

I certify that this is a copy of the authorised version of this Act as at 8 May 2019, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 8 May 2019.

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Dated 28 May 2019



TASMANIA

STATUS OF CHILDREN ACT 1974

No. 36 of 1974

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SCHEDULE 1 –



STATUS OF CHILDREN ACT 1974

No. 36 of 1974

An Act to remove the legal disabilities of children born out of wedlock, and to establish parenthood of certain children

[Royal Assent 14 October 1974]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART I – PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the *Status of Children Act 1974*.
- (2) This Act shall commence on a date to be fixed by proclamation.

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2. Interpretation

In this Act, unless the context otherwise requires –

child means a son or daughter of any age;

marriage includes a void marriage and a voidable marriage which has been annulled;

prescribed court means a state court, a federal court, a court of a Territory, a court of another State or a court of a prescribed overseas jurisdiction.

3. All children to be of equal status

- (1) For all purposes of the law of the State the relationship between every person and the person's father, mother or parents (or any one of the person's father, mother or parents) shall be determined irrespective of whether the person's father, mother or parent 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 words of relationship signify only legitimate relationship in the absence of a contrary expression of intention 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, in the absence of intention to the contrary in such

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instrument, prevent the relationship from being determined in accordance with the provisions of subsection (1).

- (4) This section shall apply in respect of every person, whether born before or after the commencement of this Act, whether born in the State or not, and whether or not the person's father, mother or either of the person's parents has ever been domiciled in the State.

4. Instruments executed and intestacies which take place before the commencement of this Act

- (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 subsection (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 was not at the time of the creation of the instrument 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.

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Part II – Presumptions of parenthood and recognition of paternity

**PART II – PRESUMPTIONS OF PARENTHOOD AND
RECOGNITION OF PATERNITY**

5. Presumption of parentage arising from marriage

(1) A child who is born to a woman while she is married is presumed to be the child of the woman and her spouse.

(2) If –

(a) at a particular time –

(i) a marriage to which a woman is a party is ended by death; or

(ii) a purported marriage to which a woman is a party is annulled; and

(b) a child is born to the woman within 44 weeks after that time –

the child is presumed to be the child of the woman and her deceased spouse or purported spouse.

(3) If –

(a) the parties to a marriage separate at any time; and

(b) after the separation they resumed cohabitation on at least one occasion; and

(c) within 3 months after resuming cohabitation they separated again and lived separately and apart; and

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- (d) a child is born to the woman within 44 weeks after the cohabitation ends but after the dissolution of the marriage –

the child is presumed to be the child of the woman and the former spouse.

6. Protection of executors, administrators, and trustees

- (1) For the purposes of the administration or distribution of any estate or of any property held in trust, or of any application under the *Testator's Family Maintenance Act 1912*, 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 any 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 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

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notice of the relationship on which the claim is based.

7. Recognition of paternity

- (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 any claim under the *Testator's Family Maintenance Act 1912*, 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 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 subsection (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

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any person has become absolutely entitled, whether beneficially or otherwise, before the act, event, or conduct occurred.

8. Presumption of paternity arising from cohabitation

If –

- (a) a child was born to a woman; and
- (b) at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the woman cohabited with a man to whom she was not married –

the child is presumed to be the child of that man.

8A. Presumption of parentage arising from registration of birth

A person whose name is entered as the parent of a child in a register of births or parentage information kept under a law of this State, the Commonwealth, another State, a Territory or a prescribed overseas jurisdiction is presumed to be the parent of the child.

8B. Presumption of parentage arising from court findings

- (1) A person is conclusively presumed to be a parent of a particular child if –

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- (a) during the lifetime of that person, a prescribed court has –
 - (i) found expressly that the person is a parent of that child; or
 - (ii) made a finding that it could not have made unless the person was a parent of that child; and
 - (b) the finding has not been altered, set aside or reversed.
- (2) A person is presumed to have been a parent of a particular child if –
- (a) after the death of that person, a prescribed court has –
 - (i) found expressly that the person was a parent of that child; or
 - (ii) made a finding that it could not have made unless the person was a parent of that child; and
 - (b) the finding has not been altered, set aside or reversed.

8C. Presumption of paternity arising from acknowledgements

- (1) A man is presumed to be the father of a particular child if –
- (a) under a law of this State, the Commonwealth, another State, a

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Territory or a prescribed overseas jurisdiction the man has executed an instrument acknowledging that he is the father of a specified child; and

(b) the instrument has not been annulled or otherwise set aside.

(2) A man is presumed to be the father of a particular child if the man and the mother of the child –

(a) execute an instrument as a deed; or

(b) jointly or severally sign an instrument in the presence of an Australian legal practitioner –

which acknowledges that the man is the father of the child.

9. Instruments of acknowledgement filed with Registrar of Births, Deaths and Marriages

(1) Any instrument of the kind described in section 8C(2) 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 of Births, Deaths and Marriages.

(2) The Registrar of Births, Deaths and Marriages shall cause indexes of all instruments and copies filed with him under subsection (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

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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 parentage under section 10 the Registrar of the Supreme Court is to forward a copy of the declaration to the Registrar of Births, Deaths and Marriages for filing in his office under this section and on receipt of any such copy the Registrar of Births, Deaths and Marriages shall file it accordingly as if it were an instrument of the kind referred to in section 8C(2).
- (4) Where a judge revokes a declaration of parentage under section 10, the Registrar of the Supreme Court shall forward a copy of the order revoking the declaration to the Registrar of Births, Deaths and Marriages.

10. Declaration of parentage

- (1) Any of the following persons may apply to a judge in chambers for a declaration of parentage:
 - (a) a person who alleges that a specified person is the parent of a particular child;
 - (b) a person who alleges that the relationship of parent and child exists between that person and a particular child;
 - (c) a person with a direct and proper interest in the result who wishes to determine

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whether the relationship of parent and child exists between 2 specified persons.

- (2) A judge in chambers may refuse to hear an application for a declaration of parentage if of the opinion that it is not just and proper to do so.
- (3) If satisfied that the relationship of parent and child exists between 2 persons, a judge in chambers may make a declaration of parentage whether or not the parent or child or both of them are living or dead.
- (4) A judge in chambers, by order, may revoke a declaration if it appears to the judge that new facts or circumstances have arisen that have not previously been disclosed to the court.
- (5) If a judge makes a declaration under subsection (3), the judge may, at the same time or subsequently, make a declaration determining whether any of the requirements of section 7(1)(b) have been satisfied.
- (6) In any proceedings under this section, the parents of the child may, but are not compellable to, give evidence to prove that sexual intercourse did or did not take place between them during any period.
- (7) Any of the following persons may apply to the Registrar of Births, Deaths and Marriages to re-register the birth of a child specified in a declaration of parentage:
 - (a) a parent of that child;

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- (b) that child, if the child has attained the age of majority;
 - (c) a person on behalf of that child, if the child has not attained the age of majority.
- (8) An application under subsection (7) is to be –
 - (a) in a form approved by the Registrar of Births, Deaths and Marriages; and
 - (b) lodged with the Registrar of Births, Deaths and Marriages; and
 - (c) accompanied by –
 - (i) a copy of the declaration of parentage; and
 - (ii) the prescribed fee.
- (9) On receipt of an application under subsection (8), the Registrar of Births, Deaths and Marriages is to cause –
 - (a) the birth of a child specified in a declaration of parentage to be re-registered in the appropriate register; and
 - (b) the particulars specified in that declaration to be recorded.
- (10) If a declaration of parentage is revoked by order under subsection (4) –
 - (a) a copy of the order may be lodged with the Registrar of Births, Deaths and Marriages; and

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- (b) the Registrar is to cause the re-registration to be cancelled in any manner the Registrar thinks fit.

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s. 10A Part III – Presumption of parenthood as a result of fertilization procedures

**PART III – PRESUMPTION OF PARENTHOOD AS A
RESULT OF FERTILIZATION PROCEDURES**

10A. Application of Part

- (1) The provisions of this Part apply –
 - (a) in respect of a pregnancy referred to in section 10C, whether the pregnancy occurred before or after the commencement of this Act and whether or not it resulted from a procedure carried out in the State; and
 - (b) in respect of any child born as a result of a pregnancy referred to in section 10C, whether or not the child was born before or after the commencement of this Act and whether or not the child was born in the State.
- (2) Nothing in any provision of this Part affects the vesting in possession or in interest of any property that occurred before the commencement of this Act.

10B. Interpretation

A reference in this Part to a fertilization procedure is a reference to –

- (a) the artificial insemination of a woman; or
- (b) the procedure of implanting in the uterus of a woman an embryo derived from an ovum fertilized outside the body.

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10C. Presumptions as to parenthood

- (1) Where a woman who is married to, or in a significant relationship, within the meaning of the *Relationships Act 2003*, with, a man, with the consent of that man, undergoes a fertilization procedure as a result of which she becomes pregnant, the consenting man is, for the purposes of the law of the State, to be treated as if he were the father of any child born as a result of that pregnancy.
- (1A) Where a woman who is married to, or in a significant relationship, within the meaning of the *Relationships Act 2003*, with, another woman, with the consent of that other woman, undergoes a fertilization procedure as a result of which she becomes pregnant, the consenting woman is, for the purposes of the law of the State, to be treated as if she were the parent of any child born as a result of that pregnancy.
- (1B) Subsection (1A) is taken to have commenced on the day on which the *Relationships Act 2003* commenced.
- (2) Where a woman undergoes a fertilization procedure as a result of which she becomes pregnant, any man, not being her husband or her partner in a significant relationship, within the meaning of the *Relationships Act 2003*, who produced semen which was used in the fertilization procedure, shall, for the purposes of the law of the State, be treated as if he were not the father of any child born as a result of the pregnancy.

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s. 10C Part III – Presumption of parenthood as a result of fertilization procedures

- (3) Where a woman who is married or in a significant relationship, within the meaning of the *Relationships Act 2003*, undergoes a fertilization procedure as a result of which she becomes pregnant and the ovum used for the purposes of the fertilization procedure was taken from another woman, the first-mentioned woman shall, for the purposes of the law of the State, be treated as if she were the mother of any child born as a result of that pregnancy.
- (4) Where a woman undergoes a fertilization procedure as a result of which she becomes pregnant, and another woman produced the ovum used for the purposes of the fertilization procedure, that other woman shall, for the purposes of the law of the State, be treated as if she were not the mother of any child born as a result of that pregnancy.
- (5) In any proceedings in which the operation of subsection (1) or (1A) is relevant, the consent of a spouse or other party to the significant relationship to the carrying out of a fertilization procedure shall be presumed, but that presumption is rebuttable.
- (6)

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Part IV – Medical procedures to determine parentage

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**PART IV – MEDICAL PROCEDURES TO DETERMINE
PARENTAGE**

11. Interpretation of Part IV

In this Part,

parentage testing procedure means a prescribed medical procedure or a prescribed class of medical procedure.

12. Application for order

If in any proceedings the parentage of a child is an issue, a party to the proceedings or a person representing the child may request the court to make an order requiring a parentage testing procedure to be carried out.

13. Orders for parentage testing procedure

- (1) A court, on request or of its own motion, may make an order requiring a parentage testing procedure to be carried out in relation to any one or more of the following persons:
 - (a) a particular child;
 - (b) the mother of the child;
 - (c) any other person the court considers relevant in order to assist in determining the parentage of a child.

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Part IV – Medical procedures to determine parentage

- (2) An order under subsection (1) may be made subject to any terms and conditions a court considers appropriate.

14. Additional orders

- (1) In an order made under section 13, a court may make such other orders as it considers necessary or desirable –
- (a) to enable the parentage testing procedure to be carried out; or
 - (b) to make the parentage testing procedure more effective or reliable.
- (2) An order under subsection (1) may also require a person to –
- (a) provide a bodily sample; or
 - (b) submit to a medical procedure; or
 - (c) provide information relevant to the person's medical or family history.
- (3) A court may make such orders as it considers just in relation to the costs incurred –
- (a) in the carrying out of the parentage testing procedure; or
 - (b) in the carrying out of any orders made under this section or section 13; or
 - (c) in the preparation of reports in relation to information obtained as a result of

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carrying out that parentage testing procedure.

- (4) A person over the age of 18 years who fails to comply with an order is not liable to a penalty but the court may draw such inferences as it considers just in the circumstances.

15. Guardian's consent

- (1) A medical procedure or any other act is not to be carried out in relation to a child under the age of 18 years without the consent of the child's guardian.
- (2) A court may draw such inferences as it considers just in the circumstances if the guardian of a child fails or refuses to consent.

16. Immunity from liability

- (1) If a guardian of a child consents to a medical procedure or any other act being carried out in relation to the child, a person who carries out, or assists in the carrying out of, the medical procedure or act is not liable to any action in relation to the proper carrying out of the medical procedure or act.
- (2) Subsection (1) does not affect any liability of a person for an act done negligently or negligently omitted to be done in relation to the carrying out of a medical procedure or act.

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Part IV – Medical procedures to determine parentage

17. Reports

- (1) A person who carries out a parentage testing procedure is to make a report in the prescribed form and manner of the information obtained as a result of carrying out such a procedure.
- (2) A report made under subsection (1) may be admitted in evidence in any proceedings under this Part.
- (3) If a report is admitted in evidence in any proceedings, a court, of its own motion, or at the request of a party to the proceedings or a person representing a child, may order the person who made the report or any other relevant person to appear and give evidence in relation to the report.

PART V – MISCELLANEOUS

18. Application of Parts II and IV

- (1) The provisions of Parts II and IV apply to a person –
 - (a) whether or not the person was born in this State; or
 - (b) whenever the person was born; or
 - (c) whether or not the person is a minor; or
 - (d) whether or not the person's parents have ever been domiciled in this State.
- (2) The amendments to Parts II and IV effected by the *Status of Children Amendment Act 1994* do not apply to proceedings that began before the commencement of that Act.

19. Rebuttal of presumptions

A presumption arising under this Act is rebuttable by proof on a balance of probabilities.

20. Prevailing presumptions

- (1) If 2 or more presumptions, or some of those presumptions, conflict and are not rebutted in any proceedings, the presumption that appears to the court to be the more or most likely to be correct prevails.

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Part V – Miscellaneous

- (2) This section does not apply to a presumption arising under section 8B(1).

21. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations in relation to the following matters:
- (a) fees to be charged under this Act;
 - (b) the carrying out of parentage testing procedures under Part IV.
- (3) Regulations may be made subject to conditions or so as to apply differently according to matters, limitations or restrictions specified in the regulations.
- (4) The regulations may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

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SCHEDULE 1

Section 12

The amendments effected by this Schedule have been incorporated into the authorised version of the following Acts:

- (a) Testator's Family Maintenance Act 1912;*
- (b) Workers' Compensation Act 1927;*
- (c) Fatal Accidents Act 1934;*
- (d) Child Welfare Act 1960;*
- (e) Mental Health Act 1963;*
- (f) Maintenance Act 1967;*
- (g) Adoption of Children Act 1968;*
- (h) Motor Accidents (Liability and Compensation) Act 1973;*
- (i) Registration of Births and Deaths Act 1895.*

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NOTES

The foregoing text of the *Status of Children Act 1974* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 8 May 2019 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Status of Children Act 1974</i>	No. 36 of 1974	1.3.1975
<i>Status of Children Amendment Act 1985</i>	No. 122 of 1985	28.11.1985
<i>Status of Children Amendment Act 1987</i>	No. 107 of 1987	8.8.1988
<i>Status of Children Amendment Act 1994</i>	No. 42 of 1994	1.8.1997
<i>Legislation Publication Act 1996</i>	No. 17 of 1996	12.5.1998
<i>Births, Deaths and Marriages Registration Act 1999</i>	No. 58 of 1999	Ss. 13(1) & 18(1) 1.11.2000
<i>Statute Law Revision Act 2003</i>	No. 9 of 2003	16.4.2003
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Relationships (Miscellaneous Amendments) Act 2009</i>	No. 73 of 2009	1.1.2010
<i>Justice and Related Legislation (Marriage and Gender Amendments) Act 2019</i>	No. 7 of 2019	8.5.2019

TABLE OF AMENDMENTS

Provision affected	How affected
Long Title	Amended by No. 122 of 1985, s. 4
Part I	Heading inserted by No. 122 of 1985, s. 5
Section 2	Substituted by No. 42 of 1994, s. 4
Section 3	Amended by No. 7 of 2019, s. 33
Part II	Heading inserted by No. 122 of 1985, s. 6
Section 5	Substituted by No. 42 of 1994, s. 5
	Amended by No. 7 of 2019, s. 34
Section 7	Amended by No. 42 of 1994, s. 6

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Provision affected	How affected
Section 8	Subsection (4A) inserted by No. 107 of 1987, s. 4 Subsection (4B) inserted by No. 107 of 1987, s. 4 Subsection (4C) inserted by No. 107 of 1987, s. 4 Substituted by No. 42 of 1994, s. 7
Section 8A	Inserted by No. 42 of 1994, s. 7
Section 8B	Inserted by No. 42 of 1994, s. 7
Section 8C	Inserted by No. 42 of 1994, s. 7 Amended by No. 66 of 2007, Sched. 1
Section 9	Amended by No. 107 of 1987, s. 5, No. 42 of 1994, s. 8, No. 58 of 1999, Sched. 1 and No. 9 of 2003, Sched. 1
Section 10	Substituted by No. 42 of 1994, s. 9 Amended by No. 58 of 1999, Sched. 1
Section 10A	Inserted by No. 122 of 1985, s. 7
Section 10B	Inserted by No. 122 of 1985, s. 7
Section 10C	Inserted by No. 122 of 1985, s. 7 Amended by No. 45 of 2003, Sched. 1, No. 73 of 2009, Sched. 1 and No. 7 of 2019, s. 35
Part IV	Substituted by No. 42 of 1994, s. 10
Section 11	Substituted by No. 42 of 1994, s. 10
Section 12	Substituted by No. 42 of 1994, s. 10
Section 13	Inserted by No. 42 of 1994, s. 10 Amended by No. 17 of 1996
Section 14	Inserted by No. 42 of 1994, s. 10
Section 15	Inserted by No. 42 of 1994, s. 10
Section 16	Inserted by No. 42 of 1994, s. 10
Section 17	Inserted by No. 42 of 1994, s. 10
Part V	Inserted by No. 42 of 1994, s. 10
Section 18	Inserted by No. 42 of 1994, s. 10 Amended by No. 17 of 1996
Section 19	Inserted by No. 42 of 1994, s. 10
Section 20	Inserted by No. 42 of 1994, s. 10
Section 21	Inserted by No. 42 of 1994, s. 10
