



Status of Children Act 2012

Act No. 12 of 2012

Table of Contents

Status of Children Bill 2012	1
Part 1 – Preliminary	1
1. Name of Act.....	1
2. Commencement	1
3. Definitions.....	1
4. Application of Act.....	2
Part 2 – Status of children and dispositions of property	2
5. All children are of equal status	2
6. Construction of dispositions of property made on or after the Commencement	2
7. Rights of exnuptial children and their relatives on intestacy	3
Part 3 – Establishing parentage	3
Division 1 – Parentage presumptions	3
8. Presumptions of parentage arising from marriage	3
9. Presumption of paternity arising from cohabitation	4
10. Presumptions of parentage arising from registration of birth	4
11. Presumption of parentage arising from findings of courts.....	4
12. Presumption of parentage arising from acknowledgments	4
13. Presumptions of parentage arising out of use of fertilisation procedures	4
14. Rebuttal of parentage presumptions.....	5
15. Conflicting rebuttable parentage presumptions	5
16. Conflicts involving irrebuttable parentage presumptions	5
17. Parentage presumptions cannot be relied on by prosecutors	6
Division 2 – Acknowledgments of paternity	6
18. Execution of instrument of acknowledgment	6
19. Annulment of paternity acknowledgments	6
Division 3 – Declarations of parentage	6
20. Applications for declarations in the Supreme Court.....	6
21. Annulment of declaration of parentage.....	7
Division 4 – Evidence of court findings and paternity acknowledgments	7
22. Admissibility of court findings and paternity acknowledgments	7
Division 5 – Hearings under divisions 2 and 3	8
23. Conduct of hearings	8
24. Offence: publication of identity of participants in hearing	8

Division 6 – Parentage evidence	8
25. Orders for carrying out of parentage testing procedures	8
26. Orders associated with parentage testing orders	8
27. Orders made against children under 18 years of age	9
28. Effect of non-compliance by adult with an order made under this Part	9
29. No liability if parent or guardian consents.....	9
30. Reports on parentage testing procedures	9
31. Offence: Personating another in or proffering another child for a parentage testing procedure.....	10
32. Offence: Taking of bodily sample by unqualified persons	10
33. Court orders for separate representation of child.....	10
Part 4 – Miscellaneous	10
34. Proceedings for offences	10
35. Regulations	11

Status of Children Act 2012

Act No. 12 of 2012

An Act concerning the legal rights of exnuptial children, parentage and for related purposes.

[Assented to 4 December 2012]

Part 1 – Preliminary

1. Name of Act

This Act is the *Status of Children Act 2012*.

2. Commencement

This Act commences upon notice of assent being published in the Gazette.

3. Definitions

(1) In this Act—

Births Register means the Register referred to in Part 3 of the *Registrations of Births, Deaths and Marriages Act 1963*.

bodily sample includes any one or more of the following—

- (a) a blood sample,
- (b) a tissue sample,
- (c) a sperm sample,
- (d) any other sample of material obtained from a human body.

declaration of parentage means a declaration under section 20.

de facto partner is defined in section 3 of the *De Facto Relationships Act 2005*.

fertilisation procedure means—

- (a) the artificial insemination of a woman, or
- (b) the procedure of transferring to a woman's body an ovum (whether or not produced by her) fertilised outside her body, or
- (c) the procedure of transferring to a woman's body an ovum (whether or not produced by her) or both the ovum and sperm to enable fertilisation of the ovum to occur in her body, or
- (d) any other procedure for the assisted conception of children that is prescribed by the regulations.

formal paternity acknowledgment means a paternity acknowledgment executed under section 18.

husband includes a husband under a void or voidable marriage.

married includes married under a void marriage and under a voidable marriage that has been annulled by a court.

parentage testing order means an order made under section 25.

parentage testing procedure means a medical procedure prescribed, or included in a class of medical procedures prescribed, by the regulations for the purposes of this definition.

prescribed court means a court of any State or Territory, a federal court, or a court of a prescribed overseas jurisdiction.

prescribed overseas jurisdiction means any country, or part of a country, outside Australia that is prescribed by the regulations for the purposes of the provision in which the expression is used.

Registrar means the Registrar of Births, Deaths and Marriages holding office as such under Part 2 of the *Registration of Births, Deaths and Marriages Act 1963*.

Supreme Court or **Court** means the Supreme Court of Norfolk Island.

wife includes a wife under a void or voidable marriage.

(2) A reference in this or any other Act—

- (a) to an exnuptial child or to a child or person born outside marriage (however expressed) is 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, and
- (b) to a child or person born in marriage or in lawful wedlock (however expressed) is 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 who subsequently married each other.

4. Application of Act

(1) This Act applies in respect of a person—

- (a) whether born in Norfolk Island or elsewhere, and
- (b) whether born before or after the commencement of this section, and
- (c) whether a minor or not, and
- (d) whether the person or the person's father or mother is or has ever been domiciled in Norfolk Island or not.

(2) Nothing in this Act affects the operation of section 9 of the *Adoption of Children Act 1932*.

(3) Nothing in this Act is intended to reduce or in any way derogate from any right or entitlement of a child under the *De Facto Relationships Act 2005*.

Part 2 – Status of children and dispositions of property

5. All children are of equal status

(1) For the purposes of any law of Norfolk Island by or under which the relationship between any person and the person's father and mother (or either of them) arises, that relationship and any other relationship (whether of consanguinity or affinity) between the person and another person is to be determined regardless of whether the person's parents are or have been married to each other.

(2) This section is subject to section 6.

6. Construction of dispositions of property made on or after the Commencement

(1) This section applies to the following dispositions only—

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

(2) Unless a contrary intention appears, in any disposition to which this section applies—

- (a) a reference (however expressed) to the child or children of a person includes a reference to an exnuptial child of whom that person is a parent, and
- (b) a reference (however expressed) to any person or persons related to another person (other than as a parent or child) includes a reference to anyone who is so related in fact regardless that the person related in fact, or some other person through whom the relationship is traced, is or was an exnuptial child.

(3) The use of any of the following words (or of any word or words having the same or a similar meaning) does not of itself indicate a contrary intention for the purposes of subsection (2)—

- (a) the words “legitimate” or “lawful” when used with reference to the child or children of a person or persons related to another person in some other way,
- (b) the words “married”, “husband” or “wife” when used with reference to the parent or parents of a person.

(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 abolished in respect of any disposition to which this section applies.

7. Rights of exnuptial children and their relatives on intestacy

(1) This section applies to rights under the intestacy of persons dying on or after the commencement of this Act.

(2) If any relative of an exnuptial child (including a parent of the child) dies intestate in respect of all or any of the relative’s real or personal property, the child (or any of the child’s issue if the child is dead) is entitled to take any interest in that property that the child (or the child’s issue) would have been entitled to take if the child’s parents had been married to each other when the child was born.

(3) If an exnuptial child dies intestate in respect of all or any of the child’s real or personal property, any relative of the child (including a parent of the child) is entitled to take any interest in that property that the relative would have been entitled to take if the parents of the child had been married to each other when the child was born.

(4) Nothing in this section affects the generality of section 5. However, this section does not (despite section 5) apply to any child who is an adopted person under an adoption order made or continued in force under the *Adoption of Children Act 1932*.

(5) The provisions of this section are in addition to and do not derogate from the rights of an exnuptial child under the *Administration and Probate Act 2006*.

Part 3 – Establishing parentage

Division 1 – Parentage presumptions

8. Presumptions of parentage arising from marriage

(1) A child born to a woman during a marriage to which she is a party is presumed to be a 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 the woman within 44 weeks after a purported marriage to which the woman is a party is annulled, the child is presumed to be a child of the woman and her purported husband.

(4) If—

- (a) the parties to a marriage separated at any time, and
- (b) after the separation, resumed cohabitation on one occasion, and
- (c) within 3 months after the resumption of cohabitation, they separated again and lived separately and apart, and
- (d) a child is born to the woman within 44 weeks after the end of the cohabitation, but after the dissolution of the marriage,

the child is presumed to be the child of the woman and her former husband.

(5) For the purposes of this section, a marriage is dissolved by a decree of dissolution or annulled by a decree of nullity on the making of the decree nisi.

9. Presumption of paternity arising from cohabitation

A child born to a woman is presumed to be a man's child if, at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the man and the woman cohabit but are not married.

10. Presumptions of parentage arising from registration of birth

A person is presumed to be a child's parent if the person's name is entered as the child's parent in the Births Register or a register of births or parentage information kept under a law of the Commonwealth, another State or a Territory or a prescribed overseas jurisdiction.

11. Presumption of parentage arising from findings of courts

- (1) A person is presumed to be a child's parent if—
 - (a) while the person is alive, a prescribed court has—
 - (i) found expressly that the person is the child's parent, or
 - (ii) made a finding that it could not have made unless the person was the child's parent, and
 - (b) the finding has not been altered, set aside or reversed.
- (2) A presumption arising under subsection (1) is irrebuttable.
- (3) A person is presumed to be a child's parent if—
 - (a) after the person dies, a prescribed court has—
 - (i) found expressly that the person was the child's parent, or
 - (ii) made a finding that it could not have made unless the person was the child's parent, and
 - (b) the finding has not been altered, set aside or reversed.
- (4) In this section, a reference to a finding of a prescribed court includes—
 - (a) a reference to a declaration of parentage, and
 - (b) a reference to a finding whether made before or after the commencement of this section.

12. Presumption of parentage arising from acknowledgments

- (1) A man is presumed to be a child's father if—
 - (a) under this Act or other law of Norfolk Island or a law of the Commonwealth, a State or another Territory or a prescribed overseas jurisdiction, the man executes a formal paternity acknowledgment or any other instrument acknowledging that he is the child's father, and
 - (b) the instrument has not been annulled or otherwise set aside.
- (2) This section extends to instruments executed before the commencement of this section.

13. Presumptions of parentage arising out of use of fertilisation procedures

- (1) When a married woman has undergone a fertilisation procedure as a result of which she becomes pregnant—
 - (a) her husband is presumed to be the father of any child born as a result of the pregnancy even if he did not provide any or all of the sperm used in the procedure, but only if he consented to the procedure, and
 - (b) the woman is presumed to be the mother of any child born as a result of the pregnancy even if she did not provide the ovum used in the procedure.

(2) When a woman who is the de facto partner of another woman has undergone a fertilisation procedure as a result of which she becomes pregnant—

- (a) the other woman is presumed to be a parent of any child born as a result of the pregnancy, but only if the other woman consented to the procedure, and
- (b) the woman who has become pregnant is presumed to be the mother of any child born as a result of the pregnancy even if she did not provide the ovum used in the procedure.

(3) If a woman (whether married or unmarried) becomes pregnant by means of a fertilisation procedure using any sperm obtained from a man who is not her husband, that man is presumed not to be the father of any child born as a result of the pregnancy.

(4) If a woman (whether married or unmarried) becomes pregnant by means of a fertilisation procedure using an ovum obtained from another woman, that other woman is presumed not to be the mother of any child born as a result of the pregnancy. This subsection does not affect the presumption arising under subsection (2)(a).

(5) Any presumption arising under subsections (1), (3) and (4) is irrebuttable.

(6) In any proceedings in which the operation of subsection (1) is relevant, a husband's consent to the carrying out of the fertilisation procedure is presumed.

(7) In any proceedings in which the operation of subsection (2) is relevant, the consent of a woman to the carrying out of a fertilisation procedure that results in the pregnancy of her de facto partner is presumed.

(8) In this section —

- (a) a reference to a married woman includes a reference to a woman who is the de facto partner of a man, and
- (b) a reference (however expressed) to the husband or wife of a person—
 - (i) is, in a case where the person is the de facto partner of a person of the opposite sex, a reference to that other person, and
 - (ii) does not, in that case, include a reference to the spouse (if any) to whom the person is actually married.

14. Rebuttal of parentage presumptions

(1) A presumption arising under this Division, or a parentage presumption arising under any other Act or rule of law, that is rebuttable, is rebuttable by proof on the balance of probabilities.

(2) Every presumption arising under this Division (except for a presumption arising under section 11(1) or 13(1), (3) and (4)) is a rebuttable presumption.

15. Conflicting rebuttable parentage presumptions

If two or more rebuttable presumptions referred to in section 14 conflict with each other and are not rebutted in any proceedings, the presumption that appears to the court to be more or most likely to be correct prevails.

16. Conflicts involving irrebuttable parentage presumptions

(1) If two or more irrebuttable presumptions arising under this Division conflict with each other, the presumption that appears to the court to be more or most likely to be correct prevails.

(2) If an irrebuttable presumption arising under this Division conflicts with a rebuttable presumption arising under this Division that is not rebutted in any proceedings, the irrebuttable presumption prevails over the rebuttable presumption.

17. Parentage presumptions cannot be relied on by prosecutors

Despite any other provision of this Act, a prosecutor cannot rely in any criminal proceedings on a presumption arising under this Act to prove the parentage of a child.

Division 2 – Acknowledgments of paternity**18. Execution of instrument of acknowledgment**

(1) A man has executed an instrument acknowledging paternity of a child under this Division if—

- (a) he executes an instrument in or to the effect of a form prescribed by the regulations and the instrument is countersigned by the mother of the child, and
- (b) he executes the instrument in the presence of a person belonging to a class of persons prescribed by the regulations for the purposes of this paragraph, and
- (c) the instrument has not been annulled under this Division.

(2) A person in whose presence a formal paternity acknowledgment is executed in Norfolk Island must—

- (a) take possession of the acknowledgment once it is executed, and
- (b) cause the acknowledgment to be transmitted to the Registrar not later than 14 days after the date of its execution to be dealt with under the *Registration of Births, Deaths and Marriages Act 1963*.

Maximum penalty—2 penalty units.

19. Annulment of paternity acknowledgments

(1) A formal paternity acknowledgment can be annulled only by order of the Supreme Court.

(2) The Court may annul a formal paternity acknowledgment on the application of, or on behalf of, any of the following persons—

- (a) the person who executed the acknowledgment,
- (b) the mother of the child to whom the acknowledgment relates,
- (c) the child to whom the acknowledgment relates,
- (d) the Registrar,
- (e) any other person who may be affected by the result of the application.

(3) If the Court makes an annulment order, the Registrar of the Division of the Court in which the order was made must immediately cause a copy of the order to be transmitted to the Registrar to be dealt with under the *Registration of Births, Deaths and Marriages Act 1963*.

Division 3 – Declarations of parentage**20. Applications for declarations in the Supreme Court**

(1) Any of the following persons may make an application to the Supreme Court for a declaration of parentage under this section—

- (a) a person who alleges that the relationship of parent and child exists between the person's child and any named person, or
- (b) a person who alleges that the relationship of parent and child exists between the person and another named or identified person, or
- (c) the Registrar when seeking a determination that the relationship of parent and child exists between a named person and another named or identified person, or

- (d) a person prescribed by the regulations who seeks a determination that the relationship of parent and child exists between a named person and another named or identified person, or
- (e) a person who may be affected by the result who seeks a determination that the relationship of parent and child exists between a named person and another named or identified person.
- (2) On any such application, the Supreme Court may make a declaration that a named or identified person is a child's parent.
- (3) A declaration of parentage may be made—
 - (a) whether or not the parent or the child (or both) are alive, or
 - (b) whether or not the child has been born.
- (4) If a declaration of parentage is made, the Registrar of the Division of the Court in which the order was made must immediately cause a copy of the declaration to be transmitted to the Registrar to be dealt with under the Registration of *Births, Deaths and Marriages Act 1963*.

21. Annulment of declaration of parentage

- (1) The Supreme Court may make an order annulling a declaration of parentage on the application of any person who applied or could have applied for the making of the declaration if it appears to the Court—
 - (a) that new facts or circumstances have arisen that have not previously been disclosed to the Court, and
 - (b) those facts could not, by the exercise of reasonable diligence, have previously been disclosed to the Court.
- (2) On the making of such an order, the declaration ceases to have effect from that time. Accordingly, the annulment does not affect anything done in reliance on the declaration before the making of the order.
- (3) If the Court makes such an order, 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 any person affected by the annulment of the declaration, as far as practicable, in the same position as the person would have been in if the declaration had not been made.
- (4) If a declaration is annulled under this section, the Registrar of the Division of the Court in which the order was made must immediately cause a copy of the order of annulment to be transmitted to the Registrar to be dealt with under the Registration of *Births, Deaths and Marriages Act 1963*.

Division 4 – Evidence of court findings and paternity acknowledgments

22. Admissibility of court findings and paternity acknowledgments

- (1) In any proceedings in which the parentage of a child is in issue and a presumption under section 11 or 12 is relied on, the finding of the prescribed court or the paternity acknowledgment (or a copy of any such instrument that the court considers authentic) giving rise to the presumption is to be admitted in evidence in those proceedings.
- (2) In any proceedings in which the parentage of a child is in issue, the court before which the proceedings are taken may admit any evidence that tends to establish that a person is or is not a parent of the child even though that evidence is not required to be admitted by virtue of subsection (1).
- (3) However, subsection (2) does not apply so as to allow the admission of evidence in rebuttal of an irrebuttable presumption of law arising by virtue of this or any other Act or any rule of law.

Division 5 – Hearings under Divisions 2 and 3

23. Conduct of hearings

(1) The hearing of an application for a declaration of parentage or for an annulment order under Division 2 or 3 is to be in closed court.

(2) The Supreme Court may adjourn the hearing of any such application to give a person the opportunity to be present or to be represented at the hearing if the Court considers that the person's interests would be affected by a declaration or an annulment order (as the case may be).

24. Offence: publication of identity of participants in hearing

A person must not publish the name, or the particulars relating to the identity, of any person by, or in relation to whom, an application for a declaration of parentage or for an annulment order under Division 2 or 3 is brought.

Maximum penalty—10 penalty units.

Division 6 – Parentage evidence

25. Orders for carrying out of parentage testing procedures

(1) In proceedings where the parentage of a child is in issue, the Supreme Court may make an order requiring a parentage testing procedure to be carried out on any of the following persons for the purpose of obtaining information to assist in determining the parentage of the child—

- (a) the child, or
 - (b) a person known to be a parent of the child, or
 - (c) any other person, if the Court is of the opinion that the information that could be obtained if the parentage testing procedure were to be carried out in relation to the person might assist in determining the parentage of the child.
- (2) A parentage testing order may be made by the Court—
- (a) on the application of a party to the proceedings, or
 - (b) on the application of a person representing the child under an order made under section 33, or
 - (c) of its own motion.
- (3) A parentage testing order may be made subject to terms and conditions.
- (4) In deciding whether to make a parentage testing order, the Court must—
- (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 an objection is valid, take the objection into account in deciding whether to make the order.

26. Orders associated with parentage testing orders

(1) If the Supreme Court makes a parentage testing order, the Court may make such other orders as it considers necessary or desirable—

- (a) to enable the parentage testing procedure to be carried out, or
- (b) to make the parentage testing procedure more effective or reliable.

(2) Some examples of the kinds of order that the Court can make under subsection (1) are as follows—

- (a) an order requiring a person to submit to a medical procedure,
- (b) an order requiring a person to provide a bodily sample,
- (c) an order requiring a person to surrender a bodily sample previously obtained from that person or from another person (regardless of whether that other person is still living) that has been stored or otherwise preserved,
- (d) an order requiring a person to furnish information relevant to the person's medical or family history.

(3) The Court may also make such costs orders as it considers just in relation to costs incurred in relation to—

- (a) the carrying out of the parentage testing procedure or other orders made by the Court in relation to the parentage testing procedure, or
- (b) the preparation of reports in relation to the information obtained as a result of the carrying out of the parentage testing procedure.

(4) In deciding whether to make an order under this section, the Court must—

- (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 an objection is valid, take the objection into account in deciding whether to make the order.

27. Orders made against children under 18 years of age

(1) This section applies if a parentage testing order or an order under section 26 requires a medical procedure or other act to be carried out in relation to a child who is under 18 years of age.

(2) The procedure or act must not be carried out in relation to the child under the order unless a parent or guardian of the child consents to the medical procedure or act being carried out.

(3) However, the Court may draw such inferences from a failure or refusal to consent as appear just in the circumstances.

28. Effect of non-compliance by adult with an order made under this Part

(1) If a person who is 18 years or more of age contravenes a parentage testing order or an order under section 26, the person is not liable to any penalty in relation to the contravention.

(2) However, the Court may draw such inferences as appear just in the circumstances.

29. No liability if parent or guardian consents

(1) If a parent or guardian of the child consents to a medical procedure or other act being carried out in relation to the child under an order made under this Division, a person who carries out, or assists in the carrying out of, the medical procedure or act is not liable to any civil or criminal action in relation to the proper carrying out of the medical procedure or act.

(2) Nothing in subsection (1) affects any liability of a person for an act done negligently, or negligently omitted to be done, in relation to the carrying out of a medical procedure or act.

30. Reports on parentage testing procedures

(1) A report made in accordance with regulations made under section 35(2)(b) may be received in evidence in any proceedings under this Act.

(2) If any such report is received in evidence in any proceedings under this Act, the Supreme 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.

(3) An order under subsection (2) may be made by the Court—

- (a) on the application of a party to the proceedings, or
- (b) on the application of a person representing a child under an order made under section 33, or
- (c) of its own motion.

31. Offence: Personating another in or proffering another child for a parentage testing procedure

A person must not—

- (a) undergo a parentage testing procedure under a parentage testing order or other procedure ordered under section 26 for the purpose of personating the person who is required by the order to undergo the procedure, or
- (b) proffer a child for the purpose of undergoing a parentage testing procedure under a parentage testing order or other procedure ordered under section 26 knowing that the child is not the child named in the order.

Maximum penalty: 5 penalty units.

32. Offence: Taking of bodily sample by unqualified persons

(1) A person must not take any bodily sample purportedly for the purpose of giving effect to a parentage testing order or an order under section 26 unless the person is a qualified person.

Maximum penalty — 2 penalty units.

(2) For the purposes of this section, “**qualified person**” means—

- (a) a medical practitioner, or
- (b) a registered nurse, or
- (c) any other person belonging to a class of persons prescribed by the regulations for the purposes of this section.

33. Court orders for separate representation of child

(1) This section applies to proceedings under this Division concerning a child.

(2) If it appears to the Supreme Court that the child ought to be separately represented, the Court may order that the child is to be separately represented, and may also make such orders as it considers necessary to secure that representation.

(3) The Supreme Court may make an order for separate representation—

- (a) on the application of any person, or
- (b) of its own motion.

Part 4 – Miscellaneous

34. Proceedings for offences

(1) Proceedings for an offence under this Act are to be dealt with before the Court of Petty Sessions.

(2) Nothing in this section affects the jurisdiction or power of the Supreme Court to enforce its orders.

35. Regulations

(1) The Administrator 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.

(2) Without affecting the generality of subsection (1), the regulations may make provision with respect to any of the following matters—

- (a) the carrying out of parentage testing procedures under parentage testing orders,
- (b) the preparation of reports in relation to the information obtained as the result of the carrying out of such procedures.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

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