



STATUS OF CHILDREN

—
 No. 36 of 1974
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ANALYSIS

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AN ACT to remove the legal disabilities of children born out of wedlock.

[14 October 1974]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

- 1—**(1) This Act may be cited as the *Status of Children Act 1974*. Short title and commencement.
- (2) This Act shall commence on a date to be fixed by proclamation.

Interpretation.
Cf. N.Z. 1969,
No. 18, s. 2.

2 For the purposes of this Act "marriage" includes a void marriage and a voidable marriage which has been annulled by a court and "married" has a corresponding meaning.

All children to
be of equal
status.
N.Z., s. 3.

3—(1) For all purposes of the law of the State the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other and all other relationships shall be determined accordingly.

(2) The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is abolished.

(3) For the purpose of construing any instrument the use, with reference to relationship of a person, of the words "legitimate" or "lawful" shall not, in the absence of intention to the contrary in such instrument, prevent the relationship from being determined in accordance with the provisions of subsection (1).

(4) This section shall apply in respect of every person, whether born before or after the commencement of this Act, whether born in the State or not, and whether or not his father or mother has ever been domiciled in the State.

Instruments
executed and
intestacies
which take
place before the
commencement
of this Act.
N.Z., s. 4.

4—(1) All instruments executed before the commencement of this Act shall be governed by the enactments, rules of construction, and law which would have applied to them if this Act had not been passed.

(2) Where an instrument to which subsection (1) applies creates a special power of appointment nothing in this Act shall extend the class of persons in whose favour the appointment may be made or cause the exercise of the power to be construed so as to include any person who was not at the time of the creation of the instrument a member of that class.

(3) The estate of a person who dies intestate as to the whole or any part of his estate before the commencement of this Act shall be distributed in accordance with the enactments and rules of law which would have applied to the estate if this Act had not been passed.

Presumptions
as to
parenthood.
N.Z., s. 5.

5—(1) In the following cases, namely,

(a) where a child is born to a woman during her marriage; or

- (b) where a child is born to a woman within ten months after the marriage has been terminated by death or otherwise dissolved and she has not remarried before the birth of the child,

the child shall, in the absence of evidence to the contrary, be presumed to be the child of that marriage.

6—(1) For the purposes of the administration or distribution of any estate or of any property held in trust, or of any application under the *Testator's Family Maintenance Act* 1912, an executor, administrator, or trustee is not under any obligation to inquire as to the existence of any person who could claim an interest in the estate or the property by reason only of any of the provisions of this Act.

Protection of executors, administrators, and trustees. N.Z., s. 6.

(2) No action shall lie against an executor of the will or administrator or trustee of the estate of any person or the trustee under any instrument by any person who could claim an interest in the estate or property by reason only of any of the provisions of this Act to enforce any claim arising by reason of the executor or administrator or trustee having made any distribution of the estate or of property held upon trust or otherwise acted in the administration of the estate or property held on trust disregarding the claims of that person where at the time of making the distribution or otherwise so acting the executor, administrator, or trustee had no notice of the relationship on which the claim is based.

7—(1) The relationship of father and child and any other relationship traced in any degree through that relationship shall, for any purpose related to succession to property or to the construction of any will or other testamentary disposition or of any instrument creating a trust or for the purpose of any claim under the *Testator's Family Maintenance Act* 1912, be recognized only if—

Recognition of paternity. N.Z., s. 7.

- (a) the father and the mother of the child were married to each other at the time of its conception or at some subsequent time; or
- (b) paternity has been admitted (expressly or by implication) by or established against the father in his lifetime (whether by one or more of the types of evidence specified by section 8 of this Act or otherwise) and, if that purpose is for the benefit of the father, paternity has been so admitted or established while the child was living.

(2) In any case where by reason of subsection (1) the relationship of father and child is not recognized at the time the child is born, the occurrence of any act, event, or conduct which enables that relationship and any other relationship traced in any degree through it to be recognized shall not affect any estate, right, or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the act, event, or conduct occurred.

Evidence of
paternity.
N.Z., s. 8.

8—(1) Where the name of the father of a child is entered in the Register of Births in relation to the child, a certified copy of the entry made or given under section 37 of the *Registration of Births and Deaths Act 1895* shall be *prima facie* evidence that the person named as the father is the father of the child.

(2) Any instrument signed by the mother of a child and by any person acknowledging that he is the father of the child shall—

(a) if the instrument is executed as a deed; or

(b) if the instrument is signed jointly or severally by each of those persons in the presence of a solicitor,

be *prima facie* evidence that the person named as the father is the father of the child.

(3) An order against a person under section 26 or section 27 of the *Maintenance Act 1967* shall be *prima facie* evidence of the paternity in subsequent proceedings whether or not between the same parties.

(4) Subject to section 7 (1), a declaration made under section 10 shall, for all purposes, be conclusive proof of the matter to which it relates.

(5) An order made outside the State declaring a person to be the father of a child, being an order to which this subsection applies pursuant to the provisions of subsection (7) or subsection (8), shall be *prima facie* evidence that the person declared the father is the father of the child.

(6) Where a man and a woman have cohabitated for a period of twelve months and during that period of cohabitation or within ten months after the cohabitation has ceased a child is born to the woman, the man shall, in the absence of evidence to the contrary, be presumed to be the father of the child if the woman has not married before the birth of the child.

(7) For the purposes of this section an order made outside the State in another Australian State or in a Territory of the Commonwealth or in New Zealand has, so long as it has not been rescinded under the law in force in that State, Territory, or country, the same effect as the like order made in the State.

(8) The Governor may from time to time by order declare that subsection (5) applies with respect to orders made by any court or public authority in any specified country outside the Commonwealth or by any specified court or public authority in any such country.

9—(1) Any instrument of the kind described in section 8 (2) or a copy thereof may in the prescribed manner and on payment of the prescribed fee (if any) be filed in the office of the Registrar-General.

Instruments of acknowledgment may be filed with Registrar-General.
N.Z., s. 9.

(2) The Registrar-General shall cause indexes of all instruments and copies filed with him under subsection (1) to be made and kept in his office and shall, upon request made by or on behalf of a party to an instrument so filed or a child referred to in any such instrument or a guardian or relative of that child, cause a search of any index to be made and shall permit that person to inspect any such instrument or copy if he is satisfied that the person has a direct and proper interest in the matter.

(3) Where the Supreme Court makes a declaration of paternity under section 10 or where a court makes an order under section 26 or section 27 of the *Maintenance Act 1967* the Registrar or the clerk of the court (as the case requires) shall forward a copy of the declaration or order to the Registrar-General for filing in his office under this section and on receipt of any such copy the Registrar-General shall file it accordingly as if it were an instrument of the kind referred to in section 8 (2).

10—(1) Any person who—

- (a) alleges that any named person is the father of her child;
- (b) alleges that the relationship of father and child exists between himself and any other named person; or
- (c) being a person having a direct and proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons,

Declaration of paternity.
N.Z., s. 10.

may apply to a judge in chambers for a declaration of paternity and, if it is proved to the satisfaction of the judge that the relationship exists, the judge may make a declaration of paternity whether or not the father or the child or both of them are living or dead.

(2) Notwithstanding anything in subsection (1), a judge in chambers may refuse to hear an application for declaration of paternity if he is of the opinion that it is not just and proper so to do.

(3) For the purposes of this section, a judge in chambers may order that the child or any person alleged to be the parent of the child shall, for the purposes of the determination of his blood group, submit himself to such medical practitioner or analyst as the judge may determine, and the medical practitioner or analyst who makes the determination shall—

- (a) forward his certificate of such determination to the judge; and
- (b) if the judge so orders, appear before the judge and give evidence in respect of the determination.

(4) The certificate referred to in subsection (3) shall be *prima facie* evidence that the child or person to whom the certificate relates is of the blood group referred to therein.

(5) Where a declaration has been made under subsection (1) and it appears to a judge that new facts or circumstances have arisen that have not previously been disclosed to the court, the judge may revoke the declaration which shall thereupon cease to have any force or effect.

(6) Where a declaration is made under subsection (1) after the death of the father or of the child, the judge may at the same time or any subsequent time make a declaration determining, for the purposes of paragraph (b) of section 7 (1), whether any of the requirements of that paragraph have been satisfied.

(7) A declaration made under this section shall be *prima facie* evidence of the matters to which it relates for the purposes of sections 26 and 27 of the *Maintenance Act 1967*.

(8) In any proceedings under this section, the evidence of the father and mother of the child in respect of whom an application is made under subsection (1) shall be admissible to prove that marital intercourse did or did not take place between them during any period but the father and mother shall not be compellable to give such evidence.

11 The Governor may make regulations for or with respect to— Regulations.
N.Z., s. 11.
 (a) forms for the purposes of this Act;
 (b) fees to be charged under this Act; and
 (c) any other purpose which he may deem necessary or expedient for carrying out the provisions of this Act.

12 The enactments specified in the Schedule are hereby amended in the manner set forth in that Schedule. Consequential
amendment of
other Acts.

SCHEDULE
(Section 12)

Enactment	Amendment
<i>Testator's Family Maintenance Act 1912</i>	By omitting section 8 (3).
<i>Workers' Compensation Act 1927</i>	By omitting from the definition of "dependants" in section 3 (1) the words "and where the worker, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, the term includes the person so left dependent, and also includes a dependent female" and substituting therefor the words "and includes a dependent female".
<i>Fatal Accidents Act 1934</i>	By omitting from section 3 all the words following the word "used".
<i>Child Welfare Act 1960</i>	By omitting from the definition of "relative" in section 3 (1) all the words following the word "adoption". By omitting, from section 51 (2), paragraphs (c) and (d), and substituting therefor the following word and paragraph:— "and (c) Any person who at the relevant date— (i) is the husband of the mother of the child; (ii) for substantially the whole of the period of twelve months ending on that date, has cohabited with the mother of the child; or (iii) is the wife of the father of the child."

Enactment	Amendment	
<i>Mental Health Act 1963</i>	By omitting from section 38 (2) all the words following the word "blood".	
<i>Maintenance Act 1967</i>	By omitting from section 4 (1) the words "an illegitimate child or".	
	By inserting after section 25 the following section in Division III of Part II:— "25A References in this Act to a child to whom this Division applies shall be construed as references to a child whose father and mother were not married to each other at the time of the conception of the child and have not since married each other."	
	By omitting from section 26 the words "an illegitimate child" (wherever occurring) and substituting therefor the words "a child to whom this Division applies" in each case.	
	By omitting from section 31 (1) (a) the words "an illegitimate child" and substituting therefor the words "a child to whom this Division applies".	
	By omitting from section 33 (1) the words "an illegitimate child" and substituting therefor the words "a child to whom this Division applies".	
	By omitting from section 34 the words "an illegitimate child" (wherever occurring) and substituting therefor the words "a child to whom this Division applies" in each case.	
	By omitting from section 35 (1) the word "illegitimate"; and	
	By omitting from section 35 (3) the words "an illegitimate child" and substituting therefor the words "a child to whom this Division applies".	
	<i>Adoption of Children Act 1968</i>	By omitting from subsection (1) of section 3 the definition of "father".
		By omitting from the definition of "relative" in that subsection the words "is traced through, or to, an illegitimate person or".
By omitting subsections (2) and (3) of section 21 and substituting therefor the following subsection:— "(2) In the case of a child who has not previously been adopted, the appropriate persons are—		

Enactment	Amendment
	<p>(a) if the father or mother of the child were married to each other at the time of the conception of the child and have not since been married to each other, every person who is the father, mother, or guardian of the child; and</p> <p>(b) in any other case, every person who is the mother or guardian of the child.”.</p>
<p><i>Motor Accidents (Liabilities and Compensation) Act 1973</i></p>	<p>By omitting from paragraph 1 (1) of Part I of the First Schedule the words “ an illegitimate child or ”.</p> <p>By omitting paragraph 1 (2) of that Part.</p>
<p><i>Registration of Births and Deaths Act 1895</i></p>	<p>By omitting from section 17 the words “ an illegitimate child ” and substituting therefor the words “ a child whose father and mother were not married to each other at the time of the conception of the child and have not since married each other ”.</p>