

THE NORTHERN TERRITORY OF AUSTRALIA

STATUS OF CHILDREN ACT
No. 16 of 1979
TABLE OF PROVISIONS

PART I - PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation

PART II - STATUS OF CHILDREN

4. Determination of relationship
5. Child of a marriage

PART III - DISPOSITION OF PROPERTY

6. Instruments
7. Persons dealing with property
8. Recognition of paternity

PART IV - ESTABLISHMENT OF PATERNITY
AND MATERNITY

9. Evidence of parentage
10. Instruments filed with District Registrar
11. Paternity
12. Maternity

PART V - USE OF BLOOD TESTS

13. Court may order blood tests
14. Results of tests
15. Failure to take tests

PART VI - MISCELLANEOUS

16. Presumptions of law
17. Closed court
18. Regulations
19. Schedule
20. The Children's Protection Act

SCHEDULE

THE
OFFICE OF THE
ATTORNEY GENERAL
STATE OF NEW YORK
ALBANY

IN SENATE
JANUARY 14, 1914

REPORT
OF THE
COMMISSIONERS OF THE
LAND OFFICE
FOR THE YEAR
1913

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ALBANY, N. Y.

1914

THE NORTHERN TERRITORY OF AUSTRALIA

No. 16 of 1979

AN ACT

Relating to the Status of Children
born out of Wedlock

[Assented to 26 January 1979]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. This Act may be cited as the Status of Children Act 1978. Short title
2. This Act shall come into operation on a date to be fixed by the Administrator by notice in the Gazette. Commencement
3. In this Act, unless the contrary intention appears - Interpretation
- "District Registrar" means the District Registrar for the purposes of the Registration of Births, Deaths and Marriages Act;
- "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;
- "proof" means proof on a balance of probabilities and "proved" has a corresponding meaning.

PART II - STATUS OF CHILDREN

- 4.(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. Determination of relationship

Status of Children

(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 sub-section (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 Northern Territory or not, and whether or not his father or mother has ever been domiciled in the Northern Territory.

Child of a
marriage

5.(1) Where a woman gives birth to a child -

(a) during her marriage;

(b) within 10 months of the termination of her marriage, whether by the death of her husband or by a decree of dissolution of the marriage or otherwise, and the woman has not remarried since the termination of that marriage and before the birth of the child,

the child shall, for all purposes, be presumed to be a child of the marriage.

(2) For the purpose of sub-section (1), a marriage dissolved by a decree of dissolution or a voidable marriage dissolved by a decree of nullity shall be deemed to have been dissolved on the making of the decree nisi.

(3) Where a woman gives birth to a child and, at any time during the period of 24 weeks commencing with the beginning of the 44th week before the birth of the child, she cohabited with a man to whom she was not married, the child shall, for all purposes, be presumed to be the child of that woman and that man.

PART III - DISPOSITION OF PROPERTY

Instruments

6.(1) All instruments executed before the commencement of this Act shall be governed by the enactments, rules of construction and law which would

Status of Children

have applied to them if this Act had not been passed.

(2) Where an instrument to which sub-section (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.(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.

Persons
dealing with
property

(2) No action shall lie against -

(a) an executor of the will; or

(b) an administrator or trustee of the estate,

of any person, 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.(1) The relationship of father and child and

Recognition of
paternity

Status of Children

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 sub-section (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

Evidence of
parentage

9.(1) Where the name of the parent of a child is entered in the Register of Births in relation to the child a certified copy of the entry purporting to be made or given under the Registration of Births, Deaths and Marriages Act shall be prima facie evidence that the person named as the parent is the parent of the child.

(2) An instrument signed by the parent of a child

Status of Children

and by any person acknowledging that he is the other parent 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 persons named as the parents are the parents of the child.

(3) An order against a person under section 14 or 16 of the Maintenance Act shall be prima facie evidence of parenthood in subsequent proceedings whether or not between the same parties.

(4) A declaration made under section 11 or 12 shall for all purposes be conclusive proof of the matters to which it relates.

(5) An order made outside the Territory declaring a person to be the parent of a child, being an order described in sub-section (6) or (7), shall be prima facie evidence that the person declared the parent is the parent of the child.

(6) For the purposes of this section an order made outside the Territory -

- (a) in a State of the Commonwealth;
- (b) in a Territory of the Commonwealth other than the Northern Territory; or
- (c) in New Zealand,

has, so long as it continues in force in the place where it was made, the same effect as the like order made in the Territory.

(7) The Administrator may, from time to time, declare that sub-section (5) applies with respect to an order made by a court or public authority in a specified country outside Australia or by a specified court or public authority in a specified country.

10.(1) An instrument of the kind described in section 9(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 District Registrar.

Instruments
filed with
District
Registrar

Status of Children

(2) The District Registrar shall cause indexes of all instruments and copies filed with him under sub-section (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 District 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 District Registrar for filing under this section and on receipt of any such copy the District Registrar shall file it accordingly as if it were an instrument of the kind referred to in section 9(2).

Paternity

11.(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 sub-section (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 so to do.

Status of Children

(3) Where a declaration has been made under sub-section (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.(1) Any person who -

Maternity

- (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 sub-section (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 so to do.

(3) Where a declaration has been made under sub-section (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 - USE OF BLOOD TESTS

13.(1) In any civil proceedings in which the parentage of a child is required to be determined, the court before which the proceedings are taken may, of its own motion or on the application of a party to the proceedings, give a direction for the use of blood tests for the purpose of ascertaining whether the tests show that a party to the proceedings may be or is not the parent of that child and for the taking, within a

Court may
order blood
tests

Status of Children

period to be specified in the direction, of blood samples from that child, the mother of that child and any party alleged to be the father of that child or from any of those persons:

(2) A court may at any time revoke or vary a direction previously given by it under sub-section (1).

(3) Before giving a direction under sub-section (1), a 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 guardian ad litem of the child, or may appoint a legal practitioner to represent the child, in relation to its deliberation in respect of the direction.

(4) A person or legal practitioner, as the case may be, shall not be appointed under sub-section (3) unless he consents to the appointment.

(5) In order to facilitate the making of an appointment under sub-section (3), the Court may adjourn the proceedings and give such directions and make such orders with respect to the appointment as it considers necessary in the circumstances of the case.

(6) An appointment under sub-section (3) may be made by the Court of its own motion or on the application of a party to the proceedings or of an employee of the Public Service prescribed for the purposes of this sub-section.

(7) An application under sub-section (6) may be made ex parte.

(8) In deciding whether to give a direction under sub-section (1), the Court shall -

(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 the objection is valid, take the objection into account in arriving at its decision.

(9) Where a court gives or proposes to give a direction under sub-section (1), and any party alleged to be the father or the mother of the child, as the case may be, to whom the proceedings relate alleges that any other person is or may be the father or the mother of the child, as the case may be, that other person may, with the leave of the court, be joined as a party to the proceedings for the purpose only of

Status of Children

determining the paternity or maternity of the child and, on that other person being so joined, the Court may apply the direction to that other person in the same way as it applies to that party.

(10) Where a court has given a direction under sub-section (1) or (2) for the taking of blood samples, those blood samples shall be taken only by a registered medical practitioner or a person registered as a registered general nurse under the Nursing Act.

14.(1) Where the person responsible for carrying out blood tests in pursuance of a direction under section 13(1) furnishes to the Court that gave the direction a report in or to the effect of the prescribed form in which is stated -

Results of tests

(a) the result of the tests;

(b) whether the party to whom the report relates may be or is not the parent of the child whose parents are to be determined; and

(c) if that party may be the parent of the child whose parents are to be determined, the value, if any, of the result in determining whether that party is that child's parent,

the report shall be admitted by the Court as evidence in the proceedings of the matters so stated.

(2) Where a report has been made to a court under sub-section (1) and the person who made the report makes a written statement explaining or amplifying any statement made in the report, that statement shall be deemed for the purposes of this section to form part of the report made to the Court.

(3) Where a direction is given under section 13(1) in any proceedings, a party to the proceedings shall, with the leave of the Court, be entitled to call as a witness -

(a) the person responsible for carrying out the tests for the purpose of giving effect to the direction; and

(b) any person who carried out or assisted in carrying out those tests,

if, within 14 days after receiving a copy of the report, he serves notice on the other parties to the proceedings, or on such of them as the Court may direct, of his intention to call that person.

Status of Children

(4) Where a person is called as a witness under sub-section (3), any party to the proceedings, including the party who called him, shall be entitled to cross-examine him.

(5) The cost of taking and testing blood samples for the purpose of giving effect to a direction under section 13(1) (including any expenses reasonably incurred in taking any steps required for the purpose) and of making a report under this section with respect to testing those samples shall be paid by the party from whom the samples were taken, except where the party is a minor in which case the cost shall be paid by the person having care and control of the minor.

(6) A court which has given a direction under section 13(1) in any proceedings may, in its discretion, order a party to the proceedings to reimburse another party to the proceedings in respect of any amount paid by that other party under sub-section (5) and, on the making of such an order, that other party may recover that amount as a debt.

Failure to
take tests

15.(1) Where in any proceedings referred to in section 13 a court has given a direction for the use of blood tests and a party to the proceedings has failed without reasonable cause to take the steps required of him for the purpose of giving effect to the direction (including any step required of him with respect to a child under his care and control), the court may draw such inferences from that fact as appear to be warranted in the circumstances, and in particular may, in the appropriate case, treat the failure -

- (a) as evidence corroborating the evidence of another party to the proceedings; and
- (b) where the party is relying on the presumption of law arising under section 5, as evidence rebutting that presumption.

(2) Where, in any proceedings referred to in section 13, a court has given a direction for the use of blood tests and a party claiming relief in the proceedings has failed to take the steps required of him for the purpose of giving effect to the direction (including any step required of him with respect to a child under his care and control) the Court may adjourn the proceedings for such period as it thinks fit to enable that party to take those steps and, if at the end of that period he has failed without reasonable cause to take them, the Court may, without prejudice to sub-section (1), dismiss his claim for relief.

Status of Children

(3) The Court may exercise the power conferred on it by sub-section (2) notwithstanding that -

- (a) a party claiming relief in the proceedings is entitled to rely on the presumption of law arising under section 5; and
- (b) there is no evidence, other than the failure of that party to take the steps required of him for the purpose of giving effect to the direction given by the Court, to rebut the presumption,

but the Court may not exercise that power if to do so would be detrimental to the interests of the child to whom the proceedings relate.

PART VI - MISCELLANEOUS

16.(1) Where a presumption of law arises by virtue of any provision of this or any other Act on any rule of law that -

Presumptions
of law

- (a) a child is or is not presumed to be a child of a particular marriage or of a particular man and a particular woman; or
- (b) a person is or is not presumed to be the father or the mother of a child, as the case may be,

that presumption is, subject to sub-section (2), rebuttable in any proceedings by proof on a balance of probabilities.

(2) Sub-section (1) does not apply to a presumption of law arising by virtue of any provision or rule referred to in that sub-section if the provision or rule provides for the presumption to be irrebuttable or to be conclusive as to the matters to which the presumption relates.

(3) Where -

- (a) 2 or more presumptions to which sub-section (1) applies are relevant in any proceedings; and

(b) those presumptions conflict with each other,

the presumption which appears to the Court to be the more or most likely to be correct, having regard to all the circumstances relating to the birth of the child to whom the presumption relates shall, if not rebutted in those proceedings, prevail.

Status of Children

(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 or maternity of a child.

Closed courts 17.(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 Supreme Court.

Penalty: \$1,000.

Regulations 18. The Administrator may make regulations not inconsistent with this Act for or with respect to -

(a) forms for the purposes of this Act;

(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.

Schedule 19. The Acts specified in the Schedule are amended in the manner indicated in that Schedule.

The Children's Protection Act 20. The Children's Protection Act, 1899, of South Australia, in its application to the Territory, is amended by omitting from section 2 the definition of "near relative" and substituting the following definition:

"'near relative', in relation to a child, includes any parent, grandparent, stepfather or stepmother of the child;"

Status of Children

SCHEDULE

Section 19

The Acts listed in Column 1 of the following table are amended as set out in that table:

Column 1 Act and Provision	Column 2 Omit	Column 3 Substitute
<u>Administration and Probate</u>		
Section 71	omit	
<u>Adoption of Children</u>		
Section 6(1)		
definition of "father"	omit	
definition of "relative"	is traced through, or to, an illegitimate person or,	
Section 21(2), (3) and (4)	omit	(2) In the case of a child who has not previously been adopted, the consent of every person who is a parent or guardian of the child is required but, sub- ject to sub-section (3), the consent of the father of a child born outside marriage is not required unless his paternity of the child is recognized under the law of the Territory before - (a) the expiration of 30 days after the day on which an instrument of

Status of Children

consent to the adoption was signed by the mother; or

- (b) the day on which an order for the adoption of the child is made,

whichever is the earlier.

(3) Where a court, before which an order for the adoption of a child is sought is satisfied, on the application of a person claiming to be the father of the child, that he has commenced proceedings under the Status of Children Act for a declaration that he is the father of the child -

- (a) the court shall stay the proceedings for a reasonable period to enable the proceedings under the Status of Children Act to be determined; and
- (b) if, during that period, the person claiming paternity of the child is adjudged under the Status of Children Act to be the father of the child, his consent is, subject to this Division, required for the adoption of the child.

(4) In the case of a child who has previously been adopted, the consent

Status of Children

of every person who is an adoptive parent or a guardian of the child is required.

Child Welfare

Section 5
definition of
"near relative"

an illegitimate
child (wher-
ever occurring)

a child whose parents
were not married to each
other at the time of its
conception and have not
since married each other

Compensation
(Fatal Injuries)
Section 4(3)(a)

Omit

Criminal Law
Consolidation

Section 76

an illegitimate
child

a child to whose mother
he was not married at the
time of its conception or
whom he has not since
married

Family
Provision

Section 7(5)

omit

Guardianship
of Infants

Section 4(1), 5(1)
and 6(1)

an illegitimate
infant

an infant whose parents
were not married to each
other at the time of its
conception and have not
since married each other

Section 7(2)

infant is
illegitimate

infant's parents were not
married to each other at
the time of its conception
and have not since married
each other

Section 8(1)
and (2)

a legitimate
infant

an infant whose parents
were married to each other
at the time of its concep-
tion or have since married
each other

Status of Children

Section 8(2)	an illegitimate infant	an infant whose parents were not married to each other at the time of its conception and have not since married each other
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THE SCHEDULE

AN
ILLEGITIMATE
CHILD

A CHILD TO WHOSE
MOTHER HE IS
NOT MARRIED

an illegitimate
child

a child to whose mother he was not married at the time of its conception or whom he has not since married

Maintenance

Section 6(1)
definition of
"child"

omit

Section 6(2)(b)

an illegitimate
child of a
party to a
marriage and

Section 6(7)

an illegitimate
child

a child whose parents were not married to each other at the time of its conception and have not since married each other

illegitimate
when born

its parents were not married to each other at the time of its conception or at its birth or any time in between

Section 16(8)
and 18(3)

an illegitimate
child

a child whose parents were not married to each other at the time of its conception and have not since married each other

Section 19(1)(a)

omit

(a) that the defendant is the father of a child to whose mother he was not married at the time of its conception and whose mother he has not since married or he has been adjudged by a court in

Status of Children

		Australia to be the father of such a child;
Section 19(4)	child was illegitimate at birth	child's parents were not married to each other at the time of its conception or its birth or at any time in between
Section 22	an illegitimate child	a child whose parents were not married to each other at the time of its conception and have not since married each other
Section 31(1)	omit	(1) Where, upon the the hearing of a complaint made for the purposes of this Part, the mother of a child to whose father she was not married at the time of its conception or whom she has not since married gives evidence that the defendant is the father of the child and no person is recognized under the <u>Guardianship of Infants Act</u> or the <u>Status of Children Act</u> as the father of the child, an order shall not be made upon the complaint unless the evidence of the mother is corroborated in a material particular.
Section 31(2)	an illegitimate child	a child to whose father she was not married at the time of its conception or whom she has not since married
Section 31(3)	an illegitimate child	a child whose parents were not married to each other at the time of its conception and who have not since married each other

Status of Children

Section 31(4)	omit	(4) Where, upon the hearing of a complaint made for the purposes of this Part, evidence is given that the defendant is recognized under the <u>Guardianship of Infants Act</u> or the <u>Status of Children Act</u> as the father of a child to whose mother he was not married at the time of its conception or whom he has not since married, the defendant shall be deemed to be the father of the child.
Section 37	an illegitimate child	a child to whose mother he was not married at its conception or whom he has not since married
Section 77(3)	an illegitimate child or to the mother of an illegitimate child	a child whose parents were not married to each other at time of its conception or have not since married each other, or to the mother of such a child.
Section 101C	illegitimate	not the child of the husband
Section 104(6)(b) and 115(1)	an illegitimate child (wherever occurring)	a child whose parents were not married to each other at the time of its conception or have not since married each other
Section 115(2)	the illegitimate child	the child referred to in sub-section (1)
Section 115(5)	an illegitimate child	a child whose parents were not married to each other at the time of its conception and have not since married each other
	that was illegitimate at birth	whose parents were not married to each other at the time of its conception or at its birth or any time in between

Status of Children

Registration
of Births, Deaths
and Marriages

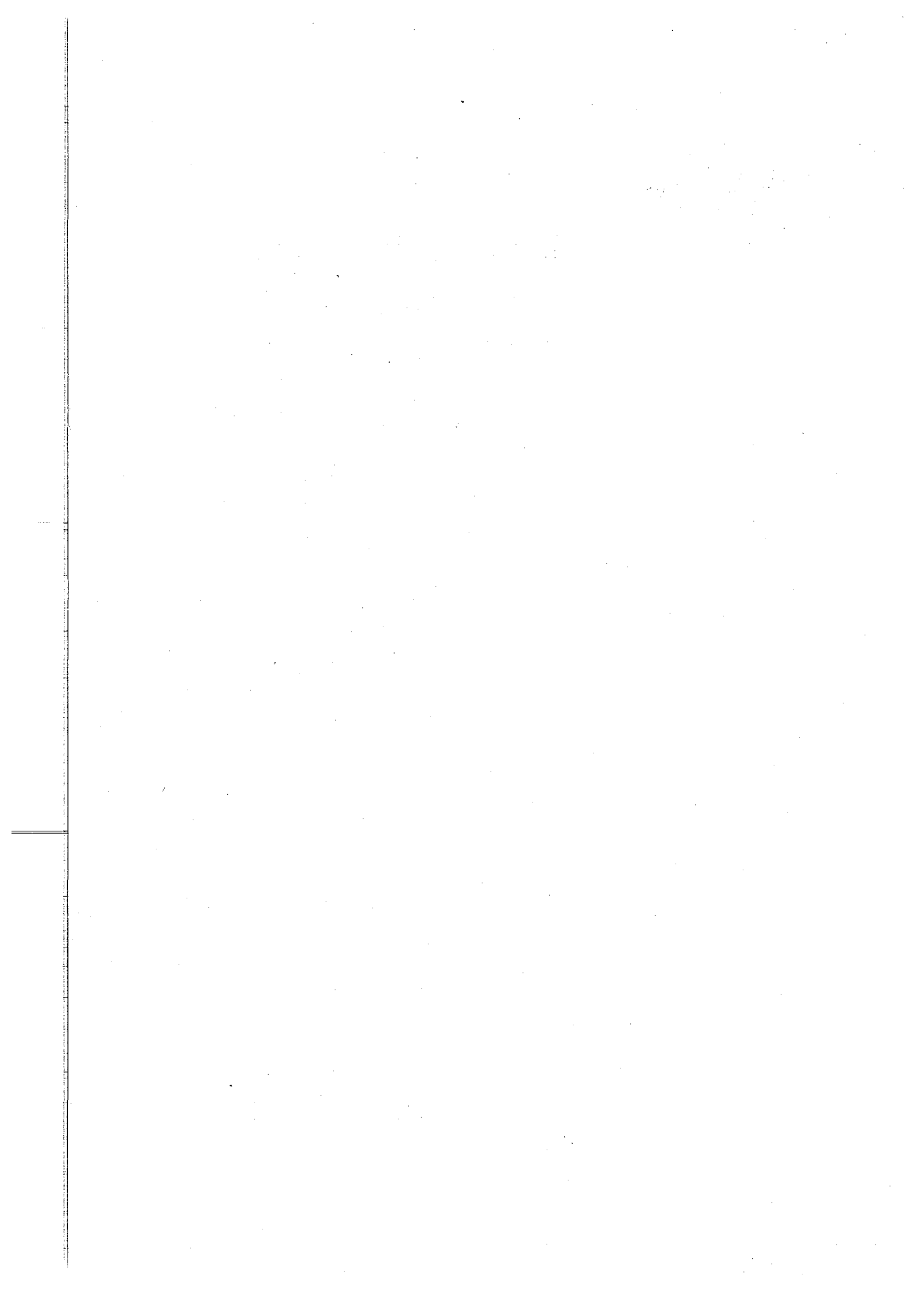
Section 18(7)

a legitimate
child
(wherever
occurring)

a child whose parents
were married to each
other at the time of its
conception or have since
married each other

an illegitimate
child

a child whose parents
were not married to each
other at the time of its
conception and have not
since married each other



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