

NORTHERN TERRITORY OF AUSTRALIA

STATUS OF CHILDREN ACT

As in force at 7 July 2003

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 7 July 2003

STATUS OF CHILDREN ACT

An Act relating to the Status of Children

Part I Preliminary

1 Short title

This Act may be cited as the *Status of Children Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

2A Application to persons

This Act applies to a person, whether or not the person:

- (a) was born in the Territory;
- (b) was born before the commencement of this Act; or
- (c) is an infant,

and whether or not the person's parents have ever been domiciled in the Territory.

3 Interpretation

In this Act, unless the contrary intention appears:

marriage includes:

- (a) a void marriage and a voidable marriage which has been annulled by a court; and
- (b) a relationship between an Aboriginal man and woman that is recognized as a traditional marriage by the community or group to which they belong,

and **married** has a corresponding meaning.

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

prescribed court means a Territory court, a court of the Commonwealth, a court of a State or another Territory or a court of a prescribed overseas jurisdiction.

proof means proof on a balance of probabilities and **proved** has a corresponding meaning.

Registrar means the Registrar within the meaning of the *Birth, Deaths and Marriages Registration Act*.

Part II Status of children

4 Determination of relationship

- (1) For all purposes of the law of the Northern Territory 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, in the absence of expression of any intention to the contrary, words of relationship signify only legitimate relationships, 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 of itself prevent the relationship from being determined in accordance with the provisions of subsection (1).

4A Presumptions arising from marriage

- (1) If a child is born to a woman while she is married, the child is presumed to be a 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 a child of the woman and the former husband or purported husband.

(3) If:

- (a) the parties to a marriage separated at any time;
- (b) after the separation, they resumed cohabitation on one occasion;
- (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 cohabitation but after the dissolution of the marriage,

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

(4) For the purposes of subsection (3), a marriage dissolved by a decree of dissolution shall be deemed to have been dissolved on the making of the decree nisi under the *Family Law Act 1975* of the Commonwealth in relation to the marriage.

5 Presumptions of paternity arising from cohabitation

If:

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

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

Part IIIA Children conceived following medical procedures

5A Interpretation

(1) In this Part:

fertilization procedure means:

- (a) artificial insemination; or

- (b) the procedure of fertilizing an ovum outside the body and transferring the fertilized ovum into the uterus whether or not the ovum was produced by the woman into whose uterus it is transferred.

(2) A reference in this Part to the husband or wife of a person:

- (a) is, 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
- (b) does not, in that case, include a reference to the spouse, if any, to whom the person is lawfully married,

and **married woman**, in those circumstances, has a corresponding meaning.

5B Application of Part

(1) This Part applies to and in relation to:

- (a) a pregnancy referred to in section 5C, 5D or 5E, whether the pregnancy occurred before or after the commencement of the *Status of Children Amendment Act 1985* and whether or not it resulted from a fertilization procedure carried out in the Territory; and
- (b) a child born as a result of a pregnancy referred to in section 5C, 5D, 5E or 5F, whether the child was born before or after the commencement of the *Status of Children Amendment Act 1985* and whether or not it was born in the Territory.

(2) Nothing in this Part affects the vesting in possession or in interest of property that occurred before the commencement of the *Status of Children Amendment Act 1985*.

5C Rule relating to maternity

A woman who gives birth to a child is, for all purposes, the mother of the child, notwithstanding that the child was conceived by the fertilization of an ovum taken from another woman.

5D Rule relating to paternity

- (1) Where a married woman undergoes, with the consent of her husband, a fertilization procedure as a result of which she becomes pregnant:
 - (a) the husband shall, for all purposes, be presumed to have caused the pregnancy and to be the father of a child born as a result of the pregnancy; and
 - (b) in the case where the semen used in the fertilization procedure was not that of the husband, the man who produced the semen shall, for all purposes, be presumed not to have produced that semen and not to be the father of a child born as the result of the pregnancy.
- (2) A presumption of law that arises by virtue of subsection (1) is irrebuttable.
- (3) In a proceeding in which the operation of subsection (1) is relevant, a husband's consent to the carrying out of a fertilization procedure in respect of his wife shall be presumed, but that presumption is rebuttable.

5E Donor of ovum

Where:

- (a) a woman becomes pregnant as the result of a fertilization procedure; and
- (b) the ovum used for the purposes of the procedure was taken from another woman,

then, for all purposes, the woman from whom the ovum was taken is not the mother of a child born as a result of the pregnancy.

5F Donor of semen used in fertilization procedure of certain women

- (1) Where semen is used in a fertilization procedure carried out on a woman who is not a married woman or on a married woman otherwise than in accordance with the consent of her husband, the man who produced the semen has no rights and incurs no liabilities in respect of a child born as a result of a pregnancy occurring by reason of the use of that semen unless, at any time, he becomes the husband of the mother of the child.
- (2) For the purposes of subsection (1), the rights and liabilities of a man who becomes the husband of the mother of a child so born are

the rights and liabilities of a father of a child but, in the absence of agreement to the contrary, do not include liabilities incurred before the man becomes the husband of the mother.

Part III Disposition of property

6 Instruments

- (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 is not 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.

7 Persons dealing with property

- (1) For the purposes of the administration or distribution of any estate or of any property held upon trust, or of any application under the Family Provision Act, or for any other purposes, 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 the provisions of this Act.
- (2) No action shall lie against:
 - (a) an executor of a person's will;
 - (b) an administrator or trustee of a person's estate; or
 - (c) 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:
 - (d) having made any distribution of the estate or of the property held upon trust; or

- (e) having otherwise acted in the administration of the estate or property held on trust,

so as to disregard the claims 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.

8 Recognition of paternity

- (1) The relationship of father and child and any other relationship traced in any degree through that relationship shall:

- (a) for any purpose related to succession to property;
- (b) for any purpose related to the construction of any will or other testamentary disposition or of any instrument creating a trust; or
- (c) for the purpose of an application under the *Family Provision Act*,

be recognized only if:

- (d) the father and the mother of the child were married to each other at the time of its conception or at some subsequent time;
 - (e) paternity has been admitted (expressly or by implication) by the father and if that purpose is for the benefit of the father, paternity has been admitted while the child was living; or
 - (f) paternity has been established by or against the father.
- (2) In any case where, by reason of the provisions 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.

Part IV Establishment of paternity and maternity

9 Presumptions of parentage arising from registration of birth

If a person's name is entered as a parent of a child in the register of births or parentage information kept under a law of the Territory, the Commonwealth, a State or another Territory of the Commonwealth

or a prescribed overseas jurisdiction, the person is presumed to be a parent of the child.

9A Presumptions of paternity arising from acknowledgments

(1) If:

(a) under subsection (2) or another law of the Territory, the Commonwealth, a State or another Territory of the Commonwealth or a prescribed overseas jurisdiction, a 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,
the man is presumed to be the father of the child.

(2) Where an instrument is signed by the parent of a child and by a man acknowledging that he is the other parent of the child and the instrument:

(a) is executed as a deed; or

(b) is signed jointly or severally by each of those persons in the presence of a legal practitioner,

the persons named are presumed to be the parents of the child.

9B Presumptions of parentage arising from findings of courts

(1) If:

(a) during the lifetime of a particular person, a prescribed court has:

(i) found expressly that the person is a parent of a particular child; or

(ii) made a finding that it could not have made unless the person was a parent of a particular child; and

(b) the finding has not been altered, set aside or reversed,

the person is conclusively presumed to be a parent of the child.

(2) If:

(a) after the death of a particular person, a prescribed court has:

(i) found expressly that the person was a parent of a particular child; or

- (ii) made a finding that it could not have made unless the person was a parent of a particular child; and
- (b) the finding has not been altered, set aside or reversed, the person is presumed to be a parent of the child.

10 Instruments filed with district Registrar

- (1) An instrument of the kind described in section 9A(2) or a copy thereof may on payment of the prescribed fee, if any, be filed in the office of the Registrar.
- (2) The Registrar 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 where the Registrar is satisfied that the person has a direct and proper interest in the matter.
- (3) Where:
 - (a) the Supreme Court makes a declaration of paternity under section 11 or of maternity under section 12 or revokes such a declaration; or
 - (b) where a court makes an order under section 14 or 16 of the Maintenance Act or annuls such an order,

the Master or the clerk of the court, as the case requires, shall forward a copy of the declaration, revocation, order or annulment to the Registrar for filing under this section and on receipt of any such copy the Registrar shall file it accordingly as if it were an instrument of the kind referred to in section 9A(2).

11 Paternity

- (1) A person who:
 - (a) alleges that a named person is the father of her child;
 - (b) alleges that the relationship of father and child exists between that person and any other named person; or
 - (c) being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between 2 named persons,

may apply to the Supreme Court for a declaration of paternity and, if it is proved to the satisfaction of the Court that the relationship exists, the Court 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), the Court may refuse to hear an application for a declaration of paternity if it is of opinion that it is not just or proper to do so.
- (3) Where a declaration has been made under subsection (1) and it appears to the Court that new facts or circumstances have arisen that have not previously been disclosed to a court and could not, by the exercise of reasonable diligence, have previously been known, the Court may revoke such declaration which shall, upon revocation, cease to have any force or effect.

12 Maternity

- (1) Any person who:
 - (a) alleges that any named person is the mother of his child;
 - (b) alleges that the relationship of mother and child exists between that person and any other named person; or
 - (c) being a person having a proper interest in the result, wishes to have it determined whether the relationship of mother and child exists between 2 named persons,

may apply to the Supreme Court for a declaration of maternity and, if it is proved to the satisfaction of the Court that the relationship exists, the Court may make a declaration of maternity whether or not the mother or the child or both of them are living or dead.

- (2) Notwithstanding anything in subsection (1), the Court may refuse to hear an application for a declaration of maternity if it is of the opinion that it is not just or proper to do so.
- (3) Where a declaration has been made under subsection (1) and it appears to the Court that new facts or circumstances have arisen that have not previously been disclosed to a court and could not, by the exercise of reasonable diligence, have previously been known, the Court may revoke such declaration which shall, upon revocation, cease to have any force or effect.

Part V Parentage testing**13 Medical procedures to determine parentage**

(1) Where the parentage of a child is in issue in proceedings before a court, the Court may:

- (a) on the request of a party to the proceedings;
- (b) on the request of a person representing the child; or
- (c) of its own motion,

make an order requiring a parentage testing procedure to be carried out in relation to a person referred to in subsection (2) for the purpose of obtaining information to assist in determining the parentage of the child.

(2) The order under subsection (1) may be made in relation to:

- (a) the child;
- (b) a person believed by the Court to be the mother of the child; or
- (c) any other person where 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.

(3) The order under subsection (1) may be made subject to terms and conditions.

(4) Where a court makes an order under subsection (1) the Court may:

- (a) make such orders as it considers necessary or desirable:
 - (i) to enable the parentage testing procedure to be carried out; or
 - (ii) to make the parentage testing procedure more effective or reliable,

including, but not limited to, orders requiring a person to submit to a medical procedure, to provide a bodily sample or to furnish information relevant to the person's medical or family history; and

- (b) make such orders as it thinks fit in relation to costs incurred in relation to:
 - (i) the carrying out of the parentage testing procedure or other orders made by the Court in relation to the parentage testing procedure; or
 - (ii) the preparation of reports in relation to the information obtained as a result of the carrying out of the parentage testing procedure.
- (5) Where a person who has attained the age of 18 years contravenes an order under this section, the person is not liable to any penalty in relation to the contravention, but the Court may draw such inferences as it thinks fit in the circumstances.
- (6) Where an order under this section is directed to a child who has not attained the age of 18 years, a medical procedure or other act must not be carried out in relation to the child under the order unless a guardian of the child consents to the medical procedure or act being carried out, but the Court may draw such inferences from a failure or refusal to consent as the Court thinks fit in the circumstances.
- (7) If a guardian of the child consents to a medical procedure or other act being carried out in relation to the child under the order, 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.

14 Matters to be taken into account in making determination

- (1) Before making a determination under section 13 the Court may, if it thinks that to do so would be in the best interest of the child, appoint a fit and proper person to act as the litigation guardian of the child.
- (2) In deciding whether to give a direction under section 13, the Court shall:
 - (a) consider and determine all objections 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 arriving at its decision.

15 Reports of medical procedure

- (1) A report made in accordance with regulations made for the purposes of section 13 may be received in evidence in proceedings under this Act.
- (2) Where a report referred to in subsection (1) is received in evidence in proceedings under this Act, the Court may:
 - (a) on the request of a party to the proceedings;
 - (b) on the request of a person representing the relevant child; or
 - (c) of its own motion,

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 it.

Part VI Miscellaneous**16 Presumptions of law**

- (1) A presumption arising under this Act is rebuttable by proof on a balance of probabilities.
- (2) Where:
 - (a) 2 or more presumptions arising under this Act are relevant in any proceeding; and
 - (b) those presumptions, or some of those presumptions, conflict with each other and are not rebutted in the proceeding,

the presumption that appears to the Court to be the more or most likely to be correct prevails.

- (3) This section does not apply to a presumption arising under section 9B(1) or 5D(1).
- (4) Notwithstanding any other provision of this Act, a prosecutor may not, in any criminal proceedings, rely on a presumption arising under this Act to prove the paternity of maternity of a child.

17 Closed courts

- (1) Unless the Court otherwise orders, the hearing of an application made under this Act shall be in closed court.

- (2) A person shall not publish, whether in a newspaper, magazine, journal or other periodical publication, or by radio or television or otherwise, the name of or any particulars relating to the identity of any person by, or in relation to, whom proceedings are taken under this Act without the authority of the Court before which such proceedings are taken.

Penalty: \$5,000.

18 Regulations

The Administrator may make regulations not inconsistent with this Act for or with respect to:

- (a) forms for the purposes of this Act;
- (aa) the carrying out of parentage testing procedures under orders made under section 13;
- (ab) the preparation of reports in relation to the information obtained as the result of the carrying out of procedures under orders made under section 13;
- (b) fees to be charged under this Act; and
- (c) generally, all matters required or permitted by this Act to be prescribed and all matters that are necessary or convenient for the proper administration of this Act or to achieve the object and purposes of this Act.

ENDNOTES
1 KEY

Key to abbreviations

| | |
|------------------------------|-------------------------------------|
| amd = amended | od = order |
| app = appendix | om = omitted |
| bl = by-law | pt = Part |
| ch = Chapter | r = regulation/rule |
| cl = clause | rem = remainder |
| div = Division | renum = renumbered |
| exp = expires/expired | rep = repealed |
| f = forms | s = section |
| Gaz = Gazette | sch = Schedule |
| hdg = heading | sdiv = Subdivision |
| ins = inserted | SL = Subordinate Legislation |
| lt = long title | sub = substituted |
| nc = not commenced | |

2 LIST OF LEGISLATION**Status of Children Act 1978 (Act No. 16, 1979)**

| | |
|-------------|---|
| Assent date | 26 January 1979 |
| Commenced | 21 September 1979 (<i>Gaz</i> G38, 21 September 1979, p 1) |

Statute Law Revision Act (No. 2) 1979 (Act No. 128, 1979)

| | |
|-------------|-----------------|
| Assent date | 15 October 1979 |
| Commenced | 15 October 1979 |

Status of Children Amendment Act 1985 (Act No. 40, 1985)

| | |
|-------------|---|
| Assent date | 18 September 1985 |
| Commenced | 1 November 1985 (<i>Gaz</i> G43, 30 October 1985, p 2) |

Statute Law Revision Act 1988 (Act No. 66, 1988)

| | |
|-------------|------------------|
| Assent date | 22 December 1988 |
| Commenced | 22 December 1988 |

Statute Law Revision Act 1990 (Act No. 33, 1990)

| | |
|-------------|--------------|
| Assent date | 11 June 1990 |
| Commenced | 11 June 1990 |

Status of Children Act 1996 (Act No. 16, 1996)

| | |
|-------------|---|
| Assent date | 19 April 1996 |
| Commenced | 1 July 1996 (<i>Gaz</i> S15, 13 June 1996) |

Births, Deaths and Marriages Registration (Consequential Amendments) Act 1996 (Act No. 27, 1996)

| | |
|-------------|---|
| Assent date | 28 June 1996 |
| Commenced | 1 January 1997 (s 2, s 2 <i>Births, Deaths and Marriages Registration Act 1996</i> (Act No. 26, 1996) and <i>Gaz</i> G49, 4 December 1996, p 5) |

Statute Law Revision Act (No. 2) 2003 (Act No. 44, 2003)

Assent date 7 July 2003
Commenced 7 July 2003

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 15 *Status of Children Amendment Act 1996* (Act No. 16, 1996)

4 LIST OF AMENDMENTS

| | |
|------------|--|
| lt | amd No. 16, 1996, s 4 |
| s 2A | ins No. 16, 1996, s 5 |
| s 3 | amd No. 66, 1988, s 5; No. 16, 1996, s 6; No. 27, 1996, s 7 |
| s 4 | amd No. 16, 1996, s 7 |
| s 4A | ins No. 16, 1996, s 8 |
| s 5 | sub No. 16, 1996, s 8 |
| pt IIA hdg | ins No. 40, 1985, s 4 |
| ss 5A – 5D | ins No. 40, 1985, s 4 |
| ss 5E – 5F | ins No. 40, 1985, s 4 |
| s 7 | amd No. 44, 2003, s 3 |
| s 9 | sub No. 16, 1996, s 9 |
| ss 9A – 9B | ins No. 16, 1996, s 9 |
| s 10 | amd No. 128, 1979, s 31; No. 66, 1988, s 5; No. 16, 1996, s 10 |
| pt V hdg | sub No. 16, 1996, s 11 |
| s 13 | amd No. 33, 1990, s 9 sub No. 16, 1996, s 11 |
| ss 14 – 15 | sub No. 16, 1996, s 11 |
| s 16 | amd No. 33, 1990, s 9; No. 16, 1996, s 12 |
| s 17 | amd No. 16, 1996, s 13 |
| s 18 | amd No. 16, 1996, s 14 |
| s 19 | rep No. 44, 2003, s 3 |
| s 20 | rep No. 66, 1988, s 5 |
| sch | rep No. 44, 2003, s 3 |