement of the provision.

6 References to the repealed status Act and repealed presumption Act

- (1) A reference in any instrument made under any Act, or any document of any kind, to the repealed status Act or a provision of the repealed status Act is to be read as a reference to this Act or the equivalent provision of this Act.

- (2) A reference in any other Act or in any instrument made under any Act, or any document of any kind, to the repealed presumption Act or a provision of the repealed presumption Act is to be read as a reference to this Act or the equivalent provision of this Act.

[Minister's second reading speech made in—
Legislative Council on 29 May 1996
Legislative Assembly on 20 June 1996]

BY AUTHORITY