



STATUS OF CHILDREN AMENDMENT ACT 1994

No. 42 of 1994

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**STATUS OF CHILDREN AMENDMENT ACT 1994**

No. 42 of 1994

AN ACT to amend the *Status of Children Act 1974***[Royal Assent 25 August 1994]**

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:—

Short title

1—This Act may be cited as the *Status of Children Amendment Act 1994*.

Commencement

2—This Act commences on a day to be proclaimed.

Principal Act

3—In this Act, the *Status of Children Act 1974** is referred to as the Principal Act.

Section 2 substituted

4—Section 2 of the Principal Act is repealed and the following section is substituted:—

Interpretation

2—In this Act, unless the context otherwise requires—

“child” means a son or daughter of any age;

“marriage” includes a void marriage and a voidable marriage which has been annulled;

“prescribed court” means a state court, a federal court, a court of a Territory, a court of another State or a court of a prescribed overseas jurisdiction.

Section 5 substituted

5—Section 5 of the Principal Act is repealed and the following section is substituted:—

Presumption of parentage arising from marriage

5—(1) A child who is born to a woman while she is married is presumed to be the child of the woman and her husband.

(2) If—

(a) at a particular time—

(i) a marriage to which a woman is a party is ended by death; or

(ii) a purported marriage to which a woman is a party is annulled; and

(b) a child is born to the woman within 44 weeks after that time—

the child is presumed to be the child of the woman and her deceased husband or purported husband.

* No. 36 of 1974. Amended by No. 122 of 1985 and No. 107 of 1987.

(3) If—

- (a) the parties to a marriage separate at any time; and
- (b) after the separation they resumed cohabitation on at least one occasion; and
- (c) within 3 months after resuming cohabitation they separated again and lived separately and apart; and
- (d) a child is born to the woman within 44 weeks after the cohabitation ends but after the dissolution of the marriage—

the child is presumed to be the child of the woman and the former husband.

Section 7 amended (Recognition of paternity)

6—Section 7 (1) of the Principal Act is amended by omitting from paragraph (b) “section 8 of”.

Section 8 substituted and sections 8A, 8B and 8C inserted

7—Section 8 of the Principal Act is repealed and the following sections are substituted:—

Presumption of paternity arising from cohabitation

8—If—

- (a) a child was born to a woman; and
- (b) at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the woman cohabited with a man to whom she was not married—

the child is presumed to be the child of that man.

Presumption of parentage arising from registration of birth

8A—A person whose name is entered as the parent of a child in a register of births or parentage information kept under a law of this State, the Commonwealth, another State, a Territory or a prescribed overseas jurisdiction is presumed to be the parent of the child.

Presumption of parentage arising from court findings

8B—(1) A person is conclusively presumed to be a parent of a particular child if—

- (a) during the lifetime of that person, a prescribed court has—
 - (i) found expressly that the person is a parent of that child; or
 - (ii) made a finding that it could not have made unless the person was a parent of that child; and
- (b) the finding has not been altered, set aside or reversed.

(2) A person is presumed to have been a parent of a particular child if—

- (a) after the death of that person, a prescribed court has—
 - (i) found expressly that the person was a parent of that child; or
 - (ii) made a finding that it could not have made unless the person was a parent of that child; and
- (b) the finding has not been altered, set aside or reversed.

Presumption of paternity arising from acknowledgements

8C—(1) A man is presumed to be the father of a particular child if—

- (a) under a law of this State, the Commonwealth, another State, a Territory or a prescribed overseas jurisdiction the man has executed an instrument acknowledging that he is the father of a specified child; and
- (b) the instrument has not been annulled or otherwise set aside.

(2) A man is presumed to be the father of a particular child if the man and the mother of the child—

- (a) execute an instrument as a deed; or

(b) jointly or severally sign an instrument in the presence of a solicitor—

which acknowledges that the man is the father of the child.

Section 9 amended (Instruments of acknowledgement filed with Registrar-General)

8—Section 9 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “section 8 (2)” and substituting “section 8C (2)”;
- (b) by omitting from subsection (3) “section 8 (2)” and substituting “section 8C (2)”;
- (c) by omitting from subsection (4) “paternity” and substituting “parentage”.

Section 10 substituted

9—Section 10 of the Principal Act is repealed and the following section is substituted:—

Declaration of parentage

10—(1) Any of the following persons may apply to a judge in chambers for a declaration of parentage:—

- (a) a person who alleges that a specified person is the parent of a particular child;
- (b) a person who alleges that the relationship of parent and child exists between that person and a particular child;
- (c) a person with a direct and proper interest in the result who wishes to determine whether the relationship of parent and child exists between 2 specified persons.

(2) A judge in chambers may refuse to hear an application for a declaration of parentage if of the opinion that it is not just and proper to do so.

(3) If satisfied that the relationship of parent and child exists between 2 persons, a judge in chambers may make a declaration of parentage whether or not the parent or child or both of them are living or dead.

(4) A judge in chambers, by order, may revoke a declaration if it appears to the judge that new facts or circumstances have arisen that have not previously been disclosed to the court.

(5) If a judge makes a declaration under subsection (3), the judge may, at the same time or subsequently, make a declaration determining whether any of the requirements of section 7 (1) (b) have been satisfied.

(6) In any proceedings under this section, the parents of the child may, but are not compellable to, give evidence to prove that sexual intercourse did or did not take place between them during any period.

(7) Any of the following persons may apply to the Registrar-General to re-register the birth of a child specified in a declaration of parentage:—

(a) a parent of that child;

(b) that child, if the child has attained the age of majority;

(c) a person on behalf of that child, if the child has not attained the age of majority.

(8) An application under subsection (7) is to be—

(a) in a form approved by the Registrar-General; and

(b) lodged with the Registrar-General; and

(c) accompanied by—

(i) a copy of the declaration of parentage; and

(ii) the prescribed fee.

(9) On receipt of an application under subsection (8), the Registrar-General is to cause—

(a) the birth of a child specified in a declaration of parentage to be re-registered in the appropriate register; and

(b) the particulars specified in that declaration to be recorded.

(10) If a declaration of parentage is revoked by order under subsection (4)—

(a) a copy of the order may be lodged with the Registrar-General; and

(b) the Registrar-General is to cause the re-registration to be cancelled in any manner the Registrar-General thinks fit.

Part IV substituted and Part V inserted

10—Part IV of the Principal Act is repealed and the following Parts are substituted:—

PART IV

MEDICAL PROCEDURES TO DETERMINE PARENTAGE

Interpretation of Part IV

11—In this Part, “parentage testing procedure” means a prescribed medical procedure or a prescribed class of medical procedure.

Application for order

12—If in any proceedings the parentage of a child is an issue, a party to the proceedings or a person representing the child may request the court to make an order requiring a parentage testing procedure to be carried out.

Orders for parentage testing procedure

13—(1) A court, on request or of its own motion, may make an order requiring a parentage testing procedure to be carried out in relation to any one or more of the following persons:—

(a) a particular child;

(b) the mother of the child;

(c) any other person the court considers relevant in order to assist in determining the parentage of a child.

(2) An order under subsection (1) may be made subject to any terms and conditions a court considers appropriate.

Additional orders

14—(1) In an order made under section 13, a 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) An order under subsection (1) may also require a person to—

- (a) provide a bodily sample; or
- (b) submit to a medical procedure; or
- (c) provide information relevant to the person's medical or family history.

(3) A court may make such orders as it considers just in relation to the costs incurred—

- (a) in the carrying out of the parentage testing procedure; or
- (b) in the carrying out of any orders made under this section or section 13; or
- (c) in the preparation of reports in relation to information obtained as a result of carrying out that parentage testing procedure.

(4) A person over the age of 18 years who fails to comply with an order is not liable to a penalty but the court may draw such inferences as it considers just in the circumstances.

Guardian's consent

15—(1) A medical procedure or any other act is not to be carried out in relation to a child under the age of 18 years without the consent of the child's guardian.

(2) A court may draw such inferences as it considers just in the circumstances if the guardian of a child fails or refuses to consent.

Immunity from liability

16—(1) If a guardian of a child consents to a medical procedure or any other act being carried out in relation to the child, a person who carries out, or assists in the carrying out of, the medical procedure or act is not liable to any action in relation to the proper carrying out of the medical procedure or act.

(2) Subsection (1) does not affect 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.

Reports

17—(1) A person who carries out a parentage testing procedure is to make a report in the prescribed form and manner of the information obtained as a result of carrying out such a procedure.

(2) A report made under subsection (1) may be admitted in evidence in any proceedings under this Part.

(3) If a report is admitted in evidence in any proceedings, a court, of its own motion, or at the request of a party to the proceedings or a person representing a child, may order the person who made the report or any other relevant person to appear and give evidence in relation to the report.

PART V**MISCELLANEOUS****Application of Parts II and IV**

18—(1) The provisions of Parts II and IV apply to a person—

- (a) whether or not the person was born in this State; or
- (b) whenever the person was born; or
- (c) whether or not the person is a minor; or
- (d) whether or not the person's parents have ever been domiciled in this State.

(2) The amendments to Parts II and IV effected by the *Status of Children Amendment Act 1994* do not apply to proceedings that began before the commencement of that Act.

Rebuttal of presumptions

19—A presumption arising under this Act is rebuttable by proof on a balance of probabilities.

Prevailing presumptions

20—(1) If 2 or more presumptions, or some of those presumptions, conflict and are not rebutted in any proceedings, the presumption that appears to the court to be the more or most likely to be correct prevails.

(2) This section does not apply to a presumption arising under section 8B (1).

Regulations

21—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations in relation to the following matters:—

- (a) fees to be charged under this Act;
- (b) the carrying out of parentage testing procedures under Part IV.

(3) Regulations may be made subject to conditions or so as to apply differently according to matters, limitations or restrictions specified in the regulations.

- (4) The regulations may—
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.
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*[Second reading presentation speech made in:—
House of Assembly on 11 May 1994
Legislative Council on 2 August 1994]*

