



AUSTRALIAN CAPITAL TERRITORY

Birth (Equality of Status) (Amendment) Act 1998

No. 42 of 1998

An Act to amend the *Birth (Equality of Status) Act 1988* and for related purposes

[Notified in ACT Gazette No. 41: 14 October 1998]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1. Short title

This Act may be cited as the *Birth (Equality of Status) (Amendment) Act 1998*.

2. Commencement

(1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

3. Principal Act

In this Act, “Principal Act” means the *Birth (Equality of Status) Act 1988*.¹

4. Interpretation

Section 3 of the Principal Act is amended—

- (a) by inserting “the Commonwealth,” after “law of” in the definition of “register of births”; and
- (b) by inserting “the Commonwealth,” after “law of” in paragraph (b) of the definition of “register of parentage information”.

5. Substitution

Section 7 of the Principal Act is repealed and the following sections are substituted:

“7. Presumptions of parentage arising from marriage

“(1) Where a child is born to a woman while she is married, the child shall be presumed to be a child of the woman and her husband.

“(2) Where a child is born to a woman within 44 weeks after—

- (a) the termination by death of a marriage to which the woman was a party; or
- (b) the annulment of a purported marriage to which the woman was a party;

the child shall be presumed to be the child of the woman and the husband or purported husband, as the case requires.

“(3) Where—

- (a) the parties to a marriage have separated and then resume cohabitation;
- (b) within 3 months after the resumption of cohabitation they separate again;
- (c) after the separation referred to in paragraph (b) the marriage is dissolved; and
- (d) a child is born to the woman—
 - (i) within 44 weeks after the separation referred to in paragraph (b); and
 - (ii) after the dissolution of the marriage;

the child shall be presumed to be a child of the woman and the husband.

“7A. Presumption of paternity arising from cohabitation

Where—

- (a) a child is born to a woman; and
- (b) at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the woman cohabited with a man to whom she was not married;

the child shall be presumed to be a child of the man.”.

6. Substitution

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

“9. Presumptions of parentage arising from findings of courts

“(1) Where—

- (a) during the lifetime of a particular person, a court of the Territory, the Commonwealth, a State or another Territory has—
 - (i) found expressly that the person is a parent of a particular child; or
 - (ii) made a finding that it could not have made unless the person was a parent of a particular child; and
- (b) the finding has not been altered, set aside or reversed;

the person shall be conclusively presumed to be a parent of the child.

“(2) Where—

- (a) after the death of a particular person, a court of the Territory, the Commonwealth, a State or another Territory has—
 - (i) found expressly that the person was a parent of a particular child; or
 - (ii) made a finding that it could not have made unless the person was a parent of a particular child; and
- (b) the finding has not been altered, set aside or reversed;

the person shall be presumed to have been a parent of the child.

“(3) Where, after the commencement of this section, a court of the Territory makes an order of a kind referred to in subsection (1) or (2), the court may direct that a copy of the order be forwarded to such person as the court thinks fit.”.

7. Insertion

After section 10 of the Principal Act the following section is inserted:

“10A. Acknowledgments of paternity outside the Territory

Where—

- (a) under a law of the Commonwealth, a State, another Territory or a prescribed jurisdiction outside Australia, a man has executed an instrument acknowledging that he is the father of a specified child; and
- (b) the instrument has not been annulled or otherwise dealt with;

the man shall be presumed to be the father of the child.”.

8. Repeal

Section 13 of the Principal Act is repealed.

9. Substitution

Section 16 of the Principal Act is repealed and the following sections are substituted:

“16. Presumptions—whether conclusive or rebuttable

“(1) A presumption arising under subsection 9 (1) is not rebuttable.

“(2) Any other presumption arising under this Part is rebuttable by proof on a balance of probabilities.

“16A. Conflicting presumptions

“(1) This section applies where—

- (a) 2 or more presumptions in respect of the parentage of a child, being presumptions arising by virtue of laws in force in the Territory, are relevant in any proceedings; and
- (b) those presumptions conflict with each other.

“(2) Where—

- (a) this section applies; and
- (b) 1 of the presumptions referred to in subsection (1) arises by virtue of subsection 9 (1);

that presumption prevails over any other presumption.

“(3) Where—

- (a) this section applies; and

- (b) 1 of the presumptions referred to in subsection (1) arises by virtue of the *Artificial Conception Act 1985*;

that presumption prevails over any other presumption, other than a presumption that arises by virtue of subsection 9 (1).

“(4) Where—

- (a) this section applies; and
(b) neither or none of the presumptions referred to in subsection (1) is of the kind referred to in subsection (2) or (3);

the presumption that appears to the court to be the more or most likely to be correct shall prevail.”.

10. Notice to carry out medical tests

Section 17 of the Principal Act is amended by inserting after subsection (8) the following subsection:

“(8A) The regulations may make provisions in relation to—

- (a) the carrying out of specified medical tests; and
(b) the preparation of reports in relation to the information obtained as the result of the carrying out of the tests.”.

11. Reports of medical tests

Section 18 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) In subsection (1) the reference to a report shall be read as a reference to a report prepared in accordance with the regulations that relates to information obtained as a result of carrying out a test in accordance with the regulations.”.

12. Amendment of the *Administration and Probate Act 1929*

Section 49E of the *Administration and Probate Act 1929* is amended by omitting “Part III” and substituting “section 8”.

13. Transitional

The Principal Act as in force immediately before the commencement of this Act continues to apply in relation to a legal proceeding begun before that commencement.

NOTES

Principal Act

1. Reprinted as at 30 November 1996. See also Acts Nos. 96 and 113, 1997.

Section headings

On the day on which the *Birth (Equality of Status) Act 1988* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, the heading to the following section of the Principal Act is altered as set out in the following table:

Section	Alteration
10	Omit the heading, substitute the following heading: Acknowledgment of paternity within the Territory

[Presentation speech made in Assembly on 25 June 1998]