

Status of Children (Assisted Reproduction Technology) Bill

Bill No. 12/2013.

Read the first time on 8th July 2013.

STATUS OF CHILDREN (ASSISTED REPRODUCTION TECHNOLOGY) ACT 2013

(No. of 2013)

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A BILL

intituled

An Act relating to the legal status of children conceived and born through assisted reproduction technology and for matters connected therewith, and to make related amendments to certain other written laws.

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 2013 and shall come into operation on
such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

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

10 “court” means the High Court;

“de facto partner”, in relation to a gestational mother (whether
married or not) at a given point in time, means the man, if any,
with whom the gestational mother is living in a relationship as
if he were her spouse at that point in time;

15 “egg” means a live human egg and includes the cells of the
female germ line at any stage of maturity but, except in the
definition of “embryo”, shall not include an egg that is in the
process of fertilisation or undergoing any other process
capable of resulting in an embryo;

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

“fertilisation procedure” means —

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

(b) the artificial insemination of a woman; or

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

30 “gestational mother” means the woman who is treated as the
mother of a child under section 6;

“sperm” means live human sperm and includes the cells of the male germ line at any stage of maturity.

(2) Any reference in this Act to a marriage includes a reference to a void marriage if, at the time of such void marriage, both or either of the parties to the marriage reasonably believed that the marriage was valid. 5

Application and effect of this Act

3.—(1) This Act shall apply only to a child born on or after the appointed day as a result of a fertilisation procedure (whether done before, on or after the appointed day) and where — 10

- (a) the child is born in Singapore; or
- (b) any of the following persons is domiciled in Singapore on the date of the birth of the child:
 - (i) the gestational mother of the child;
 - (ii) the husband, if any, of the gestational mother at the time of the fertilisation procedure as a result of which she carried the child; 15
 - (iii) the de facto partner, if any, of the gestational mother at the time of the fertilisation procedure as a result of which she carried the child; 20
 - (iv) the person whose sperm or egg the child was brought about with;
 - (v) the person who consented to the fertilisation procedure.

(2) For the purposes of this Act, a citizen of Singapore shall be presumed to be domiciled in Singapore, unless the contrary is proved. 25

(3) Where a person is to be treated as the mother or the father of a child, as the case may be, by virtue of this Act, then, from the time that person is to be treated as the mother or the father of the child, as the case may be — 30

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

(b) no other person is to be treated in law as the mother or the father of the child, as the case may be, for any purpose;

(c) any reference to any relationship between 2 persons in any law or document (whether enacted or made before, on or after the appointed day) shall be construed accordingly; and

(d) without prejudice to the generality of paragraph (c) and unless the context otherwise requires, a reference in any written law to “natural parent” or “natural father” in relation to a child to whom this Act applies shall be construed as a reference to the parent or the father of the child, as the case may be, as determined under this Act, and a reference in any written law to “natural child” or “child” shall be construed accordingly.

(4) This Act shall not apply to a child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.

(5) The application of this Act shall not by itself affect the citizenship of a child.

(6) For the avoidance of doubt, nothing in this Act shall affect any right or remedy that a person may have against any other person in relation to a fertilisation procedure which resulted in the birth of a child.

PART II

PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION TECHNOLOGY

Consent to fertilisation procedure

4. For the purposes of this Act —

(a) a person shall be deemed not to have validly given or withdrawn his consent to a fertilisation procedure, whether done in Singapore or elsewhere, unless he gives or withdraws his consent, as the case may be, in writing; and

(b) unless the contrary is proved, a person shall be presumed to have validly given or withdrawn his consent to a fertilisation

procedure done in Singapore if he gives or withdraws his consent, as the case may be, to the fertilisation procedure —

- (i) in writing; and
- (ii) in accordance with any law or any condition imposed pursuant to any law, or any requirement or procedure imposed by the responsible authority, in respect of that fertilisation procedure.

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Person who provided egg or sperm not to be treated as parent

5. Except as determined under this Act, where a child is brought about as a result of a fertilisation procedure —

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- (a) the woman whose egg the child was brought about with shall not be treated as the mother of the child; and
- (b) the man whose sperm the child was brought about with shall not be treated as the father of the child.

Gestational mother treated as mother

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6. Subject to section 9, where a woman has carried a child as a result of a fertilisation procedure, the woman shall be treated as the mother of the child from the date of the birth of the child, whether she was in Singapore or elsewhere at the time she underwent the fertilisation procedure.

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Husband treated as father

7.—(1) Subject to subsection (7), where —

- (a) a gestational mother was married at the time she underwent a fertilisation procedure as a result of which she carried a child, or was married at any time thereafter; and
- (b) the child was brought about with the sperm of her husband in that marriage,

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her husband in that marriage shall be treated as the father of the child from the date of the birth of the child or the date of the marriage, whichever is the later.

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(2) Subject to subsection (7), where —

(a) a gestational mother was married at the time she underwent a fertilisation procedure as a result of which she carried a child; and

5 (b) the child was not brought about with the sperm of her husband in that marriage,

her husband in that marriage shall be treated as the father of the child from the date of the birth of the child unless it is proved that he did not consent to the gestational mother undergoing the fertilisation procedure at the time the fertilisation procedure was carried out.

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(3) Subject to subsection (7), where —

(a) a gestational mother was married at the time she underwent a fertilisation procedure as a result of which she carried a child;

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(b) the child was not brought about with the sperm of her husband in that marriage;

(c) her husband in that marriage did not consent to the gestational mother undergoing the fertilisation procedure at the time the fertilisation procedure was carried out; and

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(d) her husband in that marriage has nevertheless through a course of conduct accepted the child as a child of the marriage knowing that the child was not brought about with his sperm,

her husband in that marriage shall be treated as the father of the child from the time he so accepted the child.

(4) Subject to subsection (7), where —

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(a) a gestational mother had a de facto partner at the time she underwent a fertilisation procedure as a result of which she carried a child;

(b) the gestational mother was married to the de facto partner at any time after the fertilisation procedure; and

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(c) the child was brought about with the sperm of the de facto partner,

the de facto partner shall be treated as the father of the child from the date of the birth of the child or the date of the marriage, whichever is the later.

(5) Subject to subsection (7), where —

- (a) a gestational mother had a de facto partner at the time she underwent a fertilisation procedure as a result of which she carried a child; 5
- (b) the gestational mother was married to the de facto partner at any time after the fertilisation procedure; and
- (c) the child was not brought about with the sperm of the de facto partner, 10

the de facto partner shall be treated as the father of the child from the date of the birth of the child or the date of the marriage, whichever is the later, unless it is proved that he did not consent to the gestational mother undergoing the fertilisation procedure at the time the fertilisation procedure was carried out. 15

(6) Subject to subsection (7), where —

- (a) a gestational mother had a de facto partner at the time she underwent a fertilisation procedure as a result of which she carried a child; 20
- (b) the gestational mother was married to the de facto partner at any time after the fertilisation procedure;
- (c) the child was not brought about with the sperm of the de facto partner;
- (d) the de facto partner did not consent to the gestational mother undergoing the fertilisation procedure at the time the fertilisation procedure was carried out; and 25
- (e) the de facto partner has nevertheless through a course of conduct accepted the child as a child of the relationship or of the marriage, as the case may be, knowing that the child was not brought about with his sperm, 30

the de facto partner shall be treated as the father of the child from the time he so accepted the child or the date of the marriage, whichever is the later.

5 (7) If 2 or more men are to be treated as the father of a child by virtue of one or more provisions in this section, only the man who is to be treated as the father of the child earlier in time by virtue of a provision in this section shall be treated as the father of the child, and no other man shall be treated as the father of the child by virtue of any other provision in this section.

10 (8) This section is subject to section 9.

Court may order de facto partner to be treated as father

8.—(1) This section shall apply only if —

- (a) no man is treated as the father of a child by virtue of any provision in section 7;
- 15 (b) section 9 does not apply; and
- (c) there is no prior court order declaring that a man is to be treated as the father of a child under this section.

(2) Where —

- (a) a gestational mother had a de facto partner —
 - 20 (i) at the time she underwent a fertilisation procedure as a result of which she carried a child and she was not married to him at any time after the fertilisation procedure; or
 - (ii) at any time after she underwent a fertilisation procedure as a result of which she carried a child and she was not married to him at any time after the fertilisation procedure; and
 - 25 (b) the child was brought about with the sperm of the de facto partner,

30 the court may, in its discretion and upon an application made under section 10, declare that the de facto partner shall be treated as the father of the child.

(3) Where —

- (a) a gestational mother had a de facto partner at the time she underwent a fertilisation procedure as a result of which she carried a child and she was not married to him at any time after the fertilisation procedure; 5
- (b) the child was not brought about with the sperm of the de facto partner; and
- (c) the de facto partner had consented to the gestational mother undergoing the fertilisation procedure at the time the fertilisation procedure was carried out, 10

the court may, in its discretion and upon an application made under section 10, declare that the de facto partner shall be treated as the father of the child.

(4) Where —

- (a) a gestational mother had a de facto partner at the time she underwent a fertilisation procedure as a result of which she carried a child and she was not married to him at any time after the fertilisation procedure; 15
- (b) the child was not brought about with the sperm of the de facto partner; 20
- (c) the de facto partner did not consent to the gestational mother undergoing the fertilisation procedure at the time the fertilisation procedure was carried out; and
- (d) the de facto partner has nevertheless through a course of conduct accepted the child as a child of the relationship 25 knowing that the child was not brought about with his sperm,

the court may, in its discretion and upon an application made under section 10, declare that the de facto partner shall be treated as the father of the child.

(5) For the avoidance of doubt, and without prejudice to section 10(9), a de facto partner to whom this section applies shall not be treated as the father of a child unless the court so declares. 30

Parenthood where egg, sperm or embryo used is not intended to be used

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

5 (a) by reason of any mistake, negligence, recklessness or fraud, any egg, sperm or embryo used in a fertilisation procedure undergone by a gestational mother was not the egg, sperm or embryo intended to be used by the gestational mother or, where applicable, her husband or her de facto partner, as the case may be; and

10 (b) the use of the egg, sperm or embryo in the fertilisation procedure resulted in the gestational mother carrying a child.

(2) Subject to subsection (3), the parenthood of the child born as a result of a fertilisation procedure referred to in subsection (1) shall be determined in accordance with section 6 or 7, as the case may be, as if —

15 (a) the mistake, negligence, recklessness or fraud had not occurred; and

20 (b) the child was brought about with the egg, sperm or embryo intended to be used by the gestational mother or, where applicable, her husband or her de facto partner, as the case may be, and not the egg, sperm or embryo actually used.

25 (3) Subject to subsection (4), the court may, in its discretion and upon an application made under section 10 by a person other than the person to be treated as the parent of a child under subsection (2), declare that that person shall be the parent of the child.

30 (4) The court shall not declare that a person is to be treated as the parent of a child pursuant to subsection (3) unless an application has been made under section 10 within 2 years after the date on which the applicant discovered that the child was born as a result of a fertilisation procedure referred to in subsection (1).

Application to determine parenthood

10.—(1) This section shall apply to all applications to determine the parenthood of a child under this Act.

(2) The following persons may apply to the court for an order to determine the parenthood of a child under this Act:

- (a) the child;
- (b) a person claiming to be treated as the parent of a child pursuant to section 6, 7 or 9(2);
- (c) a person seeking a declaration by the court that he be treated as the parent of a child pursuant to section 8 or 9(3); and
- (d) any other person, with the leave of the court.

(3) The court shall not grant leave to any person for the purpose of subsection (2)(d) unless it is satisfied that the person seeking leave has a sufficient interest in the parenthood of the child notwithstanding that he is not claiming to be treated as the parent of a child or seeking a court order declaring that he be treated as the parent of a child.

(4) An application to determine the parenthood of a child may only be made after the birth of the child.

(5) An application to determine the parenthood of a child may be made whether or not there is a dispute as to the parenthood of the child.

(6) An application to determine the parenthood of a child may be contested by the child or any person who is treated or seeking to be treated as the parent of the child.

(7) Where the parenthood of a child is to be determined in the discretion of the court pursuant to section 8 or 9(3) —

- (a) the welfare and best interests of the child shall be the first and paramount consideration of the court; and
- (b) the court may have regard to all or any of the following matters, where applicable, in considering the welfare and best interests of the child:
 - (i) the wishes of the child, where the child is of an age to express an independent opinion;
 - (ii) the child's biological relationship with any party to the proceedings;

- (iii) the age of the child;
- (iv) any bond that has developed between the child and any party to the proceedings;
- (v) the intention of the parties to the proceedings with regard to the parenthood of the child;
- (vi) the conduct and behaviour of the parties to the proceedings;
- (vii) the relationship between the child and any child of a party to the proceedings;
- (viii) the respective abilities of the parties to the proceedings to provide for the child's physical, emotional, developmental and other needs;
- (ix) the extent to which any party to the proceedings can facilitate the child's relationship with any other party to the proceedings;
- (x) any other relevant matter.

(8) An application to determine the parenthood of a child may include an application for ancillary orders relating to the welfare of the child, including a declaration of the legitimacy of the child and an order for a person treated as a parent to maintain the child, and the court may make such ancillary orders as it deems necessary.

(9) Subject to sections 6, 7 and 9(2), an order by the court in an application to determine the parenthood of a child shall take effect from the date of the order or from such other date as may be specified in the order.

Legitimacy

11. If the woman who is to be treated as the mother of a child under this Act is married to the man who is to be treated as the father of the child under this Act, the child shall be treated as legitimate and a child of the marriage from whichever of the following dates occurs last:

- (a) the date of the child's birth;
- (b) the date of the marriage;
- (c) the date the child is accepted as a child of the marriage by the man who is to be treated as the child's father.

Registration of births

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12. The birth of a child to whom this Act applies shall be registered or re-registered, as the case may be, under the Registration of Births and Deaths Act (Cap. 267) in accordance with the provisions of that Act and the rules made thereunder.

PART III

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MISCELLANEOUS

Regulations

13. The Minister may make regulations for carrying out the purposes of this Act and for prescribing any matter which is required under this Act to be prescribed.

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Rules of Court

14.—(1) Without prejudice to section 80 of the Supreme Court of Judicature Act (Cap. 322), the Rules Committee constituted under that Act may make Rules of Court —

- (a) to regulate and prescribe the procedure and practice in respect of proceedings under this Act;
- (b) to provide for the transmission of any order of court with respect to the parenthood of a child to the Registrar-General of Births and Deaths under the Registration of Births and Deaths Act (Cap. 267); and
- (c) to provide for the costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings,

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and section 80 of the Supreme Court of Judicature Act shall apply to the making of these Rules of Court.

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(2) 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.

5 **Transitional provisions**

15.—(1) Notwithstanding section 3 but subject to subsections (2) and (3), where a child was born before the appointed day as a result of a fertilisation procedure, the court may, in its discretion, make an order declaring the parenthood of the child.

10 (2) In making an order under subsection (1), the court —

(a) shall exercise its discretion in accordance with section 10(7);
and

(b) may additionally have regard to the provisions of sections 6 to 9, but shall not be bound to apply those provisions.

15 (3) No application under this section shall be made after the expiry of a period of 2 years after —

(a) the appointed day; or

(b) the date on which the applicant discovered that the child who was born as a result of the fertilisation procedure was brought
20 about under circumstances described in section 9(1),

whichever is the later.

(4) Section 10 shall apply, with the necessary modifications, to an application made under this section.

Related amendment to Evidence Act

25 **16.** Section 114 of the Evidence Act (Cap. 97, 1997 Ed.) is repealed and the following section substituted therefor:

“Rebuttable presumption of paternity

114.—(1) Where any person was born —

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

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

it shall be presumed that the person is the legitimate child of that man, unless the contrary is proved.

(2) Subsection (1) shall not apply to a person whose parenthood is determined under the Status of Children (Assisted Reproduction Technology) Act 2013.”.

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Related amendment to Legitimacy Act

17. Section 3(1) of the Legitimacy Act (Cap. 162, 1985 Ed.) is amended by inserting, immediately after the word “father”, the words “or mother”.

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Related amendment to Registration of Births and Deaths Act

18. Section 29 of the Registration of Births and Deaths Act (Cap. 267, 1985 Ed.) is amended by inserting, immediately after subsection (1), the following subsection:

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“(1A) Without prejudice to the generality of subsection (1), the Minister may make rules for the registration or re-registration, as the case may be, of the birth of a child to whom the Status of Children (Assisted Reproduction Technology) Act 2013 applies, including the particulars of the parents of the child and the legitimation of the child under that Act.”.

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EXPLANATORY STATEMENT

This Bill provides for the legal status of children conceived and born through assisted reproduction technology, and associated matters. The Bill also makes related amendments to certain other written laws.

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

Clause 3 defines the scope of application of the Bill. The Bill applies only to children born on or after the appointed day as a result of a fertilisation procedure, whether done before, on or after the appointed day. For conflict of laws purposes, the Bill applies only if (a) the child is born in Singapore, or (b) if, at the time of birth of the child, certain specified persons who are connected with the child are domiciled in Singapore. The parents of a child as determined under the Bill will be the parents of the child for all purposes, to the exclusion of all other persons. The Bill does not apply to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters. The Bill does not by itself affect the citizenship of a child. Certain rights in respect of the fertilisation procedure are preserved.

PART II

PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION TECHNOLOGY

Clause 4 relates to the validity of a person's consent or withdrawal of consent to a fertilisation procedure. A person's consent or withdrawal of consent to a fertilisation procedure is not valid unless it is given in writing. A person's consent or withdrawal of consent to a fertilisation procedure done in Singapore is presumed to be valid if given in writing and in accordance with any law, requirement or procedure regulating the fertilisation procedure.

Clause 5 disassociates parenthood from biological descent by providing that the persons whose egg and sperm were used in conceiving the child will not be treated as the parents of the child except in accordance with the Bill.

Clause 6 confers motherhood by operation of law on the gestational mother of a child, subject to clause 9.

Clause 7 determines the father of a child whose gestational mother is married at the time of the fertilisation procedure or thereafter, or has a de facto partner at the time of the fertilisation procedure whom she later marries. Fatherhood is conferred by operation of law on the man referred to in the relevant provision applicable to him if he provides the sperm with which the child is brought about, or if he consents to the fertilisation procedure (consent being presumed unless the contrary is proved), or if he accepts the child knowing that the child was not brought about with his sperm.

The clause also specifies the time from which the relevant man is to be treated as the father of the child. Where more than one man (e.g. the gestational mother's husband and her de facto partner whom she later marries) satisfies the conditions to be treated as the father of a child, the man who first satisfies the relevant conditions will be treated as the father of the child. The clause is subject to clause 9.

Clause 8 confers on the High Court (the court) the discretion, on an application made under clause 10, to declare the de facto partner of the gestational mother as the father of the child. The court may so declare if that man provides the sperm with which the child is brought about, or if he consents to the fertilisation procedure, or if he accepts the child knowing that the child was not brought about with his sperm. A de facto partner is not to be treated as the father of the child until the court so declares, without prejudice to the court's power to backdate or postdate the declaration.

Clause 9 applies where, by reason of any mistake, negligence, recklessness or fraud, a child was brought about with any egg, sperm or embryo which was not the egg, sperm or embryo intended to be used by the gestational mother or, where applicable, her husband or de facto partner. In such a situation, the child will be deemed to have been brought about with the egg, sperm or embryo intended to be used and his parenthood will be determined on this basis and in accordance with clause 6 or 7, subject to the discretion of the court to declare that some other person is to be treated, upon that person's application, as the parent of the child. An application must be made within 2 years after the date on which the applicant discovered that the child was born as a result of a fertilisation procedure affected by a mistake, etc.

Clause 10 applies to all applications to determine the parenthood of a child under the Bill. The standing to make an application is conferred upon a child, a person claiming to be treated as the parent of a child under the Bill, a person seeking a court order declaring that he be treated as the parent of a child under the Bill, and with the leave of court, any other person with a sufficient interest in the parenthood of the child. An application can only be made after the birth of the child. An application can be made notwithstanding that there is no dispute as to the parenthood of a child such as where parenthood is determined by operation of law. An application can be contested by the child or any person claiming to be the parent of a child.

Where the parenthood of a child falls to be determined not by the operation of law but in the discretion of the court, the paramount consideration of the court will be the welfare and best interests of the child. An application may include applications for ancillary orders necessary for the welfare of the child. The order of the court in an application may be backdated or postdated, subject to clauses 6 and 7, which specify the time from which a person is to be treated as the mother or the father of a child, as the case may be, by operation of law.

Clause 11 legitimises a child whose parents, as determined under the Bill, are married.

Clause 12 provides for the registration of a child to whom the Bill applies in accordance with the Registration of Births and Deaths Act (Cap. 267) and the rules made thereunder.

PART III MISCELLANEOUS

Clause 13 empowers the Minister to make regulations for the carrying out of the purposes of the Bill.

Clause 14 empowers the Rules Committee under the Supreme Court of Judicature Act (Cap. 322) to make Rules of Court in respect of proceedings under the Bill.

Clause 15 makes transitional provisions for children born before the appointed day as a result of a fertilisation procedure.

Clauses 16, 17 and 18 make related amendments to certain other written laws.

Clause 16 repeals and re-enacts section 114 of the Evidence Act (Cap. 97) so that the birth of a person during the continuance of a valid marriage between his mother and a man gives rise to a rebuttable, not a conclusive, presumption that the person is the legitimate child of that man. This presumption will not apply to a child whose parentage is determined under the Bill.

Clause 17 amends section 3(1) of the Legitimacy Act (Cap. 162) so that a person may be legitimised by the subsequent marriage of his parents under that provision if his mother is domiciled in Singapore at the date of the marriage. Currently the provision applies only to a person whose father is domiciled in Singapore at the date of the marriage.

Clause 18 amends section 29 of the Registration of Births and Deaths Act so as to allow rules to be made for the registration and re-registration of the birth of a child to whom the Bill applies.

EXPENDITURE OF PUBLIC MONEY

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