THE LAW OF SUCCESSION AND OTHER ALLIED CONSIDERATIONS IN RELATION TO ILLEGITIMATE PERSONS

Report
R 20

Queensland Law Reform Commission
December 1975

The short citation for this Report is Q.L.R.C. R 20
Published by the Queensland Law Reform Commission, December 1975

ISBN: n/a

Printed by: Queensland Law Reform Commission

QUEENSLAND

A REPORT OF THE LAW REFORM COMMISSION

ON THE LAW OF SUCCESSION AND OTHER ALLIED CONSIDERATIONS IN RELATION TO ILLEGITIMATE PERSONS

Q.L.R.C. 20

REPORT OF THE LAW REFORM COMMISSION

On the law of succession and other allied considerations in relation to illegitimate persons

Q.L.R.C. 20

The Honourable W.E. Knox, M.L.A.,
Minister for Justice and Attorney-General,
BRISBANE.

We refer to your request that the Law Reform Commission should examine and comment upon the Report of the Tasmanian Law Reform Committee on the law of succession in relation to illegitimate persons.

The terms of reference of the Tasmanian Law Reform Committee were "to consider whether any alterations are desirable to the law of succession and other allied considerations in relation to illegitimate persons". In its report the Tasmanian Committee discussed at length, and set out in an appendix a copy of, the New Zealand Status of Children Act 1969, which was enacted to remove from the law of New Zealand the legal disabilities of children born out of wedlock. The Tasmanian Committee in its report recommended the adoption in Tasmania of legislation on the pattern of the New Zealand Act. The Tasmanian Parliament subsequently enacted the Status of Children Act 1974 in substantially the same terms as the New Zealand Act. A little over a month later, the Victorian Parliament enacted the Status of Children Act 1974 for that State, again in substantially the same terms as the New Zealand Act. We understand that the Attorney-General for New South Wales has under consideration proposals for the adoption of similar legislation in that State also.

In view of these developments, we have prepared and written a commentary upon a Draft Bill dealing with this matter, which we recommend be adopted in Queensland. The Draft Bill, like the legislation that has already been enacted in New Zealand, Victoria and Tasmania, is designed to remove the legal disabilities of children born out of wedlock. Though it deals mainly with the law of succession in relation to illegitimate persons, it has the wider scope indicated above.

To the extent indicated in the commentary, some correspondence upon relevant matters has taken place with the Director of the Department of Children's Services and the Registrar-General, whose help we wish to acknowledge. However we did not think it necessary to circulate a working paper in anticipation of this Report. We would also like to point out that, though the Schedule to the Draft Bill sets out consequential amendments to statutory provisions requiring amendment that have come to our notice, we have not carried out an extensive search of Queensland legislation to see what other consequential amendments may be required.

One policy issue that we consider requires special attention is the one raised by cl. 7 of the Draft Bill in relation to the recognition of paternity. It will be noticed that, though for the sake of uniformity we recommend the adoption of cl. 7 (1)(b) in the form set out, we suggest in the commentary that discussion should take place with the other jurisdictions having the provision with a view to its modification uniformly in those jurisdictions.

Signed: The Hon. Mr. Justice D.G. Andrews
(Chairman)

Signed: Mr. B.H. McPherson, Q.C.
(Member)

Signed: Mr. P.R. Smith
(Member)

Signed: Dr. J.M. Morris
(Member)

Signed: Mr. J.J. Rowell
(Member)

18th December, 1975.
BRISBANE.

STATUS OF CHILDREN BILL

COMMENTARY

The Queensland law dealing with the legal position of legitimate and illegitimate children has been inherited from England. Like most other legal systems, the common law of England drew a distinction between a child born of a legally recognised union and a child born outside such a union. To be legitimate at common law, it was not necessary that the child be both conceived and born in wedlock. A child conceived before the marriage of his parents was legitimate if they married before its birth; and a child conceived during marriage was legitimate though the marriage came to an end before its birth, either by the death of its father or by the divorce of the parents. Moreover, it seems that a child who was neither conceived nor born during the marriage of its parents was legitimate provided the parents were married at some time after its conception and before its birth, though the marriage came to an end by the death of the father before the birth.

At common law, therefore, a child was legitimate if its parents were married to each other at the time of its conception, at the time of its birth, or at any time between the conception and birth. See Bromley, Family Law, 4th ed., pp. 227 - 228. Otherwise, it was illegitimate or, to use the technically correct legal description, a bastard.

What are the legal disabilities of illegitimate children? An illegitimate child suffers from an important practical disability when it cannot be established who its father is. It may be impossible to obtain a maintenance order against the father because the paternity of the child cannot be established. However, this disability flows, not from the state of the law, but from the facts of such a case. The legal, as distinct from the factual, disabilities of illegitimate children arise mainly in cases of inheritance and analogous matters. In such cases under the common law, an illegitimate person was nullius filius, the son of nobody. The law did not recognise, or did not fully recognise, the natural, blood relationship between an illegitimate person and his parents and other relationships depending

on that parental relationship. The law recognised the relationship between an illegitimate person and his own legitimate issue but not necessarily his relationship with other blood relatives.

Two rules relating to the property rights of illegitimate children need special mention. Firstly, there is the rule of construction whereby terms of relationship such as "children" or "issue" in wills and other dispositions are taken to refer only to legitimate relationships unless a contrary intention appears: Hill v. Crook (1873) L.R.6 H.L.265. The prima facie meaning of such terms is taken to be only those with a legitimate connection. Thus a gift to the "children" of X may be construed as a gift only to the legitimate children of X. Though this interpretation may be departed from where it is impossible that any legitimate children can take or where it appears upon a proper construction of the instrument that "children" was intended to include illegitimate children, the rule obviously reflects the attitude of the common law towards illegitimate children. It seems probable that the rule could defeat the intention of a testator or settlor in a modern community where it is not widely known that the law might give only a restricted meaning to such words used in a will or disposition.

Secondly, in accordance with the general rule at common law, only persons claiming through a legitimate relationship could participate in intestate succession. Neither the illegitimate person nor any of his issue had any right to participate on the intestacy of a parent, grandparent, brother or sister of the illegitimate. Conversely, a parent, grandparent, brother or sister of an illegitimate person did not have any right to participate on the intestacy of the illegitimate or his issue. If an illegitimate person died intestate without legitimate issue, his property would go to the Crown by escheat or as bona vacantia regardless of the existence of natural parents, grandparents, brothers, sisters, children or other issue. Though these rules of intestacy have been modified in Queensland, the modifications, as will appear below, are very limited in scope.

Modifications of the legal disabilities of illegitimates.

The legal disabilities of persons who would at common law have been regarded as illegitimate have been modified in two ways.

Firstly, the common law definition of legitimacy has been enlarged by Acts of Parliament. Secondly, Acts of Parliament have made provision for both legitimate and illegitimate persons in such a way as to reduce the legal distinction between them.

Acts of Parliament have enlarged the common law definition of legitimacy by providing for the legitimation of a child born out of wedlock by the subsequent marriage of its parents. As indicated above, a child was legitimate at common law only if its parents were married to each other at the time of its conception, at the time of its birth, or at any time between conception and birth. It was settled at the Council of Merton, 1234, that English law would not accept the canon law doctrine (itself taken from the Roman law) of legitimation by marriage subsequent to birth. An illegitimate child therefore remained illegitimate though its parents married each other after its birth. However, following the lead taken by New Zealand in 1894, all of the Australian States from 1898 to 1908 adopted the rule of legitimation by the subsequent marriage of the parents. See Sackville and Lanteri, "The Disabilities of Illegitimate Children in Australia: A Preliminary Analysis", (1970) 44 A.L.J. 5, at pp. 6 - 7. In Queensland, legitimation by subsequent marriage was provided for by the Legitimation Acts 1899 to 1938, recently repealed by the Acts Repeal Act 1975. The matter is now dealt with by the Commonwealth Marriage Act 1961 - 1973 s. 89, which came into force on 1 September, 1963.

In general, the position now is that:

(a) a child is legitimate if its parents were married to each other at the time of its conception or have since married each other; and

(b) a child is not legitimate if its parents were not married to each other at the time of its conception and have not since married each other.

The common law definition of legitimacy has also been effectively enlarged in Queensland by the Adoption of Children Act 1964 - 1974. Under s. 28(1) of that Act, an adopted child becomes the legitimate child of his adopters and ceases, for the purposes of the law, to be a child of his natural parents, and the relationship to one another of all persons is to be determined on this basis.

By virtue of this provision, a child born illegitimate may become the legitimate child of its adopters. An adoption order may be made in favour of a husband and wife jointly notwithstanding that one of them is a natural parent of the child: s. 12(4) of the Act.

Despite these enactments, there still remain children who are not adopted and whose parents do not marry each other to whom the legal disabilities of illegitimacy attach. These disabilities have been reduced by Acts of Parliament which are so worded as not to draw too marked a legal distinction between legitimate and illegitimate children. For example, under the Queensland Maintenance Act 1965 - 1974, it has been possible to obtain an order for the support of an illegitimate child as well as a legitimate, though the order is made under special provisions of the Act dealing with illegitimate children. Under Part V of the Succession Act 1867 - 1974, provision may be made out of the estate of a deceased person for the proper maintenance and support of an illegitimate child of the deceased as well as a legitimate, though there is special provision in s. 90(1) of that Act requiring the Court to satisfy itself that the evidence is reasonably sufficient to establish that any illegitimate child is the offspring of the deceased person. Since 1970, not only a legitimate child but also a child to whom another person stood in loco parentis may benefit upon the death of that person by a fatal accident claim made under the Common Law Practice Act 1867 - 1970 s. 12.

However, the Queensland law governing the distribution of an estate upon an intestacy still makes a marked distinction between legitimate and illegitimate persons. As a general rule, only persons claiming through a legitimate relationship may participate on an intestacy under Part III of the Succession Act 1867 - 1974. There are only three slight modifications to the general rule. Firstly, s. 29(1) defines "child" for the purposes of the intestacy rules to include any child of an intestate born out of lawful wedlock where parents have intermarried since the birth of that child. Secondly, s. 35(2) provides that where a person dies without leaving a will, and without leaving any spouse or lawful issue but leaving an illegitimate child or children then, if the residuary estate does not exceed two thousand dollars, the Public Curator may distribute the estate to such child or children. Thirdly, s. 35(3) provides that where an

illegitimate person dies without leaving a will, and without leaving any spouse or issue (legitimate or illegitimate) but leaving a mother, the Public Curator may distribute the estate to the mother.

Otherwise, only legitimate relationships are recognised upon an intestacy under Queensland law. Illegitimate children unable to rely on any of the exceptions to the general rule have no alternative than to apply to the Court under Part V of the Succession Act for provision out of the deceased's estate for their maintenance and support. They have no fixed right to participate on the intestacy.

Removing the legal disabilities of illegitimate children.

Should the legal disabilities of illegitimate children be removed? We are not here primarily concerned with the factual difficulties that may arise when it is sought to prove who the father of an illegitimate child is. Special rules may be necessary to govern the manner in which this question of fact is established. We are more concerned with those disabilities which burden an illegitimate child even though the identity of its father can be satisfactorily established. In particular, should there continue to be the rule of construction whereby words of relationship prima facie denote only legitimate relationships; and should only legitimate relationships, with limited exceptions, be the only relationships entitling a person to participate on an intestacy?

In its Report on the Law of Succession in Relation to Illegitimate Persons (1966) Cmnd. 3051 pp. 4 - 5, the Russell Committee, which was appointed to investigate this matter in England, stated the main argument against such disabilities as follows:

> At the root of any suggestion for the improvement of the lot of bastards in relation to the law of succession to property is, of course, the fact that in one sense they start level with legitimate children, in that no child is created of its own volition. Whatever may be said of the parents, the bastard is innocent of any wrongdoing. To allot to him an inferior, or indeed unrecognised, status in succession is to punish him for a wrong of which he was not guilty.

It is undoubtedly true that these legal disabilities burden children who are morally innocent and who are in no way responsible for the act causing the burden to be imposed on them.

The Law Reform Committee of Tasmania, in its report on the same matter, considered two arguments for the retention of the

disabilities. Firstly, there is the argument that the removal of the stigma of illegitimacy would tend to lessen respect for legitimacy, that it would diminish to some extent the material value of the rights conferred by marriage. However, as that Committee pointed out, even if this were true it would not be justifiable in our society that the success of the institution of marriage should be based even in part on the deprivation of the innocent offspring of illicit relationships. Secondly, there is the argument that giving rights to the illegitimate child creates practical difficulties in establishing paternity. But again, as the Tasmanian Committee accepted, these practical difficulties ought not to result in the denial generally of the child's rights. There are cases where the paternity of an illegitimate child can be satisfactorily established and in such a case the child ought not to be denied its rights on the ground that in other cases paternity cannot be established.

In a recent report upon "Children", (1973) Report on Family Law Part III at p. 10, the Ontario Law Reform Commission expressed what seems to be becoming the widely prevailing view:

> We have taken as our major premise the view that the status of "illegitimacy" ought to be abolished in Ontario, and that so far as it is consistent with the interests of the child born outside marriage, his position under the law ought to be equated with that of other children. Whatever the original reasons were for setting apart the child born outside marriage, be they ecomonic or moral, we cannot perceive any factor in modern society which justifies laws which perpetuate this discrimination.

It therefore recommended (at p. 12) that the law of Ontario should declare positively that for all its purposes all children have equal status.

Recommendation.

We recommend that the legal disabilities of illegitimate children be removed so far as it is practicable to do so. The number of children involved is large and liable to increase. The Director of the Department of Children's Services has supplied us with the following statistics for Queensland:

	Total Live Births year ended 31 Dec. Aust. Bureau of Statistics	Illegitimate Births year ended 31 Dec. Aust. Bureau of Statistics	Adoption Orders For Illegitimate Children year ended 30 June Dept. of Children's Services
1972	39,251	5,138	1,580
1973	38,067	5,186	1,488
1974	37,852	4,955	1,307

Unfortunately, we do not know how many children born illegitimate have been legitimated by the subsequent marriage of parents. During 1972 the number of formal legitimations for Queensland was 757, but these would not be confined to children born in that year: Queensland Year Book 1974, p.126. However, it is apparent that even after taking into account the possibility of legitimation and the number of illegitimate children that are adopted, the remaining number of illegitimate children who would benefit by the legislation we recommend is substantial. Commenting upon the figures, the Director of the Department of Children's Services writes:

> Whilst it is clear that both adoption and illegitimate birth rates have declined over the past three years, adoption rates have declined more sharply than illegitimate birth rates. Therefore, because of the increasing numbers of illegitimate children alone, my Department would welcome legislation which might alleviate the present legal position of illegitimates. As well, it would appear that one of the factors which is leading to increasing numbers of single mothers keeping their children is increased social acceptance of their situation. Legislation which formalized this acceptance would be welcomed by my Department as it relieves some of the stress suffered by single mothers.

The kind of legislation recommended.

The legislature may remove the legal disabilities of illegitimate children in one of two ways. Firstly, it may deal specifically with those disabilities that it thinks ought to be removed. This course was followed in the English Family Law Reform Act 1969 whose enactment followed the Report on the Law of Succession in

Relation to Illegitimate Persons, (1966) Cmnd. 3051, by the Russell Committee, referred to above. Part II of that Act (ss. 14 - 19) deals specifically with the property rights of illegitimate children. Section 14 provides that, on an intestacy, an illegitimate child or his issue takes an interest in the estate of his natural parent as if the child were legitimate; and a natural parent takes an interest in the estate of the illegitimate child as if the child were legitimate. Section 15 provides that in any disposition of property (including a will) a reference to a child or children and other relatives includes, unless the contrary intention appears, a reference to, and to persons related through, illegitimate children.

Legislation of somewhat similar kind, dealing specifically with the property rights of illegitimate children, was enacted in Western Australia in the Property Law Amendment Act 1971 and the Wills Act Amendment Act 1971. These Acts were passed following a report of the Law Reform Committee of Western Australia on Illegitimate Succession: (1970) Project No. 3.

Secondly, the legislature may attempt to remove in a general way, so far as it is practicable to do so, all of the legal disabilities of illegitimate children. This course was followed in the New Zealand Status of Children Act 1969. Although this Act deals with the law of succession in relation to illegitimate persons, it has the wider function of removing the legal distinction between legitimate and illegitimate persons for the purposes of the law of New Zealand. The Tasmanian Status of Children Act 1974 was enacted in substantially the same terms as the New Zealand Act upon the recommendation of the Tasmanian Law Reform Committee in its Report on the Law of Succession in Relation to Illegitimate Persons. Shortly afterwards, the Victorian Parliament enacted a Status of Children Act 1974 in similar terms. In its Report Relating to Illegitimate Children (1972), the South Australian Law Reform Committee also favoured the approach of the New Zealand legislation. We understand that the Attorney-General for New South Wales has under consideration proposals for the adoption of similar legislation in his State as well.

We think that the comprehensive approach of the New Zealand legislation of 1969 is preferable to the somewhat narrower approach of the English legislation of the same year. In our view, the time has

come to make a thoroughgoing attack on the legal distinctions between legitimate and illegitimate children and to remove, so far as it is practicable to do so, the legal disabilities of illegitimates. There may be times when the factual position in which an illegitimate child is placed makes it necessary to retain some distinction, for example, in relation to the law of adoption. But where such exigencies do not exist, the distinction should be removed. In addition, it would be an advantage to maintain a degree of uniformity with New South Wales, Victoria, Tasmania and New Zealand on the matter.

The legislation that we recommend is, therefore, based on the New Zealand Status of Children Act 1969.

PROVISIONS OF THE DRAFT BILL

1. Short title and commencement. This clause would give the Act the same short title that the legislation bears in Victoria, Tasmania and New Zealand and will probably bear in New South Wales.

2. Interpretation. This clause extends the meaning of the word "marriage" and "married", which are used in cll. 5 and 7, to void marriages and voidable marriages annulled by a court. Although the Commonwealth Family Law Act 1975 abolishes the remedy known as annulment of a voidable marriage, the provision is desirable to cover previous or foreign annulments.

3. All children of equal status. Clause 3(1), which is central to the scheme of the Bill, would provide that for all the purposes of the law of Queensland the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other and all other relationships shall be determined accordingly. This would mean, for example, that unless the contrary intention appears words of relationship in legislation, such as in the intestacy provisions of the Succession Act 1867 - 1974, would include illegitimate children and persons related through illegitimate children. Clause 3(2) would abolish the rule of construction whereby words of relationship such as "children" or "issue" in wills and other instruments refer only to legitimate relationships unless a contrary intention appears. The use of the words "legitimate" or "lawful" in an instrument would not of itself exclude illegitimate relationships: sub-cl. (3).

The Commission expressed an opinion on the provision in cl. 3(4) of the Draft Bill in a letter to the Minister for Justice and Attorney-General dated 3 May, 1973. It is not necessary to deal any further with it.

4. Instruments executed and intestacies which take place before the commencement of this Act. Clause 4 is a transitional provision which would exclude from the Act instruments executed, and intestacies of persons dying, before the commencement of the Act.

5. Presumptions as to parenthood. Where a child is born or conceived in lawful wedlock, the husband not being separated from his wife by an order of the court, the child is presumed to be legitimate: Cross on Evidence, Australian ed., p. 138. This well-known presumption of legitimacy needs to be restated in different terms to fit in with the context of the Draft Bill, whose purpose it is to remove, or at least reduce, the distinction between legitimacy and illegitimacy. Under the rule expressed in cl. 5, a child born to a woman during marriage or within ten months after dissolution of the marriage would be presumed to be a child of her husband in the absence of evidence to the contrary.

Unlike the Acts of New Zealand and Victoria, the Tasmanian Act also provides for a presumption arising from cohabitation. Section 8(6) of that Act states:

> Where a man and a woman have cohabited for a period of twelve months and during that period of cohabitation or within ten months after the cohabitation has ceased a child is born to the woman, the man shall, in the absence of evidence to the contrary, be presumed to be the father of the child if the woman has not married before the birth of the child.

We have decided against including in the Draft Bill this presumption arising from cohabitation for two reasons. Firstly, cl. 7(1) of the Draft Bill, to be considered below, provides that the relationship of father and child and any other relationship traced in any degree through the relationship shall for certain purposes where the father and mother of the child are not married to each other be recognized only if paternity has been admitted by or established against the father. However, the presumption set out in s. 8(6) of the Tasmanian Act would not serve to show that paternity has either been admitted

by or established against the father. Cohabitation, by itself, would be neither an admission by nor an establishment against the father of paternity. An executor, administrator or trustee relying on the presumption might, therefore, be misled into not ensuring that the requirements of cl. 7(1) have been satisfied. Without more, the fact of cohabitation would not authorize under cl. 7(1) any recognition of the relationship of father and child or any other relationship traced in any degree through that relationship.

Secondly, the presumption created by s. 8(6) of the Tasmanian Act, unlike that created by cl. 5 of the Draft Bill, would not be brought into operation by the production of a certificate alone. An executor, administrator or trustee could rely on cl. 5 if a marriage certificate is produced. However, cohabitation for the purposes of s. 8(6) of the Tasmanian Act could not be proved by the production of such a certificate. The application of this presumption could not be known unless the existence of what might be a complex state of facts is first determined.

6. Protection of executors, administrators and trustees. By virtue of cl. 6, an executor, administrator or trustee would not be under any obligation to inquire as to the existence of any person who could claim an interest in any estate or any property held on trust or for family provision under Part V of the Succession Act 1867 - 1974 only through an illegitimate relationship; and would not be liable for a distribution of property or act of administration made or done without notice of such a relationship.

It must also be remembered that, under the Trusts Act 1973 s. 109(3), where any remedy is sought to be enforced against a person to whom a wrongful distribution of trust property or the estate of a deceased person has been made and that person has received the distribution in good faith and has so altered his position in reliance on the propriety of the distribution that, in the opinion of the Supreme Court, it would be inequitable to enforce the remedy, the Court may make such order as it considers to be just in all the circumstances.

7. Recognition of paternity. An illegitimate child may well be faced with the difficulty of establishing who his father is. A child who is born or conceived at a time when his mother is married may rely on the presumption that her husband is his father. It is true that this

presumption is rebuttable and the rule in Russell v. Russell [1924] A.C. 687 no longer restricts the evidence that may be used to rebut it: The Evidence Further Amendment Acts 1874 to 1962 s. 3. Nevertheless, whether the presumption is called the presumption of legitimacy at common law or the presumption as to parenthood under cl. 5 of this Draft Bill, it greatly aids the child born during wedlock. A child born out of wedlock has no such advantage. Indeed, the courts must scrutinize with care any claim that there exists or existed the relationship of father and illegitimate child. Under the Maintenance Act 1965 - 1974 s. 30, an order is not to be made in relation to an illegitimate child upon the uncorroborated evidence of the mother or if the court is satisfied that, at about the time the child was conceived, the mother was a common prostitute or had intercourse with men other than the defendant. Under the Succession Act 1867 - 1974 s. 90(1), an order for provisions out of the estate of a deceased person is not to be made in favour of an illegitimate child unless the court satisfies itself that the evidence submitted to it on behalf of the child is reasonably sufficient to establish that the child is the offspring of the deceased person. For obvious reasons, a claim must especially be scrutinized if it is made after the death of the father or child.

Clause 7 of the Draft Bill would specify the circumstances in which paternity may be recognized for any purpose related to succession to property or to the construction of any will or of any instrument creating a trust or for the purpose of any application under Part V of the Succession Act. It would, therefore, be an important direction to executors, administrators and trustees as to when they can recognize paternity for these purposes. Paragraph (a) of cl. 7(1) deals with the case where the father and mother of a child are or have been married to each other while para. (b) deals with the case where the father and mother have not been so married. In the latter case, the relationship of father and child and any other relationship traced through that relationship would be recognized for these purposes only if paternity has been admitted (expressly or by implication) by or established against the father in his lifetime and, if for the benefit of the father, while the child was living.

Clause 7 would adopt for Queensland the analogous provisions of New Zealand, Victoria and Tasmania. For applicants for family

provision under Part V of the Succession Act cl. 7 would set a more difficult test than now exists by requiring in the case of any illegitimate child that paternity should have been admitted (expressly or by implication) by or established against the father in his lifetime. Under the existing Queensland law expressed in s. 90(1) of these Acts, the Court must satisfy itself that the evidence submitted to it on behalf of such a child is reasonably sufficient to establish paternity but there is no requirement that paternity should have been admitted by or established against the father in his lifetime. Section 90(1) replaced other legislation in 1968 which did require evidence to be submitted that the child had been acknowledged or recognized by the deceased in his lifetime. See Testator's Family Maintenance Acts 1914 to 1952 s. 3(1A) and the Succession Acts 1867 to 1943 s. 31(B).

Despite the fact that cl. 7 is a partial reversion to earlier law so far as regards applications for family provision under Part V of the Succession Act , we recommend it in the form set out in the Draft Bill for three reasons:

(i) it is desirable to have uniformity on this matter with Victoria, Tasmania and New Zealand;

(ii) it is desirable to have a uniform rule for all the purposes set out in cl. 7, of which an application for family provision is only one; and

(iii) in our working paper on the Law of Succession and Administration of Estates about to be distributed, we recommend an extension of the class of persons who may make an application for family provision to include persons under the age of eighteen years who are dependent on the deceased.

However, we recognize a case of hardship could arise when paternity is alleged against a deceased person who neither admitted it nor had it established against him during his lifetime. Restrictions of this kind upon the circumstances in which paternity may be proved against a dead person are, we believe, of doubtful value when applied in the Superior Courts. Speaking of a supposed doctrine that evidence charging a dead person should be corroborated, Brett M.R. said in Gandy v. Macauley (1885) 31 Ch. D. 1 at p. 9:

> The law is that when an attempt is made to charge a dead person in a matter, in which if he were alive he might have answered the charge, the evidence ought to be looked at with great care; the evidence ought to be thoroughly sifted, and the mind of any Judge who hears it ought to be, first of all, in a state of suspicion; but if in the end the truthfulness of the witnesses is made perfectly clear and apparent, and the tribunal which has to act on their evidence believes them, the suggested doctrine becomes absurd.

Although, for the sake of uniformity, we recommend that cl. 7(1)(b) be adopted in its present form, we think it would be desirable for discussion to take place with other jurisdictions having this provision to see whether its requirements can be modified with safety.

Clause 7(2) would protect the interests of persons who have become absolutely entitled to property before any claim can be made by a person relying on cl. 7(1).

8. Evidence and proof of paternity. Clause 8 sets out various forms of evidence that can be taken as proof of paternity. Each matter set out amounts in fact to an admission by or an establishment against a father of his paternity. With respect to sub.-cl. (1), it should be noted that the name of a person is not entered in the Queensland register of births as an illegitimate child's father unless he acknowledges himself to be the father of the child. See the Registration of Births, Deaths and Marriages Act 1962 - 1974 s. 25, the Registration of Births, Deaths and Marriages Acts 1855 to 1958 s. 21(5) and the (1880) Registration of Births, Deaths and Marriages Regulations Reg. 5. The Registrar-General has advised us that there is no danger of a father's particulars appearing in the register of births unless he has signed a certificate of birth acknowledging paternity.

9. Instruments of acknowledgement may be filed with Registrar-General. Clause 8(2) provides for an acknowledgement of paternity by an instrument the contents of which are not necessarily made public. Clause 9 would allow such instruments, or copies, to be filed in the office of the Registrar-General. They would there be available for inspection only by a party to the instrument, the child concerned or a guardian or relative of the child. Clause 9 would also allow certain court orders to be filed in the same way as instruments of acknowledgement.

10. Declaration of paternity. Clause 10 would confer on the Supreme Court a jurisdiction to make a declaration of paternity upon the application of a child or parent of the child or other person having a proper interest. By virtue of cl. 8(4), though subject to cl. 7(1), such a declaration would be conclusive proof of the matters to which it relates. Analogous orders made in another State or Territory of the Commonwealth or in New Zealand, under cl. 8(5) and (6), would be prima facie evidence that the person declared the father is the father of the child.

11. Orders requiring evidence of paternity to be given. Clause 11(1) is derived in part from the Commonwealth Family Law Act 1975 s. 99, which provides that where the paternity of a child is a question in proceedings under that Act, the court may make an order requiring either party to the marriage or any other person to give such evidence as is material to the question. However, cl. 11(1) goes on to include expressly within its terms the taking of a blood sample for the purpose of blood tests, a matter that appears to be left open by the provision in the Commonwealth Act. We are of the opinion that for proceedings for a declaration of paternity under cl. 10 of the Draft Bill, there ought to be express provision for the taking of blood tests. As one commentator has noted, there has been almost complete silence in Australia on the circumstances (if any), apart from express statutory provision, in which a Superior Court can order a blood test on a party or person in relation to paternity proceedings. See J.R. Forbes, "Compulsory Blood Tests in Family Law Cases: English Activity and Australian Silence", (1971) 45 A.L.J. 247.

The value of blood tests to establish paternity is now beyond dispute. After an extensive examination of the subject, the English Law Commission expressed the following opinion in its report on Blood Tests and the Proof of Paternity in Civil Proceedings (1968) Law Com. No. 16 at pp. 2 - 3:

> We are satisfied that as medical knowledge stands at present blood tests may provide conclusive evidence in a negative sense; that is, they can prove that a given man could not, according to the biological laws of heredity, be the father of a particular child. They cannot prove conclusively that he is the child's father but they can show, with varying degrees of probability, that he could be. Where blood tests indicate that the man concerned could not be the child's father we shall term

> this an "exclusion result"; where the tests indicate that he could be the father we shall term this a "non-exclusion result". Where a man is wrongly accused of paternity there is now at least a 70 per cent chance that an exclusion result will be obtained from blood tests. The chances of obtaining an exclusion result will no doubt be increased as further blood groups are discovered and more refined techniques developed. Even now, where uncommon blood factors are present or where, for example, it is known that the father must be one of only two men both of whose blood groups are known, the chances of excluding a wrongly accused man can be very much greater than 70 per cent. Where blood tests provide a non-exclusion result they indicate a possibility that the man concerned is the child's father. The strength of this indication will depend primarily upon the incidence of the relevant blood factors in the population. Where common blood factors are present there may be a statistical possibility that any one of, say, 50 per cent of the adult male population could be the child's father, but in an extreme case where uncommon blood factors are present the incidence of possible fathers could be as low as one in fifty million.

Following this report, the English Family Law Reform Act 1969 ss. 20 - 25, made provision for the use of blood tests in determining paternity.

The New Zealand Status of Children Act 1969 does not make any provision for blood tests. However, there is provision for what are referred to as "genetic tests" in the New Zealand Domestic Proceedings Act 1968 s. 50. The Tasmanian Status of Children Act 1974 s. 10(3) provides that for the purposes of that section (which deals with declarations of paternity) a judge may order that the child or any person alleged to be the parent of the child shall, for the purposes of the determination of his blood group, submit himself to such medical practitioner or analyst as the judge may determine. There is no analogous provision in the Victorian Status of Children Act 1974.

Clause 11(2) - (6) of the Draft Bill sets out the ancillary provisions that we recommend be adopted in relation to blood tests for determining paternity. They follow the style of the English provisions referred to above insofar as any failure by a person to consent to a blood test would only entitle a court to draw such inferences, if any, from that failure as appear proper in the

circumstances. Sub-clause (6) would protect a person who fails to consent to the taking of a blood sample from any other sanction. Thus a person who is sui juris would not have a blood test taken against his will. Sub-clause (2) deals with persons who, for reasons of age or otherwise, are unable to consent effectively to the taking of blood from themselves.

Clause 11 would apply only to proceedings for a declaration of paternity under cl. 10. The application of such provisions to other proceedings in which paternity is in issue could, perhaps, be considered at some subsequent time.

12. Regulations. Clause 12 would confer on the Governor in Council a regulation-making power in relation to the Act.

13. Consequential amendments to other Acts. Clause 13 would provide for the consequential amendments that it will be necessary to make to other Acts if the policy of the Draft Bill is to be fully implemented. These amendments are discussed briefly below.

CONSEQUENTIAL AMENDMENTS

For the most part, the consequential amendments are designed either to repeal provisions that would be made unnecessary by cl. 3 of the Draft Bill or to replace the word "illegitimate" and like words with phrases that do not have offensive overtones. However some of the amendments go beyond this, and they require special mention.

In the first place, it should be noticed that we recommend the omission of the definition of "Father" from s. 87 of the Children's Services Act 1965 - 1974. Section 87 expressly provides that, unless the context otherwise indicates or requires, the word "Father" in Part IX of that Act (ss. 87 - 102) does not include the natural father of an illegitimate child. The amendment we recommend coupled with cl. 3 of the Draft Bill would mean the word "father" in Part IX of that Act would include the father of an illegitimate child. If our recommendation is adopted, such a father would therefore have a power to appoint a guardian after his death under s. 90 and, if he survives the mother, have rights of guardianship under s. 89 of the Act. He would also be entitled to apply for the custody of, or access to, the child under s. 93. Cf. Re C., Infant [1974] Qd. R. 109. An order for maintenance could also be made against him under ss. 93 or 93A. Because of this, we have recommended that an evidentiary provision based on s. 122 of the Act be added as sub-section (5) of s. 93.

Secondly, we draw attention to the proposed amendments to s. 25 of the Registration of Births, Deaths and Marriages Act 1962 - 1974. At the suggestion of the Registrar-General, we recommend that a paragraph be added to s. 25 to make it quite clear that a request to register the name of the father of an illegitimate child may be made not only at the time when registration of the birth of the child is being effected but at any later time.

Thirdly, it should be noticed that we recommend the repeal of s. 35 of the Succession Act 1867 - 1974 as well as the amendment of s. 90 of that Act. Section 35 would no longer be necessary once it is possible for persons claiming through an illegitimate relationship to participate on an intestacy. The reason for our recommendation to amend s. 90 is set out in our discussion of cl. 7 of the Draft Bill.

DRAFT BILL

STATUS OF CHILDREN

A Bill to remove the legal disabilities of children born out of wedlock

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

1. Short title and commencement. (1) This Act may be cited as the Status of Children Act 197

(2) This Act shall commence on a date appointed by Proclamation.

Abbreviations. Abbreviations used in references to other Acts in notes appearing at the beginnings of sections have the following meanings:-

Cth. - Family Law Act 1975; Eng. - Family Law Reform Act 1969; N.Z. - Status of Children Act 1969; Tas. - Status of Children Act 1974; Vic. - Status of Children Act 1974.

2. Interpretation. [Tas. s.2; cf. N.Z. s.2; Vic. s.2.] For the purposes of this Act "marriage" includes a void marriage and a voidable marriage which has been annulled by a court and "married" has a corresponding meaning.

3. All children of equal status. [N.Z. s.3; Vic. s.3; Tas. s.3.] (1) For all the purposes of the law of Queensland the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other and all other relationships shall be determined accordingly.

(2) The rule of construction whereby in any instrument, in the absence of expression of any intention to the contrary, words of relationship signify only legitimate relationship is abolished.

(3) For the purpose of construing any instrument the use, with reference to relationship of a person, of the words "legitimate" or "lawful" shall not of itself prevent the relationship from being determined in accordance with the provisions of sub-section (1).

(4) This section shall apply in respect of every person, whether born before or after the commencement of this Act, whether born in Queensland or not, and whether or not his father or mother has ever been domiciled in Queensland.

4. Instruments executed and intestacies which take place before the commencement of this Act. [N.Z. s.4; Vic. s.4; Tas. s.4.] (1) All instruments executed before the commencement of this Act shall be governed by the enactments, rules of construction,and law which would have applied to them if this Act had not been passed.

(2) Where an instrument to which sub-section (1) applies creates a special power of appointment nothing in this Act shall extend the class of persons in whose favour the appointment may be made or cause the exercise of the power to be construed so as to include any person who is not a member of that class.

(3) The estate of a person who dies intestate as to the whole or any part of his estate before the commencement of this Act shall be distributed in accordance with the enactments and rules of law which would have applied to the estate if this Act had not been passed.

5. Presumptions as to parenthood. [N.Z. s.5; Vic. s.5; cf. Tas. s.5.] 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 evidence to the contrary, be presumed to be the child of its mother and her husband, or former husband, as the case may be.

6. Protection of executors, administrators and trustees. [N.Z. s.6; Vic. s.6; Tas. s.6.] (1) For the purposes of the administration or distribution of any estate or of any property held upon trust, or of any application under Part V of the Succession Act 1867 - 1974, or for any other purposes an executor, administrator, or trustee is not under any obligation to inquire as to the existence of any person who could claim an interest in the estate or the property by reason only of the provisions of this Act.

(2) No action shall lie against an executor of the will or administrator or trustee of the estate of any person, or the trustee under any instrument, by any person who could claim an interest in the estate or property by reason only of any of the provisions of this Act to enforce any claim arising by reason of the executor or administrator or trustee having made any distribution of the estate or of the property held upon trust or otherwise acted in the administration of the estate or property held on trust disregarding the claims of that person where at the time of making the distribution or otherwise so acting the executor, administrator or trustee had no notice of the relationship on which the claim is based.

7. Recognition of paternity. [N.Z. s.7; Vic. s.7; Tas. s.7.] (1) The relationship of father and child and any other relationship traced in any degree through that relationship shall, for any purpose related to succession to property or to the construction of any will or other testamentary disposition or of any instrument creating a trust or for the purpose of an application under Part V of the Succession Act 1867 - 1974, be recognized only if -

(a) the father and the mother of the child were married to each other at the time of its conception or at some subsequent time; or

(b) paternity has been admitted (expressly or by implication) by or established against the father in his lifetime (whether by one or more of the types of evidence specified by section 8 of this Act or otherwise) and, if that purpose is for the benefit of the father, paternity has been so admitted or established while the child was living.

(2) In any case where by reason of the provisions of sub-section (1) the relationship of father and child is not recognized at the time the child is born, the occurrence of any act, event, or conduct which enables that relationship and any other relationship traced in any degree through it to be recognized shall not affect any estate, right, or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the act, event, or conduct occurred.

8. Evidence and proof of paternity. [Vic. s.8; Tas. s.8; cf. N.Z. s.8.] (1) Where the name of the father of a child is entered in the register of births in relation to the child a certified copy of the entry purporting to be made or given under section 18 of the Registration of Births, Deaths and Marriages Act 1962 - 1974 shall be prima facie evidence that the person named as the father is the father of the child.

(2) An instrument signed by the mother of a child and by any person acknowledging that he is the father of the child shall -

(a) if the instrument is executed as a deed; or

(b) if the instrument is signed jointly or severally by each of those persons in the presence of a solicitor,

be prima facie evidence that the person named as the father is the father of the child.

(3) An order against a person under section 14 or section 16 of the Maintenance Act 1965 - 1974 shall be prima facie evidence of paternity in subsequent proceedings whether or not between the same parties.

(4) Subject to sub-section (1) of section 7, a declaration made under section 10 shall for all purposes be conclusive proof of the matters to which it relates.

(5) An order made outside Queensland declaring a person to be the father of a child, being an order described in sub-section (6) or sub-section (7), shall be prima facie evidence that the person declared the father is the father of the child.

(6) For the purposes of this section an order made outside Queensland in another Australian State or in a Territory of the Commonwealth or in New Zealand has, so long as it has not been rescinded under the law in force in that State, Territory or country, the same effect as the like order made in Queensland.

(7) The Governor in Council may, from time to time, by Order in Council declare that sub-section (5) applies with respect to orders made by any court or public authority in any specified country outside Australia or by any specified court or public authority in any such country.

9. Instruments of acknowledgement may be filed with Registrar-General. [Vic. s.9; Tas. s.9; cf. N.Z. s.9.] (1) Any instrument of the kind described in sub-section (2) of section 8 or a copy thereof may in the prescribed manner and on payment of the prescribed fee (if any) be filed in the office of the Registrar-General.

(2) The Registrar-General shall cause indexes of all instruments and copies filed with him under sub-section (1) to be made and kept in his office and shall, upon request made by or on behalf of a party to an instrument so filed or a child referred to in any such instrument or a guardian or relative of that child, cause a search of any index to be made and shall permit that person to inspect any such instrument or copy if he is satisfied that the person has a direct and proper interest in the matter.

(3) Where the Supreme Court makes a declaration of paternity under section 10 or revokes such a declaration or where a court makes an order under section 14 or section 16 of the Maintenance Act 1965 - 1974 or annuls such an order, the Registrar or the clerk of the court (as the case requires) shall forward a copy of the declaration, revocation, order or annulment to the Registrar-General for filing in his office under this section and on receipt of any such copy the Registrar-General shall file it accordingly as if it were an instrument of the kind referred to in sub-section (2) of section 8.

10. Declaration of paternity. [Vic. s.10; cf. N.Z. s.10; Tas. s.10.] (1) Any person who -

(a) alleges that any named person is the father of her child;

(b) alleges that the relationship of father and child exists between himself and any other named person; or

(c) being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons,

may apply to the Supreme 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 whether or not the father or the child or both of them are living or dead.

(2) Notwithstanding anything in sub-section (1), a Court may refuse to hear an application for a declaration of paternity if it is of opinion that it is not just or proper so to do.

(3) Where a declaration is made under sub-section (1) after the death of the father or of the child, the Court may at the same or any subsequent time make a declaration determining, for the purposes of paragraph (b) of sub-section (1) of section 7, whether any of the requirements of that paragraph have been satisfied.

(4) Where a declaration has been made under sub-section (1) and it appears to the Court that new facts or circumstances have arisen that have not previously been disclosed to a Court and could not by the exercise of reasonable diligence have previously been known, the Court may revoke the declaration which shall thereupon cease to have any force or effect.

11. Orders requiring evidence of paternity to be given. [cf. Cth. s.99; Eng. ss.21, 23.] (1) Where the paternity of a child is a question in issue in proceedings under sub-section (1) of section 10, the Court may make an order, upon such terms as may be just, requiring any person to give such evidence as is material to the question including a blood sample for the purpose of blood tests.

(2) A blood sample shall not be taken from a person in pursuance of an order made under sub-section (1) except -

(a) if he is a person who may effectively consent to the taking of the blood sample, with his consent;

(b) if he is not a person who may effectively consent to the taking of the blood sample, with the consent of the person having the care and control of him.

(3) For the purposes of sub-section (2), the consent of a person who has attained the age of seventeen years to the taking from himself of a blood sample shall be as effective as if he were of full age.

(4) Where a Court orders a blood sample to be given under sub-section (1) and any person fails to take any step required of him for the purpose of giving effect to the order, the Court may draw such inferences, if any, from that fact as appear proper in the circumstances.

(5) Where a Court orders a blood sample to be given under sub-section (1), any person named in the order who fails to consent to the taking of a blood sample from himself or from any person named in the order of whom he has the care and control shall be deemed for the purposes of sub-section (4) to have failed to take a step required of him for the purpose of giving effect to the order.

(6) Subject to sub-section (4), a person who fails to consent to the taking of a blood sample from himself or from a person of whom he has the care and control for the purpose of giving effect to an order under sub-section (1) shall not be liable to any sanction.

12. Regulations. [N.Z. s.11; Vic. s.11; Tas. s.11.] The Governor in Council may make regulations not inconsistent with this Act for or with respect to -

(a) forms for the purposes of this Act;

(b) fees to be charged under this Act; and

(c) generally, all matters required or permitted by this Act to be prescribed and all matters that are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.

13. Consequential amendments of other Acts. (1) The Acts specified in the Schedule are amended in the manner indicated in that Schedule.

(2) An Act as amended by this Act may be collectively cited as indicated in relation to that Act in the Schedule.

SCHEDULE

Act and Amendment	New Collective Title
Adoption of Children Act 1964 - 1974 In section 6, (a) omit the definition of "Father"; (b) omit from the definition "Relative" the words "is traced through, or to, an illegitimate person or". In section 19, omit sub-sections (2) and (3) and insert in their stead the following sub-sections:- "(2) In the case of a child - (a) whose parents were married to each other at the time of its conception or have since married each other; and (b) who has not previously been adopted, the appropriate persons are every person who is a parent or guardian of the child. (3) In the case of a child - (a) whose parents were not married to each other at the time of its conception and have not since married each other; and (b) who has not previously been adopted, the appropriate person is every person who is the mother or guardian of the child."	Adoption of Children Act 1964 - 197
Children's Services Act 1965 - 1974 In section 8, (a) omit from the definition of "Father" the words "an illegitimate child" and insert in their stead the words "a child whose parents were not married to each other at the time of its conception and have not since married each other";	Children's Services Act 1965 - 197

Act and Amendment	New Collective Title
Children's Services Act 1965 - 1974	Children's Services Act 1965 - 197
(b) omit from the definition of "Mother" the words "Includes the mother of an illegitimate infant and in relation to" and insert in their stead the words "In relation to"; (c) omit from the definition of "Relative" the words "is traced through or to an illegitimate person or". In section 85, (a) omit the note to and appearing at the beginning of the section, namely, "Children born out of wedlock." and insert in its stead the note "Children of unmarried parents."; (b) omit sub-section (1) and insert in its stead the following sub-section:- (1) This section applies in respect of every child who - (a) in a case referred to in sub-section (2), is a child whose parents were not married to each other at the time of its conception and have not since married each other before the time of its birth; or (b) in a case referred to in sub-section (3), is a child whose parents were not married to each other at the time of its conception and have not since married each other before the time of its death." In section 87, omit the definition of "Father". In section 90, omit from sub-section (2) the words "an illegitimate infant" and insert in their stead the words "an infant to whose father she was not married at the time of its conception and whom she has not since married".	

Act and Amendment	New Collective Title
Children's Services Act 1965 - 1974 In section 93, at the end thereof add the following sub-section:- "(5) In any proceeding under this section or section 93A in relation to the maintenance of an infant whose parents were not married to each other at the time of its conception and have not since married each other - (a) the court shall not be satisfied that a particular male person is the father of the infant on the uncorroborated evidence of the mother; (b) the court shall not make a maintenance order against any person alleged to be the father of the infant if it is satisfied that at about the time the infant was conceived the mother was a common prostitute or had had sexual intercourse with a man other than such person." In section 122, (a) omit from the note to and appearing at the beginning of the section the words "illegitimate children" and insert in their stead the words "children of unmarried parents"; (b) omit the words "an illegitimate child" and insert in their stead the words "a child whose parents were not married to each other at the time of its conception and have not since married each other". In section 129, omit from sub-section (3) the words "an illegitimate child" and insert in their stead the words "a child whose parents were not married to each other at the time of its conception and have not since married each other".	Children's Services Act 1965 - 197

Act and Amendment	New Collective Title
Maintenance Act 1965 - 1974 In section 3, in the portion of the Table relating to Sub-division (4) of Division 1 of Part II omit the words "Orders against Fathers or Mothers for Maintenance of Illegitimate Children" and insert in their stead the words "Orders against Unmarried Fathers or Mothers for Maintenance of Children". In section 7, omit from the definition of "Child" in sub-section (1) the words "illegitimate or". In section 8, (a) omit from paragraph (e) of sub-section (1) the words "a father for the maintenance of his illegitimate child" and insert in their stead the words "an unmarried father for the maintenance of his child"; (b) omit from paragraph (f) of sub-section (1) the words "a mother for the maintenance of her illegitimate child" and insert in their stead the words "an unmarried mother for maintenance of her child"; (c) omit from paragraph (g) of sub-section (1) the words "a father for preliminary expenses in respect of the birth of his illegitimate child" and insert in their stead the words "an unmarried father for preliminary expenses in respect of the birth of his child"; (d) omit from paragraph (h) of sub-section (1) the words "a father for funeral expenses in respect of the death of his illegitimate child" and insert in their stead the words "an unmarried father for funeral expenses in respect of the death of his child".	Maintenance Act 1965 - 197

Act and Amendment	New Collective Title
Maintenance Act 1965 - 1974	Maintenance Act 1965 - 197
In the heading preceding section 14, omit the words "Fathers or Mothers for Maintenance of Illegitimate Children" and insert in their stead the words "Unmarried Fathers or Mothers for Maintenance of Children".	
In section 14, (a) omit from the note to and appearing at the beginning of the section the words "father to maintain illegitimate child" and insert in their stead the words "unmarried father to maintain child"; (b) omit the words "an illegitimate child" and insert in their stead the words "a child whose parents were not married to each other at the time of its conception and have not since married each other".	
In section 15, (a) omit from the note to and appearing at the beginning of the section the words "mother to maintain illegitimate child" and insert in their stead the words "unmarried mother to maintain child"; (b) omit the words "illegitimate child" and insert in their stead the words "a child whose parents were not married to each other at the time of its conception and have not since married each other".	
In section 17, omit from the note to and appearing at the beginning of the section the word "illegitimate".	
In section 18, (a) omit from sub-section (1) the word "legitimate" (where twice occurring); (b) omit from sub-section (3) the words "an illegitimate child" and insert in their stead the words "a child to whose father she was not married at the time of its conception and whom she has not since married";	

Act and Amendment	New Collective Title
Maintenance Act 1965 - 1974	Maintenance Act 1965 - 197
(c) omit from sub-section (4) the words "of an illegitimate child or of an illegitimate stillborn child" and insert in their stead the words "of a child (including a stillborn child) to whose father she was not married at the time of its conception and whom she did not since marry".	
In section 19,	
(a) omit from the note to and appearing at the beginning of the section the words "father to pay funeral expenses of mother of illegitimate child" and insert in their stead the words "unmarried father to pay funeral expenses of mother of child";	
(b) omit from sub-section (1) the words "an illegitimate child" and insert in their stead the words "a child to whose mother he was not married at the time of its conception and whom he did not since marry".	
In section 30,	
(a) omit from the note to and appearing at the beginning of the section the words "illegitimate child" and insert in their stead the words "child of unmarried parents";	
(b) omit the words "an illegitimate child" and insert in their stead the words "a child to whose mother he was not married at the time of its conception and whom he has not since married".	
In section 33, omit the words "made under this Part for the maintenance of an illegitimate child is made " and insert in their stead the words "is made under section 17".	
In section 35, omit from sub-section (1) the words "an illegitimate child" and insert in their stead the words "a child to whose mother he was not married at the time of its conception and whom he has not since married".	

Act and Amendment	New Collective Title
Maintenance Act 1965 - 1974	Maintenance Act 1965 - 197
In section 115, (a) omit from sub-section (4) the words "illegitimate child" and insert in their stead the words "child whose parents were not married to each other at the time of its conception and have not since married each other"; (b) omit from sub-section (5) the words "an illegitimate child" and insert in their stead the words "a child".	
In section 128, (a) omit from sub-section (1) the expression "(so far as it relates to an illegitimate child or the mother of an illegitimate child)" and insert in its stead the expression "(so far as it relates to a child whose parents were not married to each other at the time of its conception and have not since married each other or the mother of such child)"; (b) omit from paragraph (h) of sub-section (1) the words "illegitimate children, or the mothers of illegitimate children" and insert in their stead the words "children of unmarried parents, or the mothers of such children".	
Registration of Births, Deaths and Marriages Act 1962 - 1974	Registration of Births, Deaths and Marriages Act 1962 - 197
In section 25, (a) omit the note to and appearing at the beginning of the section, namely, "Father of illegitimate child." and insert in its stead the note "Where parents of child not married."; (b) omit the words "an illegitimate child" and insert in their stead the words "a child whose parents were not married to each other at the time of its conception and have not since married each other";	

Act and Amendment	New Collective Title
Registration of Births, Deaths and Marriages Act 1962 - 1974	Registration of Births, Deaths and Marriages Act 1962 - 197
(c) add at the end thereof the following paragraph:- "A joint request or a request by the father alone referred to in this section may be made at the time when registration of the birth of the child is being effected or at any time thereafter and, in the latter case, may be so made whether registration was effected before or after the commencement of the Status of Children Act 197 ."	
In section 28, omit from sub-section (1) the words "an illegitimate child" and insert in their stead the words "a child whose parents were not married to each other at the time of its conception and have not since married each other".	
In section 28A, (a) omit the note to and appearing at the beginning of the section, namely, "Provisions re surname of illegitimate child." and insert in its stead the note "Change of child's surname to that of mother."; (b) omit the words "an illegitimate child" and insert in their stead the words "a child whose parents were not married to each other at the time of its conception and have not since married each other".	
Succession Act 1867 - 1974	Succession Act 1867 - 197
In section 29, omit the definition "Child".	
Section 35 is repealed.	
In section 89, omit from the definition "Child" the words "legitimate, illegitimate or legitimised".	

Act and Amendment	New Collective Title
Succession Act 1867 - 1974 In section 90, (a) omit from sub-section (1) the expression "child:" and insert in its stead the expression "child. "; (b) omit from sub-section (1) the paragraph commencing with the words "Provided that the Court" and ending with the words "deceased person. ".	Succession Act 1867 - 197