

Queensland



# **STATUS OF CHILDREN AMENDMENT ACT 2001**

**Act No. 17 of 2001**



# Queensland



## STATUS OF CHILDREN AMENDMENT ACT 2001

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Queensland



## **Status of Children Amendment Act 2001**

### **Act No. 17 of 2001**

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**An Act to amend the *Status of Children Act 1978*, and for another purpose**

*[Assented to 11 May 2001]*

The Parliament of Queensland enacts—

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Status of Children Amendment Act 2001*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF STATUS OF CHILDREN ACT 1978**

### **3 Act amended in pt 2 and schedule**

This part and the schedule amend the *Status of Children Act 1978*.

### **4 Amendment of title**

Title, ‘**artificially conceived**’—

*omit.*

### **5 Replacement of s 1 (Short title, commencement and application)**

Section 1—

*omit, insert—*

#### **‘1 Short title**

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

**‘1A 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.

**‘1B 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.’.

**6 Replacement of s 2 (Interpretation)**

Section 2—

*omit, insert—*

**‘2 Definitions**

‘In this Act—

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

**“parentage testing order”** see section 11(2)(b).

**“parentage testing procedure”** see section 2A.

**“parentage testing procedure report”** see section 11A(1).

**“prescribed court”** see section 18C(1)(a).

**“prescribed overseas jurisdiction”** has the meaning given by the *Family Law Act 1975* (Cwlth).<sup>1</sup>

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1 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).

**‘2A 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.’.

**7 Amendment of s 3 (All children to be of equal status)**

Section 3(4)—

*omit.*

**8 Amendment and relocation of s 4 (Instruments executed and intestacies that take place before the commencement of this Act)**

(1) Section 4, heading—

*omit, insert—*

**‘4 Documents executed before commencement of Act’.**

(2) Section 4(1), ‘instruments’—

*omit, insert—*

‘documents’.

(3) Section 4(2), ‘an instrument’—

*omit, insert—*

‘a document’.



(4) Before section 4(3), as heading—

*insert—*

**‘4A Intestacies taking place before commencement of Act’.**

(5) Section 4(3)—

*renumber* as section 4A.

(6) Sections 4 and 4A—

*relocate* and *renumber*, in part 5, division 1 (as inserted by this Act), as sections 22 and 23.

**9 Omission of s 5 (Presumption as to parenthood)**

Section 5—

*omit.*

**10 Amendment of s 7 (Recognition of paternity)**

Section 7(1)(b), from ‘(whether’ to ‘otherwise)’—

*omit.*

**11 Omission of s 8 (Evidence and proof of paternity)**

Section 8—

*omit.*

**12 Amendment of s 10 (Declaration of paternity)**

Section 10—

*insert—*

‘(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.’.

### **13 Replacement of s 11 (Order requiring evidence concerning paternity to be given)**

Section 11—

*omit, insert—*

#### **‘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*.

### ‘11A Parentage testing procedure reports

‘(1) A person who carries out, or helps in the carrying out of, a parentage testing procedure under a parentage testing order 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 the procedure (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 person who prepared the report to give a written statement explaining or expanding on any statement made in the report.

‘(5) The person who prepared the report 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 person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the court and give evidence in relation to the report.

‘(8) The court may make an order under subsection (6)—

(a) on its own initiative; or

(b) on the request of a party to the proceeding.’.

#### **14 Insertion of new division headings in pt 3**

(1) Part 3, before section 13—

*insert—*

*‘Division 1—Application’.*

(2) Before section 15—

*insert—*

*‘Division 2—Parentage presumptions of children conceived by fertilisation procedures’.*

#### **15 Amendment of s 13 (Interpretation)**

(1) Section 13, heading—

*omit, insert—*

**‘13 Interpretation for div 2’.**

(2) Section 13, ‘Part’—

*omit, insert—*

‘division’.

(3) Section 13—

*relocate and renumber, in division 2, as section 14A.*

**16 Amendment of s 14 (Application)**

(1) Section 14, ‘this Part’—

*omit, insert—*

‘division 2’.

(2) Section 14—

*insert—*

‘(3) 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.’.

**17 Insertion of new pt 3, divs 3 and 4**

Part 3, after section 18—

*insert—*

***‘Division 3—Other parentage presumptions*****‘18A 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.

### ‘18B 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.

### ‘18C 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;<sup>1</sup>

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1 *Maintenance Act 1965*, section 14 (Court may order unmarried father to maintain child) or 16 (Court may order payment of preliminary expenses etc.)

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

#### **'18D Paternity presumption arising from acknowledgments**

- '(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.

#### **'18E 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***

#### **'18F Rebuttal of presumptions**

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

#### **'18G 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.
- '(2) However, if the conflicting presumptions include a presumption under section 18C(1), the presumption under section 18C(1) prevails.<sup>17</sup>

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1 Section 18C (Parentage presumption arising from court finding)

**18 Replacement of s 19 (Regulations)**

Section 19—

*omit, insert—*

**‘19 Approval of forms**

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

**‘20 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.

**‘21 Numbering and renumbering of Act**

‘In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.

**‘PART 5—TRANSITIONAL PROVISIONS**

*‘Division 1—Transitional provisions for Status of Children Act 1978’.*

**19 Insertion of new pt 5 div 2**

After section 23—

*insert—*



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

**‘24 Proceedings**

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

**PART 3—AMENDMENT OF MAINTENANCE ACT 1965**

**20 Act amended in pt 3**

This part amends the *Maintenance Act 1965*.

**21 Omission of pt 2, div 3, sdiv 2**

Part 2, division 3, subdivision 2—  
*omit.*

**SCHEDULE****MINOR AND CONSEQUENTIAL AMENDMENTS**

section 3

**1 Part 2, heading—***relocate* to before section 3.**2 Sections 3(2) and (3) and 9(2) and (4)(b), ‘any instrument’—***omit, insert—*

‘a document’.

**3 Sections 6(2), 7(1), 9(2) and (3), ‘an instrument’—***omit, insert—*

‘a document’.

**4 Sections 7(3), 9(3) and 10(1), ‘or a Judge thereof’—***omit.***5 Section 9, ‘instruments’—***omit, insert—*

‘documents’.

**6 Section 9(1), from ‘An instrument’ to ‘thereof’—***omit, insert—*

‘A document mentioned in section 18D or a copy of it’.

## SCHEDULE (continued)

- 7 Section 9(3), ‘8(2)’—**  
*omit, insert—*  
‘18D’.
- 8 Section 9(4), ‘a Judge of the Supreme Court sitting in chambers’—**  
*omit, insert—*  
‘the court’.
- 9 Section 9(4B) and (4C), ‘Judge’—**  
*omit, insert—*  
‘court’.
- 10 Section 10(1), ‘by way of originating summons’—**  
*omit.*
- 11 Section 10(1), (2), (3) and (4), ‘or Judge’—**  
*omit.*
- 12 Section 10(1), ‘, his or her’—**  
*omit.*
- 13 Section 12(1), ‘8(2)’—**  
*omit, insert—*  
‘18D’.

## SCHEDULE (continued)

**14 Section 12(2), ‘8(1)’—***omit, insert—*

‘18B’.

**15 Section 12(2), before ‘shall’—***insert—*

‘or a law of the Commonwealth, a State or a prescribed overseas jurisdiction’.