



ANNO TRICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1984

No. 102 of 1984

An Act to amend the Family Relationships Act, 1975; and to make related amendments to the Adoption of Children Act, 1966, the Community Welfare Act, 1972, the Guardianship of Infants Act, 1940 and the Sex Discrimination Act, 1975.

[Assented to 20 December 1984]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. (1) This Act may be cited as the "Family Relationships Act Amendment Act, 1984".

(2) The Family Relationships Act, 1975, is in this Act referred to as "the principal Act".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Amendment of
s. 3—
Arrangement of
Act.

3. Section 3 of the principal Act is amended by inserting after the item:

PART II—CHILDREN

the item:

PART IIA—CHILDREN CONCEIVED FOLLOWING MEDICAL PROCEDURES.

Amendment of
s. 5—
Interpretation.

4. Section 5 of the principal Act is amended—

(a) by striking out the definition of "child born outside marriage" and substituting the following definition:

"child born outside marriage" includes a child born to a married woman of which a man other than her lawful spouse is the father;

and

(b) by inserting after the definition of "the Court" the following definition:

“father” or “natural father”, of a child, includes a person who is presumed to be the father of the child under Part IIA.:

5. Section 8 of the principal Act is amended by striking out the passage “A child” and substituting the passage “Subject to Part IIA, a child”.

Amendment of s. 8—
Presumption as to parenthood.

6. The following Part is inserted after section 10 of the principal Act:

Insertion of new Part IIA.

PART IIA

CHILDREN CONCEIVED FOLLOWING MEDICAL PROCEDURES

10a. (1) In this Part—

Interpretation.

“fertilization procedure” means—

(a) artificial insemination;

or

(b) the procedure of fertilizing an ovum outside the body and transferring the fertilized ovum into the uterus:

“married woman” or “wife” includes a woman who is living with a man as his wife on a genuine domestic basis; and “husband” has a correlative meaning.

(2) A reference in this Part to the “husband” of a woman shall, where the woman has a lawful spouse but is living with some other man as his wife on a genuine domestic basis, be construed as a reference to the man with whom she is living and not the lawful spouse.

10b. (1) Subject to this section, this Part applies—

Application of Part.

(a) in respect of a fertilization procedure carried out before or after the commencement of the Family Relationships Act Amendment Act, 1984, either within or outside the State;

and

(b) in respect of a child born before or after commencement of the Family Relationships Act Amendment Act, 1984, either within or outside the State.

(2) This Part does not apply in respect of a fertilization procedure carried out on or after the thirty-first day of December 1986, either within or outside the State;

(3) Nothing in this Part affects the vesting of property in possession or in interest before the commencement of the Family Relationships Act Amendment Act, 1984.

10c. A woman who gives birth to a child is, for the purposes of the law of the State, the mother of the child, notwithstanding that the child was conceived by the fertilization of an ovum taken from some other woman.

Rule relating to maternity.

10d. (1) Where a married woman undergoes, with the consent of her husband, a fertilization procedure in consequence of which she

Rule relating to paternity.

becomes pregnant, then, for the purposes of the law of the State, the husband—

(a) shall be conclusively presumed to have caused the pregnancy;

and

(b) is the father of any child born as a result of the pregnancy.

(2) In every case in which it is necessary to determine whether a husband consented to his wife undergoing a fertilization procedure, that consent shall be presumed, but the presumption is rebuttable.

Donor of genetic material.

10e. (1) Where—

(a) a woman becomes pregnant in consequence of a fertilization procedure;

and

(b) the ovum used for the purposes of the procedure was taken from some other woman,

then, for the purposes of the law of the State, the woman from whom the ovum was taken is not the mother of any child born as a result of the pregnancy.

(2) Where—

(a) a woman becomes pregnant in consequence of a fertilization procedure;

and

(b) a man, (not being the woman's husband) produced sperm used for the purposes of the procedure,

then, for the purposes of the law of the State, the man referred to in paragraph (b)—

(c) shall be conclusively presumed not to have caused the pregnancy;

and

(d) is not the father of any child born as a result of the pregnancy.

Amendment of s. 11—
Putative spouses.

7. Section 11 of the principal Act is amended by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) a child, of which he and that other person are the parents, has been born (whether or not the child is still living at the date referred to above).

Amendment of certain Acts.

8. (1) The Adoption of Children Act, 1966, is amended as indicated in the first part of the schedule to this Act.

(2) The Community Welfare Act, 1972, is amended as indicated in the second part of the schedule to this Act.

(3) The Guardianship of Infants Act, 1940, is amended as indicated in the third part of the schedule to this Act.

(4) The Sex Discrimination Act, 1975, is amended as indicated in the fourth part of the schedule to this Act.

THE SCHEDULE

PART I

AMENDMENT OF THE ADOPTION OF CHILDREN ACT, 1966

Provision Affected	How Affected
Section 4	By striking out from subsection (1) the definition of "child born outside marriage" and substituting the following definition: "child born outside marriage" includes a child born to a married woman of which a man other than her lawful spouse is the father..

PART II

AMENDMENT OF THE COMMUNITY WELFARE ACT, 1972

Provision Affected	How Affected
Section 6	By striking out from subsection (1) the definition of "child born outside marriage" and substituting the following definition: "child born outside marriage" includes a child born to a married woman of which a man other than her lawful spouse is the father..

PART III

AMENDMENT OF THE GUARDIANSHIP OF INFANTS ACT, 1940

Provision Affected	How Affected
Section 3	By striking out from subsection (1) the definition of "child born outside marriage" and substituting the following definition: "child born outside marriage" includes a child born to a married woman of which a man other than her lawful spouse is the father..

PART IV

AMENDMENT OF THE SEX DISCRIMINATION ACT, 1975

Provision Affected	How Affected
After section 37 Fertilization procedures.	Insert new section as follows: 37a. (1) A reference in this Act to the provision of a service does not include, and shall be deemed never to have included, the carrying out of a fertilization procedure. (2) In this section— "fertilization procedure" means— (a) artificial insemination; or (b) the procedure of fertilizing an ovum outside the body and transferring the fertilized ovum into the uterus.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor