

Status of Children Amendment Act 2004

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The Parliament of New Zealand enacts as follows:**1 Title**

- (1) This Act is the Status of Children Amendment Act 2004.
- (2) In this Act, the Status of Children Act 1969 is called "the principal Act".

2 Commencement

This Act comes into force on 1 July 2005.

Amendments to principal Act**3 Title repealed**

The Title of the principal Act is repealed.

4 New Part heading and heading and section 2A inserted

The principal Act is amended by inserting, immediately before section 3, the following Part heading and heading and section:

“Part1**“Status of children generally**

“Children of equal status whether or not parents are or have been married to each other

“2A Purpose of sections 3 and 4

The purpose of sections 3 and 4 is to remove the legal disabilities of children born out of wedlock.”

5 New heading inserted

The principal Act is amended by inserting, immediately before section 4, the following heading:

“Prior instruments and intestacies”.

6 New heading inserted

The principal Act is amended by inserting, immediately before section 5, the following heading:

“Presumptions as to parenthood”.

7 New heading inserted

The principal Act is amended by inserting, immediately before section 5A, the following heading:

“Grant of letters of administration and distribution of estates and property held upon trust”.

8 Warning notices

(1) Section 6C(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) advising the person served of his or her right to seek to establish the relationship in question by applying to a Family Court or to the High Court under section 10 for a declaration of paternity; and”.

(2) Section 6C(1)(b) of the principal Act is amended by omitting the words “the Court”, and substituting the words “a Family Court or to the High Court”.

9 New heading inserted

The principal Act is amended by inserting, immediately before section 7, the heading:

“Paternity”.

10 Recognition of paternity

Section 7(3)(b) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraph:

- “(ii) after the expiration of any notice under section 6C(1) and without notice of any declaration of paternity made by a Family Court or by the High Court under section 10.”

11 Instruments of acknowledgment may be filed with Registrar-General

Section 9 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

- “(3) If a Family Court or the High Court makes a declaration under section 10(2) or (3), or a Family Court makes a paternity order under the Family Proceedings Act 1980,—
- “(a) the Registrar of the Court must forward a copy of the declaration or order, as the case may require, to the Registrar-General for filing in his or her office under this section; and
 - “(b) on receipt of any such copy, the Registrar-General must file it accordingly as if it were an instrument of the kind described in section 8(2).”

12 New section 10 substituted

The principal Act is amended by repealing section 10, and substituting the following section:

“10 Declaration as to paternity

- “(1) In this section, **eligible person** means a person—
- “(a) who is a woman and who alleges that a named person is the father of her child; or
 - “(b) who alleges that the relationship of father and child exists between the person and another named person; or
 - “(c) who wishes to have it determined whether the relationship of father and child exists between 2 named persons, and has a proper interest in the result.
- “(2) A Family Court or the High Court may make a declaration of paternity (whether the alleged father or the alleged child or both of them are living or dead) if—
- “(a) an eligible person applies to the Court for the declaration; and
 - “(b) it is proved to the Court’s satisfaction that the relationship exists.

- “(3) A Court considering an application under subsection (2) may, either on its own initiative or on an application for the purpose by a party to the proceedings, make a declaration of non-paternity (whether the alleged father or the alleged child or both of them are living or dead) if it is proved to the Court’s satisfaction that the relationship does not exist.
- “(4) If a declaration of paternity under subsection (2) is made after the death of the father or of the child, the Court may, at the same or any later time, make a declaration determining, for the purposes of section 7(1)(b), whether any of the requirements of section 7(1)(b) have been satisfied.
- “(5) If an application under subsection (2) is made—
- “(a) to a Family Court, the provisions of the Family Proceedings Act 1980 (except sections 47 to 50) apply to the application as if it were an application for a paternity order under section 47 of that Act:
- “(b) to the High Court, the provisions of the Declaratory Judgments Act 1908 apply to the application.
- “(6) Every question of fact that arises in applying any of subsections (2) to (4) must be decided on a balance of probabilities.”

13 New heading inserted

The principal Act is amended by inserting, immediately before section 11, the heading:

“Miscellaneous provisions”.

14 New Part 2 inserted

The principal Act is amended by inserting, after section 12, the following Part:

“Part2

“Status of children conceived as result of AHR procedures

“Preliminary provisions

“13 Purpose of this Part

The purpose of this Part is to—

- “(a) remove uncertainty about the status of children conceived as a result of AHR procedures; and

- “(b) replace the Status of Children Amendment Act 1987 with provisions that continue the effects of that Act (except for the status of father without the rights and liabilities of a father), but also extend the status of parent to a woman living as a de facto partner of a birth mother.

“**14 Interpretation**

- “(1) In this Part, unless the context otherwise requires,—

“**AHR procedure** has the meaning given to it by section 14A

“**de facto partner** has the meaning given to it by section 9 of the Care of Children Act 2004

“**partner**,—

- “(a) in relation to a woman who is married and to whom paragraph (b) does not apply, means the woman’s husband; and

- “(b) in relation to a woman (**woman A**) who is married but is living with a man, or with another woman, as a de facto partner, means the man or other woman who is living with woman A as a de facto partner (and so does not mean woman A’s husband); and

- “(c) in relation to a woman (**woman A**) who is not married but is living with a man, or with another woman, as a de facto partner, means the man or other woman who is living with woman A as a de facto partner

“**partnered woman** means a woman who—

- “(a) is married; or

- “(b) is married, but is living with a man, or with another woman, as a de facto partner; or

- “(c) is not married but is living with a man, or with another woman, as a de facto partner

“**woman acting alone** means a woman—

- “(a) who is not a partnered woman; or

- “(b) who is a partnered woman, but has undergone an AHR procedure without her partner’s consent.

- “(2) A woman who is not the birth mother of a child but who, by operation of this Part, is a parent of the child must, for the purposes of an enactment or rule of law (other than this Part) that refers to, or contemplates, a mother and a father of, or 2

parents of, a child, be treated so far as practicable in the same manner as the father of, or as the other parent of, the child.

- “(3) A reference in any of sections 17 to 22 to ‘any child of the pregnancy’ is a reference to ‘any child of the pregnancy (whether born or unborn)’.

“Compare: 1987 No 185 s 2

“**15 AHR procedure defined**

- “(1) In this Part, unless the context otherwise requires, **AHR procedure** means one of the following assisted human reproduction procedures (regardless of where, or how (for example, with whose help) the procedure is carried out):

“(a) an artificial insemination procedure:

“(b) a donor semen implantation procedure:

“(c) a donor ovum or donor embryo implantation procedure:

“(d) a donor semen intra-fallopian transfer procedure:

“(e) a donor ovum intra-fallopian transfer procedure:

“(f) a donor embryo intra-fallopian transfer procedure:

“(g) an embryo (donor semen) intra-fallopian transfer procedure:

“(h) an embryo (donor ovum) intra-fallopian transfer procedure.

- “(2) In this section,—

“**artificial insemination procedure** means a procedure of artificial insemination of a woman where the semen used for the artificial insemination—

“(a) is produced by a man who is not her partner; or

“(b) is a mixture of semen part of which is produced by a man who is not her partner and part of which is produced by her partner

“**donor semen implantation procedure** means a procedure of implanting in the womb of a woman an embryo derived from an ovum produced by her and fertilised outside her body by the use of semen produced by a man who is not her partner

“**donor ovum or donor embryo implantation procedure** means a procedure of implanting in the womb of a woman (**woman A**) an embryo derived from an ovum produced by another woman (**woman B**) (whether or not woman B is

woman A's partner), being an ovum that has been fertilised by the use of semen produced—

“(a) by woman A's partner; or

“(b) by a man who is not woman A's partner

“**donor semen intra-fallopian transfer procedure** means a procedure of transferring into the fallopian tubes of a woman an ovum produced by her together with semen produced by a man who is not her partner

“**donor ovum intra-fallopian transfer procedure** means a procedure of transferring into the fallopian tubes of a woman (**woman A**) an ovum produced by another woman (**woman B**) (whether or not woman B is woman A's partner) together with semen produced—

“(a) by woman A's partner; or

“(b) by a man who is not woman A's partner

“**donor embryo intra-fallopian transfer procedure** means a procedure of transferring into the fallopian tubes of a woman (**woman A**) an embryo derived from an ovum produced by another woman (**woman B**) (whether or not woman B is woman A's partner), being an ovum that has been fertilised by the use of semen produced by a man who is not woman A's partner

“**embryo (donor semen) intra-fallopian transfer procedure** means a procedure of transferring into the fallopian tubes of a woman (**woman A**) an embryo derived from an ovum produced by woman A, being an ovum that has been fertilised by the use of semen produced by a man who is not woman A's partner

“**embryo (donor ovum) intra-fallopian transfer procedure** means a procedure of transferring into the fallopian tubes of a woman (**woman A**) an embryo derived from an ovum produced by another woman, being an ovum that has been fertilised by the use of semen produced by woman A's partner.

“**16 Application of Part**

“(1) This Part applies in respect of a pregnancy referred to in any of sections 17 to 22,—

“(a) whether the pregnancy occurred before or after the commencement of this Part:

- “(b) whether or not the pregnancy resulted from a procedure carried out in New Zealand.
 - “(2) This Part applies in respect of a child born of a pregnancy referred to in any of sections 17 to 22,—
 - “(a) whether the child was born before or after the commencement of this Part:
 - “(b) whether or not the child was born in New Zealand.
 - “(3) Nothing in this Part affects the vesting in possession or in interest of any property that occurred before the commencement of this Part.
- “Compare: 1987 No 185 s 3

“Rule about maternity

“17 Woman who becomes pregnant is mother even though ovum is donated by another woman

- “(1) This section applies to the following situation:
 - “(a) a woman (**woman A**) becomes pregnant as a result of an AHR procedure:
 - “(b) the ovum or embryo used for the procedure was produced by or derived from an ovum produced by another woman (**woman B**).
- “(2) In that situation, woman A is, for all purposes, the mother of any child of the pregnancy.

“Rule about when non-donor partner is parent

“18 When woman’s non-donor partner is parent, and non-partner semen donor or ovum donor is not parent

- “(1) This section applies to the following situation:
 - “(a) a partnered woman (**woman A**) becomes pregnant as a result of an AHR procedure:
 - “(b) the semen (or part of the semen) used for the procedure was produced by a man who is not woman A’s partner or, as the case requires, the ovum or embryo used for the procedure was produced by, or derived from an ovum produced by, a woman who is not woman A’s partner:
 - “(c) woman A has undergone the procedure with her partner’s consent.

- “(2) In that situation, woman A’s partner is, for all purposes, a parent of any child of the pregnancy.

“Rules about donors of genetic material

“19 Partnered woman: ovum donor not parent unless mother’s partner at time of conception

- “(1) This section applies to the following situation:
- “(a) a partnered woman (**woman A**) becomes pregnant as a result of an AHR procedure:
 - “(b) the ovum or embryo used for the procedure was produced by, or derived from an ovum produced by, another woman (**woman B**).
- “(2) In that situation, woman B is not, for any purpose, a parent of any child of the pregnancy unless woman B is, at the time of conception, woman A’s partner.

“20 Woman acting alone: non-partner ovum donor not parent unless later becomes mother’s partner

- “(1) This section applies to the following situation:
- “(a) a woman acting alone (**woman A**) becomes pregnant as a result of an AHR procedure:
 - “(b) the ovum or embryo used for the procedure was produced by or derived from an ovum produced by another woman (**woman B**) who is not woman A’s partner.
- “(2) In that situation, woman B is not, for any purpose, a parent of any child of the pregnancy unless woman B becomes, after the time of conception, woman A’s partner (in which case the rights and liabilities of woman B, and of any child of the pregnancy, are determined in accordance with section 23).

“21 Partnered woman: non-partner semen donor not parent

- “(1) This section applies to the following situation:
- “(a) a partnered woman becomes pregnant as a result of an AHR procedure:
 - “(b) the semen (or part of the semen) used for the procedure was produced by a man (**man A**) who is not her partner.
- “(2) In that situation, man A is not, for any purpose, a parent of any child of the pregnancy.

“22 Woman acting alone: non-partner semen donor not parent unless later becomes mother’s partner

“(1) This section applies to the following situation:

“(a) a woman acting alone becomes pregnant as a result of an AHR procedure:

“(b) the semen used for the procedure was produced by a man (**man A**) who is not her partner.

“(2) In that situation, man A is not, for any purpose, a parent of any child of the pregnancy unless man A becomes, after the time of conception, the woman’s partner (in which case the rights and liabilities of man A, and of any child of the pregnancy, are determined in accordance with section 24).

“Rights and liabilities if non partner donor later becomes mother’s partner

“23 Non-partner ovum donor

If, in the situation to which section 20 applies, woman B becomes, after the time of conception, woman A’s partner,—

“(a) woman B has, in relation to any child of the pregnancy, the rights and liabilities of a parent of the child, but, in the absence of agreement to the contrary, those liabilities do not include liabilities incurred before woman B becomes woman A’s partner:

“(b) any child of the pregnancy has, in relation to woman B, the rights and liabilities of a child of woman B, but, in the absence of agreement to the contrary, those liabilities do not include liabilities incurred before woman B becomes woman A’s partner.

“24 Non-partner semen donor

If, in the situation to which section 22 applies, man A becomes, after the time of conception, the woman’s partner,—

“(a) man A has, in relation to any child of the pregnancy, the rights and liabilities of a parent of the child, but, in the absence of agreement to the contrary, those liabilities do not include liabilities incurred before man A becomes the woman’s partner:

“(b) any child of the pregnancy has, in relation to man A, the rights and liabilities of a child of man A, but, in the

absence of agreement to the contrary, those liabilities do not include liabilities incurred before man A becomes the woman's partner.

“Compare: 1987 No 185 s 18

“25 Only first non-partner donor to later become mother's partner becomes parent

Despite sections 20(2) and 22(2), a person cannot become a parent of a child under one of those provisions if another person has already done so through the application of the other of those provisions.

“Miscellaneous provisions

“26 Conflicting evidence of paternity

Sections 18, 21, and 22 have effect despite—

- “(a) any conflicting evidence under section 8 that the man who produced the semen was the father of the child of the pregnancy:
- “(b) any conflicting declaration of paternity made under section 10 that the man who produced the semen was the father of the child of the pregnancy:
- “(c) any other evidence that the man who produced the semen was the father of the child of the pregnancy.

“Compare: 1987 No 185 s 16

“27 Partner's consent is presumed

- “(1) In proceedings in which this Part is relevant, the consent of a partner (**partner A**) to the carrying out on his or her partner (**partner B**) of an AHR procedure that involves genetic material from a person who is not partner A, is, in the absence of evidence to the contrary, presumed.

- “(2) Every question of fact that arises in applying subsection (1) must be decided on a balance of probabilities.
“Compare: 1987 No 185 s 17.”

Amendments to other Acts

15 Births, Deaths, and Marriages Registration Act 1995 amended

- (1) Section 15(3)(b)(iv) of the Births, Deaths, and Marriages Registration Act 1995 is amended by inserting, before the words “the High Court”, the words “a Family Court or”.
- (2) Section 15(6) of the Births, Deaths, and Marriages Registration Act 1995 is amended by inserting, after the words “declaration made by”, the words “a Family Court or by”.

16 Child Support Act 1991 amended

Section 7(4) of the Child Support Act 1991 is consequentially amended—

- (a) by omitting from paragraph (a) the expression “medical procedure to which the Status of Children Amendment Act 1987 applies”, and substituting the expression “AHR procedure to which Part 2 of the Status of Children Act 1969 applies” ; and
- (b) by omitting from paragraph (b) the words “does not have the rights and liabilities of a father or mother of the child”, and substituting the words “is not the mother of the child, or a person who has the rights and liabilities of a parent of the child,”.

17 Family Proceedings Act 1980 amended

Section 51 of the Family Proceedings Act 1980 is amended by repealing subsection (1), and substituting the following subsection:

- “(1) On hearing an application for a paternity order made under section 47 in respect of a child, the Family Court,—
- “(a) must, if it is satisfied that the respondent is the father of the child, make an order declaring that the respondent is the father of the child; and

“(b) may, if it is satisfied (either on its own initiative or on an application for the purpose by a party to the proceedings) that the respondent is not the father of the child, make an order declaring that the respondent is not the father of the child.”

Repeal

18 Status of Children Amendment Act 1987 repealed

The Status of Children Amendment Act 1987 (1987 No 185) is repealed.

Legislative history

4 November 2004

Divided from Care of Children Bill (Bill 54-2) as
Bill 54-3A

9 November 2004

Third reading
