



Status of Children Act 1978

Current as at 22 March 2016

© State of Queensland 2019



This work is licensed under a Creative Commons Attribution 4.0 International License.



Queensland

Status of Children Act 1978

Contents

		Page
Part 1	Preliminary	
1	Short title	5
2	Application of Act	5
3	Act binds all persons	5
4	Definitions	5
5	Meaning of parentage testing procedure	6
Part 2	Status of children	
6	All children to be of equal status	7
7	Protection of executors, administrators and trustees	7
8	Recognition of paternity	8
9	Filing of certain instruments with registrar-general	9
10	Declaration of parentage	10
11	Order requiring evidence to be given about paternity or parentage testing procedure to be carried out	11
12	Parentage testing procedure reports	13
13	Inadmissibility of acknowledgement of paternity or certified copy as evidence in criminal proceedings	14
Part 3	Parentage of children	
Division 1	Application	
14	Application	14
Division 2	Parentage presumptions of children conceived by fertilisation procedures	
Subdivision 1	Interpretation	
15	Interpretation for div 2	16
Subdivision 2	Fertilisation procedures—married women with husband's consent	
16	Application of sdiv 2	16
17	Artificial insemination—Presumption as to status	17
18	Implantation procedure—Presumption as to status where donor semen	

Contents

	used	17
19	Implantation procedure—Presumption as to status where donor ovum used	18
Subdivision 2A	Fertilisation procedures—women with female de facto partner’s consent	
19A	Interpretation	20
19B	Application of sdiv 2A	20
19C	Artificial insemination—Presumption as to status	20
19D	Implantation procedure—Presumption as to status where donor semen used	21
19E	Implantation procedure—Presumption as to status where donor ovum used	21
19F	Irrebuttable presumptions	22
19G	Presumption without consent	22
Subdivision 3	Fertilisation procedures—other married women and unmarried women	
20	Application of sdiv 3	22
21	Artificial insemination	23
22	Implantation procedure—Presumption as to status where donor semen used	23
23	Implantation procedure—Presumption as to status where donor ovum used	24
Division 3	Other parentage presumptions	
24	Parentage presumptions arising from marriage	25
25	Parentage presumption arising from birth registration	26
26	Parentage presumption arising from court finding	26
27	Paternity presumption arising from acknowledgements	27
28	Paternity presumption arising from cohabitation	27
Division 4	Other provisions about presumptions	
29	Rebuttal of presumptions	27
30	Resolution of conflicting presumptions	27
Part 4	Miscellaneous provisions	
31	Approval of forms	28
32	Regulation-making power	28
Part 5	Transitional provisions	
Division 1	Transitional provisions for Status of Children Act 1978	
33	Documents executed before commencement of Act	29
34	Intestacies taking place before commencement of Act	29

Division 2	Transitional provision for Status of Children Amendment Act 2001	
35	Proceedings	29
Division 3	Transitional provisions for Surrogacy Act 2010	
36	Parentage presumption of children conceived by particular fertilisation procedures occurring before commencement	30
37	Parentage presumption of children conceived by particular fertilisation procedures occurring before commencement for women with female de facto partner	30

Status of Children Act 1978

An Act to remove the legal disabilities of children born out of wedlock and to declare with respect to the parentage of children

Part 1 Preliminary

1 Short title

This Act may be cited as the *Status of Children Act 1978*.

2 Application of Act

This Act applies to a person, whether or not—

- (a) the person—
 - (i) was born in the State; or
 - (ii) was born before or after the commencement of this section; or
 - (iii) is a child; or
- (b) the person's father or mother has ever been domiciled in the State.

3 Act binds all persons

This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

4 Definitions

In this Act—

artificial insemination means the insertion of semen into a woman's reproductive tract otherwise than by sexual intercourse and regardless of whether the insertion is done by the woman or another person.

marriage includes a void marriage and a voidable marriage that has been annulled by a court.

nominated reporter means the person nominated by a laboratory to prepare a parentage testing procedure report in relation to a parentage testing procedure carried out at the laboratory.

parentage testing order see section 11(2)(b).

parentage testing procedure see section 5.

parentage testing procedure report see section 12(1).

prescribed court see section 26(1)(a).

prescribed overseas jurisdiction has the meaning given by the *Family Law Act 1975* (Cwlth).

Editor's note—

See the *Family Law Act 1975* (Cwlth), section 4 (Interpretation) and the *Family Law Regulations 1984* (Cwlth), section 39B(2) (Extension of provisions of Act).

semen means semen or sperm.

womb includes fallopian tubes.

5 Meaning of **parentage testing procedure**

- (1) A **parentage testing procedure** is a physical or other test carried out on a person involving the application of medical science for the purpose of obtaining evidence about paternity.
- (2) A parentage testing procedure includes the taking of tissue, fluid or other bodily sample from a person and the scientific examination of the samples.
- (3) The following medical procedures are also parentage testing procedures—
 - (a) red cell antigen blood grouping;

- (b) red cell enzyme blood grouping;
- (c) human leucocyte antigen tissue typing;
- (d) testing for serum markers;
- (e) DNA typing.

Part 2 Status of children

6 All children to be of equal status

- (1) For all the purposes of the law of the State, the relationship between every person and the person's 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 a document, in the absence of a contrary expression of intention, words of relationship signify only legitimate relationship is abolished.
- (3) For the purpose of construing a document, the use, with reference to relationship of a person, of the word 'legitimate' or 'lawful' shall not of itself prevent the relationship from being determined in accordance with the provisions of subsection (1).

7 Protection of executors, administrators and trustees

- (1) For the purposes of the administration or distribution of an estate or of property held on trust or of an application under Part 4 of the *Succession Act 1981* 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) Action shall not lie against an executor of the will or administrator or trustee of the estate of any person or the

trustee under a document 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 a claim arising by reason of the executor, administrator or trustee having made any distribution of the estate or of the 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.

8 Recognition of paternity

- (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 a will or other testamentary disposition or of a document creating a trust or for the purpose of an application under Part 4 of the *Succession Act 1981*, be recognised only if—
 - (a) the father and mother of the child were married to each other, or in a civil partnership, 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 and, if that purpose is for the benefit of the father, paternity has been so admitted or established while the child was living; or
 - (c) a declaration of parentage has been made under section 10 after the death of the father of the child.
- (2) In a case where by reason of the provisions of subsection (1) the relationship of father and child is not recognised at the time the child is born, the occurrence of any act, event or conduct that enables that relationship and any other relationship traced in any degree through it to be recognised shall not affect any estate, right or interest in real or personal property to which any person has become absolutely entitled,

whether beneficially or otherwise, before the act, event or conduct occurred.

- (3) Where the event that enables a relationship to be recognised under subsection (1) is a declaration of parentage made under section 10 after the death of the father, the declaration shall, for the purposes of subsection (2), be taken to have been made immediately before the death of the father if the declaration is made in consequence of an application therefor made before the death of the father or within 6 months (or such further time as the Supreme Court upon application duly made in that behalf allows) after the death of the father.

9 Filing of certain instruments with registrar-general

- (1) A document mentioned in section 27 or a copy of it certified as prescribed may, in the prescribed manner and on payment of the prescribed fee (if any), be filed in the office of the registrar-general.
- (2) The registrar-general shall cause indexes of all documents and copies filed with the registrar-general under subsection (1) to be made and kept in the registrar-general's office and shall, upon request made by or on behalf of a party to a document so filed or a child referred to therein or a guardian or relative of that child, cause a search of any such index to be made and shall, if the registrar-general is satisfied that the person making the request has a proper interest in the matter, permit that person to inspect a document or copy so filed.
- (3) Where the Supreme Court makes a declaration of parentage under section 10 or revokes a declaration so made or a court makes an order under section 14 or 16 of the *Maintenance Act 1965* or annuls an order so made, the registrar of the Supreme Court or clerk of the court shall forward to the registrar-general an office copy or, as the case requires, a certified copy of the declaration, revocation, order or annulment and upon receipt thereof the registrar-general shall file the copy as if it were a document of the kind referred to in section 27.
- (4) Where the registrar-general refuses a request—

[s 10]

- (a) to cause to be made a search of any index made and kept in accordance with subsection (2); or
- (b) to permit a person to inspect a document or copy filed in accordance with subsection (1);

the person aggrieved by such refusal may make an application to the court for an order calling upon the registrar-general to show cause why the request should not be granted.

- (5) The application shall be supported by an affidavit of the facts.
- (6) An order made pursuant to subsection (4) shall be returnable before the court on the date and at the time specified therein and shall be served upon the registrar-general.
- (7) Upon the return of the order the court may, if the registrar-general fails to show good cause against it, make the order absolute but otherwise may discharge the order and in either case may make such other orders including an order as to costs as the court thinks fit, but an order for costs shall not be made against the registrar-general if the court is satisfied that at the time of the refusal of the request, the registrar-general had reasonable grounds therefor.
- (8) The registrar-general shall comply with the terms of an order absolute made in accordance with subsection (7).
- (9) In this section—

registrar-general means the registrar under the *Births, Deaths and Marriages Registration Act 2003*.

10 Declaration of parentage

- (1) A person who—
 - (a) alleges that any named person is the parent of her child; or
 - (b) alleges that the relationship of parent and child exists between the person and another named person; or

-
- (c) having a proper interest in the result, wishes to have determined the question whether the relationship of parent and child exists between 2 named persons;

may apply to the Supreme Court for a declaration of parentage and the Supreme Court may, if it is proved to its satisfaction that the relationship exists, make the declaration whether the parent or the child or both of them are living or dead.

- (2) Where a declaration is made under subsection (1) after the death of the parent or child, the Court may at the same or a subsequent time make a declaration determining for the purposes of section 8(2) whether any and if so which of the requirements of section 8(1)(b) have been satisfied.
- (3) Where a declaration is made under subsection (1) and it is made to appear to the Court that new facts or circumstances have arisen that have not previously been disclosed to the Court and could not by the exercise of reasonable diligence have previously been known or if for any other reason the Court thinks it desirable so to do, the Court may revoke the declaration and thereupon that declaration shall cease to have any force or effect.
- (4) The Court shall not make or revoke a declaration under this section unless the Court is satisfied that, so far as is reasonably practicable, all persons whose interests are or may be affected by the declaration or revocation are represented before or have been given the opportunity of making representations to the Court upon the subject matter of the proceedings.
- (5) For a criminal proceeding, a declaration having effect under this section is conclusive evidence of the matters contained in it, unless the contrary is established.

11 Order requiring evidence to be given about paternity or parentage testing procedure to be carried out

- (1) This section applies to a proceeding in relation to an application under section 10.
- (2) The court may make the following orders—

- (a) an order requiring a named person to give evidence material to any question in issue in the proceeding;
 - (b) an order directing a named person to submit himself or herself or a child or adult mentioned in subsection (4)(b) or (c), within the time stated in the order, to the carrying out of a parentage testing procedure on himself or herself or the child or adult (a *parentage testing order*).
- (3) The order may be subject to conditions.
- (4) A parentage testing procedure must not be carried out on a person under a parentage testing order unless—
- (a) if the person does not have impaired capacity and is an adult or is a child who is 16 or 17 years—the person consents to the carrying out of the procedure; or
 - (b) if the person is a child who is under 16 years or is a child who is 16 or 17 years with impaired capacity—the child’s parent or guardian or a person exercising parental responsibility in relation to the child consents to the carrying out of the procedure; or
 - (c) if the person is an adult with impaired capacity—a person who may exercise powers in relation to personal matters for the adult under a power of attorney under the *Powers of Attorney Act 1998*, or a guardian for the adult under the *Guardianship and Administration Act 2000*, consents to the carrying out of the procedure.
- (5) If a person fails to take any step required of the person for giving effect to a parentage testing order, the court may draw whatever inferences from that fact the court considers appropriate in the circumstances.
- (6) For subsection (5), a person is taken to have failed to take a step required of the person for giving effect to a parentage testing order if the person—
- (a) is named in the order; and
 - (b) fails to consent to a parentage testing procedure being carried out on—
 - (i) himself or herself; or

-
- (ii) a child or adult mentioned in subsection (4)(b) or (c) named in the order.
- (7) However, the person is not liable to any penalty in relation to the contravention.
- (8) In this section—
- impaired capacity* means capacity that is impaired capacity under the *Guardianship and Administration Act 2000*.
- personal matter* means a matter that is a personal matter under the *Powers of Attorney Act 1998*.

12 Parentage testing procedure reports

- (1) The nominated reporter must prepare and give to the court a report in the approved form in relation to information obtained as a result of the carrying out of a parentage testing procedure under a parentage testing order (a *parentage testing procedure report*).
- (2) The report must be prepared in accordance with the requirements prescribed under a regulation.
- (3) The report may be received in evidence in a proceeding under this Act.
- (4) A party to the proceeding—
- (a) with leave of the court, may; or
- (b) if the court directs, must;
- ask the nominated reporter to give a written statement explaining or expanding on any statement made in the report.
- (5) The nominated reporter must comply with the request.
- (6) The statement given in compliance with the request is taken to form part of the report.
- (7) If a report is received in evidence, the court may make an order requiring the nominated reporter, or any person whose evidence may be relevant in relation to the report, to appear before the court and give evidence in relation to the report.

- (8) The court may make an order under subsection (7)—
- (a) on its own initiative; or
 - (b) on the request of a party to the proceeding.

13 Inadmissibility of acknowledgement of paternity or certified copy as evidence in criminal proceedings

- (1) An acknowledgement by a person that he is the father of a child made for the purposes of section 25 of the *Registration of Births, Deaths and Marriages Act 1962* or section 27 of this Act shall not be admissible in criminal proceedings against that person as evidence to show that he has had or has attempted to have carnal knowledge of the mother of the child.
- (2) Notwithstanding section 18 of the *Registration of Births, Deaths and Marriages Act 1962* and section 25 of this Act, a certified copy of an entry of the name of the father of a child purporting to be made or given under section 22 of the *Registration of Births, Deaths and Marriages Act 1962* or a law of the Commonwealth, a State or a prescribed overseas jurisdiction shall not be admissible in criminal proceedings against the person whose name is so entered as evidence to show that he has had or has attempted to have carnal knowledge of the mother of the child.

Part 3 Parentage of children

Division 1 Application

14 Application

- (1) The provisions of division 2, subdivision 2 and section 21 apply—

-
- (a) in respect of a pregnancy referred to in section 17, 18, 19 or 21, whether the pregnancy occurred before or after the passing of the *Status of Children Act Amendment Act 1988* and whether or not it resulted from a procedure carried out in Queensland; and
- (b) in respect of any child born as a result of a pregnancy referred to in section 17, 18, 19 or 21, whether or not the child was born before or after the passing of the *Status of Children Act Amendment Act 1988*.
- (2) Nothing in any provision of division 2, subdivision 2 or section 21 affects the vesting in possession or in interest of any property that occurred before the passing of the *Status of Children Act Amendment Act 1988*.
- (3) The provisions of division 2, subdivision 3 (other than section 21) apply—
- (a) in relation to a pregnancy mentioned in section 22 or 23, whether the pregnancy happened before or after the commencement of the *Guardianship and Administration and Other Acts Amendment Act 2008*, part 5 and whether or not it resulted from a procedure carried out in Queensland; and
- (b) in relation to any child born as a result of a pregnancy mentioned in section 22 or 23, whether or not the child was born before or after the commencement of the *Guardianship and Administration and Other Acts Amendment Act 2008*, part 5.
- (4) Nothing in any provision of division 2, subdivision 3 (other than section 21) affects the vesting in possession or in interest of any property that happened before the commencement of the *Guardianship and Administration and Other Acts Amendment Act 2008*, part 5.
- (5) Divisions 3 and 4 apply to happenings before or after the commencement of the divisions.

Example of a happening—

the registration of the birth of a child

Division 2 Parentage presumptions of children conceived by fertilisation procedures

Subdivision 1 Interpretation

15 Interpretation for div 2

- (1) A reference in this division to a married woman includes reference to a woman who is living with a man as his wife on a bona fide domestic basis although not married to him or who is in a civil partnership with a man.
- (2) A reference (however expressed) in this division to the husband or wife of a person—
 - (a) is, in the case where the person is living with another person of the opposite sex as his or her husband or wife on a bona fide domestic basis although not married to that other person, a reference to that other person; and
 - (b) does not, in that case, include reference to the husband or wife (if any) to whom the person is actually married.
- (3) A reference (however expressed) in this division to the husband or wife of a person is also, in the case where the person is in a civil partnership with another person of the opposite sex, a reference to that other person.

Subdivision 2 Fertilisation procedures—married women with husband's consent

16 Application of sdiv 2

This subdivision applies if a married woman, in accordance with the consent of her husband, undergoes a fertilisation procedure.

17 Artificial insemination—Presumption as to status

- (1) A reference in this section to a fertilisation procedure is a reference to the artificial insemination of a woman where the semen used for the artificial insemination—
 - (a) was produced by a man other than her husband; or
 - (b) was a mixture of semen, part of which was produced by a man other than her husband and part of which was produced by her husband.
- (2) Where a married woman has undergone a fertilisation procedure as a result of which she has become pregnant—
 - (a) the husband shall be presumed, for all purposes, to have caused the pregnancy and to be the father of any child born as a result of the pregnancy; and
 - (b) any man, not being her husband, who produced semen used for the procedure shall, for all purposes, be presumed not to have caused the pregnancy and not to be the father of any child born as a result of the pregnancy.
- (3) A presumption of law that arises by virtue of subsection (2) is irrebuttable.
- (4) In any proceedings in which the operation of subsection (2) is relevant, a husband's consent to the carrying out of a fertilisation procedure in respect of his wife shall be presumed but that presumption is rebuttable.

18 Implantation procedure—Presumption as to status where donor semen used

- (1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—
 - (a) an embryo derived from an ovum produced by her and fertilised outside her body by semen produced by a man other than her husband; or

- (b) for the purpose of fertilising an ovum inside her body, an ovum produced by her together with semen produced by a man other than her husband.
- (2) Where a married woman has undergone a fertilisation procedure as a result of which she has become pregnant—
 - (a) the husband shall be presumed, for all purposes, to have produced the semen used for the fertilisation of the ovum used in the procedure and to be the father of any child born as a result of the pregnancy; and
 - (b) the man who produced the semen used for the fertilisation of the ovum used in the procedure shall, for all purposes, be presumed not to have produced the semen and not to be the father of any child born as a result of the pregnancy.
- (3) A presumption of law that arises by virtue of subsection (2) is irrebuttable.
- (4) In any proceedings in which the operation of subsection (2) is relevant, a husband's consent to the carrying out of a fertilisation procedure in respect of his wife shall be presumed but that presumption is rebuttable.

19 Implantation procedure—Presumption as to status where donor ovum used

- (1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—
 - (a) an embryo derived from an ovum produced by another woman and fertilised by—
 - (i) semen produced by the husband of the first-mentioned woman; or
 - (ii) semen produced by a man other than the husband of the first-mentioned woman; or
 - (b) for the purpose of fertilising an ovum inside her body, an ovum produced by another woman together with

semen produced by the husband of the first-mentioned woman or by a man other than her husband.

- (2) Where a married woman has undergone a fertilisation procedure as a result of which she has become pregnant—
- (a) the married woman shall be presumed, for all purposes, to have become pregnant as a result of the fertilisation of an ovum produced by her and to be the mother of any child born as a result of the pregnancy; and
 - (b) the woman who produced the ovum from which the embryo used in the procedure was derived shall be presumed, for all purposes, not to be the mother of any child born as a result of the pregnancy; and
 - (c) where the semen used for the fertilisation of the ovum from which the embryo used in the procedure was derived was produced by the husband of the married woman, the husband shall be presumed, for all purposes, to be the father of any child born as a result of the pregnancy; and
 - (d) where the semen used for the fertilisation of the ovum from which the embryo used in the procedure was derived was produced by a man other than the husband of the married woman—
 - (i) the husband shall be presumed, for all purposes, to have produced the semen and to be the father of any child born as a result of the pregnancy; and
 - (ii) the man who produced the semen shall be presumed, for all purposes, not to have produced the semen and not to be the father of any child born as a result of the pregnancy.
- (3) A presumption of law that arises by virtue of subsection (2) is irrebuttable.
- (4) In any proceedings in which the operation of subsection (2) is relevant, a husband's consent to the carrying out of a fertilisation procedure in respect of his wife shall be presumed but that presumption is rebuttable.

Subdivision 2A Fertilisation procedures—women with female de facto partner’s consent

19A Interpretation

In this subdivision—

fertilisation procedure means a procedure mentioned in sections 19C to 19E.

19B Application of sdiv 2A

This subdivision applies if a woman—

- (a) has a female de facto partner and undergoes a fertilisation procedure with the consent of the de facto partner; or

Note—

For the meaning of *de facto partner* see the *Acts Interpretation Act 1954*, section 32DA.

- (b) has a female civil partner and undergoes a fertilisation procedure with the consent of the civil partner.

19C Artificial insemination—Presumption as to status

- (1) A reference in this section to a fertilisation procedure is a reference to the procedure of artificial insemination.
- (2) If semen is used in a fertilisation procedure of the woman, the man who produced the semen has no rights or liabilities relating to a child born as a result of a pregnancy for which the semen has been used.
- (3) The woman’s de facto partner is presumed, for all purposes, to be a parent of any child born as a result of the pregnancy.

19D Implantation procedure—Presumption as to status where donor semen used

- (1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—
 - (a) an embryo derived from an ovum produced by her and fertilised outside her body by semen produced by a man who is not her husband; or
 - (b) for the purpose of fertilising an ovum inside her body, an ovum produced by the woman together with semen produced by a man other than her husband.
- (2) If the woman has undergone a fertilisation procedure as a result of which she has become pregnant, the man who produced the semen has no rights or liabilities relating to any child born as a result of a pregnancy for which the semen has been used.
- (3) The woman's de facto partner is presumed, for all purposes, to be a parent of any child born as a result of the pregnancy.

19E Implantation procedure—Presumption as to status where donor ovum used

- (1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—
 - (a) an embryo derived from an ovum produced by another woman and fertilised by semen produced by a man who is not the husband of the first-mentioned woman; or
 - (b) for the purpose of fertilising an ovum inside her body, an ovum produced by another woman together with semen produced by a man other than the first-mentioned woman's husband.
- (2) If a woman has undergone a fertilisation procedure as a result of which she has become pregnant—
 - (a) the woman is presumed, for all purposes, to have become pregnant as a result of the fertilisation of an

[s 19F]

ovum produced by her and to be the mother of any child born as a result of the pregnancy; and

- (b) the other woman who produced the ovum from which the embryo used in the procedure was derived is presumed, for all purposes, not to be the mother of any child born as a result of the pregnancy.
- (3) The woman's de facto partner is presumed, for all purposes, to be a parent of the child.
- (4) Also, the man who produced the semen has no rights or liabilities relating to any child born as a result of a pregnancy for which the semen has been used.

19F Irrebuttable presumptions

A presumption declared to exist under sections 19C to 19E is irrebuttable.

19G Presumption without consent

- (1) In any proceedings in relation to the operation of this division a de facto partner's consent mentioned in section 19B must be presumed unless the contrary is proved.
- (2) The presumption is rebuttable.

Subdivision 3 Fertilisation procedures—other married women and unmarried women

20 Application of sdiv 3

This subdivision applies if—

- (a) a married woman undergoes a fertilisation procedure other than with her husband's consent; or

- (b) a woman who is not married and does not have a de facto partner or civil partner undergoes a fertilisation procedure; or
- (c) a woman who has a de facto partner undergoes a fertilisation procedure other than with her partner's consent; or
- (d) a woman who has a civil partner undergoes a fertilisation procedure other than with her partner's consent.

21 Artificial insemination

- (1) Where semen is used in a procedure of artificial insemination of a woman, the man who produced the semen has no rights or liabilities in respect of a child born as a result of a pregnancy occurring by reason of the use of semen unless, at any time, he becomes the husband of the child's mother.
- (2) The rights and liabilities of a man who produced the semen and becomes the husband of the mother of a child born as a result of a pregnancy referred to in subsection (1) are the rights and liabilities of a father of a child but, in the absence of agreement to the contrary, are restricted to rights and liabilities that arise after the man becomes the husband of the child's mother.

22 Implantation procedure—Presumption as to status where donor semen used

- (1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—
 - (a) an embryo derived from an ovum produced by her and fertilised outside her body by semen produced by a man who is not her husband; or
 - (b) for the purpose of fertilising an ovum inside her body, an ovum produced by the woman together with semen produced by a man who is not her husband.

- (2) If a woman has undergone a fertilisation procedure as a result of which she has become pregnant, the man who produced the semen has no rights or liabilities in relation to any child born as a result of the pregnancy happening because of the use of the semen unless, at any time, he becomes the husband of the child's mother.
- (3) The rights and liabilities of a man who produced the semen and becomes the husband of the mother of a child born as a result of a pregnancy mentioned in subsection (2) are the rights and liabilities of a father of a child but, in the absence of agreement to the contrary, are restricted to rights and liabilities that arise after the man becomes the husband of the child's mother.

23 Implantation procedure—Presumption as to status where donor ovum used

- (1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—
 - (a) an embryo derived from an ovum produced by another woman and fertilised by semen produced by a man who is not the husband of the first-mentioned woman; or
 - (b) for the purpose of fertilising an ovum inside her body, an ovum produced by another woman together with semen produced by a man who is not the husband of the first-mentioned woman.
- (2) If a woman has undergone a fertilisation procedure as a result of which she has become pregnant—
 - (a) the woman who has undergone the fertilisation procedure is presumed, for all purposes, to have become pregnant as a result of the fertilisation of an ovum produced by her and to be the mother of any child born as a result of the pregnancy; and
 - (b) the woman who produced the ovum from which the embryo used in the procedure was derived is presumed,

for all purposes, not to be the mother of any child born as a result of the pregnancy.

- (3) A presumption of law that arises by virtue of subsection (2) is irrebuttable.
- (4) Also, the man who produced the semen has no rights or liabilities in relation to any child born as a result of the pregnancy happening because of the use of the semen unless, at any time, he becomes the husband of the child's mother.
- (5) The rights and liabilities of a man who produced the semen and becomes the husband of the mother of a child born as a result of a pregnancy mentioned in subsection (2) are the rights and liabilities of a father of a child but, in the absence of agreement to the contrary, are restricted to rights and liabilities that arise after the man becomes the husband of the child's mother.

Division 3 Other parentage presumptions

24 Parentage presumptions arising from marriage

- (1) A child born to a woman while she is married is presumed to be the child of the woman and her husband.
- (2) If a child is born to a woman within 44 weeks after her husband dies, the child is presumed to be the child of the woman and her deceased husband.
- (3) If a child is born to a woman within 44 weeks after her purported marriage is annulled, the child is presumed to be the child of the woman and her purported husband.
- (4) A child is presumed to be the child of a woman and her former husband if—
 - (a) when they are married, they separate, resume cohabitation on a single occasion and, within 3 months after resuming cohabitation, separate again and live separately and apart; and

- (b) after the dissolution of the marriage, but within 44 weeks after the cohabitation ends, the child is born to the woman.
- (5) A presumption under this section is rebuttable.

25 Parentage presumption arising from birth registration

- (1) If, under a law of the Commonwealth, a State or a prescribed overseas jurisdiction, a person is named as a child's parent in a register of births or parentage information, the person is presumed to be the child's parent.
- (2) The presumption in subsection (1) is rebuttable.

26 Parentage presumption arising from court finding

- (1) A person is presumed to be a child's parent if, while the person is alive—
 - (a) a court of the Commonwealth, a State or a prescribed overseas jurisdiction (a *prescribed court*) expressly finds that the person is the child's parent; and
 - (b) the finding is not altered, set aside or reversed.
- (2) The presumption in subsection (1) is irrebuttable.
- (3) A person is presumed to have been a child's parent if, after the person dies—
 - (a) a prescribed court expressly finds that the person was the child's parent; and
 - (b) the finding is not altered, set aside or reversed.
- (4) The presumption in subsection (3) is rebuttable.
- (5) In this section, a reference to a court finding includes the following—
 - (a) a declaration under section 10 of this Act;
 - (b) an order under the *Maintenance Act 1965*, section 14 or 16;

- (c) another court declaration or order that a stated person is a stated child's parent.

27 Paternity presumption arising from acknowledgements

- (1) A man is presumed to be the father of a child if—
 - (a) under a law of the Commonwealth, a State or a prescribed overseas jurisdiction, the man signs a document acknowledging that he is a stated child's father; and
 - (b) the document is not annulled or otherwise set aside.
- (2) The presumption in subsection (1) is rebuttable.

28 Paternity presumption arising from cohabitation

- (1) A child born to a woman is presumed to be a man's child if, during the period starting 44 weeks and ending 20 weeks before the birth, the man and woman cohabit, but are not married.
- (2) The presumption in subsection (1) is rebuttable.

Division 4 Other provisions about presumptions

29 Rebuttal of presumptions

A presumption under this part that is rebuttable is rebuttable on the balance of probabilities.

30 Resolution of conflicting presumptions

- (1) If presumptions under this part are relevant in a proceeding and 2 or more of the presumptions conflict and are not rebutted, the presumption appearing to the court to be the most likely to be correct prevails.

[s 31]

- (2) However, if the conflicting presumptions include a presumption under section 26(1), the presumption under section 26(1) prevails.

Part 4 Miscellaneous provisions

31 Approval of forms

The chief executive may approve forms for use under this Act.

32 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about—
- (a) the carrying out of parentage testing procedures under a parentage testing order; and
 - (b) the preparation of parentage testing procedure reports; and
 - (c) fees.

Part 5 **Transitional provisions**

Division 1 **Transitional provisions for Status of Children Act 1978**

33 **Documents executed before commencement of Act**

- (1) All documents executed before the commencement of this Act shall be governed by the enactments, rules of construction and law that would have applied to them if this Act had not been passed.
- (2) Where a document 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.

34 **Intestacies taking place before commencement of Act**

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

Division 2 **Transitional provision for Status of Children Amendment Act 2001**

35 **Proceedings**

The Act, as in force immediately before the commencement of this section, continues to apply to a proceeding started before the commencement.

Division 3 Transitional provisions for Surrogacy Act 2010

36 Parentage presumption of children conceived by particular fertilisation procedures occurring before commencement

- (1) This section applies if, before the commencement of this section—
 - (a) a woman underwent a fertilisation procedure mentioned in section 18, 19, 22 or 23; and
 - (b) a child was born as a result of the fertilisation procedure.
- (2) The presumptions arising under sections 18, 19, 22 and 23 apply.
- (3) However, the presumptions do not apply so as to affect the vesting in possession or in interest of any property before the commencement of this section.

37 Parentage presumption of children conceived by particular fertilisation procedures occurring before commencement for women with female de facto partner

- (1) This section applies if, before the commencement of the relevant provision—
 - (a) a woman had a female de facto partner and underwent a fertilisation procedure mentioned in sections 19C to 19E; and
 - (b) a child was born as a result of the fertilisation procedure; and
 - (c) the de facto partner consented to the fertilisation procedure.
- (2) Part 3, division 2, subdivision 2A applies as if the relevant provision had commenced immediately before the woman underwent the fertilisation procedure.

- (3) However, the presumptions arising under sections 19C, 19D and 19E do not apply so as to affect the vesting in possession or in interest of any property before the commencement of the relevant provision.
- (4) In this section—
relevant provision means the *Surrogacy Act 2010*, section 107.