

Status of Children (Assisted Reproduction Technology) Bill

Bill No. /2012.

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2012.

STATUS OF CHILDREN (ASSISTED REPRODUCTION TECHNOLOGY) ACT 2012

(No. xxx of 2012)

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A BILL

i n t i t u l e d

An Act relating to the legal status of children born through assisted reproduction technology and for matters connected therewith, and to make a related amendment to the Evidence Act (Chapter 97 of the 1997 Revised Edition) and the Legitimacy Act (Chapter 162 of the 1985 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Status of Children (Assisted
 5 Reproduction Technology) Act 2012 and shall come into operation
 on such date as the Minister may, by notification in the *Gazette*,
 appoint.

Interpretation

2.—(1) In this Act —

10 “appointed day” means the date of commencement of this Act;

“de facto partner” means a man with whom the gestational
 mother was living in a relationship as if he were her spouse;

“eggs” refer to live human eggs, including the cells of the
 female germ line at any stage of maturity;

15 “embryo” means a live human embryo and includes an egg that
 is in the process of fertilisation or is undergoing any other
 process capable of resulting in an embryo;

“fertilisation procedure” means —

20 (a) the placing in a woman of an embryo or of sperm and
 eggs;

(b) the artificial insemination of a woman; or

(c) any other prescribed procedure for the assisted
 conception of children;

25 “gametes” means eggs or sperm or both but does not include
 any eggs which are in the process of fertilisation;

“sperm” refers to live human sperm, including the cells of the
 male germ line at any stage of maturity.

(2) For the purposes of this Act, where a person gives or
 withdraws his consent (as the case may be) to a fertilisation

procedure, such consent or withdrawal of consent shall be given in writing.

(3) Where consent is given or withdrawn (as the case may be) in writing and in accordance with any prescribed procedure, proof of compliance shall be prima facie evidence that a person's consent has been validly given or withdrawn, as the case may be.

PART II

PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION TECHNIQUES

10 **Meaning of “mother”**

3.—(1) Where a woman carries or has carried a child as a result of a fertilisation procedure, the woman shall be treated as the mother of the child (referred to in this Part as the gestational mother).

(2) Subsection (1) applies whether or not the gestational mother was in Singapore or elsewhere at the time she underwent the fertilisation procedure.

(3) Where a woman is treated as the mother of a child by virtue of subsection (1), no other woman is to be treated as the mother of the child.

20 **Meaning of “father”**

4.—(1) Where a gestational mother was a party to a marriage at the time she underwent a fertilisation procedure as a result of which she becomes pregnant, and the child which the gestational mother is carrying or has carried was brought about with the sperm of her husband in that marriage, her husband shall be treated as the father of the child.

(2) Where the gestational mother was a party to a marriage at the time she underwent a fertilisation procedure as a result of which she becomes pregnant, and the child which the gestational mother is carrying or has carried was not brought about with the sperm of her husband in that marriage, her husband shall be treated as the father of the child unless it is proved that he did not consent to the woman

undergoing the fertilisation procedure at the time the fertilisation procedure was carried out.

5 (3) Where the gestational mother was a party to a marriage at the time she underwent a fertilisation procedure as a result of which she becomes pregnant but her husband did not consent to the fertilisation procedure, he shall nevertheless be treated as the father of the child she is carrying or has carried if he has accepted the child as a child of the marriage, knowing that the child was not brought about with his sperm.

10 (4) The child referred to in subsection (2) shall be treated as legitimate and a child of the marriage from the time of the birth of the child.

15 (5) The child referred to in subsection (3) shall be treated as legitimate and a child of the marriage from the time the child is accepted by the husband of the gestational mother as a child of the marriage.

20 (6) Any reference in this section to a marriage includes a reference to a void marriage if, at the time of such void marriage, both or either of the parties reasonably believed that the marriage was valid.

(7) Where the gestational mother —

(a) was not a party to a marriage;

25 (b) had a de facto partner at the time she underwent a fertilisation procedure as a result of which she became pregnant; and

30 (c) is carrying or has carried the child with the consent of the de facto partner that the child shall be the child of the relationship between the partner and the gestational mother, whether such consent was given at the time she underwent the fertilisation procedure, or at any time thereafter,

the High Court shall have jurisdiction, upon the application of the gestational mother, the de facto partner or the child, to make an order declaring that the de facto partner be treated as the father of the child.

(8) Nothing in subsection (7) shall be construed as having the effect of conferring the status of legitimacy on the child.

(9) Subject to the provisions of this Act, where a man is treated as the father of a child by virtue of this section, no other man is to be treated as the father of the child.

Fertilisation procedure carried out without consent of husband, etc.

5.—(1) This section shall apply where —

(a) the gestational mother was married at the time she underwent a fertilisation procedure and carries or has carried a child as a result of the fertilisation procedure but —

(i) her husband did not consent to her undergoing the fertilisation procedure at the time it was carried out; and

(ii) her husband does not accept the child who was born as a result of the fertilisation procedure as a child of the marriage;

(b) the gestational mother was not married and did not have a de facto partner at the time she underwent a fertilisation procedure; or

(c) the gestational mother had a de facto partner at the time she underwent a fertilisation procedure and carries or has carried a child as a result of the fertilisation procedure but no order of court has been obtained declaring that the de facto partner is the father of the child.

(2) For the avoidance of doubt and subject to subsections (3) and (4), where sperm is used in a fertilisation procedure as a result of which the gestational mother becomes pregnant, the man who produced the sperm shall not be treated as the father of the child whom the mother is carrying or has carried unless he was, at the time the child's mother underwent the fertilisation procedure, her de facto partner or he becomes her husband or her de facto partner at any time thereafter.

(3) If the man referred to in subsection (2) becomes the husband of the mother of a child born as a result of a pregnancy referred to in that subsection, he shall be treated as the father of the child but his rights and liabilities as the father of the child shall, in the absence of
 5 any agreement to the contrary, be restricted to rights and liabilities that arise after the man becomes the husband of the child's mother.

(4) If the man referred to in subsection (2) was, at the time the fertilisation procedure was carried out, the de facto partner of the mother of a child born as a result of the pregnancy referred to in that
 10 subsection or he becomes her de facto partner at any time thereafter —

(a) the High Court shall have jurisdiction, upon the application of the gestational mother, the de facto partner or the child, to make an order declaring that the de facto partner be
 15 treated as the father of the child; and

(b) the de facto partner's rights and liabilities as the father of the child shall, in the absence of any agreement to the contrary, be restricted to rights and liabilities that arise after the de facto partner is declared the father of the child.

(5) Nothing in subsection (4) shall be construed as having the effect of conferring the status of legitimacy on the child.

(6) Where a man is treated as the father of a child by virtue of this section, no other man is to be treated as the father of the child.

**Declaration of parentage where egg, embryo or sperm used by
 25 reason of mistake or negligence**

6.—(1) Subject to subsections (2) to (6), where —

(a) any egg, embryo or sperm was used in a fertilisation procedure undergone by a gestational mother who is married by reason of any mistake or negligence;

30 (b) the egg, embryo or sperm was not intended to be used by the gestational mother or her husband in the fertilisation procedure that the mother underwent; and

(c) the use of the egg, embryo or sperm in the fertilisation procedure resulted in the pregnancy of the gestational mother,

5 the mother shall be treated as the mother of the child who was born as a result of the fertilisation procedure and the husband shall be treated as the father of that child.

(2) Where a child is brought about with any egg, embryo or sperm which was used by reason of mistake or negligence in a fertilisation procedure, any other person claiming to be the mother or the father
10 of the child may apply to court for an order declaring that the person be treated as the mother or the father of the child, as the case may be.

(3) An application under subsection (2) shall be made within a period of 2 years starting from the date on which the applicant
15 discovered the fact that the child who was born as a result of a fertilisation procedure was brought about with any egg, embryo or sperm that was not intended to be used by the gestational mother referred to in subsection (1) or her husband in the fertilisation procedure.

(4) The court may, if it is satisfied that it is in the best interests of
20 a child to do so, declare that the person or persons named in the application be treated as the father or the mother of the child, as the case may be.

(5) In determining whether a declaration should be made, the
25 court shall consider the following:

- (a) the wishes of the child, where he or she is of an age to express an independent opinion;
- (b) the child's biological relationship with the parties to the proceedings;
- 30 (c) the age of the child and any bond that has developed between the child and any person claiming that the person be treated as the child's parent;
- (d) the intention of the parties with regard to the parentage of the child;

- (e) the conduct and behaviour of the parties;
 - (f) the relationship between the child and any sibling he may have or any child of any person claiming to be treated as the child's parent;
 - 5 (g) the ability of the parties to provide for the child's physical, emotional and developmental needs;
 - (h) the extent to which each of the parties in the proceedings can facilitate the child's relationship with the other party or parties to the proceedings;
 - 10 (i) whether the issues of care, custody and control over the child may be resolved by means other than a declaration under subsection (4).
- (6) Where a court makes a declaration under subsection (4) that a person is the father or the mother of the child, as the case may be,
15 no other person shall be treated as the father or the mother of the child, as the case may be.

Application of Part II

7.—(1) This Part shall apply only where —

- 20 (a) either the gestational mother or, if she is married, her husband is domiciled in Singapore at the time of the birth of the child referred to in those sections; or
 - (b) the child referred to in those sections is born in Singapore.
- (2) For the purposes of this Part, a Singapore citizen shall be deemed to be domiciled in Singapore, unless proven otherwise.
- 25 (3) This Part shall apply only where the child referred to in section 3, 4, 5 or 6 is born on or after the appointed day.
- (4) Sections 3 to 6 shall not apply to any child to the extent that the child is treated, by virtue of an adoption order, as not being the child of any person other than the adopter or adopters.
- 30 (5) Subject to the provisions of this Act, where, by virtue of this Part, a person is to be treated as the mother or the father of a child —

(a) that person is to be treated in law as the mother or father of the child, as the case may be, for all purposes; and

5 (b) any reference to “mother”, “father”, “parent” or “child” with its grammatical variations and cognate expressions in any written law or other document (whether enacted or made before, on or after the appointed day) shall be construed accordingly.

10 (6) Sections 3, 4(2) and (3), and 5 apply whether or not the child referred to in those sections is or was being carried as a result of an egg, embryo or sperm produced from or by any person other than the person who is treated as the mother or the father of the child by virtue of any of those sections, as the case may be.

15 (7) For the avoidance of doubt, nothing in this Part shall affect any right or remedy of a person who is treated as a “mother” or a “father” of a child under this Part against any other person in relation to the fertilisation procedure which resulted in the birth of the child.

Regulations

20 **8.**—(1) The Minister may make regulations for carrying out the purposes of this Act and for any matter which is required under this Act to be prescribed.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or in respect of all or any of the following matters:

25 (a) the requirements relating to the giving or withdrawal of consent to any fertilisation procedure;

(b) the manner in which, and the point at which, consent to any fertilisation procedure may be given or withdrawn;

30 (c) the effect of withdrawal of consent on the use of any gametes or embryos in a fertilisation procedure;

(d) the persons or category of persons who may make an application under section 5 on behalf of a child.

Rules of Court

9.—(1) Rules of Court may be made —

(a) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under this Act; and

5 (b) to provide for the costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

(2) Without prejudice to the generality of subsection (1), Rules of Court may make provision —

10 (a) as to the manner and form in which proceedings are to be commenced;

(b) as to the persons entitled to be notified of, and be made parties to, the proceedings;

15 (c) for enabling the court to appoint a suitable person to act in the name of, or on behalf of, or to represent the person to whom the proceedings relate;

(d) for enabling an application to the court to be disposed of without a hearing;

20 (e) for enabling the court to proceed with, or with any part of, a hearing in the absence of the person to whom the proceedings relate;

25 (f) for enabling or requiring the proceedings or any part of them to be conducted in private and for enabling the court to determine who is to be admitted when the court sits in private and to exclude specified persons when it sits in public;

(g) as to what may be received as evidence (whether or not admissible apart from the Rules of Court) and the manner in which it is to be presented;

30 (h) for the enforcement of orders made and directions given in the proceedings;

(i) for regulating matters relating to the costs of those proceedings, including prescribing scales of costs to be paid to legal or other representatives; and

5 (j) as to the way in which, and funds from which, fees and costs are to be paid.

(3) Rules of Court may, instead of providing for any matter, refer to any provision made or to be made about that matter by practice directions issued for the time being by the Registrar of the Supreme Court.

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PART III

MISCELLANEOUS

Related amendment to Evidence Act

10. Section 114 of the Evidence Act (Cap. 97) is repealed and the following section substituted therefor:

15

“Rebuttable presumption of paternity

114.—(1) Where any person was born —

(a) during the continuance of a valid marriage between his mother and any man; or

20 (b) within 280 days after the dissolution of the marriage, the mother remaining unmarried,

it shall be presumed that the person is the child of that man, unless it can be proven to the contrary from any relevant evidence to the satisfaction of the court.

25 (2) Subsection (1) shall not apply to a person who was conceived by his mother through a fertilisation procedure.

(3) In this section, “fertilisation procedure” has the same meaning as in section 2 of the Status of Children (Assisted Reproduction Technology) Act 2012 (Act of 2012).”.

Related amendment to Legitimacy Act

11. Section 3(1) of the Legitimacy Act (Cap. 162) is amended by inserting, immediately after the word “father”, the words “or mother”.

5 **Transitional provisions**

12.—(1) Where a child was born by means of a fertilisation procedure before the appointed day, the child or any person claiming to be his father or mother, as the case may be, may apply to court for a declaration that the person or persons named in the application, be declared as the father or the mother of the child, as
10 the case may be.

(2) An application under subsection (1) shall be made before the expiry of a period of 2 years starting from —

(a) the appointed day; or

15 (b) the date on which the applicant discovered that the child who was born as a result of the fertilisation procedure was brought about with any gametes or embryos which were not intended to be used in the fertilisation procedure,

whichever day or date is the later.

20 (3) The court may, if it is satisfied that it is in the best interests of a child to do so, declare that the person or persons named in the application be treated as the father or the mother of the child, as the case may be.

25 (4) In determining whether a declaration should be made, the court shall consider the following:

(a) the wishes of the child, where he or she is of an age to express an independent opinion;

(b) the child’s biological relationship with the parties to the proceedings;

30 (c) the age of the child and any bond that has developed between the child and any person claiming that the person be treated as the child’s parent;

- (d) the intention of the parties with regard to the parentage of the child;
- (e) the conduct and behaviour of the parties;
- (f) the relationship between the child and any sibling he may have or any child of any person claiming to be treated as the child's parent;
- (g) the ability of the parties to provide for the child's physical, emotional and developmental needs;
- (h) the extent to which each of the parties in the proceedings can facilitate the child's relationship with the other party or parties to the proceedings;
- (i) whether the issues of care, custody and control over the child may be resolved by means other than a declaration under subsection (3).

EXPLANATORY STATEMENT

This Bill seeks to clarify the legal status of children conceived and born through assisted reproduction technology. The Bill also makes a related amendment to the Evidence Act (Cap. 97) and the Legitimacy Act (Cap. 162).

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Act.

PART II

PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION TECHNIQUES

Clause 3 provides that a woman who carries or has carried a child as a result of a fertilisation procedure is in law to be treated conclusively as the mother of the child. This will apply whether or not the child is genetically hers.

Clause 4 sets out who is to be treated as the father of the child when a child is conceived through a fertilisation procedure. Where the mother of a child conceived in this way was married at the time she underwent the fertilisation procedure and the child was brought about with the sperm of her husband, her

husband is to be treated in law as the father. If the mother was married at the time she underwent the fertilisation procedure but the child was not brought about with the husband's sperm, her husband is also to be treated in law as the father of the child unless he can show that he did not consent to the woman undergoing the fertilisation procedure at the time it was carried out. If the husband did not consent to the fertilisation procedure but has treated the child as a child of the marriage, he too will be treated in law as the father of the child. The child will be treated as a legitimate child in these circumstances.

The clause further provides that where the mother of a child conceived through a fertilisation procedure is not married but has a de facto partner at the time she underwent the fertilisation procedure and the de facto partner consents to the child being regarded as a child of the relationship, the High Court may, on application, declare the de facto partner to be treated in law as the father of the child. However, such a declaration does not affect the legitimacy status of the child in law.

Clause 5 deals with the parental rights and obligations of a man whose sperm is used in a fertilisation procedure in a situation where the gestational mother is married but did not obtain the consent of her husband to the fertilisation procedure, where she is unmarried and does not have a de facto partner or where she has a de facto partner who either did not consent to the fertilisation procedure or was not declared the father of the child. In such circumstances, the man whose sperm was used in a fertilisation procedure will not be treated as the father of the child resulting from the procedure unless he marries the gestational mother or he is her de facto partner at the time the fertilisation procedure was carried out becomes her de facto partner at any time thereafter. A court declaration must be obtained before a de facto partner is to be treated as the child's father.

Clause 6 provides that where a child is born to a gestational mother who is married through a fertilisation procedure, but he was brought about using an egg, embryo or sperm which was not intended to be used in that fertilisation procedure by reason of a mistake or negligence, the married couple shall nonetheless be treated in law as his father or mother. Any other person claiming to be the father or the mother of the child may however bring an application to court for a declaration of parentage. The court is required to consider the best interests of the child and the matters set out in subclause (5) before it makes such a declaration.

Clause 7 sets out the circumstances in which sections 3 to 6 will apply and the legal effect of the determination of relationships described in those sections. The clause also clarifies that the determination of relationships in sections 3 to 6 does not affect the legal position where a child is adopted.

The clause also contains a saving provision preserving the rights and remedies of a person who is treated as the "father" or the "mother" of a child

under Part II of the Act against any other person in relation to the fertilisation procedure which resulted in the birth of the child.

Clause 8 confers on the Minister power to make subsidiary legislation for the purposes of the Act.

Clause 9 provides for Rules of Court to be made in respect of certain matters.

PART III

MISCELLANEOUS

Clause 10 makes a related amendment to section 114 of the Evidence Act (Cap. 97). Section 114 of the Evidence Act is repealed and re-enacted. The new section 114 now provides for a rebuttable presumption of paternity. A man presumed to be the father of a child may disprove paternity by adducing any relevant evidence to the satisfaction of the court.

Clause 11 makes a related amendment to section 3(1) of the Legitimacy Act (Cap. 162) to enable persons whose mothers are domiciled in Singapore to be legitimised under that Act as well. Previously, only persons whose fathers are domiciled in Singapore could be legitimised under that Act.

Clause 12 contains transitional provisions.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

Note: [HD 1.1/WSC/Status of Children Bill 2012-5 \(fb 2.11.12\)](#)