

## APPENDIX - EXTRACTS OF s60H FLA, s14 SOCA, s79 JA AND s109 OF THE CONSTITUTION

### FAMILY LAW ACT 1975 – SECTION 60H

#### Children born as a result of artificial conception procedures

(1) If:

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married to, or a de facto partner of, another person (the *other intended parent*); and
- (b) either:
  - (i) the woman and the other intended parent consented to the carrying out of the procedure, and any other person who provided genetic material used in the procedure consented to the use of the material in an artificial conception procedure; or
  - (ii) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman and of the other intended parent;

then, whether or not the child is biologically a child of the woman and of the other intended parent, for the purposes of this Act:

- (c) the child is the child of the woman and of the other intended parent; and
- (d) if a person other than the woman and the other intended parent provided genetic material--the child is not the child of that person.

(2) If:

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure; and
- (b) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman;

then, whether or not the child is biologically a child of the woman, the child is her child for the purposes of this Act.

(3) If:

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure; and
- (b) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of a man;

then, whether or not the child is biologically a child of the man, the child is his child for the purposes of this Act.

...

(5) For the purposes of subsection (1), a person is to be presumed to have consented to an artificial conception procedure being carried out unless it is proved, on the balance of probabilities, that the person did not consent.

(6) In this section:

*"this Act"* includes:

- (a) the standard Rules of Court; and
- (b) the related Federal Circuit Court Rules.

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### STATUS OF CHILDREN ACT 1996 - SECTION 14

#### Presumptions of parentage arising out of use of fertilisation procedures

(A) 14 PRESUMPTIONS OF PARENTAGE ARISING OUT OF USE OF FERTILISATION PROCEDURES

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

- (1A) When a woman who is married to or who is the de facto partner of another woman has undergone a fertilisation procedure as a result of which she becomes pregnant:
- (a) the other woman is presumed to be a parent of any child born as a result of the pregnancy, but only if the other woman consented to the procedure, and
  - (b) the woman who has become pregnant is presumed to be the mother of any child born as a result of the pregnancy even if she did not provide the ovum used in the procedure.

**Note** : "De facto partner" is defined in section 21C of the *Interpretation Act 1987* .

- (2) If a woman (whether married or unmarried) becomes pregnant by means of a fertilisation procedure using any sperm obtained from a man who is not her husband, that man is presumed not to be the father of any child born as a result of the pregnancy.
- (3) If a woman (whether married or unmarried) becomes pregnant by means of a fertilisation procedure using an ovum obtained from another woman, that other woman is presumed not to be the mother of any child born as a result of the pregnancy. This subsection does not affect the presumption arising under subsection (1A) (a).
- (4) Any presumption arising under subsections (1)-(3) is irrebuttable.
- (5) In any proceedings in which the operation of subsection (1) is relevant, a husband's consent to the carrying out of the fertilisation procedure is presumed.
- (5A) In any proceedings in which the operation of subsection (1A) is relevant, the consent of a woman to the carrying out of a fertilisation procedure that results in the pregnancy of her spouse or de facto partner is presumed.
- (6) In this section:
- (a) a reference to a woman who is married to a man includes a reference to a woman who is the de facto partner of a man, and
  - (b) a reference (however expressed) to the husband or wife of a person:
    - (i) is, in a case where the person is the de facto partner of a person of the opposite sex, a reference to that other person, and
    - (ii) does not, in that case, include a reference to the spouse (if any) to whom the person is actually married.

## APPENDIX - EXTRACTS OF s60H FLA, s14 sOCA, s79 JA AND s109 OF THE CONSTITUTION

### JUDICIARY ACT 1903 – SECTION 79

#### State or Territory laws to govern where applicable

(1) The laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable.

(2) A provision of this Act does not prevent a law of a State or Territory covered by subsection (3) from binding a court under this section in connection with a suit relating to the recovery of an amount paid in connection with a tax that a law of a State or Territory invalidly purported to impose.

(3) This subsection covers a law of a State or Territory that would be applicable to the suit if it did not involve federal jurisdiction, including, for example, a law doing any of the following:

- (a) limiting the period for bringing the suit to recover the amount;
- (b) requiring prior notice to be given to the person against whom the suit is brought;
- (c) barring the suit on the grounds that the person bringing the suit has charged someone else for the amount.

(4) For the purposes of subsection (2), some examples of an amount paid in connection with a tax are as follows:

- (a) an amount paid as the tax;
- (b) an amount of penalty for failure to pay the tax on time;
- (c) an amount of penalty for failure to pay enough of the tax;
- (d) an amount that is paid to a taxpayer by a customer of the taxpayer and is directly referable to the taxpayer's liability to the tax in connection with the taxpayer's dealings with the customer.

**APPENDIX - EXTRACTS OF s60H FLA, s14 sOCA, s79 JA AND s109 OF THE CONSTITUTION**

**COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECTION 109**

**Inconsistency of laws**

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.