

2003

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

PARENTAGE BILL 2003

EXPLANATORY STATEMENT

Circulated by authority of
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PARENTAGE BILL 2003

BACKGROUND

The main purpose of this Bill is to remove discrimination relating to sexuality and relationship status. In this respect, the Bill is concerned with the right to equality before the law. In particular it is designed to remove discrimination relating to parentage.

SUMMARY

The Bill consolidates provisions from three Acts into one statute about legal recognition of parentage and family relationships. The *Artificial Conception Act 1985*, the *Birth (Equality of Status) Act 1988* and the *Substitute Parent Agreements Act 1994* are repealed and their provisions included in the Bill. Little substantive change has been made to the law.

The substantive changes in the Bill are:

Extending the meaning of “parent”.

“Parent” was not previously defined for ACT law generally but was taken to mean “mother” or “father”. In order to recognise the reality of families with same sex partners, the meaning of “parent” has been extended to include parents other than a mother and a father. The extended definition of “parent” has been included in the *Legislation Act 2001* so that it applies generally to ACT laws. A legal relationship of parent and child is created between a child and the person fulfilling the role of parent when the family is based around same sex rather than opposite sex partners. As a flow on from this, children of same sex partners will also acquire other family relationships at law such as grandparents, uncles, aunts and cousins. By extending the meaning of “parent” children who were previously disadvantaged by having a legal connection to only one parent and family will be treated equally with other children and will have two legally recognised parents with two extended families.

The parentage presumptions are extended so that same sex domestic partners as well as opposite sex domestic partners are presumed to be parents when a child is born within a domestic partnership.

Removing discrimination in adoption

An amendment to the *Adoption Act 1993* removes the bar to same sex couples being considered as adoptive parents. No other change to the requirements for an adoption order has been made. The Supreme Court, in considering whether to make an adoption order, must still consider whether the applicants are suitable people to adopt the child and whether the welfare and interests of the child will be promoted by making the order. For any action under the *Adoption Act 1993* the welfare and interests of each individual child remain the paramount consideration. However, same sex couples will no longer be automatically excluded from consideration as possible adoptive parents.

REVENUE/COST IMPLICATIONS

There are no cost implications.

SUMMARY OF CLAUSES

Formal Clauses

Clause 1 sets out the name of the Act.

Clause 2 provides for the Act to commence on a day set by the Attorney General. However, the Act will commence automatically after six months if no earlier day is set by the Minister.

Clause 3 says that the definitions for the Act are in the dictionary at the end of the Act.

Clause 4 says that notes can be included to explain provisions in the Act but they are not part of the Act itself.

Clause 5 mentions other legislation that applies to offences against the Act. The *Criminal Code* relates to offences and the *Legislation Act 2001* sets out what penalty units are.

Part 2 Establishing parentage

This part continues the effect of the provisions currently in part 3 of the *Birth (Equality of Status) Act 1988* and part 2 of the *Artificial Conception Act 1985*.

Division 2.1 General

Purpose

Clause 6: Part 2 sets out presumptions about who are the parents of a child. It also gives the Supreme Court the power to make parentage declarations saying who is a parent of a particular child. Generally the parentage presumptions will operate to determine who are the parents of a child. Sometimes those presumptions can conflict so that it may not be clear who are the parents of a particular child. In that situation the people with an interest in the child's parentage can apply to the Supreme Court for a declaration to resolve the conflict.

A definition of "parent" is included in the *Legislation Act 2001* (see Amendment 1.25 in the Schedule of the Bill). It will apply generally to ACT law. A parent of a child is the mother, the father or another person who is a parent because of the operation of a presumption in this Bill.

Division 2.2 Presumptions about parentage

This division continues the effect of the provisions in part 2 of the *Artificial Conception Act 1985* and part 3 of the *Birth (Equality of Status) Act 1988*. Existing provisions about presumption of parentage arising from domestic partnership are extended to same sex domestic partners.

Marriage

Clause 7: Certain presumptions about the parents of a child arise when the child's mother is married. The mother's husband is presumed to be the father of the child. If the child is born within 44 weeks after the marriage is ended by annulment, dissolution or the death of the husband, the mother's husband is still presumed to be the father of the child.

Domestic partnership

Clause 8: If the mother of a child is in a domestic partnership during the period in which the child was conceived then her domestic partner is presumed to be a parent of the child. This applies no matter what the gender of the domestic partner. A domestic partnership is defined in the *Legislation Act 2001* as a relationship between two people living together as a couple on a genuine domestic basis.

Registered information

Clause 9: If a person is entered on a birth record as the parent of a child then the person is presumed to be the parent of the child.

Findings of courts

Clause 10: This clause says that a finding of a court about parentage creates a conclusive presumption that a person is the parent of a child. A conclusive presumption cannot be overturned by contrary information or by other, conflicting, presumptions.

Clause 12 sets out the effect of conclusive presumptions.

If a court considers evidence about the parentage of a child and decides that a living person is the parent of a particular child then that person is conclusively presumed to be a parent of that child. The question can be revisited only by a court reconsidering that decision.

If a court considers evidence about the parentage of a child and decides that a deceased person is the parent of a particular child then that person is presumed to be a parent of that child. In this case, because direct evidence from the parent was not available to the court, the presumption is not conclusive so it can be overturned using information that suggests that the person is not the parent of the child.

Procedure resulting in conception

Clause 11: If a woman conceives a child through any process other than having sexual intercourse with a man, special presumptions apply to determine who are the parents of the child. The woman is conclusively presumed to be the mother of the child. That means that no one else can bring evidence to show that another person is the child's mother. To reinforce this position an ovum donor is conclusively presumed not to be the mother of the child resulting from the use of the ovum.

If a woman is in a domestic partnership when she participates in a procedure to conceive a child and her domestic partner consents to that procedure then the domestic partner is conclusively presumed to be the parent of the child. The domestic partner is presumed to have consented to the woman participating in the procedure but can bring forward evidence

to show that he or she did not in fact consent. These presumptions apply no matter what the sex of the woman's domestic partner.

A semen donor other than a man who was the woman's domestic partner at the time the procedure was carried out is conclusively presumed not to be the father of the child born as a result of the procedure that used the semen.

The presumptions apply no matter when the pregnancy occurred and whether or not the child was born in the ACT. However, any property interests that have come into effect before the provision commences are not altered.

Division 2.3 Effect of presumptions

This division continues the effect of provisions in part 3 of the *Birth (Equality of Status) Act 1988*.

Conclusive and rebuttable presumptions

Clause 12: In court proceedings where the question of whether a person is the parent of another person is relevant some presumptions about parentage can be rebutted by evidence to the contrary. Other presumptions, called conclusive presumptions, about parentage are not able to be rebutted. The conclusive presumptions are those arising from the finding of a court (clause 10) and those arising from an assisted reproduction procedure (clause 11).

Presumptions arising from the finding of a court are not rebuttable because the court has had the opportunity to consider information about the circumstances of the birth of the child before coming to a conclusion about parentage. The presumptions arising from the use of a procedure to achieve a pregnancy are not rebuttable because they operate to exclude gamete donors from being parents of a child resulting from the pregnancy. However, the presumption that the domestic partner of the mother of the child consented to the procedure that resulted in the birth of the child can be rebutted by evidence to the contrary.

Conflicting presumptions

Clause 13: Parentage presumptions in some circumstances conflict so that more than two people could be presumed to be the parents of a child. Clause 13 sets out the rules for determining which of the conflicting presumptions should apply. In proceedings in which parentage presumptions are being used to work out who are the parents of a child a presumption arising from the finding of a court (clause 10) will prevail over any other presumption. A presumption arising from the fact that the child was born as the result of a procedure to assist reproduction (clause 11) will prevail over all other presumptions except those arising from the finding of a court. If all the presumptions under consideration arise from other things (clauses 7, 8 and 9) then the court must decide which of them prevails. In making that decision the court must consider the best interests of the child concerned and what would be just.

No more than 2 parents

Clause 14: A child cannot have more than two parents at any one time. If conflicting presumptions suggest that more than two people could possibly be the parents of a child, the conflict can be resolved using the rules in clause 13 or through recourse to the court.

Division 2.4 Parentage declarations

This division continues the effect of provisions in part 3 of the *Birth (Equality of Status) Act 1988*.

Application for a parentage declaration

Clause 15: Certain people who have an interest in the question can apply to the Supreme Court for a declaration about the parentage of a child. The people who can make the application are:

- a person who is a parent of the child and who claims that another particular person is also the parent of the child;
- a person who claims to be the parent of a particular child;
- a person, whether or not the person is still a child, who claims that a particular person is his or her parent; and
- the Registrar-General, if the court is being asked to make a decision about whether a particular person is a parent of a particular child. Another person who has a proper interest in that decision can also apply.

Clause 16: An application for a parentage declaration will be dismissed if the relationship claimed by the person making the application has not been shown to exist. If a parentage declaration is made there may be an appeal from the decision of the court making the decision and on appeal the parentage declaration could be set aside because the appeal court considers that the relationship claimed has not been shown to exist.

When an application for a parentage declaration has been dismissed or a parentage declaration has been set aside, the person who made the application can make another application for that declaration if facts or circumstances were not disclosed to the court in the original application because the applicant did not know about them at that time and could not with a reasonable amount of effort have discovered them earlier. If a subsequent application is made the court has to receive the evidence given at the original hearing as well as the newly discovered facts and circumstances. If the court considers that the additional facts and circumstances are not important in establishing the relationship claimed in the application then it must dismiss the application. This prevents a further decision being made on the original evidence after the applicant has exhausted the normal court processes.

Clause 17: If it considers that to hear an application for a parentage declaration would not be in the best interests of the child concerned, then the Supreme Court can refuse to hear the application.

Clause 18: To ensure that a person whose interests would be affected by a particular declaration of parentage, the Supreme Court can adjourn the hearing of an application to give the person an opportunity to attend or be represented at the hearing.

Supreme Court may make a parentage declaration

Clause 19: If someone has made an application for a parentage declaration the Supreme Court can declare that a particular person is the parent of a particular child. The Supreme Court can make the declaration even if the child has not been born. It does not matter that either the child or the parent or both are dead.

Supreme Court may annul a parentage declaration

Clause 20: If a parentage declaration has been made certain people can apply to the Supreme Court to have the declaration annulled. The people who can apply are:

- the person who made the original application for the declaration;
- a person who is named in the declaration; and
- a person who would, before the declaration was made, been able to apply to the Supreme Court for a parentage declaration about either the parent or the child named in the declaration.

This allows a person who thinks that the parentage declaration is incorrect to apply to the Supreme Court for the question of parentage of a particular child to be considered again.

Clause 21: To ensure that a person whose interests would be affected by annulling a particular declaration of parentage, the Supreme Court can adjourn the hearing of an application to give the person an opportunity to attend or be represented at the hearing.

Clause 22: If the Supreme Court thinks that there are facts or circumstances relevant to the parent/child relationship that were not before it when the original application for a parentage declaration was heard and those facts or circumstances could not with a reasonable effort have been disclosed to it by the applicant during that hearing the Court can re-consider the relationship set out in the parentage declaration. If the Supreme Court is then not satisfied that that the parent/child relationship stated in the parentage declaration is established then it can annul the declaration.

The question of whether the facts or circumstances brought to the attention of the Court after the original application could have been disclosed through a reasonable effort by the original applicant does not arise for consideration if the original applicant was either a child or the Registrar-General.

If the Supreme Court annuls a parentage declaration it no longer has any effect. However, anything done in reliance on the parentage declaration while it was still in effect is not altered by the annulment. In addition, the Supreme Court can make other orders so that the annulment of the parentage declaration does not cause injustice.

Division 2.5 Parentage Orders

This division continues the effect of the provisions of part 3 of the *Artificial Conception Act 1985*.

Definitions

Clause 23: This clause contains definitions that apply to the provisions about parentage orders in clauses 24 to 31.

Circumstances in which a parentage order can be made

Clause 24: A parentage order can be made about a child conceived as the result of a procedure that involved transferring a fertilised ovum into the uterus of a woman. Such a procedure includes fertilisation of the ovum outside the body of the woman who is to give birth to the resulting child. A parentage order can only be made about such a child if other conditions are also met. They are:

- that the procedure resulting in conception of the child was carried out in the ACT;
- that neither the woman who gave birth to the child nor her husband or domestic partner is a genetic parent of the child;
- that a substitute parent agreement other than a commercial substitute parent agreement had been made about the child, including the intention that an application for a parentage order be made;
- that at least one of the people who, in the substitute parents agreement, indicated they would apply for a parentage order about the child, is a genetic parent of the child; and
- that the people who seek to become the parents of the child under the parentage order live in the ACT.

A substitute parent agreement is commonly known as a surrogacy agreement. Under these agreements a woman agrees to become pregnant and to have a baby for another person or couple to raise as their own child. Provisions in Part 4 (clauses 40 to 45) make it an offence to enter into a commercial substitute parent agreement where payment is offered in return for becoming pregnant or having a baby. Where a substitute parent agreement is entered for reasons other than to receive a payment, no offence is committed but the agreement has no legal validity except to establish the circumstances in which a parentage order can be made.

Substitute parent agreements of all kinds are discouraged by the provisions of this Bill, which continues the effect of the provisions of the *Substitute Parents Agreement Act 1994*. Allowance is made for a limited number of altruistic surrogacy agreements to be given effect through a court order transferring the parentage of a child from the birth parents to the commissioning parents. The only circumstances in which that can happen is where at least one of the people commissioning the pregnancy will provide gametes used in the pregnancy and will as a result be the genetic parent of the resulting child. Neither the woman who agrees to give birth to the child nor her husband or domestic partner can contribute gametes. As a result a parentage order can only be made if the child concerned is not genetically related to the woman who gave birth to the child or her husband or domestic partner but is genetically related to at least one of the people applying for the order.

The operation of the parentage orders provisions is further limited because an order can only be made if the fertilisation procedure was done in the ACT and the commissioning couple live in the ACT.

The provision restricting the application of the parentage order provisions to children conceived before 1 July 2004 is removed.

Applying for a parentage order

Clause 25: The Supreme Court considers applications for parentage orders. An application for a parentage order can be made by either or both of the people who commissioned the pregnancy. Because of the nature of the order sought, the application can only be made when the child concerned is between six weeks and six months old.

The parentage order

Clause 26: When a couple commissions a pregnancy under a substitute parent agreement the normal operation of the parentage presumptions contained in the Bill will mean that the woman giving birth to the child will be presumed to be the child's mother and her husband (clause 7) or her domestic partner (clause 8) will be presumed to be the child's other parent. If gametes from the commissioning couple are used to achieve the pregnancy those people will be conclusively presumed not to be the parents of the child (clause 11) because they will be gamete donors in a procedure in which a third person bears the child.

The effect of a parentage order is to reverse the normal operation of the law and, by a court order, to make the commissioning couple (one of whom must be a gamete donor) the parents of the child. As a child can only have two parents at once, the order also says that the birth parents are not the parents of the child.

The Supreme Court must make a parentage order if it is satisfied that it is in the best interests of the child concerned. The Court must also be satisfied that both birth parents understand what is involved in the making of the order and freely agree to it. A parentage order is not the outcome of a substitute parent agreement nor does it represent enforcement of such an agreement. Substitute parent agreements have no legal force or effect – see clause 31. The only way in which they can have any effect is in establishing the conditions under which an application can be made for a parentage order – see clause 24.

As the Supreme Court is not merely enforcing a substitute parent agreement, it must take a number of factors into account in satisfying itself that a parentage order can be made. They include:

- whether the child is living with both substitute parents (the commissioning couple);
- whether both substitute parents are over 18 years old;
- if only one of the two people who originally indicated in the substitute parent agreement that they would apply for a parentage order has in fact applied, whether the other person agrees to the order being made in favour of that applicant;

- whether the birth parents have received any sort of payment (other than to cover expenses of the pregnancy) to encourage them to agree to give the child to the substitute parents or to agree to the order being made; and
- whether all the parties to the substitute parent agreement have received independent counselling about the proposal.

The Court can take into account any other relevant matter.

A parentage order is made in favour of both substitute parents if both apply or if only one applies because the other is dead or incapable of applying. Otherwise, if only one of the substitute parents applies the order is made in favour of that person.

Parentage orders when there is a multiple birth

Clause 27: If the pregnancy arranged under the substitute parent agreement results in a multiple birth the Supreme Court can only make a parentage order about one of the children if it makes the same order about all of them. This is to prevent siblings such as twins or triplets from being split and brought up with different parents.

Name of the child

Clause 28: When a parentage order is made about a child the name of the child is determined according to the rules in clause 28. The child's family name is either the family name of the substitute parents, provided that they both have the same family name. Otherwise the substitute parents will ask the Supreme Court to approve a name. Similarly, the substitute parents will ask the Supreme Court to approve given names for the child. The Court can take into account whether the child is already known by a particular name.

Effect of a parentage order

Clause 29: A parentage order has the same effect in many ways as an adoption order. Provisions of the *Adoption Act 1993* are applied to parentage orders as though the substitute parents are adopting the child about whom the order is made. The clause provides that modifications are made to the *Adoption Act 1993* provisions as necessary to make them fit in with the provisions in the Bill.

Medical information

Clause 30: After a parentage order is made about a child, that child or relatives of that child, through either the substitute parents or the birth parents can apply for medical information held in the records of the child or his or her relatives. The provision allows disclosure of that information. It reflects the provisions in section 65 of the *Adoption Act 1993* and allows medical information to pass to people for whom it could be important but who would not otherwise be able to access it.

This clause repeats the provisions in section 25 of the *Artificial Conception Act 1985*.

Effect of substitute parent agreements

Clause 31: Substitute parent agreements have no effect except in establishing the circumstances in which a parentage order can be made – see notes on clause 26.

Division 2.6 – Use of medical tests in establishing parentage

The provisions in this division continue the effect of the provisions in part 4 of the *Birth (Equality of Status) Act 1988*.

Definition

Clause 32: Definitions are provided specifically for this division.

When does division 2.6 apply?

Clause 33: Special provision is made to regulate medical testing when the parentage of a child needs to be resolved in civil court proceedings. In some circumstances the parentage of a child will be crucial to the determination of court proceedings.

Parentage testing order

Clause 34: A court can make a parentage testing order setting out medical tests that are to be done and when they are to be done and by whom. The parentage testing order can be made on the court's own initiative or on the application of a party to the proceedings or the child in question. Before deciding to make a parentage testing order the court has to consider any objections that the person to be tested or that person's carer makes.

Failure to comply

Clause 35: A court may draw inferences from a failure by a person to comply with a parentage testing order. In particular failure to comply can be used to either support evidence given by a party to the proceedings or to rebut a parentage presumption arising under clauses 7, 8 or 9.

If the parentage testing order is not complied with the court can either dismiss the proceedings or allow it to continue on appropriate conditions.

Reports of medical tests

Clause 36: This clause sets out the ways in which evidence relating to the results of medical tests can be brought before the court.

Offences related to medical tests

Clause 37: It is an offence for a person to pretend to be someone else for the purpose of having a medical test. The maximum penalty is 50 penalty units or six months imprisonment.

It is an offence for a person to take a child or a person who has a mental disability to have a medical test knowing that the child or other person is not the person whose name is on the parentage testing order. The maximum penalty is 50 penalty units or six months imprisonment.

It is also an offence for a person who is not an appropriate health professional to take a sample of another person's body tissue for the purpose of a medical test. The maximum penalty is 30 penalty units.

Part 3 Status of children

This part continues the effect of the provisions in part 2 of the *Birth (Equality of Status) Act 1988*.

Children all of equal status

Clause 38: This provision makes it clear that the legal relationships between a child and his or her parents and other relatives is not in any way affected by whether or not the child's parents have been married to each other. In the past the law distinguished between children whose parents were married and ex-nuptial children whose parents were not married. This provision, which was part of the *Birth (Equality of Status) Act 1988*, removes that legal distinction.

These provisions about parentage establish that the family relationships for a child flow from their parents, no matter whether the parents were married or living in a domestic partnership other than marriage or were not living together at all. Those relationships include grandparents, uncles, aunts and cousins. As the parentage presumptions recognise same sex domestic partners as parents (see clauses 8 and 11), this provision ensures their children also have these family relationships recognised by law.

Construction of legal instruments

Clause 39: This provision ensures that the modified rules about status of children and parentage are taken into account in interpreting legal documents. It carries forward the transitional provisions from the *Birth (Equality of Status) Act 1988*. It is important to continue to restate these provisions as documents such as wills may have been drawn up before the changes were introduced but come into operation after this Bill commences. The provisions displace old legal rules that distinguished between children born to married parents and ex-nuptial children.

Part 4 Offences relating to substitute parent agreements

This part continues the effect of the *Substitute Parent Agreements Act 1994*.

Definition of substitute parent agreement

Clause 40: A substitute parent agreement is defined in clause 23. Commonly known as a surrogacy agreement, it involves a person agreeing to become (or to attempt to become) pregnant with the intention that the resulting child will be treated as the child of someone else. An alternative form of agreement is that a person already pregnant agrees that the child, when born, will be treated as the child of someone else.

A commercial substitute parent agreement is a surrogacy agreement that includes payment of some kind. Payment of expenses connected with the pregnancy or the birth or care of the child does not make an agreement into a commercial substitute parent agreement.

Substitute parent agreements are of no legal effect except to the extent that they contribute to circumstances in which a parentage order may be made and they are otherwise discouraged. Commercial substitute parent agreements are prohibited.

Commercial substitute parent agreements prohibited

Clause 41: It is an offence to intentionally enter into a commercial substitute parent agreement. The maximum penalty is 100 penalty units or imprisonment for one year or both.

Procuring a substitute parents agreement

Clause 42: It is an offence to arrange for a person to enter a commercial substitute parent agreement with someone else. The maximum penalty is 100 penalty units or imprisonment for one year or both.

If the person plans to become a party to the agreement he or she will be committing an offence under clause 41 rather than clause 42.

Advertising relating to substitute parent agreements

Clause 43: It is an offence to publish something intended to encourage someone to enter into a substitute parent agreement. Similarly, it is an offence to publish something that is likely to encourage someone to enter into a substitute parent agreement. Publication of anything that seems to be trying to find a person willing to enter a substitute parent agreement or that indicates that a person is willing to enter such an agreement is also an offence. The definition of “publish” is wide. It covers newspaper or magazine articles, material displayed in public, documents intended for limited distribution, radio and television broadcasts and electronic documents such as web pages. To fall within this offence it is not necessary for the published material to be an obvious advertisement. An example is an informative article that discusses substitute parent agreements and includes contact information for people wanting more information about assisting infertile couples.

The maximum penalty is 50 penalty units but if the published material is about commercial substitute parent agreements the penalty is increased by the possibility of six months imprisonment either as an alternative or in addition to the monetary penalty.

Facilitating pregnancy

Clause 44: It is an offence to provide professional or technical services to a person to help that person become pregnant for the purposes of a commercial substitute parent agreement. This provision is to make health professionals responsible if they participate in the process of achieving a pregnancy for a substitute parent agreement. The maximum penalty is 100 penalty units or imprisonment for one year or both.

ACT connection for offences

Clause 45: It is not necessary for all the things that make up an offence to be done in the ACT. If something is prohibited then the person who does it commits an offence, no matter where it is done, if the person usually lives in the ACT. Provisions in the *Criminal Code* section 64(2) also explain how actions that form part of an offence are connected with the ACT.

Part 5 Miscellaneous

Joinder of parties

Clause 46: When there are proceedings in court under the provisions of this Bill about a child and a person who is a party to those proceedings is claimed to be a parent of that child then if that person says that another person is a parent of that child that other person has to become a party to the proceedings as well.

Notification of court orders to registrar-general

Clause 47: Certain orders made by the Supreme Court under provisions in this Bill must be given to the registrar-general, who is responsible for birth records. A sealed copy of the following declarations and orders must be given to the registrar-general within 28 days of being made:

- a parentage declaration
- an order annulling a parentage declaration
- a parentage order.

Proof of orders about parentage

Clause 48: If evidence is needed in court proceedings about an order or declaration made under the provisions in this Bill, it can be given in the form of:

- the original of the order or declaration
- a certified copy or certified extract of the order or declaration
- an official certificate, entry or record of the making of the order or declaration.

Approved forms

Clause 49: Forms required for the Bill can be approved by the Attorney General. Any approved forms have to be notified under the *Legislation Act 2001* and placed on the electronic database.

Regulations

Clause 50: This clause gives the Executive power to make regulations relevant to the provisions of the Bill.

Part 6 Repeals

Clause 51: The Bill repeals the *Artificial Conception Act 1985*, the *Birth (Equality of Status) Act 1988* and the *Substitute Parent Agreements Act 1994*. The repeal is to enable all the provisions about establishing parentage to be collected in one statute. Provisions have been redrafted to make stylistic changes but have been substantively retained in this Bill.

Clause 52: Consequential amendments are made to other legislation as set out in the schedule.

Schedule 1 Consequential amendments

The Schedule contains changes that are necessary to other legislation as a result of the amalgamation of parentage provisions, the removal of provisions that discriminated against same sex couples and to replace the term “spouse” with the inclusive term “domestic partner”.

Part 1.1 Administration and Probate Act 1929

Amendment 1.1: In section 49E the reference to the *Birth (Equality of Status) Act 1988* (which is to be repealed) is replaced with a reference to the equivalent provision in the Bill.

Part 1.2 Adoption Act 1993

Amendment 1.2 and

Amendment 1.3 In section 9 the term “spouse” is replaced by the term “domestic partner”. A note is inserted saying that “domestic partner” is defined in the *Legislation Act 2001* section 169. “Domestic partner” is an inclusive term that covers same sex as well as opposite sex partnerships. It includes a spouse if a person is married.

Amendment 1.4 and

Amendment 1.5 and

Amendment 1.6: Section 18 is altered to remove references not inclusive of same sex couples. The section sets out which people may apply to the Supreme Court for an order for adoption of a child. Previously it contained a provision that restricted the Court to considering applications only from opposite sex couples but the bill removes that provision. In this way the discriminatory restriction that prevented same sex couples applying to the Court for an adoption order is removed. No other substantive change has been made. The Supreme Court will still have to decide, using the existing criteria set out in section 19 of the *Adoption Act 1993*, whether the applicants will be suitable parents for the child and whether the welfare and interests of the child will be promoted by the making of the order.

Amendment 1.7: Section 27(3) is omitted as it refers to the *Birth (Equality of Status) Act 1988*, which is to be repealed. No replacement cross reference is needed.

Amendment 1.8: Section 45(1)(b)(iii) is replaced by a new paragraph (iii) and a new section 45(1)(b)(iv) is added. The provision is about the name to be given to a child about whom an adoption order is made. Previously only the surnames of the adoptive mother and adoptive father could be used. The new provision includes reference to the surname of a parent other than mother or father. Under the revised provision the child will have the surname of the adoptive parents if they both use the same name. If they do not the court will approve a name that is either the surname or previous surname of the adoptive mother, the surname of the adoptive father, the surname or former surname of another adoptive parent or a name that is a combination of the surname or former surnames of the adoptive parents.

Amendment 1.9 and

Amendment 1.10: In section 48(1)(a) the term “spouse” is replaced by the term “domestic partner”. A note is inserted saying that “domestic partner” is defined in the *Legislation Act 2001* section 169. “Domestic partner” is an inclusive term that covers same sex as well as opposite sex partnerships. It includes a spouse if a person is married.

Amendment 1.11 and

Amendment 1.12: In section 49(1) the term “spouse” is replaced by the term “domestic partner”. A note is inserted saying that “domestic partner” is defined in the *Legislation Act 2001* section 169. “Domestic partner” is an inclusive term that covers same sex as well as opposite sex partnerships. It includes a spouse if a person is married.

Amendment 1.13: The existing definition of “birth parent” in section 58 is replaced by a definition that does not refer to the *Birth (Equality of Status) Act 1988*, which is to be repealed. No reference to an equivalent provision is needed.

Part 1.3 Adoption Regulations 1993

Amendment 1.14 and

Amendment 1.15: A new Regulation 11(a)(via) is inserted to ask for the full name of any other parent as well as the full name of the mother and the full name of the father. The subparagraphs will be renumbered next time the regulations are consolidated and republished.

Part 1.4 Births, Deaths and Marriages Registration Act 1997

Amendment 1.19: Section 16A(1) is replaced by a new section 16A(1) in order to replace a reference to the *Artificial Conception Act 1985* with a reference to the equivalent provision in the Bill.

Amendment 1.20: Section 16B(1)(a)(iii) is replaced in order to remove a reference to the *Artificial Conception Act 1985*, which is to be repealed. There is no change to the meaning of the provision.

Amendment 1.21: Section 70(4) is replaced in order to remove a reference to the *Artificial Conception Act 1985*, which is to be repealed. There is no change to the meaning of the provision.

Part 1.5 Births, Deaths and Marriages Registration Regulations 1998

Amendment 1.22: In regulations 5(h), 5(i) and 5(j) “or other parent” is inserted after “father” to take account of the range of possible parents.

Part 1.6 Domestic Relationships Act 1994

Amendment 1.23 and

Amendment 1.24: Sections 3(4)(b) and 3(4)(c) are removed. They are not replaced as the remaining paragraphs comprehensively cover all possible legal and social parent relationships with the assistance of the new definition of “parent”. The paragraphs in section 3(4) will be renumbered when the Act is consolidated and republished.

Part 1.7 Legislation Act 2001

Amendment 1.25: A new definition of “parent” is inserted in the dictionary, part 1. By including the definition in the *Legislation Act 2001* it is extended to all ACT legislation.

As a result the meaning given to the term “parent” by the Bill will be its meaning for all purposes connected with ACT laws.

A parent of a child is the child’s mother, the child’s father or another person who is a parent because of the operation of a presumption about parentage. This provision creates a parent and child relationship between a child and a person who is neither the child’s father nor the child’s mother. It is designed to accommodate families where the mother of the child is in a domestic partnership with a person who is not a man. The effect will be to place children of same sex partnerships in the same position as children of opposite sex partnerships in having two parents. However, children can only have two parents at any one time so the parentage presumptions are not able to operate to give a child three or four parents at once.

Dictionary

The dictionary contains definitions of terms used in the Bill. It also contains references to definitions in the *Legislation Act 2001* of terms used in the Bill.