



Australian Capital Territory

# Parentage (Surrogacy) Amendment Act 2024

A2024-31

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Australian Capital Territory

# Parentage (Surrogacy) Amendment Act 2024

A2024-31

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An Act to amend the *Parentage Act 2004*, and for other purposes

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

## 1 Name of Act

This Act is the *Parentage (Surrogacy) Amendment Act 2024*.

## 2 Commencement

- (1) This Act (other than section 4) commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Section 4 commences on this Act's notification day.

## 3 Legislation amended

This Act amends the *Parentage Act 2004*.

*Note* This Act also amends the *Births, Deaths and Marriages Registration Act 1997* (see sch 1).

## 4 New Parentage Regulation—sch 2

- (1) The provisions set out in schedule 2 are taken to be a regulation made under the *Parentage Act 2004*, section 50.
- (2) The regulation—
  - (a) is taken to be notified under the [Legislation Act](#) on the day this Act is notified; and
  - (b) commences on the commencement of schedule 2; and
  - (c) is not required to be presented to the Legislative Assembly under the [Legislation Act](#), section 64 (1); and
  - (d) may be amended or repealed as if it had been made under the *Parentage Act 2004*, section 50.
- (3) This Act is taken to be an amending law for the [Legislation Act](#), section 89 (Automatic repeal of certain laws and provisions) despite this section not being a provision mentioned in section 89 (12), definition of *amending law*.

**5 Dictionary  
Section 3, note 1**

*omit*

For example, the signpost definition ‘*parentage order*, for division 2.5 (Parentage orders)—see section 23.’ means that the term ‘parentage order’ is defined in that section.

*substitute*

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.

**6 Presumptions arising from procedure  
Section 11 (9), definition of *procedure*, paragraph (b)**

*omit*

the procedure of transferring

*substitute*

a clinical process to transfer

**7 Division 2.5 heading**

*substitute*

**Division 2.5 Surrogacy**

**Subdivision 2.5.1 Definitions—div 2.5**

**8 Sections 23 to 28**

*substitute*

**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.

**9 Effect of parentage order and access to information  
Section 29 (2) (a)**

*omit*

substitute parent or substitute parents

*substitute*

intended parent or intended parents

**10 Section 29 (3)**

*omit*

- division 5.3 (Identifying information) other than section 77, section 78 and section 79.

*insert*

- division 5.3 (Identifying information) other than sections 70, 71, 77, 78 and 79.

**11 Medical information  
Section 30 (3), definition *relevant person*, paragraph (b)**

*omit*

birth parent

*substitute*

presumed parent

**12 Section 31**

*substitute*

**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.

**13 New subdivision 2.5.4**

*insert*

**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.

## 14 Part 4 heading

*substitute*

# 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).

## 15 Section 40

*substitute*

### 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.

**16 Section 41 heading**

*substitute*

**41 Commercial surrogacy arrangements prohibited**

**17 Section 41**

*omit*

substitute parent agreement

*substitute*

surrogacy arrangement

**18 Section 42 heading**

*substitute*

**42 Procuring commercial surrogacy arrangements**

**19 Section 42 (1)**

*omit*

substitute parent agreement

*substitute*

commercial surrogacy arrangement

**20 Section 42 (2)**

*omit*

**21 Section 43 heading**

*substitute*

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

**22 Section 43**

*omit*

substitute parent agreement

*substitute*

commercial surrogacy arrangement

**23 Section 43 (1), penalty**

*substitute*

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



**24 Facilitating pregnancy  
Section 44 (b)**

*omit*

substitute parent agreement

*substitute*

surrogacy arrangement

**25 Section 44 (c)**

*omit*

agreement

*substitute*

arrangement

**26 New part 7**

**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).

**27 Dictionary, definitions of *birth parent* and *birth sibling***

*substitute*

*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.

**28 Dictionary, definition of *commercial substitute parent agreement***

*omit*

**29 Dictionary, new definitions**

*insert*

***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.

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

**30 Dictionary, definition of *parentage order***

*substitute*

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

**31 Dictionary, new definitions**

*insert*

***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.



**32 Dictionary, definition of *procedure***

*substitute*

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

**33 Dictionary, new definition of *reasonable expense***

*insert*

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

**34 Dictionary, definitions of *substitute parent* and *substitute parent agreement***

*omit*

**35 Dictionary, new definition of *surrogacy arrangement***

*insert*

*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.

## **Schedule 1 Births, Deaths and Marriages Registration Act 1997— Consequential amendments**

(see s 3)

### **[1.1] Division 2.4 heading**

*substitute*

### **Division 2.4 Intended parent information**

#### **[1.2] Section 16A (1)**

*omit*

section 26

*substitute*

section 28H

#### **[1.3] Section 16B (1) (a) (iii)**

*omit*

substitute

*insert*

intended

#### **[1.4] Section 70 (4), definition of *relevant children***

*omit*

section 26

*substitute*

section 28H

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## Schedule 2      New Parentage Regulation

(see s 4)



Australian Capital Territory

# Parentage Regulation 2024

## Subordinate Law SL2024–

made under the

**Parentage Act 2004**

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### 1      **Name of regulation**

This regulation is the *Parentage Regulation 2024*.

### 2      **Dictionary**

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

*Note 1*    The dictionary at the end of this regulation defines certain terms used in this regulation.

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

### 3 Notes

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

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

### 4 Reasonable expense—Act, s 24 (2)

- (1) Expenses of the following kind are prescribed in relation to becoming or trying to become pregnant and a pregnancy or a birth (both antenatal and postnatal):
  - (a) any reasonable medical expenses incurred by the birth parent;
  - (b) any reasonable travel or accommodation expenses incurred by a presumed parent;
  - (c) if the birth parent obtains insurance—the insurance premium paid or increase in an existing insurance premium paid;
  - (d) for becoming or trying to become pregnant—the expense in reimbursing the birth parent for a loss of earnings as a result of any unpaid leave taken;
  - (e) for a pregnancy or a birth—the expense in reimbursing the birth parent for a loss of earnings as a result of unpaid leave taken, but only for the following periods:
    - (i) a period of not more than 2 months during which the birth happened or was expected to happen;
    - (ii) any other period during the pregnancy when the birth parent was unable to work on medical grounds related to pregnancy or birth;
  - (f) if the birth parent is the primary caregiver for another child, any reasonable out-of-pocket expenses associated with child care—
    - (i) incurred by the birth parent; and

- 
- (ii) including the expense in reimbursing the birth parent's partner for a loss of earnings as a result of unpaid leave taken to care for the child while the birth parent is unable to care for the child;
- (g) the expense in reimbursing the birth parent's partner for a loss of earnings as a result of unpaid leave taken to care for the birth parent on medical grounds in accordance with a carer's medical certificate provided by a doctor;
- (h) any reasonable expenses, including reasonable medical expenses, incurred in respect of the child of the surrogacy arrangement.
- (2) Expenses of the following kind are prescribed in relation to entering into and giving effect to a surrogacy arrangement:
- (a) the reasonable expenses associated with a presumed parent receiving counselling in relation to the surrogacy arrangement;
- (b) the reasonable expenses associated with a presumed parent obtaining legal advice in relation to the surrogacy arrangement;
- (c) the reasonable expenses associated with an application for a parentage order, including reasonable travel and accommodation expenses.
- (3) In this section:
- medical expenses*** do not include expenses that are recoverable by the presumed parent under—
- (a) Medicare, in accordance with the *Health Insurance Act 1973* (Cwlth); or
- (b) any health insurance or other scheme.

***obtains insurance*** means enter into a contract for health, life or disability insurance or increase the level of insurance on an existing contract for the insurance.

**5 Prescribed person—Act, s 25**

The following people are prescribed:

- (a) a doctor who is registered under the *Health Practitioner Regulation National Law (ACT)* to practise in the specialty of psychiatry;
- (b) a person registered under the *Health Practitioner Regulation National Law (ACT)* to practise in the psychology profession (other than as a student);
- (c) a person with a social work qualification that provides eligibility for membership of the Australian Association of Social Workers;
- (d) a person who is a member of the Australian and New Zealand Infertility Counsellors Association (other than as a provisional member or an affiliate member).

**Dictionary**

(see s 2)

*Note 1* The *Legislation Act* contains definitions relevant to this regulation. For example:

- prescribed.

*Note 2* Terms used in this regulation have the same meaning that they have in the *Parentage Act 2004*. For example, the following terms are defined in the Act, dict:

- birth parent
- partner
- presumed parent
- surrogacy arrangement.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 31 October 2023.

**2 Notification**

Notified under the [Legislation Act](#) on 9 July 2024.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Parentage (Surrogacy) Amendment Bill 2024, which originated in the Legislative Assembly as the Parentage (Surrogacy) Amendment Bill 2023 and was passed by the Assembly on 25 June 2024.

Clerk of the Legislative Assembly

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