



Australian Capital Territory

# Parentage Act 2004

A2004-1

**Republication No 11**

**Effective: 10 July 2024**

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## About this republication

### The republished law

This is a republication of the *Parentage Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 10 July 2024. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 10 July 2024.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

# Parentage Act 2004

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An Act relating to parentage, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Parentage Act 2004*.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*birth parent*, of a child, for division 2.5 (Surrogacy)—see section 23.' means that the term 'birth parent' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.



## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2                            Establishing parentage

### Division 2.1                  General

#### 6                            Purpose of pt 2

This part sets out presumptions about parentage and provides for the Supreme Court to make a parentage declaration that establishes who is a parent of a child.

*Note*     **Parent** is defined in the [Legislation Act](#), dict, pt 1 as follows:

**parent**, of a child, means—

- (a) the child's mother; or
- (b) the child's father; or
- (c) someone else who is presumed under the Parentage Act 2004, part 2 to be a parent of the child.

### Division 2.2                  Presumptions about parentage

#### 7                            Presumptions arising from marriage, civil union or civil partnership

- (1) A child born to a person while the person is married or in a civil union or civil partnership is presumed to be a child of the person and the person's spouse, civil union partner or civil partner.
- (2) A child born to a person within 44 weeks after the death of the person's spouse, civil union partner or civil partner is presumed to be the child of the person and the person's spouse, civil union partner or civil partner who died.
- (3) A child born to a person within 44 weeks after the annulment of the person's purported marriage is presumed to be the child of the person and the person's purported spouse.

- (4) A child born to a person after the end of the person's marriage, civil union or civil partnership, but within 44 weeks after the person last separated from the person's spouse or partner in that marriage, civil union or civil partnership, is presumed to be the child of the person and the person's spouse or partner in that marriage, civil union or civil partnership.

## **8 Presumption arising from domestic partnership**

- (1) A person is presumed to be a parent of a child if the person was in a domestic partnership with another person who gave birth to the child at any time during the period beginning not earlier than 44 weeks, and ending not later than 20 weeks, before the birth of the child.
- (2) This presumption applies whether the child was born before or after the commencement of this Act.
- (3) However, this section does not affect the vesting in possession or in interest of any property that happened before the commencement of this Act.

## **9 Presumptions arising from registered information**

- (1) A person whose name is entered in a register as the name of a parent of a child is presumed to be a parent of the child.
- (2) This section applies to an entry in a register whether the entry was made before or after the commencement of this Act.
- (3) In this section:

*register* means—

- (a) the register under the *Births, Deaths and Marriages Registration Act 1997*; or
- (b) a register in which births are recorded under the law of—
- (i) the Commonwealth, a State or another Territory; or
  - (ii) a foreign jurisdiction prescribed under the regulations; or

- (c) another register in which information about parentage is recorded under the law of—
  - (i) the Commonwealth, a State or another Territory; or
  - (ii) a foreign jurisdiction prescribed under the regulations.

## **10            Presumptions arising from findings of courts**

- (1) A person is conclusively presumed to be a parent of a child if—
  - (a) during the person’s life, a court of the Territory, the Commonwealth, a State or another Territory has—
    - (i) found expressly that the person is a parent of the child; or
    - (ii) made a finding that it could not have made unless the person was a parent of the child; and
  - (b) the finding has not been changed, set aside or reversed.
- (2) A person is presumed to have been a parent of a child if—
  - (a) after the death of the person, a court of the Territory, the Commonwealth, a State or another Territory has—
    - (i) found expressly that the person was a parent of the child;  
or
    - (ii) made a finding that it could not have made unless the person was a parent of the child; and
  - (b) the finding has not been changed, set aside or reversed.
- (3) In this section:  
*finding*, of a court, includes an order or direction of the court.

## **11 Presumptions arising from procedure**

- (1) This section sets out presumptions that arise if a person undergoes a procedure as a result of which the person becomes pregnant.
- (2) The person is conclusively presumed to be a parent of any child born as a result of the pregnancy.
- (3) If the ovum used in the procedure was produced by another person other than the person's domestic partner at the time of the procedure, the person who produced the ovum is conclusively presumed not to be a parent of any child born as a result of the pregnancy.
- (4) If semen used in the procedure was produced by another person other than the person's domestic partner at the time of the procedure, the person who produced the semen is conclusively presumed not to be a parent of any child born as a result of the pregnancy.
- (5) If the person undergoes the procedure with the consent of the person's domestic partner at the time of the procedure, the domestic partner is conclusively presumed to be a parent of any child born as a result of the pregnancy.
- (6) For subsection (5), a person is presumed to consent to the carrying out of a procedure in relation to the person's domestic partner, but the presumption is rebuttable.
- (7) The presumptions set out in this section apply—
  - (a) whenever the pregnancy happened and whether or not it resulted from a procedure carried out in the ACT; and
  - (b) in relation to any child born as a result of the pregnancy, whether or not the child was born in the ACT.
- (8) However, this section does not affect the vesting in possession or in interest of any property that happened before the commencement of this Act.

(9) In this section:

*procedure* means—

- (a) artificial insemination; or
- (b) a clinical process to transfer into the uterus of a person an embryo derived from an ovum fertilised outside the person's body; or
- (c) any other way (whether medically assisted or not) by which a person can become pregnant other than by having sexual intercourse with a person.

## **Division 2.3            Effect of presumptions**

### **12            Whether presumptions conclusive or rebuttable**

In a proceeding—

- (a) a conclusive presumption under division 2.2 is not rebuttable; and
- (b) a presumption that is not conclusive under that division is rebuttable by proof on the balance of probabilities.

*Note*      The presumptions arising under s 10 (1) (Presumptions arising from findings of courts) and s 11 (Presumptions arising from procedure) are conclusive. The other presumptions arising under div 2.2 are not conclusive.

### **13            Conflicting presumptions**

(1) This section applies if—

- (a) 2 or more presumptions about the parentage of a child are relevant in a proceeding; and
- (b) the presumptions conflict with each other.

- (2) If 1 of the presumptions arises under section 10 (1) (Presumptions arising from findings of courts), that presumption prevails over any other presumption.
- (3) If 1 of the presumptions arises under section 11 (Presumptions arising from procedure), that presumption prevails over any presumption other than a presumption that arises under section 10 (1).
- (4) If no presumption arises under section 10 (1) or section 11, the court must decide which presumption prevails having regard to the interests of justice and the best interests of the child.

**14 Presumptions not to allow more than 2 parents**

Despite anything in this Act or in any other Territory law, a child cannot have more than 2 parents at any one time.

**Division 2.4 Parentage declarations**

**15 Application for parentage declaration**

- (1) An application for a parentage declaration may be made to the Supreme Court by—
  - (a) a parent of a child who claims that another particular person is also a parent of the child; or
  - (b) a person who claims to be a parent of a particular child; or
  - (c) a person who claims that a particular person is their parent; or
  - (d) the registrar-general, or someone else having a proper interest in the matter, if a decision is sought about whether a particular person is a parent of a particular child.

## **16            Further application for parentage declaration**

- (1) This section applies if—
  - (a) an application for a parentage declaration (or an appeal against an order dismissing an application) has been dismissed because the relationship claimed in the application has not been established; or
  - (b) a parentage declaration has been set aside on appeal because the relationship stated in the declaration has not been established.
- (2) The applicant may make another application to the Supreme Court for the declaration sought in the original application if—
  - (a) facts or circumstances that existed when the original application was heard were not disclosed to the court; and
  - (b) the applicant—
    - (i) did not know of those facts or circumstances at that time or
    - (ii) could not, by the exercise of reasonable diligence, have discovered those facts or circumstances before that time.
- (3) On an application under this section, the court must receive the evidence given at the hearing of the original application as well as any evidence relating to facts or circumstances mentioned in subsection (2) (a).
- (4) The court must dismiss an application under this section if, at the end of the evidence presented by the applicant, the court finds that the evidence relating to the facts and circumstances mentioned in subsection (2) (a) is not material to establishing the existence of the relationship that the applicant claims to exist or wishes to be decided.

## **17            Refusal to hear application**

The Supreme Court may refuse to hear an application under section 15 or section 16 in relation to a child if the court considers it would not be in the best interests of the child to hear the application.



## **18 Adjourment of hearing**

- (1) This section applies if—
  - (a) a person whose interests would, in the Supreme Court’s opinion, be affected by making a parentage declaration—
    - (i) is not present or represented at the hearing of the application; and
    - (ii) has not been given an opportunity to be present or represented; and
  - (b) the court considers the person ought to be given the opportunity to be present or represented.
- (2) The Supreme Court may adjourn the hearing so the person can be given the opportunity.

## **19 Parentage declaration**

- (1) On an application under section 15 or section 16, the Supreme Court may declare that a particular person is a parent of a particular child.
- (2) A parentage declaration may be made about a child whether or not—
  - (a) the child is born; or
  - (b) the parent or child is alive.

## **20 Application for annulment of parentage declaration**

An application for an order annulling a parentage declaration may be made to the Supreme Court by—

- (a) the applicant for the declaration; or
- (b) a person named in the declaration; or
- (c) a person who would, before the declaration was made, have been entitled to apply for a parentage declaration about a person named in the declaration.

## **21            Adjournment of hearing**

- (1) This section applies if—
  - (a) a person whose interests would, in the Supreme Court’s opinion, be affected by making an order annulling a parentage declaration—
    - (i) is not present or represented at the hearing of the application for the order; and
    - (ii) has not been given an opportunity to be present or represented; and
  - (b) the court considers the person ought to be given the opportunity to be present or represented.
- (2) The Supreme Court may adjourn the hearing so the person can be given the opportunity.

## **22            Annulment of parentage declaration**

- (1) The Supreme Court may, by order, annul a parentage declaration if—
  - (a) the court considers that facts exist, or circumstances have arisen, that—
    - (i) were not disclosed to the court before the declaration was made; and
    - (ii) could not, by the exercise of reasonable diligence, have been disclosed to the court by the applicant when the application for the declaration was heard; and
    - (iii) are material to the question whether the relationship stated in the declaration exists; and
  - (b) after considering those facts or circumstances the court is not satisfied that the relationship is established.

- (2) However, subsection (1) (a) (ii) does not apply if the applicant for the order is—
- (a) a person who was a child when the declaration was made; or
  - (b) the registrar-general.
- (3) If the Supreme Court makes an order annulling a declaration—
- (a) the declaration ceases to have effect; and
  - (b) the annulment does not affect anything done relying on the declaration before the order was made.
- (4) If the Supreme Court makes an order annulling a declaration, it may make the ancillary orders (including orders varying property rights) that it considers just and equitable to place everyone affected by the annulment as far as practicable in the position each person would have been in if the declaration had not been made.

## **Division 2.5                      Surrogacy**

### **Subdivision 2.5.1      Definitions—div 2.5**

#### **23                      Definitions—div 2.5**

In this division:

***birth parent***, of a child, means the person who intends to give birth or gave birth to the child.

***birth sibling***, of a child, means any other child who is born as a result of the same pregnancy as the child.

***intended parent*** means a person who will be taken to be the parent of a child born under a surrogacy arrangement.

***partner***, of a birth parent, means the other person, if any, presumed under division 2.2 to be a parent of the child.

*presumed parent*, of a child, means—

- (a) the birth parent; or
- (b) the birth parent's partner.

*procedure* means—

- (a) artificial insemination; or
- (b) a clinical process to transfer into the uterus of a person an embryo derived from an ovum fertilised outside the person's body.

## **24            Meaning of *reasonable expense***

- (1) In this Act:

*reasonable expense*, in relation to a presumed parent under a surrogacy arrangement, means an expense paid or owing that is—

- (a) verified by a receipt or other document; and
- (b) reasonably necessary or reasonably incidental to any of the following:
  - (i) becoming or trying to become pregnant;
  - (ii) a pregnancy or a birth;
  - (iii) entering into and giving effect to a surrogacy arrangement.

- (2) Without limiting subsection (1) (b), a regulation may also prescribe an expense as reasonably necessary or reasonably incidental to a matter mentioned in subsection (1) (b).

## **25            Provision of counselling**

Any counselling a person receives under this division must be provided by a person prescribed by regulation.

## **Subdivision 2.5.2 Surrogacy arrangements**

### **26 Surrogacy arrangement must be in writing**

A surrogacy arrangement must be in writing.

### **27 Parties to surrogacy arrangement**

The parties to a surrogacy arrangement are—

- (a) the birth parent; and
- (b) the birth parent's partner, if any; and
- (c) each intended parent.

### **28 Legal advice**

- (1) Each party to a surrogacy arrangement must, before entering into the arrangement, obtain legal advice about its effect.
- (2) The intended parent or parents must obtain legal advice that is independent to the legal advice obtained by the birth parent and their partner, if any.
- (3) If there are 2 intended parents to the surrogacy arrangement, they may obtain the legal advice jointly or separately.
- (4) If the birth parent's partner is a party to the surrogacy arrangement, the birth parent and their partner may obtain the legal advice jointly or separately.

### **28A Counselling**

- (1) Each party to a surrogacy arrangement must, before entering into the arrangement, receive counselling about its effect.
- (2) The intended parent or parents must receive counselling from a person who is different to the person from whom the birth parent and their partner, if any, receive their counselling.

- (3) If there are 2 intended parents to the surrogacy arrangement, they may receive the counselling jointly or separately.
- (4) If the birth parent's partner is a party to the surrogacy arrangement, the birth parent and their partner may receive the counselling jointly or separately.
- (5) If the birth parent is to undergo a procedure with the intention of becoming pregnant as a result of the procedure, the counselling each party must receive under this section must be from a person who, or an entity providing counselling services that, is not connected with—
  - (a) the doctor who will carry out the procedure; or
  - (b) the institution where the procedure will be carried out; or
  - (c) another entity involved in carrying out the procedure.

**28B      Age of intended parent**

Each intended parent must be at least 18 years old when they enter into a surrogacy arrangement.

**28C      Age of birth parent**

- (1) A birth parent must be at least 18 years old when they enter into a surrogacy arrangement.
- (2) However, a birth parent who is not yet 25 years old must not enter into a surrogacy arrangement unless—
  - (a) the birth parent has received counselling about the surrogacy arrangement and its social and psychological implications; and
  - (b) the counsellor was satisfied that the birth parent was of sufficient maturity to understand the surrogacy arrangement and its social and psychological implications.

- (3) The birth parent must receive counselling from a person who is different to the person from whom the intended parent or parents to the surrogacy arrangement receive their counselling under section 28A (1).
- (4) If the birth parent is to undergo a procedure with the intention of becoming pregnant as a result of the procedure, the counselling they must receive under subsection (2) must be from a person who, or an entity providing counselling services that, is not connected with—
  - (a) the doctor who will carry out the procedure; or
  - (b) the institution where the procedure will be carried out; or
  - (c) another entity involved in carrying out the procedure.

#### **28D Reasonable expenses incurred**

A surrogacy arrangement may provide for the payment or reimbursement of only the reasonable expenses in relation to the surrogacy arrangement.

#### **28E Rights of birth parent**

A birth parent has the same rights to manage their pregnancy and birth as any other pregnant person.

### **Subdivision 2.5.3 Parentage orders**

#### **28F Application—subdiv 2.5.3**

- (1) This subdivision applies to a child if—
  - (a) there is a surrogacy arrangement, other than a commercial surrogacy arrangement, under which the intended parent or intended parents have indicated their intention to apply for a parentage order about the child; and
  - (b) the intended parent or intended parents of the child live in the ACT.

- (2) This subdivision also applies to a child if—
- (a) there is a commercial surrogacy arrangement of a kind described in section 40 (1) (a) under which the intended parent or intended parents have indicated their intention to be taken to be the parent or parents of the child; and
  - (b) the intended parent or intended parents of the child live in the ACT.

**28G      Application for parentage order**

- (1) The intended parent or intended parents of a child mentioned in section 28F may make an application to the Supreme Court for a parentage order about the child.
- (2) If there are 2 intended parents to an arrangement mentioned in section 28F, the application must be made jointly by both intended parents, unless the Supreme Court gives leave to only 1 intended parent to make the application.
- (3) The application may only be made—
  - (a) for a child mentioned in section 28F (1)—after the child is at least 4 weeks old but before the child is 6 months old; or
  - (b) for a child mentioned in section 28F (2)—at any time after the child is at least 4 weeks old.
- (4) However, an application for a child mentioned in section 28F (1) may be made after the end of the time limit specified in subsection (3) (a) if the Supreme Court is satisfied on reasonable grounds that exceptional circumstances justify the court deciding the application.



## **28H Making of parentage order**

- (1) The Supreme Court may make a parentage order about a child mentioned in section 28F (1) if satisfied that—
  - (a) the making of the order is in the best interests of the child; and
  - (b) each presumed parent freely, and with a full understanding of what is involved, agrees to the making of the order; and
  - (c) the requirements of subdivision 2.5.2 are met.
- (2) The Supreme Court may make a parentage order about a child mentioned in section 28F (2) if satisfied that—
  - (a) the making of the order is in the best interests of the child; and
  - (b) there is a pressing disadvantage facing the child that would be alleviated by making a parentage order about the child; and
  - (c) each presumed parent freely, and with a full understanding of what is involved, agrees to the making of the order; and
  - (d) the requirements of subdivision 2.5.2, other than the requirement in section 28D (Reasonable expenses incurred), are met as if the commercial surrogacy arrangement mentioned in section 28F (2) (a) were a surrogacy arrangement mentioned in section 28F (1) (a); and
  - (e) it is reasonable in all the circumstances to make the parentage order.

*Note* The making of a parentage order about a child born under a commercial surrogacy arrangement does not affect a person's criminal responsibility under pt 4—see s 31 (Effect of surrogacy arrangements).

- (3) In making an order under subsection (1) or (2), the Supreme Court may do any of the following:
- (a) dispense with the requirement under subsection (1) (b) or (2) (c) in relation to a presumed parent if satisfied that the presumed parent is dead or incapacitated or, despite reasonable steps having been taken, cannot be contacted;
  - (b) dispense with the following requirements of subdivision 2.5.2 if satisfied that doing so is in the best interests of the child:
    - (i) section 26 (Surrogacy arrangement must be in writing);
    - (ii) section 28 (Legal advice);
    - (iii) section 28A (Counselling).

**28I            Relevant considerations for making of parentage order**

- (1) In deciding whether to make a parentage order, the Supreme Court may take the following, if relevant, into consideration:
- (a) whether the child's home is, and was at the time of the application, with the intended parent or intended parents;
  - (b) if there are 2 intended parents to the arrangement but only 1 intended parent has applied for the order (the *applicant intended parent*), and the other intended parent is alive at the time of the application, whether—
    - (i) the other intended parent freely, and with a full understanding of what is involved, agrees to the making of the order in favour of the applicant intended parent; or
    - (ii) the applicant intended parent, despite taking reasonable steps, cannot contact the other intended parent to obtain their agreement under subparagraph (i);

- (c) if a presumed parent is dead or incapacitated or cannot be contacted—any evidence before the court that the parent no longer agreed or agrees that the intended parent or intended parents obtain a parentage order about the child;
  - (d) if the birth parent was not yet 25 years old, but was at least 18 years old, when they entered into the arrangement—any evidence before the court of compliance with section 28C (2).
- (2) The Supreme Court may take into consideration anything else it considers relevant.

## **28J Content of parentage order**

- (1) If the Supreme Court makes a parentage order, the order must state—
- (a) for an application made jointly by 2 intended parents to an arrangement mentioned in section 28F—that the order is in favour of both intended parents; or
  - (b) for an application made by only 1 of 2 intended parents to an arrangement mentioned in section 28F—
    - (i) if the application was made by the applicant intended parent because the other intended parent is dead or incapacitated—
      - (A) that the order is in favour of both intended parents; or
      - (B) if the court is satisfied that, at the time of the other intended parent's death or incapacitation, the deceased or incapacitated intended parent no longer intended or intends to apply for a parentage order about the child—that the order is in favour of the applicant intended parent; or
    - (ii) in any other case—that the order is in favour of the applicant intended parent; or

(c) for an application made by 1 intended parent who is the only intended parent to an arrangement—that the order is in favour of the intended parent.

(2) In this section:

*applicant intended parent*—see section 28I (1) (b).

### **28K        Multiple births**

(1) This section applies if a child about whom an application for a parentage order has been made has a living birth sibling.

(2) Despite section 28H (1) or (2), the Supreme Court may make a parentage order about the child only if it also makes a parentage order about each living birth sibling of the child.

### **28L        Name of child**

(1) On the making of a parentage order about a child, the child has as their surname—

(a) if the order is made in favour of 1 intended parent—the surname of the intended parent; or

(b) if the order is made in favour of 2 intended parents and they are both known by the same surname—that surname; or

(c) in any other case—a name the Supreme Court, on the application of the intended parent or intended parents, approves in the parentage order.

(2) On the making of a parentage order about a child, the child has as their given name or names a name or names the Supreme Court, on the application of the intended parent or intended parents, approves in the parentage order.

- (3) Despite subsection (2), if the child has been generally known by a particular name or names, the Supreme Court may, in the parentage order, order that the child will have that name or those names as their given name or names.
- (4) This section does not prevent a name of a child being later changed in accordance with territory law.

## **29 Effect of parentage order and access to information**

- (1) If a parentage order is made about a child, the provisions of the *Adoption Act 1993* mentioned in subsection (3) (the ***applied provisions***) apply in relation to the parentage order as if the parentage order were an order made under that Act for the adoption of the child and the child were an adopted child.
- (2) For that application—
  - (a) a reference in an applied provision to the adoptive parent or adoptive parents is a reference to the intended parent or intended parents in whose favour the parentage order was made; and
  - (b) a reference in an applied provision to the adopted child or adopted person is a reference to the child about whom the parentage order was made; and
  - (c) a reference in an applied provision to the commencement of the *Adoption Act 1993* were a reference to the commencement of this Act; and
  - (d) a reference in section 48 to the director-general were a reference to the registrar-general; and
  - (e) any other necessary changes were made.

- (3) The applied provisions of the *Adoption Act 1993* are as follows:
- section 43 (General effect) other than subsections (1) (c) and (2)
  - section 44 (Disposition of property)
  - section 47 (Distribution of property by trustee or personal representative)
  - section 48 (Bequest by will to unascertained adopted person)
  - section 49 (Gifts between living people)
  - section 60 (Confidentiality of records) other than subsection (1) (a)
  - section 62 (3) (Provision of information)
  - division 5.3 (Identifying information) other than sections 70, 71, 77, 78 and 79.

### **30            Medical information**

- (1) This section applies if—
- (a) information about the medical or psychiatric condition of a relevant person may be disclosed by a medical record holder under a law in force in the Territory; and
  - (b) the relevant person applies to the medical record holder for the information; and
  - (c) the medical record holder considers that the disclosure might be prejudicial to the physical or mental health or wellbeing of the relevant person.
- (2) The medical record holder may—
- (a) refuse to disclose the information to the relevant person personally; and
  - (b) instead disclose it (without identifying anyone other than the relevant person) to a doctor nominated by the relevant person.

(3) In this section:

*relevant person* means—

- (a) the child about whom a parentage order is made; or
- (b) a presumed parent of the child; or
- (c) a person who was a grandparent, sibling or sibling of the parents of the child before the parentage order was made; or
- (d) a person who is a grandparent, sibling or sibling of the parents of the child because of the parentage order; or
- (e) a descendant of the child (including their own child).

### **31 Effect of surrogacy arrangements**

- (1) The legal effect of a surrogacy arrangement is limited only to this division.
- (2) The making of a parentage order about a child born under a commercial surrogacy arrangement does not affect a person's criminal responsibility under part 4 in relation to the commercial surrogacy arrangement.

### **Subdivision 2.5.4 Parentage orders—particular arrangements entered into before Parentage (Surrogacy) Amendment Act 2024**

#### **31A Definitions—subdiv 2.5.4**

In this subdivision:

*commencement day* means the day the *Parentage (Surrogacy) Amendment Act 2024*, section 8 commences.

*commercial arrangement* means an arrangement in the nature of a surrogacy arrangement that also includes an agreement by any person to make or give to someone else payment or reward, other than reasonable expenses incurred in relation to the arrangement.

*payment or reward*—see section 40 (2).

**31B        Parentage order—commercial arrangement made and child born before commencement day**

- (1) This section applies if—
  - (a) a commercial arrangement was entered into before the commencement day; and
  - (b) a person gave birth to a child, under the commercial arrangement, before the commencement day; and
  - (c) there is no parentage order in force in relation to the child before the commencement day; and
  - (d) subdivision 2.5.3 would apply to the child had the arrangement been an arrangement mentioned in section 28F (2) (a) entered into on or after the commencement day; and
  - (e) the person or people who intend to be taken to be the parent or parents of the child under the arrangement live in the ACT.
- (2) The person or people may apply to the Supreme Court under section 28G for a parentage order for the child as if—
  - (a) the commercial arrangement is a commercial surrogacy arrangement of a kind described in section 40 (1) (a); and
  - (b) the person or people were the intended parent or intended parents of the child under the commercial surrogacy arrangement.
- (3) The Supreme Court may make a parentage order about the child under section 28H (2) as if the child were a child mentioned in section 28F (2).



- (4) In making a parentage order about the child, the Supreme Court need not be satisfied under section 28H (2) (d) that the requirements of subdivision 2.5.2 are met.

**31C Effect of parentage order mentioned in s 31B and access to information**

- (1) This section applies instead of section 29 in relation to a parentage order mentioned in section 31B (3).
- (2) The provisions of the *Adoption Act 1993* mentioned in subsection (4) (the *applied provisions*) apply in relation to the parentage order as if the parentage order were an order made under that Act for the adoption of the child and the child were an adopted child.
- (3) For that application—
- (a) a reference in an applied provision to the adoptive parent or adoptive parents is a reference to the intended parent or intended parents in whose favour the parentage order was made; and
  - (b) a reference in an applied provision to the adopted child or adopted person is a reference to the child about whom the parentage order was made; and
  - (c) a reference in an applied provision to the commencement of the *Adoption Act 1993* were a reference to the commencement day; and
  - (d) a reference in the *Adoption Act 1993*, section 48 to the director-general were a reference to the registrar-general; and
  - (e) any other necessary changes were made.
- (4) The applied provisions of the *Adoption Act 1993* are as follows:
- (a) section 43 (General effect) other than subsections (1) (c) and (2);
  - (b) section 44 (Disposition of property);

- (c) section 47 (Distribution of property by trustee or personal representative);
- (d) section 48 (Bequest by will to unascertained adopted person);
- (e) section 49 (Gifts between living people);
- (f) section 60 (Confidentiality of records) other than subsection (1) (a);
- (g) section 62 (3) (Provision of information);
- (h) division 5.3 (Identifying information) other than sections 70, 71, 77, 78 and 79.

**31D            Effect of parentage order on commercial substitute parent agreement**

- (1) The making of a parentage order about a child born under a commercial substitute parent agreement does not affect a person's criminal responsibility under part 4, as in force immediately before the commencement day, in relation to the commercial substitute parent agreement.

- (2) In this section:

*commercial substitute parent agreement*—see section 40, as in force immediately before the commencement day.

**Division 2.6                    Use of medical tests in establishing parentage**

**32            Definition for div 2.6**

In this division:

*parentage testing order*—see section 34.

**33 Application of div 2.6**

This division applies if the parentage of a child is in issue in a civil proceeding in a court.

**34 Order to carry out medical tests**

- (1) The court may make an order (a *parentage testing order*) requiring stated medical tests that are relevant to establishing the parentage of the child to be carried out on a stated person within a stated time and in accordance with any stated conditions.
- (2) The court may make the parentage testing order—
  - (a) on its own initiative; or
  - (b) on the application of a party to the proceeding; or
  - (c) if the child is not a party—on the application of the child.
- (3) If the child makes an application, the child must be joined as a party to the proceeding.
- (4) When deciding whether to make the parentage testing order, the court must take into account any objection made on medical, religious or other grounds by the person to whom a copy of the order must be given.
- (5) A copy of the parentage testing order must be given—
  - (a) if the stated person is under 18 years old—to the person who has custody of the stated person; or
  - (b) if the stated person is of unsound mind or for any other reason incapable of consenting to having the medical tests carried out—to the person who has the care and control of the stated person; or
  - (c) in any other case—to the stated person.
- (6) The court may at any time revoke or vary the parentage testing order.

**35                      Effect of failure to comply with parentage testing order**

- (1) If, without reasonable excuse, a parentage testing order is not complied with the court may draw the inferences from the failure to comply that it considers appropriate.
- (2) In particular, the court may treat the failure—
  - (a) as evidence corroborating the evidence of a party to the proceeding; or
  - (b) if the stated person is a party to the proceeding and is relying in the proceeding on a rebuttable presumption arising under division 2.2—as evidence rebutting the presumption.
- (3) An objection mentioned in section 34 (4) that has been taken into account is not a reasonable excuse for subsection (1).
- (4) Without limiting subsection (1) or (2), if a parentage testing order is not complied with the court may—
  - (a) dismiss the proceeding; or
  - (b) allow the proceeding to continue on the conditions it considers appropriate.

**36                      Reports of medical tests**

- (1) This section applies if—
  - (a) the court makes a parentage testing order in a proceeding; and
  - (b) a medical test required under the order is carried out in accordance with the regulations.
- (2) A report prepared in accordance with the regulations by the person who carried out the test, and stating the result of the test, is admissible in the proceeding as evidence of matters stated in the report.

- (3) The court may call as a witness—
  - (a) the person who prepared the report; or
  - (b) anyone who assisted in carrying out the medical tests mentioned in the report.
- (4) The court may act under subsection (3)—
  - (a) on its own initiative; or
  - (b) on the application of a party to the proceeding; or
  - (c) if the child whose parentage is in issue is not a party—on the application of the child.
- (5) If the child makes an application, the child must be joined as a party to the proceeding.
- (6) A person called as a witness under subsection (3) may be cross-examined by any party to the proceeding, including a party who called the person.
- (7) The cost of carrying out a medical test under the parentage testing order (including any expenses reasonably incurred in taking any steps required for the purpose) and preparing a report in relation to the test must be regarded as costs of the proceeding.

### **37 Offences related to medical tests**

- (1) A person must not impersonate someone else in undergoing a medical test under a parentage testing order.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if the person—
- (a) puts forward a child or someone who is of unsound mind to undergo a medical test under a parentage testing order; and
  - (b) knows that the person put forward is not the person stated in the order.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) A person who is not a doctor, a nurse or a person prescribed under the regulations must not take a sample of a person's blood or other body tissue for the purpose of carrying out a medical test under a parentage testing order.

Maximum penalty: 30 penalty units.

## Part 3 Status of children

### 38 Children all of equal status

- (1) This section applies if the relationship of a person with the person's parents, or with either of them, is to be decided under a Territory law, whether in a proceeding before a court or otherwise.
- (2) The relationship must be decided without regard to whether the parents of the person are or have ever been married to, or in a civil union or civil partnership with, each other.
- (3) All other relationships of or to the person, whether of consanguinity or affinity, must be decided in the same way.
- (4) This section is subject to section 39.
- (5) In this section:

*affinity* means affinity derived through marriage, civil union, civil partnership or any other domestic partnership.

### 39 Construction of instruments

- (1) Subsections (2) and (3) apply to—
  - (a) an instrument other than a will or codicil that was signed after 24 March 1989; or
  - (b) an instrument other than a will or codicil that—
    - (i) was signed before that date; and
    - (ii) under the law of the place where the instrument was signed, would be interpreted without regard to the illegitimacy of people mentioned in, or taking under, the instrument.
- (2) Any rule of law that a disposition in favour of an exnuptial child not conceived or born when an instrument takes effect is void for being contrary to public policy is abolished.

- (3) In an instrument other than a will or codicil—
- (a) a reference (however expressed) to a child of a person includes a reference to an exnuptial child of the person; and
  - (b) a reference (however expressed) to a person related to someone else in another way includes a reference to anyone who is related in that way regardless of whether the person or another person through whom the relationship is traced is or was an exnuptial child.
- (4) An instrument (other than an instrument mentioned in subsection (1) or a will or codicil) that was executed before 24 March 1989 must be interpreted as if the *Birth (Equality of Status) Act 1988* or this Act had not been made.
- (5) The *Birth (Equality of Status) Act 1988*, part 3 and part 4 apply in relation to the interpretation of a will or codicil if the testator died on or after 24 March 1989 and before the commencement of this Act, but a will or codicil must otherwise be interpreted as if that Act had not been made.
- (6) This Act applies to the interpretation of a will or codicil if the testator died on or after the commencement of this Act, but a will or codicil must otherwise be interpreted as if this Act had not been made.
- (7) If an instrument contains a special power of appointment in favour of a class of people, nothing in the *Birth (Equality of Status) Act 1988* or this Act extends the class of people in whose favour the appointment may be made or causes the exercise of the power to be interpreted to include anyone who is not a member of that class.
- (8) In this section:
- exnuptial child*** means a child whose parents were not married to each other when the child was conceived and have not later married each other (other than a child who is a legitimate child, or is taken to be a legitimate child, under the *Marriage Act 1961* (Cwlth), part 6).



## Part 4 Offences relating to surrogacy arrangements

*Note* The making of a parentage order about a child born under a commercial surrogacy arrangement does not affect a person's criminal responsibility under this part—see s 31 (Effect of surrogacy arrangements).

### 40 Meaning of *commercial surrogacy arrangement*

(1) In this Act:

*commercial surrogacy arrangement* means—

- (a) a surrogacy arrangement under which a person agrees to make or give to someone else a payment or reward, other than for reasonable expenses incurred in relation to the arrangement; or
- (b) a contract, agreement, arrangement or understanding under which—
  - (i) a person who is pregnant agrees that a child born as a result of the pregnancy will be taken to be the child of someone else; and
  - (ii) a person agrees to make or give to someone else a payment or reward, other than for reasonable expenses incurred in relation to the contract, agreement, arrangement or understanding as if the contract, agreement, arrangement or understanding was a surrogacy arrangement.

(2) In this section:

*payment or reward* includes a payment or reward for or in consideration of—

- (a) the making of a parentage order; or
- (b) an agreement by each presumed parent to the making of a parentage order; or

- (c) the handing over of a child to the intended parent or intended parents; or
- (d) the making of any arrangements with a view to the making of a parentage order.

**41 Commercial surrogacy arrangements prohibited**

A person commits an offence if the person intentionally enters into a commercial surrogacy arrangement.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**42 Procuring commercial surrogacy arrangements**

A person commits an offence if the person procures someone to enter into a commercial surrogacy arrangement with a third person.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**43 Advertising in relation to commercial surrogacy arrangements**

- (1) A person commits an offence if the person—
  - (a) publishes an advertisement, notice or anything else with the intention of inducing someone to enter into a commercial surrogacy arrangement; or
  - (b) publishes an advertisement, notice or anything else that—
    - (i) is likely to induce someone to enter into a commercial surrogacy arrangement; or
    - (ii) seeks or purports to seek someone who is willing to enter into a commercial surrogacy arrangement; or

- (iii) states or implies that someone is willing to enter into a commercial surrogacy arrangement.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) In this section:

***publish***—something is ***published*** if it is—

- (a) included in a newspaper, periodical publication or other publication; or
- (b) publicly exhibited in, on, over or under a building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of people on a street or in a public place; or
- (c) contained in a document given to someone or left on premises where someone lives or works; or
- (d) broadcast by radio or television; or
- (e) electronically disseminated in another way (for example, by inclusion on a web site).

#### **44 Facilitating pregnancy**

A person commits an offence if—

- (a) the person intentionally provides a professional or technical service to someone else; and
- (b) the person knows the other person is, or intends to be, a party to a commercial surrogacy arrangement; and

- (c) the person provides the service with the intention of assisting the other person to become pregnant for the purpose of the arrangement.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**45 Geographical nexus for offences**

- (1) A geographical nexus exists between the ACT and an offence against this part if, when the offence is committed, the person who commits the offence is ordinarily resident in the ACT.
- (2) This section is additional to, and does not limit, the [Criminal Code](#), section 64 (2) (Extension of offences if required geographical nexus exists).

## Part 5                      Miscellaneous

### 46                      Joinder of parties

- (1) This section applies to a proceeding under this Act in relation to a child if a party to the proceeding who is claimed to be a parent of the child claims that someone else is, or may be, a parent of the child.
- (2) The other person must be joined as a party to the proceeding.

### 47                      Notification of court orders to registrar-general

If the Supreme Court makes a parentage declaration, an order annulling a parentage declaration, or a parentage order, the registrar of the court must give a sealed copy of the declaration or order to the registrar-general within 28 days after the day on which the declaration or order is made.

### 48                      Proof of orders etc about parentage

In any proceeding in a Territory court, a document purporting to be any of the following is evidence of the facts stated in it and the matters appearing from it:

- (a) an order or declaration made under this Act;
- (b) an official certificate, entry or record of the making of the order or declaration.

*Note*                      A certified copy or extract from an order, declaration or certificate is admissible in a proceeding in a Territory court (see *Evidence Act 2011*, s 155 and s 156).

**49 Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the form must be used for that purpose.

*Note* For other provisions about forms, see [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**50 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may make provision in relation to—
  - (a) the carrying out of medical tests for division 2.6 (Use of medical tests in establishing parentage); and
  - (b) the preparation of reports in relation to the information obtained because of the carrying out of the medical tests.

## Part 7

# Transitional—Parentage (Surrogacy) Amendment Act 2024

### 53 Definitions—pt 7

In this part:

*arrangement* means an arrangement in the nature of a surrogacy arrangement.

*commencement day* means the day the *Parentage (Surrogacy) Amendment Act 2024*, section 8 commences.

*commercial arrangement* means an arrangement that also includes an agreement by any person to make or give to someone else payment or reward, other than reasonable expenses incurred in relation to the arrangement.

*payment or reward*—see section 40 (2).

### 54 Parentage order—substitute parent agreement and no parentage order before commencement day

- (1) This section applies if—
  - (a) a substitute parent agreement was entered into before the commencement day; and
  - (b) the substitute parent or substitute parents under the agreement—
    - (i) had not made an application for a parentage order immediately before the commencement day; or
    - (ii) made an application for a parentage order which had not been decided by the Supreme Court immediately before the commencement day; and

- (c) division 2.5, as in force immediately before the commencement day, applies to the child under the substitute parent arrangement.

*Note* See s 24 (Application of div 2.5) as in force immediately before the commencement day.

- (2) Division 2.5, as in force immediately before the commencement day, continues to apply in relation to—
- (a) an application for, or the making of, the parentage order about the child; and
- (b) the effect of the parentage order, if made.

- (3) In this section:

*parentage order* means an order under section 26 as in force immediately before the commencement day.

*substitute parent*, of a child—see section 24 (c) as in force immediately before the commencement day.

*substitute parent agreement*—see section 23 as in force immediately before the commencement day.

## **55 Parentage order—arrangement made and child born before commencement day**

- (1) This section applies if—
- (a) an arrangement, other than a commercial arrangement, was entered into before the commencement day; and
- (b) a person gave birth to a child, under the arrangement, before the commencement day; and
- (c) there is no parentage order in force in relation to the child before the commencement day; and



- (d) division 2.5, as in force immediately before the commencement day, does not apply to the child, but division 2.5, as in force after the commencement day, would apply to the child had the arrangement been an arrangement mentioned in section 28F (1) (a) entered into on or after the commencement day; and
  - (e) the person or people who intend to be taken to be the parent or parents of the child under the arrangement live in the ACT.
- (2) The person or people may apply to the Supreme Court under section 28G for a parentage order for the child as if—
    - (a) the arrangement was a surrogacy arrangement; and
    - (b) the person or people were the intended parent or intended parents of the child under the surrogacy arrangement; and
    - (c) section 28G (3) does not apply.
  - (3) An application mentioned in subsection (2) may only be made in the 5-year period beginning on the commencement day.
  - (4) The Supreme Court may make a parentage order about the child under section 28H (1) as if the child were a child mentioned in section 28F (1).
  - (5) In making a parentage order about the child, the Supreme Court need not be satisfied under section 28H (1) (c) that the requirements of subdivision 2.5.2 are met.

**56 Parentage order—arrangement made, but child not born, before commencement day**

- (1) This section applies if—
  - (a) an arrangement, other than a commercial arrangement, was entered into before the commencement day; and
  - (b) a person has not given birth to a child under the arrangement before the commencement day; and

- (c) the person or people who intend to be taken to be the parent or parents of the child under the arrangement live in the ACT.
- (2) The person or people may apply to the Supreme Court under section 28G for a parentage order for the child as if—
  - (a) the arrangement was a surrogacy arrangement; and
  - (b) the person or people were the intended parent or intended parents of the child under the surrogacy arrangement.
- (3) The Supreme Court may make a parentage order about the child under section 28H (1) as if the child were a child mentioned in section 28F (1).
- (4) In making a parentage order about the child, the Supreme Court need not be satisfied under section 28H (1) (c) that the requirements of subdivision 2.5.2 are met.

**57 Parentage order—commercial arrangement made, but child not born, before commencement day**

- (1) This section applies if—
  - (a) a commercial arrangement was entered into before the commencement day; and
  - (b) a person has not given birth to a child under the commercial arrangement before the commencement day; and
  - (c) the person or people who intend to be taken to be the parent or parents of the child under the commercial arrangement live in the ACT.
- (2) The person or people may apply to the Supreme Court under section 28G for a parentage order for the child as if—
  - (a) the arrangement was a commercial surrogacy arrangement of a kind described in section 40 (1) (a); and

- (b) the person or people were the intended parent or intended parents of the child under the surrogacy arrangement.
- (3) The Supreme Court may make a parentage order about the child under section 28H (2) as if the child were a child mentioned in section 28F (2).
- (4) In making a parentage order about the child, the Supreme Court need not be satisfied under section 28H (2) (d) that the requirements of subdivision 2.5.2 are met.

**58 Effect of parentage order mentioned in s 55 (4) and access to information**

- (1) This section applies instead of section 29 in relation to a parentage order mentioned in section 55 (4).
- (2) The provisions of the *Adoption Act 1993* mentioned in subsection (4) (the *applied provisions*) apply in relation to the parentage order as if the parentage order were an order made under that Act for the adoption of the child and the child were an adopted child.
- (3) For that application—
  - (a) a reference in an applied provision to the adoptive parent or adoptive parents is a reference to the intended parent or intended parents in whose favour the parentage order was made; and
  - (b) a reference in an applied provision to the adopted child or adopted person is a reference to the child about whom the parentage order was made; and
  - (c) a reference in an applied provision to the commencement of the *Adoption Act 1993* were a reference to the commencement day; and
  - (d) a reference in the *Adoption Act 1993*, section 48 to the director-general were a reference to the registrar-general; and
  - (e) any other necessary changes were made.

- (4) The applied provisions of the *Adoption Act 1993* are as follows:
- (a) section 43 (General effect) other than subsections (1) (c) and (2);
  - (b) section 44 (Disposition of property);
  - (c) section 47 (Distribution of property by trustee or personal representative);
  - (d) section 48 (Bequest by will to unascertained adopted person);
  - (e) section 49 (Gifts between living people);
  - (f) section 60 (Confidentiality of records) other than subsection (1) (a);
  - (g) section 62 (3) (Provision of information);
  - (h) division 5.3 (Identifying information) other than sections 70, 71, 77, 78 and 79.

**59 Effect of parentage order on commercial substitute parent agreement**

- (1) The making of a parentage order about a child born under a commercial substitute parent agreement does not affect a person's criminal responsibility under part 4, as in force immediately before the commencement day, in relation to the commercial substitute parent agreement.
- (2) In this section:
- commercial substitute parent agreement*—see section 40, as in force immediately before the commencement day.

**60 Expiry—pt 7**

This part expires 5 years after the commencement day.

*Note* A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

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## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- civil partner
- civil partnership
- civil union
- civil union partner
- doctor
- domestic partner (see s 169 (1))
- domestic partnership (see s 169 (2))
- foreign country
- nurse
- parent
- registrar-general.

***birth parent***, of a child, for division 2.5 (Surrogacy)—see section 23.

***birth sibling***, of a child, for division 2.5 (Surrogacy)—see section 23.

***commencement day***, for subdivision 2.5.4 (Parentage orders—particular arrangements entered into before Parentage (Surrogacy) Amendment Act 2024)—see section 31A.

***commercial arrangement***, for subdivision 2.5.4 (Parentage orders—particular arrangements entered into before Parentage (Surrogacy) Amendment Act 2024)—see section 31A.

***commercial surrogacy arrangement***—see section 40.

***foreign jurisdiction*** means a foreign country or part of a foreign country.

**genetic parent**, of a child, means a person whose gametes were used to create the embryo.

**intended parent**, of a child, for division 2.5 (Surrogacy)—see section 23.

**parentage declaration** means a declaration under section 19.

**parentage order** means an order under section 28H.

**parentage testing order**, for division 2.6 (Use of medical tests in establishing parentage)—see section 34.

**partner**, of a birth parent, for division 2.5 (Surrogacy)—see section 23.

**payment or reward**, for subdivision 2.5.4 (Parentage orders—particular arrangements entered into before Parentage (Surrogacy) Amendment Act 2024)—see section 40 (2).

**presumed parent**, of a child, for division 2.5 (Surrogacy)—see section 23.

**procedure**, for division 2.5 (Surrogacy)—see section 23.

**reasonable expense**, in relation to a presumed parent under a surrogacy arrangement—see section 24.

**register of births** means the register maintained under the *Births, Deaths and Marriages Registration Act 1997* in which births are registered.

**surrogacy arrangement** means a contract, agreement, arrangement or understanding under which a birth parent and an intended parent or 2 intended parents agree—

- (a) that the birth parent will become, or attempt to become, pregnant; and
- (b) that the child born as a result of the pregnancy will be taken to be (whether by adoption, agreement or otherwise) the child of the intended parent or intended parents.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Parentage Act 2004 A2004-1**

notified LR 18 February 2004

s 1, s 2 commenced 18 February 2004 (LA s 75 (1))

remainder commenced 22 March 2004 (s 2 and [CN2004-3](#))

as amended by

#### **Civil Unions Act 2006 A2006-22 sch 1 pt 1.23**

notified LR 19 May 2006

s 1, s 2 commenced 19 May 2006 (LA s 75 (1))

sch 1 pt 1.23 never commenced

*Note* Act repealed by disallowance 14 June 2006 (see Cwlth Gaz 2006 No S93)

#### **Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.19**

notified LR 15 May 2008

s 1, s 2 commenced 15 May 2008 (LA s 75 (1))

sch 1 pt 1.19 commenced 19 May 2008 (s 2 and [CN2008-8](#))

#### **Adoption Amendment Act 2009 (No 2) A2009-36 sch 1 pt 1.4**

notified LR 22 October 2009

s 1, s 2 commenced 22 October 2009 (LA s 75 (1))

sch 1 pt 1.4 commenced 22 April 2010 (s 2 and LA s 79)

#### **Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.118**

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

sch 1 pt 1.118 commenced 1 July 2011 (s 2 (1))

#### **Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.28**

notified LR 22 November 2011

s 1, s 2 commenced 22 November 2011 (LA s 75 (1))

sch 1 pt 1.28 commenced 1 March 2012 (s 2 (1) and see [Evidence Act 2011 A2011-12](#), s 2 and [CN2012-4](#))



**Statute Law Amendment Act 2012 A2012-21 sch 3 pt 3.33**

notified LR 22 May 2012

s 1, s 2 commenced 22 May 2012 (LA s 75 (1))

sch 3 pt 3.33 commenced 5 June 2012 (s 2 (1))

**Civil Unions Act 2012 A2012-40 sch 3 pt 3.21**

notified LR 4 September 2012

s 1, s 2 commenced 4 September 2012 (LA s 75 (1))

sch 3 pt 3.21 commenced 11 September 2012 (s 2)

**Marriage Equality (Same Sex) Act 2013 A2013-39 sch 2 pt 2.19**

notified LR 4 November 2013

s 1, s 2 commenced 4 November 2013 (LA s 75 (1))

sch 2 pt 2.19 commenced 7 November 2013 (s 2 and [CN2013-11](#))

*Note* The High Court held this Act to be of no effect (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)

**Justice Legislation Amendment Act 2016 A2016-7 pt 5**

notified LR 29 February 2016

s 1, s 2 commenced 29 February 2016 (LA s 75 (1))

pt 5 commenced 29 August 2016 (s 2 and LA s 79)

**Parentage (Surrogacy) Amendment Act 2024 A2024-31**

notified LR 9 July 2024

s 1, s 2 commenced 9 July 2024 (LA s 75 (1))

remainder commenced 10 July 2024 (s 2 (1))

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Commencement

s 2 om LA s 89 (4)

#### Dictionary

s 3 am [A2024-31](#) s 5

#### Presumptions arising from marriage, civil union or civil partnership

s 7 hdg sub [A2006-22](#) amdt 1.95 ([A2006-22](#) rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); [A2008-14](#) amdt 1.65; [A2012-40](#) amdt 3.84

s 7 am [A2006-22](#) amdts 1.96-1.101 ([A2006-22](#) rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); [A2008-14](#) amdts 1.66-1.69; [A2012-40](#) amdts 3.85-3.87  
sub [A2016-7](#) s 46

#### Presumption arising from domestic partnership

s 8 am [A2016-7](#) s 47

#### Presumptions arising from procedure

s 11 sub [A2016-7](#) s 48  
am [A2024-31](#) s 6

#### Application for parentage declaration

s 15 am [A2016-7](#) s 49, s 50

#### Annulment of parentage declaration

s 22 am [A2016-7](#) s 51

#### Surrogacy

div 2.5 hdg sub [A2024-31](#) s 7

#### Surrogacy

sdiv 2.5.1 hdg ins [A2024-31](#) s 7

#### Definitions—div 2.5

s 23 sub [A2024-31](#) s 8  
def **birth parent** am [A2016-7](#) s 52  
sub [A2024-31](#) s 8  
def **birth sibling** sub [A2016-7](#) s 53; [A2024-31](#) s 8  
def **commercial substitute parent agreement** om [A2024-31](#) s 8  
def **intended parent** ins [A2024-31](#) s 8  
def **parentage order** om [A2024-31](#) s 8  
def **partner** ins [A2024-31](#) s 8  
def **presumed parent** ins [A2024-31](#) s 8  
def **procedure** sub [A2016-7](#) s 54; [A2024-31](#) s 8  
def **substitute parent** om [A2024-31](#) s 8  
def **substitute parent agreement** am [A2016-7](#) s 55  
om [A2024-31](#) s 8

**Meaning of *reasonable expense***

s 24 (2), (3) exp 22 March 2006 (s 24 (3))  
sub [A2024-31](#) s 8

**Provision of counselling**

s 25 sub [A2024-31](#) s 8

**Surrogacy arrangements**

sdiv 2.5.2 hdg ins [A2024-31](#) s 8

**Surrogacy arrangement must be in writing**

s 26 am [A2016-7](#) s 56  
sub [A2024-31](#) s 8

**Parties to surrogacy arrangement**

s 27 sub [A2024-31](#) s 8

**Legal advice**

s 28 am [A2016-7](#) s 57  
sub [A2024-31](#) s 8

**Counselling**

s 28A ins [A2024-31](#) s 8

**Age of intended parent**

s 28B ins [A2024-31](#) s 8

**Age of birth parent**

s 28C ins [A2024-31](#) s 8

**Reasonable expenses incurred**

s 28D ins [A2024-31](#) s 8

**Rights of birth parent**

s 28E ins [A2024-31](#) s 8

**Parentage orders**

sdiv 2.5.3 hdg ins [A2024-31](#) s 8

**Application—subdiv 2.5.3**

s 28F ins [A2024-31](#) s 8

**Application for parentage order**

s 28G ins [A2024-31](#) s 8

**Making of parentage order**

s 28H ins [A2024-31](#) s 8

**Relevant considerations for making of parentage order**

s 28I ins [A2024-31](#) s 8

**Content of parentage order**

s 28J ins [A2024-31](#) s 8

## Endnotes

4 Amendment history

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### Multiple births

s 28K ins [A2024-31](#) s 8

### Name of child

s 28L ins [A2024-31](#) s 8

### Effect of parentage order and access to information

s 29 am [A2009-36](#) amdt 1.6; [A2011-22](#) amdt 1.347; [A2024-31](#) s 9, s 10

### Medical information

s 30 am [A2016-7](#) s 58, s 59; [A2024-31](#) s 11

### Effect of surrogacy arrangements

s 31 sub [A2024-31](#) s 12

### Parentage orders—particular arrangements entered into before Parentage (Surrogacy) Amendment Act 2024

sdiv 2.5.4 hdg ins [A2024-31](#) s 13

### Definitions—subdiv 2.5.4

s 31A ins [A2024-31](#) s 13  
def **commencement day** ins [A2024-31](#) s 13  
def **commercial arrangement** ins [A2024-31](#) s 13  
def **payment or reward** ins [A2024-31](#) s 13

### Parentage order—commercial arrangement made and child born before commencement day

s 31B ins [A2024-31](#) s 13

### Effect of parentage order mentioned in s 31B and access to information

s 31C ins [A2024-31](#) s 13

### Effect of parentage order on commercial substitute parent agreement

s 31D ins [A2024-31](#) s 13

### Children all of equal status

s 38 am [A2006-22](#) amdt 1.102, amdt 1.103 ([A2006-22](#) rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); [A2008-14](#) amdt 1.70; [A2012-40](#) amdt 3.88, amdt 3.89; [A2016-7](#) s 60

### Construction of instruments

s 39 am [A2016-7](#) s 61, s 62

### Offences relating to surrogacy arrangement

pt 4 hdg sub [A2024-31](#) s 14

### Meaning of *commercial surrogacy arrangement*

s 40 sub [A2024-31](#) s 15

**Commercial surrogacy arrangements prohibited**

s 41 hdg sub [A2024-31](#) s 16  
s 41 am [A2024-31](#) s 17

**Procuring commercial surrogacy arrangements**

s 42 hdg sub [A2024-31](#) s 18  
s 42 am [A2024-31](#) s 19, s 20

**Advertising in relation to commercial surrogacy arrangements**

s 43 hdg sub [A2024-31](#) s 21  
s 43 am [A2024-31](#) s 22, s 23

**Facilitating pregnancy**

s 44 am [A2024-31](#) s 24, s 25

**Proof of orders etc about parentage**

s 48 sub [A2011-48](#) amdt 1.45

**Approved forms**

s 49 am [A2012-21](#) amdt 3.127

**Regulation-making power**

s 50 am [A2012-21](#) amdt 3.128

**Repeals and consequential amendments**

pt 6 hdg om LA s 89 (3)

**Legislation repealed**

s 51 om LA s 89 (3)

**Legislation amended—sch 1**

s 52 om LA s 89 (3)

**Transitional—Parentage (Surrogacy) Amendment Act 2024**

pt 7 hdg ins [A2024-31](#) s 26  
exp 10 July 2029 (s 60)

**Definitions—pt 7**

s 53 ins [A2024-31](#) s 26  
exp 10 July 2029 (s 60)

**Parentage order—substitute parent agreement and no parentage order before commencement day**

s 54 ins [A2024-31](#) s 26  
exp 10 July 2029 (s 60)

**Parentage order—arrangement made and child born before commencement day**

s 55 ins [A2024-31](#) s 26  
exp 10 July 2029 (s 60)

## Endnotes

4 Amendment history

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**Parentage order—arrangement made, but child not born, before commencement day**

s 56 ins [A2024-31](#) s 26  
exp 10 July 2029 (s 60)

**Parentage order—commercial arrangement made, but child not born, before commencement day**

s 57 ins [A2024-31](#) s 26  
exp 10 July 2029 (s 60)

**Effect of parentage order mentioned in s 55 (4) and access to information**

s 58 ins [A2024-31](#) s 26  
exp 10 July 2029 (s 60)

**Effect of parentage order on commercial substitute parent agreement**

s 59 ins [A2024-31](#) s 26  
exp 10 July 2029 (s 60)

**Expiry—pt 7**

s 60 ins [A2024-31](#) s 26  
exp 10 July 2029 (s 60)

**Consequential amendments**

sch 1 om LA s 89 (3)

**Dictionary**

dict am [A2008-14](#) amdt 1.71; [A2012-40](#) amdt 3.90, [A2013-39](#) amdt 2.50 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55))  
def **birth parent** sub [A2024-31](#) s 27  
def **birth sibling** sub [A2024-31](#) s 27  
def **commencement day** ins [A2024-31](#) s 29  
def **commercial arrangement** ins [A2024-31](#) s 29  
def **commercial substitute parent agreement** om [A2024-31](#) s 28  
def **commercial surrogacy arrangement** ins [A2024-31](#) s 29  
def **intended parent** ins [A2024-31](#) s 29  
def **parentage order** sub [A2024-31](#) s 30  
def **partner** ins [A2024-31](#) s 31  
def **payment or reward** ins [A2024-31](#) s 31  
def **presumed parent** ins [A2024-31](#) s 31  
def **procedure** sub [A2024-31](#) s 32  
def **reasonable expense** ins [A2024-31](#) s 33  
def **substitute parent** om [A2024-31](#) s 34  
def **substitute parent agreement** om [A2024-31](#) s 34  
def **surrogacy arrangement** ins [A2024-31](#) s 35

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 22 Mar 2004	22 Mar 2004– 22 Mar 2006	not amended	new Act
R2 23 Mar 2006	23 Mar 2006– 18 May 2008	not amended	commenced expiry
R3 19 May 2008	19 May 2008– 21 Apr 2010	<a href="#">A2008-14</a>	amendments by <a href="#">A2008-14</a>
R4 22 Apr 2010	22 Apr 2010– 30 June 2011	<a href="#">A2009-36</a>	amendments by <a href="#">A2009-36</a>
R5 1 July 2011	1 July 2011– 29 Feb 2012	<a href="#">A2011-22</a>	amendments by <a href="#">A2011-22</a>
R6 1 Mar 2012	1 Mar 2012– 4 June 2012	<a href="#">A2011-48</a>	amendments by <a href="#">A2011-48</a>
R7 5 June 2012	5 June 2012– 10 Sept 2012	<a href="#">A2012-21</a>	amendments by <a href="#">A2012-21</a>
R8 11 Sept 2012	11 Sept 2012– 6 Nov 2013	<a href="#">A2012-40</a>	amendments by <a href="#">A2012-40</a>
R9 7 Nov 2013	never effective	<a href="#">A2013-39</a> (never effective)	amendments by <a href="#">A2013-39</a>
R9 (RI) 24 Feb 2014	7 Nov 2013– 28 Aug 2016	<a href="#">A2013-39</a> (never effective)	reissued because of High Court decision in relation to <a href="#">A2013-39</a>
R10 29 Aug 2016	29 Aug 2016– 9 July 2024	<a href="#">A2016-7</a>	amendments by <a href="#">A2016-7</a>

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