



ANNO VICESIMO QUARTO

**ELIZABETHAE II REGINAE**

A.D. 1975

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**No. 115 of 1975**

An Act to abolish the legal consequences of illegitimacy under the law of this State; to invest courts of this State with power to make judgments declaratory of certain relationships; and for other purposes.

[Assented to 4th December, 1975]

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

<u>PART I</u>	PART I PRELIMINARY
Short title.	1. This Act may be cited as the "Family Relationships Act, 1975".
Commencement.	2. This Act shall come into operation on a day to be fixed by proclamation.
Arrangement of Act.	3. THIS Act is arranged as follows:— PART I—PRELIMINARY PART II—CHILDREN PART III—PUTATIVE SPOUSES PART IV—MISCELLANEOUS.
Crown to be bound by this Act.	4. This Act binds the Crown.
Interpretation.	5. In this Act, unless the contrary intention appears— "child born outside marriage" includes a child born to a married woman in consequence of sexual relations with a man other than her lawful spouse: "the Court" means— (a) the Supreme Court; or (b) a local court of full jurisdiction: "instrument" means any instrument that creates, modifies or extinguishes legal or equitable rights, powers or liabilities.

## PART II

## PART II

## CHILDREN

6. (1) Subject to this Act, the relationship of parent and child exists, for the purposes of the law of this State, between a person and his natural father or mother, and other relationships of consanguinity or affinity shall be traced accordingly.

All children of equal status.

(2) Subject to subsection (3) of this section, where an instrument contains an expression denoting a relationship of consanguinity or affinity, that expression shall be construed in accordance with the provisions of subsection (1) of this section, unless the contrary intention appears either expressly or by implication from the terms of the instrument, or from circumstances that can be properly taken into account in construing the instrument.

(3) An instrument executed before the commencement of this Act shall be construed as if this Act had not been passed.

(4) Whenever it is relevant under the law of this State to determine the relationship between persons, the provisions of this Part are, so far as they may be relevant, applicable—

(a) whether or not any of those persons is, or has ever been, domiciled in this State;

and

(b) whether or not any of those persons was born, or died, before the commencement of this Act.

7. A person shall be recognized as the father of a child born outside marriage only if—

Recognition of paternity.

(a) he is recognized as father of the child by reason of legitimation of the child, or under the law relating to the adoption of children;

(b) he has acknowledged in proceedings for registration of the birth of the child (either in this State or in some other place) that he is the father of the child;

(c) he has been, during his lifetime, adjudged by a court of competent jurisdiction (either of this State, or of some other place) to be the father of the child;

or

(d) he has been adjudged under this Act to be the father of the child.

8. A child born to a woman during her marriage, or within ten months after the marriage has been dissolved by death or otherwise, shall, in the absence of proof to the contrary, be presumed to be the child of its mother and her husband or former husband (as the case may be).

Presumption as to parenthood.

9. (1) Where—

(a) a female person alleges that a particular person is the father of her child;

(b) a person alleges that the relationship of father and child exists between himself and a particular person;

or

Declaration of paternity.

**PART II**

- (c) a person whose pecuniary interests, or whose rights or obligations at law or in equity, are affected according to whether the relationship of father and child exists between two persons desires the court to determine whether the relationship of father and child exists between those persons,

that person may apply to the Court for a declaration of paternity, and if it is proved to the satisfaction of the Court that the relationship exists, the Court may make a declaration of paternity.

(2) A declaration may be made under this section whether or not one or both of the persons in relation to whom the declaration is sought are dead.

(3) The Court should not proceed to make a declaration under this section unless it is satisfied, as far as reasonably practicable, that all living persons whose interests are affected by the declaration have had the opportunity to make representations to the Court in relation to the subject matter of the proceedings.

(4) Where a person claims that the relationship of father and child exists between two persons, and one or both of those persons are dead at the time of the proceedings, a declaration shall not be made under this section unless the claim is supported by credible corroborative evidence.

Saving  
provision.

10. This Part does not affect—

- (a) the rules under which the domicile of a child is determined;  
 (b) the consequences at law or in equity of the adoption of a child made or recognized under the law of this State;  
 or  
 (c) any proceedings under the Community Welfare Act, 1972-1975, in which the paternity of a child is in issue.

**PART III****PART III****PUTATIVE SPOUSES**

Putative  
spouses.

11. (1) A person is, on a certain date, the putative spouse of another if he is, on that date, cohabiting with that person as the husband or wife *de facto* of that other person and—

(a) he—

- (i) has so cohabited with that other person continuously for the period of five years immediately preceding that date;

or

- (ii) has during the period of six years immediately preceding that date so cohabited with that other person for periods aggregating not less than five years;

or

- (b) he has had sexual relations with that other person resulting in the birth of a child.

(2) A person whose pecuniary interests, or whose rights or obligations at law or in equity, are affected according to whether—

(a) he was, on a certain date, the putative spouse of another;

or

(b) two other persons were, on a certain date, putative spouses one of the other,

may apply to the Court for a declaration under this section, and if it is proved to the satisfaction of the Court that the persons in relation to whom the declaration is sought were, on the date in question, putative spouses one of the other, the Court may make a declaration accordingly.

(3) Subject to the provisions of any other Act, a person shall not be recognized under the law of this State as the putative spouse of another unless a declaration of the relationship has been made under this section.

(4) A declaration may be made under this section whether or not one or both of the persons in relation to whom the declaration is sought—

(a) are, or have ever been, domiciled in this State;

or

(b) are dead.

(5) Where a person claims that two persons were putative spouses, one of the other, and one or both of those persons are dead at the time of the proceedings, a declaration shall not be made under this section unless the claim is supported by credible corroborative evidence.

(6) It shall not be inferred from the fact that the Court has declared that two persons were putative spouses, one of the other, on a certain date, that they were putative spouses as at any prior or subsequent date.

(7) A declaration may be made under this section whether or not either, or both, of the persons in relation to whom the declaration is sought are, or have ever been, domiciled in this State.

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#### PART IV

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#### MISCELLANEOUS

12. (1) Where a person has an interest in property by reason of a relationship recognized under the law of this State by virtue of this Act—

Protection of  
administrators,  
etc.

(a) no action shall lie against an administrator or trustee of the property by virtue of any distribution of, or dealing with, the property made without actual notice of the relationship;

and

(b) where any person has taken a beneficial interest in the property, his interest shall be undisturbed unless he took the interest with prior actual notice of the relationship.

## PART IV

(2) Where a person claims an interest in property by reason of a relationship that would be recognized under the law of this State if it were adjudged, in pursuance of the provisions of this Act, to exist, or to have existed, an administrator or trustee of the property may by notice in writing require that person to take proceedings under this Act seeking the appropriate declaration, and if that person fails to commence such proceedings within three months after being served personally or by post with that notice, then—

(a) no action shall lie against the administrator or trustee of the property by reason of any distribution of, or dealing with, the property made on the assumption that the relationship does not exist;

and

(b) where any person has taken a beneficial interest in the property, his interest shall be undisturbed.

Confidentiality  
of proceedings  
under this Act.

13. (1) Unless the Court otherwise determines, proceedings under this Act shall be held in a room that is not open to the public.

(2) Any person who publishes by newspaper, radio or television the name of any person by, or in relation to, whom proceedings are taken under this Act unless authorized to do so by the Court shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

Claim under  
this Act may  
be brought in  
the courts of  
other  
proceedings.

14. (1) Where—

(a) a person desires to institute proceedings in the Court;

and

(b) it is necessary for the purposes of those proceedings to establish under this Act that a certain relationship exists,

he may commence the proceedings in the usual way, but he must endorse on the process by which the proceedings are instituted a statement to the effect that he seeks a declaration under this Act of a specified relationship.

(2) In any such proceedings, there shall be, unless the Court otherwise determines, a separate trial of any issues arising under this Act.

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

M. L. OLIPHANT, Governor