



AUSTRALIAN CAPITAL TERRITORY

# Substitute Parent Agreements Act 1994

No. 69 of 1994

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## **An Act to restrict the making of substitute parent agreements (sometimes called “surrogacy agreements”) and for related purposes**

*[Notified in ACT Gazette S229: 1 November 1994]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### **Short title**

1. This Act may be cited as the *Substitute Parent Agreements Act 1994*.

### **Commencement**

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the remaining provisions have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

### **Interpretation**

3. In this Act, unless the contrary intention appears—

“commercial substitute parent agreement” means a substitute parent agreement under which a person agrees to make or give to another person a payment or reward, other than for or on account for expenses connected with—

- (a) a pregnancy (including any attempt to become pregnant) that is the subject of the agreement; or
- (b) the birth or care of a child born as a result of that pregnancy;

“substitute parent agreement” means a contract, agreement, arrangement or understanding under which—

- (a) a person agrees to become, or to attempt to become, pregnant and that a child born as a result of the pregnancy is to be taken to be (whether by adoption, agreement or otherwise) the child of another person; or
- (b) a person who is pregnant agrees that a child born as a result of the pregnancy is to be taken to be (whether by adoption, agreement or otherwise) the child of another person.

#### **Application of offence provisions**

**4.** A person who does an act prohibited by this Act is guilty of an offence under this Act if—

- (a) the act occurs in the Territory, irrespective of the whereabouts of the person at the time the act is done; or
- (b) at the time the act is done, the person is ordinarily resident in the Territory, irrespective of where the act occurs.

#### **Commercial substitute parent agreements prohibited**

**5.** A person shall not enter into a commercial substitute parent agreement.

Penalty: \$10,000 or imprisonment for 12 months, or both.

#### **Procuration of substitute parent agreements**

**6.** A person shall not procure another person to enter into a substitute parent agreement with a third person unless the first-mentioned person intends to be a party to the agreement.

Penalty: \$10,000 or imprisonment for 12 months, or both.

#### **Advertising in relation to substitute parent agreements**

**7.** A person shall not publish an advertisement, notice or document—

- (a) intended or likely to induce a person to enter into a substitute parent agreement;

- (b) seeking or purporting to seek a person who is willing to enter into a substitute parent agreement; or
- (c) stating or implying that a person is willing to enter into a substitute parent agreement.

Penalty:

- (a) where the offence relates to a commercial substitute parent agreement—\$5,000 or imprisonment for 6 months, or both;
- (b) in any other case—\$5,000.

### **Facilitating pregnancy**

**8.** A person shall not knowingly provide any professional or technical services to another person to facilitate a person who is, or intends to be, a party to a commercial substitute parent agreement becoming pregnant for the purpose of the agreement.

Penalty: \$10,000 or imprisonment for 12 months, or both.

### **Substitute parent agreements void**

**9.** A substitute parent agreement is void.

### **Welfare and interests of child paramount**

**10.** Despite section 9, in any action or proceeding in connection with a substitute parent agreement, the welfare and interests of the child born as a result of a pregnancy that was the subject of the agreement shall be regarded as the paramount consideration.

*[Presentation speech made in Assembly on 19 May 1994]*