

26/83

IN THE PRIVY COUNCIL

No. 7 of 1983

O N : A P P E A L

FROM THE SUPREME COURT OF NEW SOUTH WALES
(COURT OF APPEAL)

IN MATTERS 89 - 94 (INCLUSIVE) of 1981

B E T W E E N :

HELEN MARGARET HOGAN

Appellants
(Appellants)

- and -

BRIAN ROBERT HOGAN

First Respondent
(First Respondent)

- and -

MILDRED FRANCES GREEN

Second Respondent
(Second Respondent)

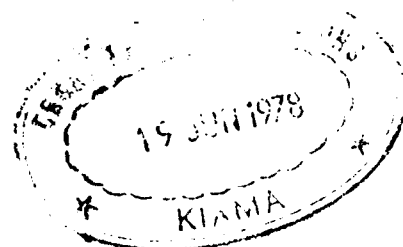
APPENDIX TO THE CASE FOR THE FIRST RESPONDENT

**TESTATOR'S FAMILY MAINTENANCE AND GUARDIANSHIP
OF INFANTS ACT, 1916, No. 41**

Reprinted under the Acts Reprinting Act, 1972

[Reprinted as at 18th April, 1978]

New South Wales



ANNO SEPTIMO

GEORGII V REGIS

Act No. 41, 1916 (1), as amended by Act No. 20, 1934 (2); Act No. 30, 1938 (3); Act No. 40, 1954 (4); Act No. 60, 1970 (5); Act No. 48, 1972 (6); and Act No. 121, 1977 (7).

Note.—(1) See also Wills, Probate and Administration Act, 1898, sec. 40A (2); and Child Welfare Act, 1939.

(2) This Act is reprinted with the amendments made by sec. 8 (2) and sec. 9 (3) of the Acts Reprinting Act, 1972. See footnote (6) on page 2. No marginal notes to this effect are included.

44804H

(1) Testator's Family Maintenance and Guardianship of Infants Act, 1916, No. 41. Assented to, 18th September, 1916.

(2) Guardianship of Infants Act, 1934, No. 20. Assented to, 31st October, 1934.

(3) Conveyancing, Trustee and Probate (Amendment) Act, 1938, No. 30. Assented to, 14th December, 1938. Date of commencement, 1st January, 1939, sec. 1 (2) and Gazette No. 188 of 23rd December, 1938, p. 4951.

(4) Administration of Estates Act, 1954, No. 40. Assented to, 6th December, 1954. Date of commencement, 1st January, 1955, sec. 1 (6).

(5) Minors (Property and Contracts) Act, 1970, No. 60. Assented to, 13th November, 1970. Date of commencement, 1st July, 1971, sec. 1 (2) and Gazette No. 60 of 4th June, 1971, p. 1863.

(Reference notes continued on page 2.)

Testator's Family Maintenance and Guardianship of Infants.

An Act to assure to the widow or widower and family of a testator an adequate maintenance from the estate of such testator; to amend the law relating to the guardianship of infants; and for purposes incidental thereto or consequent thereon.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title. 1. This Act may be cited as the "Testator's Family Maintenance and Guardianship of Infants Act, 1916."

Definitions. 2. In this Act, unless the context otherwise requires—
 "Court" means the Supreme Court in its equitable jurisdiction.

 "Executor" includes administrator with the will annexed.

 "Minor" means a person under the age of eighteen years.

New definition added, Act No. 60, 1970, First Sch.

Testator's family maintenance.

Where no adequate provision made by testator, etc., court may make orders, &c.

3. (1) If any person (hereinafter called "the Testator") dying or having died since the seventh day of October, one thousand nine hundred and fifteen, disposes of or has disposed of his property either wholly or partly by will in such a manner that the widow, husband, or children of such person, or any or all of them, are left without adequate provision for their proper

(6) Acts Reprinting Act, 1972, No. 48. Assented to, 9th October, 1972. Order dated 13th February, 1974, and published in Gazette No. 15 of 15th February, 1974, p. 510, declaring that the Testator's Family Maintenance and Guardianship of Infants Act, 1916, is an enactment to which sec. 8 (2) and sec. 9 (3) of the Acts Reprinting Act, 1972, apply.

(7) Testator's Family Maintenance and Guardianship of Infants (Amendment) Act, 1977, No. 121. Assented to, 9th December, 1977. Date of commencement of sec. 3, 1st January, 1978, sec. 2 (2) and Gazette No. 159 of 23rd December, 1977, p. 5602.

Testator's Family Maintenance and Guardianship of Infants.

maintenance, education, or advancement in life as the case may be, the court may at its discretion, and taking into consideration all the circumstances of the case, on application by or on behalf of such wife, husband, or children, or any of them, order that such provision for such maintenance, education, and advancement as the court thinks fit shall be made out of the estate of the testator for such wife, husband, or children, or any or all of them.

Notice of such application shall be served by the applicant on the executor of the will of the deceased person.

The court may order such other persons as it may think fit to be served with notice of such application.

(1A) If any person (hereinafter called "the intestate") dies wholly intestate after the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1938, and, in consequence of the provisions of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, that are applicable to the distribution of his estate as on intestacy, his widow, or children, or any or all of them, are left without adequate provision for their proper maintenance, education, or advancement in life as the case may be, the court may, at its discretion and taking into consideration all the circumstances of the case, upon application made by or on behalf of such widow, or children, or any of them, order that such provision for such maintenance, education, and advancement as the court thinks fit shall be made out of the estate of such person.

New subsection added, Act No. 30, 1938, s. 9 (a). Amended, Act No. 40, 1954, s. 4 (1) (a).

Notice of such application shall be served by the applicant on such persons as the court may direct.

In this subsection "children" includes children (being under the age of twenty-one years at the death of the intestate) of any child of the intestate who died before the intestate.

(2) The court may attach such conditions to the order as it thinks fit, or may refuse to make an order in favour of any person whose character or conduct is such as to disentitle him to the benefit of such an order.

Testator's Family Maintenance and Guardianship of Infants.

(3) In making an order the court may, if it thinks fit, order that the provision may consist of a lump sum, or periodical, or other payments.

Operation of provision made under Act.
Vic. Act, 1906, s. 9 (5).

4. (1) Every provision made under this Act shall, subject to this Act, operate and take effect as if the same had been made by a codicil to the will of the deceased person executed immediately before his or her death.

New subsection added, Act No. 30, 1938, s. 9 (b).
Substituted subsection, Act No. 40, 1954, s. 4 (1) (b).

(2) Any order made under subsection (1A) of section 3 in respect of the estate of a deceased person shall, subject to this Act, operate and take effect as a modification of the provisions of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, that are applicable to the distribution of that estate as on intestacy.

Time within which application must be made.
N.Z. Act, 1901, No. 60, s. 33, subsec. (9).

5. (1) No application shall be heard by the court at the instance of a party claiming the benefit of this Act unless the application is made, in the case of a testator who has died before the passing of this Act, within three months of the date thereof, but in all other cases within twelve months from the date of the grant or re-sealing in New South Wales of probate of the will or grant or re-sealing of letters of administration with the will annexed :

Proviso repealed, Act No. 40, 1954, s. 4 (1) (c) (i).

* * * * *

New subsection added, Act No. 30, 1938, s. 9 (c).

(2) No application under subsection (1A) of section 3 shall be heard by the court unless the application is made within twelve months from the date of the grant or resealing in New South Wales of letters of administration of the estate of the deceased person.

Testator's Family Maintenance and Guardianship of Infants.

- (2A) Notwithstanding anything in subsections (1) and (2)—
- (a) the time for making an application under either of those subsections may be extended for a further period by the court, after hearing such of the parties affected as the court thinks necessary, and this power extends to cases where the time for applying has already expired, including cases where it has expired before the commencement of the Administration of Estates Act, 1954; but every application for extension shall be made before the final distribution of the estate, and no distribution of any part of the estate made before the application shall be disturbed by reason of the application or of an order made thereon;
- (b) if, in any case to which the provisions of subsection (1) of section 3 apply, all the children and the widow or widower, as the case may be, shall in writing, at any time after the death of the testator, whether the testator died before or after the commencement of the Administration of Estates Act, 1954, agree to be bound by the will of the testator and if there are minors such agreement is confirmed by the Court, then no application shall be made thereafter under that subsection;
- (c) if, in any case to which the provisions of subsection (1A) of section 3 apply, all the children and the widow shall in writing, at any time after the death of the intestate, whether the intestate died before or after the commencement of the Administration of Estates Act, 1954, agree to be bound by the provisions of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, that are applicable to the distribution of the intestate's estate as on intestacy and if there are minors such agreement is confirmed by the court, then no application shall be made thereafter under that subsection.

New subsection added, Act No. 40, 1954, s. 4 (1) (c) (ii).

cf. N.Z. Act, 1908, No. 60, s. 33 (9).

Amended, Act No. 60, 1970, First Sch.

Amended, Act No. 60, 1970, First Sch.

In this paragraph "children" includes children (being under the age of twenty-one years at the death of the intestate) of a child of the intestate who died before the intestate.

Testator's Family Maintenance and Guardianship of Infants.

New subsection added, Act No. 30, 1938, s. 9 (c).

(3) An application shall be deemed to be made on the day upon which the notice of motion or other process originating the application is filed.

Contents of order. Vic. Act, 1906, No. 2,074, s. 9.

6. (1) Every order making any provision under this Act shall inter alia—

- (a) specify the amount and nature of such provision;
- (b) specify the part or parts of the estate out of which such provision shall be raised or paid, and prescribe the manner of raising and paying such provision;
- (c) state the conditions, restrictions, or limitations imposed by the court.

Adjustment of burden of provision upon beneficiaries.

(2) Unless the court otherwise orders, the burden of any such provision shall as between the persons beneficially entitled to the estate of the deceased person be borne by those persons in proportion to the values of their respective interests in such estate:

Provided that the estates and interests of persons successively entitled to any property which is settled by such will shall not for the purposes of this subsection be separately valued, but the proportion of the provision made under this Act to be borne by such property shall be raised or charged against the corpus of such property.

Certified copy of order to be made on probate. Amended, Act No. 30, 1938, s. 9 (d) (i).

(3) The court shall in every case in which provision is made under this Act direct that a certified copy of such order be made upon the probate of the will or letters of administration with the will annexed or, as the case may be, letters of administration of the estate of the deceased person, and for that purpose may require the production of such probate or letters.

Testator's Family Maintenance and Guardianship of Infants.

(4) The court may at any time and from time to time on the application by motion of the executor of the testator's estate or of the administrator of the estate of the intestate or of any person beneficially entitled to or interested in any part of the estate of the deceased person rescind or alter any order making any provision under this Act. Notice of such motion shall be served on all persons taking any benefit under the order sought to be rescinded or altered.

Power to vary or revoke order.
Amended, Act No. 30, 1938, s. 9 (d) (ii).

(5) The court may make such order as to the costs of any proceeding under this Act as it deems just.

Costs.

7. The court may at any time fix a periodic payment or lump sum to be paid by any legatee or devisee or beneficiary, to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate to which he is entitled under the will or in consequence of the intestacy, and may exonerate such portion from further liability, and direct in what manner such periodic payment shall be secured, and to whom such lump sum shall be paid, and in what manner it shall be invested for the benefit of the person to whom the commuted payment was payable.

Court may fix periodic payment or lump sum.
N.Z. Act, No. 60, 1908, s. 33 (6).
Amended, Act No. 30, 1938, s. 9 (e).

8. Where the court has ordered periodic payments, or has ordered a lump sum to be invested for the benefit of any person, it may inquire whether at any subsequent date the party benefited by its order has become possessed of or entitled to provision for his proper maintenance or support, and into the adequacy of such provision, and may discharge, vary, or suspend its order, or make such other order as is just in the circumstances.

Court may make subsequent inquiries, and vary or discharge order.
N.Z. Act, No. 60, 1908, s. 33, subsec. (13).

9. No mortgage, charge, or assignment of any kind whatsoever over any interest dependent on any order of the court under this Act, whether before or after such order is made, shall be of any force, validity, or effect, unless made with the permission of the court or the Master in Equity first had and obtained.

Permission of court, &c., necessary to mortgage.

Testator's Family Maintenance and Guardianship of Infants.

Duty on estate, how computed.
N.Z. Act, No. 60, 1908, s. 34.
Amended, Act No. 30, 1938, s. 9 (i).

Amended, Act No. 30, 1938, s. 9 (ii).

10. (1) Where an order is made by the court under this Act, all probate duties payable under the will of the testator or in consequence of the death of the deceased person shall be computed as if the provisions of the order had been part of the will.

(2) Any duty paid in excess of the amount required to be paid under this section shall, on application, and without further appropriation than this Act, be returned by the Colonial Treasurer to the executor or administrator, and by him remitted to the person entitled to receive the same.

Distribution of assets.
Amended, Act No. 36, 1938, s. 9 (k).
Substituted section, Act No. 121, 1977, s. 3.

11. (1) Where an executor or administrator of the estate of a testator or an intestate has published notices in or to the effect of the form prescribed by rules of court requiring the claims of beneficiaries (including children conceived but not yet born at the death of the testator or intestate), creditors and other persons in respect of the assets of that estate to be submitted to the executor or administrator by or on behalf of those beneficiaries or by those creditors or other persons, the executor or administrator may, at the expiration of the period for submitting those claims specified in the notices or, as the case may be, specified in the last of the notices, distribute the assets, or any part of the assets, of that estate among the persons entitled, having regard to any applications under this Act of which the executor or administrator has notice at the time of the distribution.

(2) An executor or administrator who distributes the assets or any part of the assets of the estate of a testator or an intestate in accordance with subsection (1) is not liable in respect of those assets or that part of those assets to any person of whose application under this Act he did not have notice at the time of the distribution.

(3) This section does not prevent the court from making an order directing that provision under this Act be made out of assets that have been distributed in accordance with subsection (1).

Testator's Family Maintenance and Guardianship of Infants.

12. An executor of a testator who has died prior to the passing of this Act shall not under any circumstances be liable to any person claiming under this Act in respect of any assets which such executor has lawfully distributed prior to the passing of this Act.

Executor not liable for assets legally distributed.

Guardianship of minors.

Amended, Act No. 60, 1970, First Sch.

13. (1) On the death of the father of a minor, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the minor, either alone or jointly with any guardian appointed by the father.

Rights of surviving parent as to guardianship. 15 & 16 Geo. V, c. 45, s. 4.

Where no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the mother.

Substituted section, Act No. 20, 1934, s. 5 (1) (a). Amended, Act No. 60, 1970, First Sch.

(2) On the death of the mother of a minor, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the minor, either alone or jointly, with any guardian appointed by the mother.

Amended, Act No. 60, 1970, First Sch.

Where no guardian has been appointed by the mother, or if the guardian or guardians appointed by the mother is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the father.

14. (1) The father of a minor may by deed or will appoint any person to be guardian of the minor after his death.

Power of mother and father to appoint guardians. 15 & 16 Geo. V, c. 45, s. 5. Substituted section, Act No. 20, 1934, s. 5 (1) (a). Amended, Act No. 60, 1970, First Sch.

Testator's Family Maintenance and Guardianship of Infants.

Amended,
Act No. 60,
1970,
First
Sch.

(2) The mother of a minor may by deed or will appoint any person to be guardian of the minor after her death.

Amended,
Act No. 60,
1970,
First
Sch.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the minor so long as the mother or father remains alive, unless the mother or father objects to his so acting.

Amended,
Act No. 60,
1970,
First
Sch.

(4) If the mother or father so objects, or if the guardian so appointed considers that the mother or father is unfit to have the custody of the minor, the guardian may apply to the court.

The court may either refuse to make an order (in which case the mother or father shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the mother or father, or that he shall be sole guardian of the minor.

Where the court makes an order that the guardian so appointed shall be the sole guardian of the minor, the court may make such order regarding the custody of the minor and the right of access thereto of its mother or father as, having regard to the welfare of the minor, the court may think fit, and may further order that the mother or father shall pay to the guardian towards the maintenance and education of the minor such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable.

cf. 22 and
23 Geo. V,
c. 46, s. 79
(2).

The powers conferred by this subsection may be exercised at any time and shall include power to vary or discharge any order previously made in virtue of those powers.

(5) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.

(6) If under the preceding section a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

Testator's Family Maintenance and Guardianship of Infants.

15, 16.

* * * * *

Repealed,
Act No. 20,
1934, s. 5
(1) (a).

17. (1) In the event of guardians being unable to agree upon a question affecting the welfare of a minor, any of them may apply to the court for its direction, and the court may make such order regarding the matters in difference as it may think proper.

Guardians
may apply
to court for
directions.
Eng. Act, 49
and 50 Vic.,
ch. 27, s. 3
(3).

Amended,
Act No. 60,
1970,
First
Sch.

(2) The power conferred by the foregoing provisions of this section shall include power to vary or discharge any order made under this section or made by any court under the Infants' Custody and Settlements Act, 1899-1934, and, where one of the guardians is the mother or father of a minor, shall also include power—

cf. 22 & 23
Geo. V,
c. 46, s. 79
(1) (3).

New subsection
added,
Act No. 20,
1934, s. 5
(1) (b).

Amended,
Act No. 60,
1970,
First
Sch.

(a) to make such orders regarding the custody of a minor and the right of access thereto as, having regard to the welfare of a minor, the court may think fit; and

(b) to order the mother or father to pay towards the maintenance or education of a minor such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable.

18. The court may, in its discretion, on being satisfied that it is for the welfare of the minor, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Act, and may also, if the court shall deem it to be for the welfare of the minor, appoint another guardian in place of the guardian so removed.

Power of court
to remove
guardian.

Eng. Act, 49
and 50 Vic.,
ch. 27, s. 6.

Amended,
Act No. 20,
1934, s. 6
(1) (a);
Act No. 60,
1970, First
Sch.

The powers of the court under this section extend to the removal of either parent from guardianship under this Act.

New para-
graph added,
Act No. 20,
1934, s. 6
(1) (b).

Testator's Family Maintenance and Guardianship of Infants.

Powers of guardians.
Eng. Act, 49 and 50 Vic., ch. 27, s. 4.
Amended, Act No. 60, 1970, First Sch.

19. Every guardian under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be) of a minor, as any guardian appointed by will or otherwise now has.

Savings.
Substituted section, Act No. 60, 1970, First Sch.

20. Subject to section 20A, this Act does not restrict or affect the jurisdiction of the court to appoint or remove guardians in respect of infants.

Guardianship to end at 18 years.
New section added, Act No. 60, 1970, First Sch.

20A. (1) Guardianship of the person or of the estate of a minor, whether under an appointment by the court or otherwise, shall cease upon the minor reaching the age of eighteen years.

(2) Where a minor has been made a ward of court, the wardship shall not continue after he reaches the age of eighteen years.

(3) A guardian shall not be appointed, by the court or otherwise, of the person or of the estate of a person who has reached the age of eighteen years.

(4) The court shall not make a person aged eighteen years or upwards a ward of court.

Court may order access by grandparents.
Amended, Act No. 60, 1970, First Sch.

21. In the event of the death before or after the passing of this Act of the parents or of one of the parents of a minor the court may order that the maternal or paternal grandparents of the minor or any one of them shall have access to the minor at such times and places as the court shall deem proper :

Provided that applications under this section shall be heard in camera.

Testator's Family Maintenance and Guardianship of Infants.

General.

22. The court may make rules for regulating the practice and **Rules.** procedure in any applications and proceedings under this Act, and prescribe the forms in such proceedings.

Any application under this Act shall be made in accordance with such rules.

Until such rules are made, any application under this Act shall be by motion, and the practice of the Equity Court shall apply thereto.

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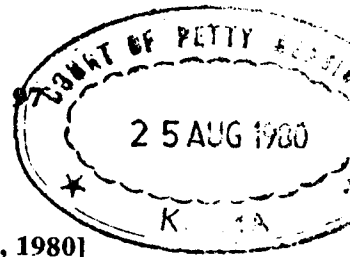
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CHILDREN (EQUALITY OF STATUS) ACT, 1976, No. 97

Reprinted under the Acts Reprinting Act, 1972

[Reprinted as at 8th July, 1980]



New South Wales



ANNO VICESIMO QUINTO

ELIZABETHÆ II REGINÆ

Act No. 97, 1976 (1), as amended by Act No. 43, 1977 (2); and Act No. 1, 1979 (3).

Note.—This Act is reprinted with the omission of all amending provisions authorised to be omitted under sec. 6 of the Acts Reprinting Act, 1972.

An Act to remove legal disabilities of exnuptial children; to facilitate the establishment of the paternity and maternity of children; and to amend the Registration of Births, Deaths and Marriages Act, 1973, and certain other Acts.

P 78373A

(1) Children (Equality of Status) Act, 1976, No. 97. Assented to, 17th December, 1976. Date of commencement, other than secs. 1 and 2 and Part IV, 1st July, 1977, sec. 2 and Gazette No. 68 of 24th June, 1977, p. 2508; date of commencement of Part IV, 23rd November, 1979, sec. 2 (3) and Gazette No. 157 of 23rd November, 1979, p. 5826.

(2) Maintenance (Amendment) Act, 1977, No. 43. Assented to, 19th April, 1977. Date of commencement of Sch. 6, 1st April, 1980, sec. 2 and Gazette No. 48 of 21st March, 1980, p. 1241.

(3) Children (Equality of Status) Amendment Act, 1979, No. 1. Assented to, 22nd March, 1979. Date of commencement of Sch. 2, 23rd November, 1979, sec. 2 (2) and Gazette No. 157 of 23rd November, 1979, p. 5826.

2,006

[70c]

Children (Equality of Status).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be cited as the "Children (Equality of Status) Act, 1976".

Commencement. **2.** (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsections (1) and (3), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Part IV shall commence on such day (being the day appointed and notified under subsection (2) or a later day) as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Division of Act. **3.** This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1-5.

PART II.—STATUS OF CHILDREN AND DISPOSITIONS OF PROPERTY—ss. 6-9.

PART III.—ESTABLISHING PATERNITY AND MATERNITY—ss. 10-18.

Children (Equality of Status).

PART IV.—USE OF BLOOD TESTS IN DETERMINING
PATERNITY AND MATERNITY—ss. 19–22.

PART V.—MISCELLANEOUS PROVISIONS—ss. 23–26.

SCHEDULE 1.—AMENDMENTS TO ACTS.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. (1) In this Act, except so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“blood samples” means blood taken for the purpose of blood tests;

“blood tests” means blood tests carried out under Part IV, and includes any other tests made with the object of ascertaining the inheritable characteristics of blood;

“custody order” includes a custody order made under, or registered or registrable under, the Family Law Act 1975, as subsequently amended, of the Parliament of the Commonwealth; New definition added, Act No. 1, 1979, Sch. 1 (1).

“husband” includes a husband under a void or voidable marriage;

“married” includes married under a void marriage and under a voidable marriage which has been annulled by a court;

“Principal Registrar” means the Principal Registrar of Births, Deaths and Marriages for the time being holding office under section 4A of the Registration of Births, Deaths and Marriages Act, 1973;

“proof” means proof on a balance of probabilities;

“Supreme Court” or “Court” means the Supreme Court of New South Wales;

“wife” includes a wife under a void or voidable marriage.

Children (Equality of Status).

(2) A reference in this or any other Act to the commencement of this Act shall be construed as a reference to the day appointed and notified under section 2 (2).

(3) A reference in this or any other Act to an exnuptial child or to a child or person born outside marriage, however expressed, shall be construed as a reference to a child or person whose father and mother were not married to each other at the time of the conception of the child or person and who have not subsequently married each other.

(4) A reference in this or any other Act to a child or person born in marriage or in lawful wedlock, however expressed, shall be construed as a reference to a child or person whose father and mother were married to each other at the time of the conception of the child or person or, if not so married, have subsequently married each other.

Application
of Act.

5. (1) This Act shall apply in respect of a person---

- (a) whether born in New South Wales or elsewhere;
- (b) whether born before or after the commencement of this Act;
- (c) whether a minor or not; and
- (d) whether he or his father or mother is or has ever been domiciled in New South Wales or not.

(2) Nothing in this Act shall be taken as affecting the operation of sections 35 and 36 of the Adoption of Children Act, 1965.

PART II.

STATUS OF CHILDREN AND DISPOSITIONS OF PROPERTY.

All
children of
equal status.

6. Subject to sections 7 and 8, whenever the relationship of a child with his father and mother, or with either of them, falls to be determined by or under the law of New South Wales, whether in

Children (Equality of Status).

proceedings before a court or otherwise, that relationship shall be determined irrespective of whether the father and mother of the child are or have ever been married to each other, and all other relationships of or to that child, whether of consanguinity or affinity, shall be determined accordingly.

7. (1) This section applies to—

- (a) dispositions made inter vivos after the commencement of this Act; and
- (b) dispositions made by will or codicil executed before or after the commencement of this Act by a person who dies after that commencement.

Construction
of instruments
providing for
dispositions
of property.

(2) Subject to this section, in a disposition to which this section applies—

- (a) a reference, however expressed, to the child or children of any person shall, unless the contrary intention appears, be construed as, or as including, a reference to an exnuptial child of whom that person is a parent; and
- (b) a reference, however expressed, to a person or persons related to another person in a way other than that referred to in paragraph (a) shall, unless the contrary intention appears, be construed as, or as including, a reference to anyone who is so related in fact, notwithstanding that he or some other person through whom the relationship is traced is or was an exnuptial child.

(3) In construing a disposition to which this section applies, the use—

- (a) with reference to the child or children of a person or to a person or persons related to another person in some other way, of the word "legitimate" or "lawful" or of any word or words having the same or a similar effect; or

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- (b) with reference to the parent or parents of a person, of the word "married" or "husband" or, as the case may be, "wife" or of any word or words having the same or a similar effect,

shall not of itself be an expression of contrary intention.

(4) Without limiting any other provision of this Act, any rule of law that a disposition in favour of an exnuptial child not conceived or born when the disposition takes effect is void as being contrary to public policy is, with respect to a disposition to which this section applies, abolished.

Application
of Act to
certain
dispositions.
Substituted
subsection,
Act No. 1,
1979, Sch. 1
(2) (a).

8. (1) Dispositions—

- (a) made inter vivos before the commencement of this Act;
or
(b) made by will or codicil executed by a person who died before that commencement,

shall be construed as if this Act had not been passed.

Amended,
Act No. 1,
1979, Sch. 1
(2) (b).

(2) Where a disposition referred to in subsection (1) contains a special power of appointment, nothing in this Act extends the class of persons in whose favour the appointment may be made or causes the exercise of the power to be construed so as to include any person who is not a member of that class.

Rights of
exnuptial
children,
with respect
to estates
of intestate
relatives, and
vice versa.

9. (1) Without limiting section 6, where any relative of an exnuptial child, including a parent of the child, dies intestate in respect of all or any of his real or personal property, the child or, if the child is dead, his issue shall be entitled to take any interest in that property which he or that issue would have been entitled to take if his parents had been married to each other when he was born.

Children (Equality of Status).

(2) Without limiting section 6, where an exnuptial child dies intestate in respect of all or any of his real or personal property, any relative of the child (including a parent of the child) shall be entitled to take any interest in that property which he would have been entitled to take if the parents of the child had been married to each other when the child was born.

(3) Notwithstanding section 6, this section does not apply to a child to whom it would apply but for this subsection if that child is an adopted person under an adoption order made or continued in force under the Adoption of Children Act, 1965, or under an adoption recognised in New South Wales by virtue of Part V of that Act.

(4) This section does not affect any rights under the intestacy of a person dying before the commencement of this Act.

PART III.

ESTABLISHING PATERNITY AND MATERNITY.

10. (1) Where a woman gives birth to a child—

(a) during her marriage; or

(b) within 10 months after 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,

Presump-
tions as to
parent-
hood.

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

(2) For the purpose of subsection (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.

Children (Equality of Status).

(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 forty-fourth 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.

Paternity
acknowledg-
ments.

11. (1) Any man may, in the presence of a person belonging to a class of persons prescribed for the purposes of this section, execute a paternity acknowledgment in or to the effect of the prescribed form acknowledging that he is the father of an exnuptial child specified in the acknowledgment, and if the acknowledgment—

(a) is either countersigned by the mother of the child or recorded in a register of births, or in the register of parentage information, kept under the Registration of Births, Deaths and Marriages Act, 1973; and

(b) has not been annulled under this section,

that man shall, for all purposes, be presumed to be the father of the child.

(2) Where a paternity acknowledgment is executed in New South Wales, the person in whose presence the acknowledgment was executed shall take possession of the acknowledgment and cause the acknowledgment to be transmitted, not later than 14 days after the execution of the acknowledgment, to the Principal Registrar to be dealt with under the Registration of Births, Deaths and Marriages Act, 1973.

Penalty : \$200.

(3) Where a paternity acknowledgment has been—

(a) countersigned by the mother of the child to whom the acknowledgment relates; or

Children (Equality of Status).

- (b) recorded in a register of births, or in the register of parentage information, kept under the Registration of Births, Deaths and Marriages Act, 1973,

that acknowledgment shall not be annulled except by an order of the Supreme Court.

(4) An application for an order referred to in subsection (3) may be made by or on behalf of any person who has a proper interest in the result, including—

- (a) the man who executed the paternity acknowledgment;
- (b) the mother of the child to whom the acknowledgment relates;
- (c) the child; or
- (d) the Principal Registrar.

(5) Where any person whose interests would, in the opinion of the Court, be affected by the making of an order referred to in subsection (3) is not present or represented, and has not been given the opportunity to be present or represented, at the hearing of an application made under subsection (4), the Court may, if it thinks that that person ought to be present or represented at the hearing, adjourn the hearing in order to enable that person to be given an opportunity to be so present or represented.

(6) On the hearing of an application made under subsection (4), the Court may make or refuse to make the order applied for.

(7) Where an order referred to in subsection (3) is made, the Registrar of the Court shall forthwith cause a copy of the order to be transmitted to the Principal Registrar to be dealt with under the Registration of Births, Deaths and Marriages Act, 1973.

Children (Equality of Status).

Effect
of orders
under
Maintenance
Act, 1964,
etc., relating
to fathers
of exnuptial
children.

12. (1) Where—

- (a) an order has been made under Part II of the Maintenance Act, 1964, whether before or after the commencement of this Act, requiring a man named in the order to pay an amount for or towards—
 - (i) the maintenance of an exnuptial child;
 - (ii) the preliminary expenses of a woman in respect of an unborn exnuptial child or an exnuptial child to whom she has given birth; or
 - (iii) the funeral expenses of an exnuptial child;
- (b) that man is named in the order as being the father of the child; and
- (c) the order has not been annulled under section 39 of that Act,

that man shall, for all purposes, be presumed to be the father of the child.

(2) Where—

- (a) an order has been made under Part XII of the Child Welfare Act, 1939, whether before or after the commencement of this Act—
 - (i) requiring a man named in the order to maintain or contribute to the maintenance of an exnuptial child; or
 - (ii) requiring a man so named to pay to the Minister administering that Act a sum as reimbursement of money paid for past maintenance of an exnuptial child;
- (b) that man is named in the order as being the father of the child; and

Children (Equality of Status).

- (c) the order has not been discharged on the ground, or on grounds including the ground, that that man is not, or may not be, the father of the child,

that man shall, for all purposes, be presumed to be the father of the child.

(3) The reference in subsection (2) to a child includes a reference to any person named in an order referred to in that subsection who is a child to whom this Act applies, whether or not he is a child within the meaning of the Child Welfare Act, 1939.

(4) Where, after the commencement of this Act, an order referred to in subsection (1) or (2) is made, the clerk of the court shall forthwith cause a copy of the order to be transmitted to the Principal Registrar to be dealt with under the Registration of Births, Deaths and Marriages Act, 1973.

(5) Where—

- (a) an order made outside New South Wales by a court of a State or Territory in Australia or by a court of a prescribed country or territory outside Australia, whether before or after the commencement of this Act, would, if it had been made in New South Wales, have been an order referred to in subsection (1) (a) or (2) (a);
- (b) a man is named in the order as being the father of an exnuptial child so named; and
- (c) the order has not been terminated on the ground, or on grounds including the ground, that that man is not, or may not be, the father of the child,

that man shall, for all purposes, be presumed to be the father of the child.

Children (Equality of Status).

Amended,
Act No. 1,
1979, Sch. 1
(3).

(6) Where—

- (a) a custody order has been made, whether before or after the commencement of this Act, in respect of an exnuptial child; and
- (b) a man is named in the order as being the father of the child,

that man shall, for all purposes, be presumed to be the father of the child.

(7) Where, after the commencement of this Act—

- (a) an order referred to in subsection (1) is annulled under section 39 of the Maintenance Act, 1964; or
- (b) an order referred to in subsection (2) is discharged on the ground, or on grounds including the ground, that the man named in the order as being the father of the exnuptial child to whom the order relates is not, or may not be, the father of the child,

the clerk of the court shall forthwith cause a copy of the order of annulment or discharge, as the case may be, to be transmitted to the Principal Registrar to be dealt with under the Registration of Births, Deaths and Marriages Act, 1973.

Declarations
of paternity.

13. (1) Any person who—

- (a) being a woman, alleges that the relationship of father and child exists between any named person and her child;
- (b) alleges that the relationship of father and child exists between himself and another named or identified person;
or

Children (Equality of Status).

- (c) being the Principal Registrar, a prescribed person or a person having a proper interest in the result, wishes to have a determination made that the relationship of father and child exists between a named person and another named or identified person,

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 (which shall have effect as a judgment of the Court) that a man named in the declaration is the father of the child.

(2) Where any person whose interests would, in the opinion of the Court, be affected by the making of a declaration under subsection (1) is not present or represented, and has not been given the opportunity to be present or represented, at the hearing of an application made under that subsection, the Court may, if it thinks that that person ought to be present or represented at the hearing, adjourn the hearing in order to enable that person to be given an opportunity to be so present or represented.

(3) A declaration may be made under subsection (1) whether or not the father or the child is or both of them are alive or notwithstanding that the child is not yet born.

(4) While a declaration made under subsection (1) remains in force, the man named in the declaration as being the father of the child to whom the declaration relates shall, for all purposes, be presumed conclusively to be the father of that child.

(5) Where a declaration is made under subsection (1), the Registrar of the Court shall forthwith cause a copy of the declaration to be transmitted to the Principal Registrar to be dealt with under the Registration of Births, Deaths and Marriages Act, 1973.

Children (Equality of Status).

(6) Where a declaration has been made under subsection (1) and, on the application of any person who applied or could have applied for the making of the declaration, it appears 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 disclosed to the Court, the Court may make an order annulling the declaration, and the declaration shall thereupon cease to have effect, but the annulment of the declaration shall not affect anything done in reliance on the declaration before the making of the order of annulment.

(7) Where any person whose interests would, in the opinion of the Court, be affected by the making of an order under subsection (6) is not present or represented, and has not been given an opportunity to be present or represented, at the hearing of an application made under that subsection, the Court may, if it thinks that that person ought to be present or represented at the hearing, adjourn the hearing in order to enable that person to be given an opportunity to be so present or represented.

(8) Where the Court makes an order under subsection (6) annulling a declaration made under subsection (1), it may, if it thinks that it would be just and equitable to do so, make such ancillary orders (including orders varying property rights) as may be necessary to place as far as practicable any person affected by the annulment of the declaration in the same position as he would have been in if the declaration had not been made.

(9) Where a declaration is annulled under subsection (6), the Registrar of the Court shall forthwith cause a copy of the order of annulment to be transmitted to the Principal Registrar to be dealt with under the Registration of Births, Deaths and Marriages Act, 1973.

(10) Where an order or a declaration made outside New South Wales by a court of a State or Territory in Australia or by a court of a prescribed country or territory outside Australia, whether

Children (Equality of Status).

before or after the commencement of this Act, would, if it had been made in New South Wales, have been, or have had the effect of, a declaration of paternity under subsection (1), the man named in the order or declaration as being the father of a child so named, shall, for all purposes, be presumed conclusively to be the father of that child while the order or declaration remains in force.

14. (1) Where—

(a) an order has been made under Part II of the Maintenance Act, 1964, whether before or after the commencement of this Act, requiring a woman named in the order to pay an amount for or towards—

Effect of orders under Maintenance Act, 1964, etc., relating to mothers of exnuptial children.

(i) the maintenance of an exnuptial child; or

(ii) the funeral expenses of an exnuptial child;

(b) that woman is named in the order as being the mother of the child; and

(c) the order has not been discharged on the ground, or on grounds including the ground, that that woman is not, or may not be, the mother of the child,

that woman shall, for all purposes, be presumed to be the mother of the child.

(2) Where—

(a) an order has been made under Part XII of the Child Welfare Act, 1939, whether before or after the commencement of this Act—

(i) requiring a woman named in the order to maintain or contribute to the maintenance of an exnuptial child; or

Children (Equality of Status).

- (ii) requiring a woman so named to pay to the Minister administering that Act a sum as reimbursement of money paid for past maintenance of an exnuptial child;
- (b) that woman is named in the order as being the mother of the child; and
- (c) the order has not been discharged on the ground, or on grounds including the ground, that that woman is not, or may not be, the mother of the child,

that woman shall, for all purposes, be presumed to be the mother of the child.

(3) The reference in subsection (2) to a child includes a reference to any person named in an order referred to in that subsection who is a child to whom this Act applies, whether or not he is a child within the meaning of the Child Welfare Act, 1939.

(4) Where, after the commencement of this Act, an order referred to in subsection (1) or (2) is made, the clerk of the court shall forthwith cause a copy of the order to be transmitted to the Principal Registrar to be dealt with under the Registration of Births, Deaths and Marriages Act, 1973.

(5) Where—

- (a) an order made outside New South Wales by a court of a State or Territory in Australia or by a court of a prescribed country or territory outside Australia, whether before or after the commencement of this Act, would, if it had been made in New South Wales, have been an order referred to in subsection (1) (a) or (2) (a);
- (b) a woman is named in the order as being the mother of an exnuptial child so named; and

Children (Equality of Status).

- (c) the order has not been terminated on the ground, or on grounds including the ground, that that woman is not, or may not be, the mother of the child,

that woman shall, for all purposes, be presumed to be the mother of the child.

(6) Where—

- (a) a custody order has been made, whether before or after the commencement of this Act, in respect of an exnuptial child; and
- (b) a woman is named in the order as being the mother of the child,

Amended,
Act No. 1,
1979, Sch. 1
(4).

that woman shall, for all purposes, be presumed to be the mother of the child.

(7) Where, after the commencement of this Act, an order referred to in subsection (1) or (2) is discharged on the ground, or on grounds including the ground, that the woman named in the order as being the mother of the exnuptial child to whom the order relates is not, or may not be, the mother of the child, the clerk of the court shall forthwith cause a copy of the order of discharge to be transmitted to the Principal Registrar to be dealt with under the Registration of Births, Deaths and Marriages Act, 1973.

15. (1) Any person who—

- (a) being a man, alleges that the relationship of mother and child exists between any named person and his child;
- (b) alleges that the relationship of mother and child exists between that person and another named or identified person; or

Declarations
of maternity.

Children (Equality of Status).

- (c) being the Principal Registrar, a prescribed person or a person having a proper interest in the result, wishes to have a determination made that the relationship of mother and child exists between a named person and another named or identified person,

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 (which shall have effect as a judgment of the Court) that a woman named in the declaration is the mother of the child.

(2) Where any person whose interests would, in the opinion of the Court, be affected by the making of a declaration under subsection (1) is not present or represented, and has not been given the opportunity to be present or represented, at the hearing of an application made under that subsection, the Court may, if it thinks that that person ought to be present or represented at the hearing, adjourn the hearing in order to enable that person to be given an opportunity to be so present or represented.

(3) A declaration may be made under subsection (1) whether or not the mother or the child is or both of them are alive.

(4) While a declaration made under subsection (1) remains in force, the woman named in the declaration as being the mother of the child to whom the declaration relates shall, for all purposes, be presumed conclusively to be the mother of that child.

(5) Where a declaration is made under subsection (1), the Registrar of the Court shall forthwith cause a copy of the declaration to be transmitted to the Principal Registrar to be dealt with under the Registration of Births, Deaths and Marriages Act, 1973.

(6) Where a declaration has been made under subsection (1) and, on the application of any person who applied or could have applied for the making of the declaration, it appears to the

Children (Equality of Status).

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 disclosed to the Court, the Court may make an order annulling the declaration, and the declaration shall thereupon cease to have effect, but the annulment of the declaration shall not affect anything done in reliance on the declaration before the making of the order of annulment.

(7) Where any person whose interests would, in the opinion of the Court, be affected by the making of an order under subsection (6) is not present or represented, and has not been given an opportunity to be present or represented, at the hearing of an application made under that subsection, the Court may, if it thinks that that person ought to be present or represented at the hearing, adjourn the hearing in order to enable that person to be given an opportunity to be so present or represented.

(8) Where the Court makes an order under subsection (6) annulling a declaration made under subsection (1), it may, if it thinks that it would be just and equitable to do so, make such ancillary orders (including orders varying property rights) as may be necessary to place as far as practicable any person affected by the annulment of the declaration in the same position as he would have been in if the declaration had not been made.

(9) Where a declaration is annulled under subsection (6), the Registrar of the Court shall forthwith cause a copy of the order of annulment to be transmitted to the Principal Registrar to be dealt with under the Registration of Births, Deaths and Marriages Act, 1973.

(10) Where an order or a declaration made outside New South Wales by a court of a State or Territory in Australia or by a court of a prescribed country or territory outside Australia would, if it had been made in New South Wales, have been, or have had

Children (Equality of Status).

the effect of, a declaration of maternity under subsection (1), the woman named in the order or declaration as being the mother of a child so named, shall, for all purposes, be presumed conclusively to be the mother of that child while the order or declaration remains in force.

Miscellaneous provisions relating to hearings of applications under this Part.

16. (1) The hearing of an application made under section 11 (4), 13 (1) or (6) or 15 (1) or (6) shall be in closed court.

(2) Any person who publishes, 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 section 11 (4), 13 (1) or (6) or 15 (1) or (6), without the authority of the Supreme Court, is guilty of an offence and is liable on conviction to a penalty not exceeding \$1,000.

Admissibility in evidence of instruments and copies of instruments referred to in this Part.

17. (1) Where in any proceedings before a court in which the paternity or maternity of a child is in issue a presumption arising under section 11, 12, 13, 14 or 15 is relied on, the paternity acknowledgment, order or declaration by virtue of which the presumption arises, or any copy of the paternity acknowledgment, order or declaration which the court is satisfied is authentic, shall be admitted by the court in evidence in those proceedings.

(2) In any proceedings in which the paternity or maternity of a child is in issue, the court before which the proceedings are taken may, in its discretion, admit in evidence any evidence that tends to establish that a person is or is not the father or, as the case may be, the mother of the child, notwithstanding that that evidence is not evidence admissible by virtue of subsection (1).

New subsection added, Act No. 1 1979, Sch. 1 (5).

(3) Subsection (2) does not apply so as to allow the admission of evidence in rebuttal of an irrebuttable or a conclusive presumption of law arising by virtue of this or any other Act or any rule of law.

Children (Equality of Status).

18. (1) Where a presumption of law arises by virtue of any provision of this or any other Act or any rule of law that— Rebuttal of certain presumptions.

- (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, as the case may be, the mother of a child,

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

(2) Subsection (1) does not apply to a presumption of law arising by virtue of any provision or rule referred to in that subsection 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) two or more presumptions to which subsection (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.

(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.

Children (Equality of Status).

PART IV.

USE OF BLOOD TESTS IN DETERMINING PATERNITY AND
MATERNITY.

Power of
court to
require
use of
blood
tests.

19. (1) In any civil proceedings in which the paternity of a child falls 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 father of that child and for the taking, within a 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) In any civil proceedings in which the maternity of a child falls 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 mother of that child and for the taking, within a period to be specified in the direction, of blood samples from that child, the father of that child and any party alleged to be the mother of that child or from any of those persons.

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

(4) Before giving a direction under subsection (1) or (2), the court may, if it thinks that to do so would be in the best interests of the child, appoint a fit and proper person to act as guardian ad litem of the child, or may appoint a counsel or solicitor to represent the child, in relation to its deliberations in respect of the direction.

(5) A person or, as the case may be, a counsel or solicitor shall not be appointed under subsection (4) unless he consents to the appointment.

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(6) In order to facilitate the making of an appointment under subsection (4), the court may adjourn the proceedings and give such directions with respect to the appointment as it considers necessary in the circumstances of the case.

(7) An appointment under subsection (4) may be made by the court of its own motion or on the application of a party to the proceedings or of an officer of the Public Service prescribed for the purposes of this subsection.

(8) An application under subsection (7) may be made *ex parte*.

(9) In deciding whether to give a direction under subsection (1) or (2), 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.

(10) Where a court gives or proposes to give a direction under subsection (1) or (2) and any party alleged to be the father or, as the case may be, the mother of the child to whom the proceedings relate alleges that any other person is or may be the father or, as the case may be, the mother of the child, that other person may, with the leave of the court, be joined as a party to the proceedings for the purpose only of 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.

(11) Where a court has given a direction under subsection (1) or (2) for the taking of blood samples, those blood samples shall be taken only by a medical practitioner, a registered nurse or a person of a class of persons prescribed for the purposes of this subsection.

Amended,
Act No. 1,
1979, Sch. 2
(1) (a).

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Amended,
Act No. 1,
1979, Sch. 2
(1) (b).

(12) Any person other than a person of a class specified in or prescribed under subsection (11) who takes blood samples purportedly for the purpose of giving effect to a direction given under subsection (1) or (2) is guilty of an offence and is liable on conviction to a penalty not exceeding \$200.

Reports
of blood
tests.

20. (1) Where the person responsible for carrying out blood tests for the purpose of giving effect to a direction under section 19 (1) makes to the court which gave the direction a report in or to the effect of the prescribed form in which he states—

- (a) the result of the tests;
- (b) whether the party to whom the report relates may be or is not the father of the child whose paternity is to be determined; and
- (c) if that party may be the father of the child whose paternity is to be determined, the value, if any, of the result in determining whether that party is that child's father,

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

(2) Where the person responsible for carrying out blood tests for the purpose of giving effect to a direction under section 19 (2) makes to the court which gave the direction a report in or to the effect of the prescribed form in which he states—

- (a) the result of the tests;
- (b) whether the party to whom the report relates may be or is not the mother of the child whose maternity is to be determined; and

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

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

(2A) Where the person responsible for taking blood samples for the purpose of giving effect to a direction under section 19 (1) or (2) takes those samples and makes to the court which gave the direction a report in or to the effect of the prescribed form with regard to the taking or identification of those samples, the report shall be admitted by the court as evidence in the proceedings of the matters stated in the report.

New subsection added, Act No. 1, 1979, Sch. 2 (2) (a).

(3) Where a report has been made to a court under subsection (1), (2) or (2A) 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.

Amended, Act No. 1, 1979, Sch. 2 (2) (b).

(4) Where a direction is given under section 19 (1) or (2) in any proceedings, a party to the proceedings shall, with the leave of the court, be entitled to call as a witness—

Amended, Act No. 1, 1979, Sch. 2 (2) (c).

(a) any person who has made a report under subsection (1), (2) or (2A); and

(b) any person who took or assisted in taking the samples referred to in such a report or who carried out or assisted in carrying out the tests referred to in such a report,

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.

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

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Amended,
Act No. 1,
1979, Sch. 2
(2) (d) (e).

(6) The cost of taking and testing blood samples for the purpose of giving effect to a direction under section 19 (1) or (2) (including any expenses reasonably incurred in taking any steps required for the purpose) and of making reports under this section with respect to taking or testing those samples shall be paid by the party from whom the samples were taken, except where the court which has given the direction in its discretion orders that the cost or part thereof be paid by another party to the proceedings, in which case the cost or part thereof shall be paid by that other party.

Amended,
Act No. 1,
1979, Sch. 2
(2) (f) (g).

(7) A court which has given a direction under section 19 (1) or (2) in any proceedings may, in its discretion, order a party to the proceedings to reimburse a person in respect of any amount paid by that person under subsection (6) and, on the making of such an order, that person may recover that amount as a debt.

New
subsection
added,
Act No. 1,
1979, Sch. 2
(2) (h).

(8) A reference in subsection (6) or (7) to a party shall, where the party is a minor, be deemed to be a reference to the person having care and control of the minor.

Failure to
comply with
a direction
for the
use of blood
tests.

21. (1) Where in any proceedings referred to in section 19 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 a rebuttable presumption of law arising by virtue of this or any other Act or any rule of law, as evidence rebutting that presumption.

Amended,
Act No. 1,
1979, Sch. 2
(3).

(2) Where in any proceedings referred to in section 19 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

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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 subsection (1), dismiss his claim for relief.

(3) The court may exercise the power conferred on it by subsection (2) notwithstanding that—

Amended,
Act No. 1,
1979, Sch. 2
(3).

- (a) a party claiming relief in the proceedings is entitled to rely on a rebuttable presumption of law arising by virtue of this or any other Act or any rule of law; 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 may not exercise that power if to do so would be detrimental to the interests of the child to whom the proceedings relate.

22. Any person who, for the purpose of providing a blood sample for a test required to give effect to a direction under section 19 (1) or (2)—

Penalty for personating another, etc., for the purpose of providing blood sample.

- (a) personates another; or
- (b) proffers a child knowing that the child is not the child named in the direction,

is guilty of an offence and is liable on conviction to a penalty not exceeding \$500.

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PART V.

MISCELLANEOUS PROVISIONS.

Trial of
offences.

23. Proceedings for an offence against this Act shall be disposed of before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Regulations.

24. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) regulating the taking, identification and transport of blood samples;
- (b) requiring the production at the time when a blood sample is to be taken of such evidence of the identity of the person from whom it is to be taken as may be prescribed;
- (c) requiring any person from whom a blood sample is to be taken, or, in such cases as may be prescribed, such other person as may be prescribed, to state in writing whether or not the person from whom the sample is to be taken, as the case may be, has during such period as may be specified in the regulations suffered from any such illness as may be so specified or received a transfusion of blood;
- (d) providing that blood tests shall not be carried out except by such persons, and at such places, as may be appointed by the Minister;
- (e) prescribing the blood tests to be carried out and the manner in which they are to be carried out;

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- (f) regulating the charges that may be made for the taking and testing of blood samples and for the making of a report to a court under section 20;
- (g) making provision for ensuring that, so far as practicable, the blood samples to be tested for the purpose of giving effect to a direction under section 19 (1) or (2) are tested by the same person; and
- (h) prescribing the form of a report under section 20.

(2) Regulations under subsection (1) may be made so as to apply differently according to such factors as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance, as are so specified.

25. Each Act specified in Column 1 of Schedule 1 is amended in the manner set forth opposite that Act in Column 2 of Schedule 1. Amendments.

26. Schedule 2 has effect.

Savings and
transitional
provisions.

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Sec. 25.
Amended,
Act No. 43,
1977, Sch. 6.

SCHEDULE 1.

AMENDMENTS TO ACTS.

(The amending provisions relating to various Acts are not reprinted: Acts Reprinting Act, 1972, s. 6.)

Sec. 26.

SCHEDULE 2.

SAVINGS AND TRANSITIONAL PROVISIONS.

Index of
legitima-
tions and
parentage
information
under
Registration
of Births,
Deaths and
Marriages
Act, 1973.

1. The index established and kept under section 9 (1) (c) of the Registration of Births, Deaths and Marriages Act, 1973, as in force immediately before the commencement of this Act, shall continue in being and shall be deemed to be established as part of the index of legitimations and parentage information established and kept under section 9 (1) (d) of the Registration of Births, Deaths and Marriages Act, 1973, as in force after that commencement.

Disposal
of requests
and applica-
tions under
section 14
of the
Registration
of Births,
Deaths and
Marriages
Act, 1973.

2. Any joint or sole request, or any application, made under section 14 of the Registration of Births, Deaths and Marriages Act, 1973, as in force immediately before the commencement of this Act, shall, if not disposed of at that commencement, be disposed of as if this Act had not been enacted.

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