

NORTHERN TERRITORY OF AUSTRALIA
STATUS OF CHILDREN AMENDMENT BILL 1995

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Status of Children Act*

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:

1. SHORT TITLE

This Act may be cited as the *Status of Children Amendment Act 1995*.

2. COMMENCEMENT

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

3. PRINCIPAL ACT

The *Status of Children Act* is in this Act referred to as the Principal Act.

4. LONG TITLE

The long title to the Principal Act is amended by omitting "born out of Wedlock".

5. NEW SECTION

The Principal Act is amended by inserting after section 2 the following:

"2A. APPLICATION TO PERSONS

"This Act applies to a person, whether or not the person -

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- (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."

6. INTERPRETATION

Section 3 of the Principal Act is amended by inserting after the definition of "marriage" the following:

"'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;"

7. DETERMINATION OF RELATIONSHIP

Section 4 of the Principal Act is amended by omitting subsection (4).

8. REPEAL AND SUBSTITUTION

Section 5 of the Principal Act is repealed and the following substituted:

"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.

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"(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."

9. REPEAL AND SUBSTITUTION

Section 9 of the Principal Act is repealed and the following substituted:

"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.

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"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

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(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

Section 10 of the Principal Act is amended by omitting from subsections (1) and (3) "section 9(2)" and substituting "section 9A(2)".

11. REPEAL AND SUBSTITUTION OF PART

Part V of the Principal Act is repealed and the following substituted:

"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.

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"(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.

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"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."

12. PRESUMPTIONS OF LAW

Section 16 of the Principal Act is amended by omitting subsections (1), (2) and (3) and substituting the following:

"(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,

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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)."

13. CLOSED COURTS

Section 17 of the Principal Act is amended -

- (a) by omitting from subsection (2) "Supreme Court" and substituting "Court before which such proceedings are taken"; and
- (b) by omitting "\$1,000" and substituting "\$5,000".

14. REGULATIONS

Section 18 of the Principal Act is amended by inserting after paragraph (a) the following:

- "(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;"

15. TRANSITIONAL

The amendments effected by this Act apply only to and in relation to proceedings commenced after the commencement of this Act, and the Principal Act, as in force immediately before that commencement, shall continue to apply to and in relation to proceedings commenced before that commencement as if this Act had never come into force.
