

1996
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

**Artificial Conception (Amendment) Bill
1996**

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(Chief Minister)

**Artificial Conception (Amendment) Bill
1996**

**A BILL
FOR
An Act to amend the *Artificial Conception Act 1985*
and for related purposes**

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

Short title

- 5 1. This Act may be cited as the *Artificial Conception (Amendment) Act 1996*.

Commencement

- 10 2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.
(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

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

5 **Principal Act**

3. In this Act, “Principal Act” means the *Artificial Conception Act 1985*.¹

Long title

10 4. The title of the Principal Act is amended by adding at the end “and for related matters”.

Insertion

5. Before section 1 of the Principal Act the following heading is inserted:

“PART I—PRELIMINARY”.

15 **Interpretation**

6. Section 3 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) In this Act, unless the contrary intention appears—

‘adoptive parent’ has the same meaning as in the *Adoption Act 1993*;

20 ‘birth father’, in relation to a child, means the man presumed, under Part II of this Act or under the *Birth (Equality of Status) Act 1988*, to be the child’s father;

‘birth mother’, in relation to a child, means the woman who gave birth to the child;

25 ‘birth parent’, in relation to a child, means the child’s birth mother or the child’s birth father;

‘birth relative’, in relation to a prescribed child, means a person who was a grandparent, brother, sister, uncle or aunt of the child before the parentage order was made;

30 ‘Court’ means the Supreme Court;

‘genetic father’, in relation to a child, means the man whose gametes were used to create the embryo;

‘genetic mother’, in relation to a child, means the woman whose gametes were used to create the embryo;

‘genetic parent’, in relation to a child, means the child’s genetic mother or the child’s genetic father;

5 ‘genetic relative’, in relation to a prescribed child, means a person who is a grandparent, brother, sister, uncle or aunt of the child because of the parentage order;

‘guardian’, in relation to a child, includes—

- 10 (a) a person having the custody of the child under an order of a court; and
- (b) a person who is the guardian of the child (whether to the exclusion of, or in addition to, a parent or other guardian) under a law of the Territory, the Commonwealth, a State or another Territory;

‘parentage order’ means an order under section 10;

15 ‘prescribed child’ means a child in respect of whom a parentage order has been made;

‘procedure’ means—

- (a) artificial insemination; or
- 20 (b) the procedure of transferring into the uterus of a woman an embryo derived from an ovum fertilised outside her body;

‘Register of Births’ means the Register of Births kept pursuant to section 8 of the *Registration of Births, Deaths and Marriages Act 1963*.”.

Insertion

25 7. Before section 4 of the Principal Act the following heading is inserted:

“PART II—PRESUMPTIONS RELATING TO PARENTAGE”.

Application

8. Section 4 of the Principal Act is amended—

- 30 (a) by omitting from subsection (1) “Act” (first occurring) and substituting “Part”;
- (b) by omitting from paragraphs (1) (a) and (b) “Act” and substituting “Part”;
- (c) by omitting from subsection (2) “Act” (wherever occurring) and substituting “Part”; and

- (d) by omitting from subsection (3) “Act” (first occurring) and substituting “Part”.

Addition

- 5 9. The Principal Act is amended by adding at the end the following Parts:

“PART III—PARENTAGE ORDERS

“Division 1—Obtaining an order

Child

- 10 “8. This Division applies in relation to a child born in the Territory as the result of a procedure carried out in the Territory (whether before or after the commencement of this Part) in which the gametes of a woman who is not the child’s birth mother and of a man who is not the child’s birth father were used to create the embryo.

Applying for an order

- 15 “9. (1) The genetic parents of a child may apply, in accordance with this section, to the Court for a parentage order in relation to the child.

“ (2) Subject to subsection (3), an application must be made by both genetic parents.

- 20 “ (3) An application may be made by a genetic parent if the other genetic parent has died.

“ (4) An application must be made—

- (a) if the child was born before the commencement of this Division—within 6 months after that date; or
(b) in any other case—within 6 months after the child was born;

- 25 but may not be made within 6 weeks after the child was born.

Making an order

“10. The Court shall make a parentage order if—

- (a) the Court is satisfied that the making of the order is in the best interests and welfare of the child;
30 (b) the child’s home is, and was at the time of the application, with both genetic parents;
(c) both genetic parents are domiciled in the Territory;
(d) both genetic parents have attained the age of 18 years;

- (e) the Court is satisfied that both birth parents freely, and with a full understanding of what is involved, agree to the making of the order;
- 5 (f) the Court is satisfied that no payment or reward (other than for expenses reasonably incurred) has been given or received by either of the genetic parents for or in consideration of—
- (i) the making of the order;
 - (ii) any agreement required under paragraph (e);
 - (iii) the handing over of the child to the genetic parents; or
 - 10 (iv) the making of any arrangements with a view to the making of the order;
- unless authorised by the Court; and
- (g) the Court is satisfied that—
- 15 (i) both birth parents and both genetic parents have received appropriate counselling and assessment from a counselling service that is not connected with the medical practitioner who carried out the procedure that resulted in the birth of the child or the institution at which the procedure was carried out; or
 - 20 (ii) although a birth parent or a genetic parent has not received counselling of that kind, it would not be contrary to the welfare and interests of the child to make the order.

Names of prescribed child

25 “11. (1) Subject to subsection (3), upon the making of a parentage order, the prescribed child shall have as his or her surname—

- (a) if both genetic parents are known by the same surname—that surname; or
- (b) in any other case—
 - (i) the maiden name or other surname of the genetic mother;
 - 30 (ii) the surname of the genetic father; or
 - (iii) a surname formed by combining the genetic mother’s maiden name or other surname and the genetic father’s surname;

35 whichever the Court, on the application of the genetic parents, approves in the parentage order.

“(2) Subject to subsection (3), upon the making of a parentage order, the prescribed child shall have as his or her forename or forenames such name or names as, on the application of the genetic parents, the Court approves in the parentage order.

5 “(3) Where, before the making of a parentage order, the prescribed child had been generally known by a particular name, the Court may, in the parentage order, order that the child shall have that name.

10 “(4) Nothing in this section prevents the changing of any name of a prescribed child, after the making of the parentage order, in accordance with the law of the Territory.

“Division 2—Effect of orders

General effect

15 “12. (1) Subject to this Part and any law of the Territory that expressly distinguishes in any way between prescribed children and other children, upon the making of a parentage order, for all purposes—

- (a) the prescribed child becomes in law a child of the genetic parents, and the genetic parents become in law the parents of the child as if the child had been born to the genetic parents;
- 20 (b) the prescribed child ceases to be a child of the birth parents or of any person who was an adoptive parent before the making of the parentage order, and any such person ceases to be a parent of the child;
- 25 (c) the relationship to one another of all persons (including the prescribed child and the genetic parents, birth parents or any former adoptive parent) shall be determined on the basis of the foregoing provisions of this subsection so far as they are relevant;
- (d) any existing appointment of a person as guardian of the prescribed child ceases to have effect; and
- 30 (e) any previous adoption of the prescribed child (whether under the law of the Territory or otherwise) ceases to have effect.

“(2) Despite subsection (1), for the purposes of any law of the Territory relating to a sexual offence, being a law under which the relationship between persons is relevant—

- 35 (a) a parentage order shall not be taken to cause the cessation of any relationship that would otherwise have existed; and
- (b) any such relationship shall be deemed to exist in addition to any relationship that exists by virtue of the application of subsection (1).

Disposition of property

“13. (1) Subsection 12 (1) has effect in relation to dispositions of property—

- (a) whether by will or otherwise; and
- 5 (b) whether made before or after the commencement of this Part; but does not affect a disposition of property—
- (c) by a person who, or by persons any of whom, died before the commencement of this Part; or
- 10 (d) that has taken effect in possession before the commencement of this Part.

“(2) Subsection 12 (1) does not apply in relation to an agreement or instrument (not being a disposition of property) made or executed before the commencement of this Part.

“(3) Where—

- 15 (a) before the commencement of this Part, a person made a disposition of property by an instrument other than a will;
- (b) the disposition had not taken effect in possession before the commencement of this Part; and
- 20 (c) it did not appear from the instrument that it was the intention of that person to include a prescribed child as an object of the disposition;

that person may vary the instrument to exclude a prescribed child from participation in any right, benefit or privilege under the instrument, despite that the instrument could not (apart from this subsection) be revoked or varied by a like instrument.

“(4) Nothing in section 12 or this section affects the operation of any provision in a will or other instrument (whether made or coming into operation before or after the commencement of this Part) distinguishing between prescribed children and other children.

30 **Distribution of property by trustee or personal representative**

“14. (1) Despite any other provision of this Part but subject to this section, a trustee or personal representative may convey, transfer or distribute property to or among the persons appearing to be entitled to the property without having to ascertain whether or not a parentage order (a consequence of which order being that a person is or is not entitled to an interest in the property) has been made.

5 “(2) A trustee or personal representative conveying, transferring or distributing property in the manner referred to in subsection (1) is not liable to a person claiming directly or indirectly an interest in the property by virtue of the making of a parentage order, unless the trustee or personal representative had notice of the claim before the conveyance, transfer or distribution.

“(3) Nothing in this section prejudices the right of a person to follow property into the hands of another person, other than a *bona fide* purchaser for value without notice.

10 **Bequest by will to unascertained prescribed child**

“15. (1) Where, under a will made after the commencement of this Part—

15 (a) a disposition of property or of an interest in property (in this section called a ‘bequest’) is expressed to be made by the testator to a person (in this section called the ‘beneficiary’) who is not named but who is described as a child of the testator or of a spouse, parent, child, brother or sister of the testator, being a person in respect of whom a parentage order was or has been made; and

20 (b) the testator’s personal representative is unable to ascertain the name and whereabouts of the beneficiary;

the personal representative shall give to the Public Trustee a copy of the will and a statement that he or she is unable to ascertain the name and whereabouts of the beneficiary.

25 “(2) Where the Public Trustee is given a copy of a will under subsection (1), the Public Trustee shall, in writing, request the Registrar-General to provide any information in his or her possession that may assist in ascertaining the name and whereabouts of the beneficiary.

30 “(3) Where the Registrar-General receives a request under subsection (2), the Registrar-General shall—

(a) examine the records in his or her possession for the purpose of assisting the Public Trustee to ascertain the name and whereabouts of the beneficiary; and

(b) inform the Public Trustee of the results of that examination.

35 “(4) If the Public Trustee ascertains that the beneficiary has died, the Public Trustee shall inform the personal representative accordingly.

“(5) If the Public Trustee ascertains the name and whereabouts of the beneficiary and the beneficiary has attained the age of 18 years, the Public Trustee shall—

- (a) ascertain whether the beneficiary wishes to accept the bequest;
- (b) if the beneficiary does not wish to do so—inform the personal representative accordingly;
- 5 (c) if the beneficiary wishes to do so—inform the personal representative that the proceeds of the bequest should be transferred to the Public Trustee on behalf of the beneficiary; and
- (d) on receiving those proceeds—transmit them to the beneficiary.

10 “(6) If the Public Trustee ascertains the name and whereabouts of the beneficiary but the beneficiary has not attained the age of 18 years, the Public Trustee shall—

- (a) inform the personal representative that the proceeds of the bequest should be transferred to the Public Trustee to be held in trust for the beneficiary;
- 15 (b) hold the proceeds on trust for the beneficiary upon the trusts (if any) set out in or arising under the will until the beneficiary attains the age of 18 years; and
- (c) upon the beneficiary attaining that age—transfer those proceeds to the beneficiary, unless the beneficiary then disclaims the bequest.

20 “(7) Where a personal representative transfers the proceeds of a bequest to the Public Trustee under this section, the personal representative shall be taken to have transferred the bequest to the beneficiary.

25 “(8) A written statement to the effect that the beneficiary has disclaimed the bequest given by the Public Trustee to the personal representative is, in the course of the administration of the estate, conclusive evidence that the beneficiary has disclaimed the bequest.

“(9) The Public Trustee shall not include in information conveyed to a personal representative under this section particulars that identify or tend to identify the beneficiary.

Gifts *inter vivos*

30 “16. Section 15 applies in relation to a deed executed after the commencement of this Part by which a gift of money is expressed to be made by a person (in this section called the ‘donor’) to a person who is not named but who is described as the child of the donor or of a spouse, parent, child, brother or sister of the donor, being a person in respect of whom a parentage order was or has been made as if—

35

- (a) a reference in that section to a will were a reference to the deed of gift;

- (b) a reference in that section to the testator or to a personal representative were a reference to the donor; and
- (c) a reference in that section to property or to an interest in property were a reference to the money that is the subject of the gift.

5

“Division 3—Access to information

Interpretation

“17. In this Division, unless the contrary intention appears—

‘associated person’, in relation to a parentage order, means—

- (a) the prescribed child;
- 10 (b) a birth parent or genetic parent of the prescribed child;
- (c) a birth relative or genetic relative of the prescribed child; or
- (d) a child or other descendant of the prescribed child;

‘birth parent’, in relation to a prescribed child, includes any person who was the guardian of the child before the parentage order was made;

15

‘identifying information’, in relation to a parentage order, means—

- (a) a copy of, or an extract from, an entry in the Register of Births relating to the prescribed child; or
- (b) information from which the prescribed child, or a birth parent or birth relative of the child may be identified (other than information that consists of a residential address).

20

Confidentiality of records

“18. (1) Except as provided in this Division—

- (a) the records of the Court (other than an order or decision of the Court) relating to proceedings on an application for a parentage order; or
- 25 (b) an entry in the Register of Births relating to the birth of a prescribed child, or a copy of or extract from, such an entry;

shall not be made available to, or be open to inspection by, any person.

30 “(2) Subsection (1) does not operate to prevent a person whose duties require him or her to do so from obtaining access to information where it is necessary to do so for the administration of this Part.

Right of access to identifying information

“19. (1) Subject to this Division, an associated person is entitled to apply for identifying information contained in records kept by the Registrar-General.

5 “(2) A prescribed child (whether the child has attained the age of 18 years or not) is entitled to apply for—

(a) identifying information that consists of a copy of, or an extract from, an entry in the Register of Births in respect of the prescribed child; and

10 (b) any other identifying information only with the consent in writing of—

(i) each of the child’s genetic parents;

(ii) each of the child’s birth parents; and

15 (iii) if a birth relative may be identified from the information, the birth relative.

“(3) A birth relative, genetic relative or descendant of a prescribed child is entitled to apply for identifying information only with the consent in writing of the person who may be identified from the information.

20 “(4) The consent of a person is not required for the purposes of subsection (2) or (3) if the Registrar-General is satisfied that—

(a) the person is dead; or

(b) the whereabouts of the person are unknown and could not with reasonable inquiries be ascertained.

Provision of information by Registrar-General

25 “20. (1) Where, on an application for identifying information—

(a) the Registrar-General is satisfied that the applicant is entitled to apply for that information; and

(b) the appropriate fee determined under section 62 of the *Registration of Births, Deaths and Marriages Act 1963* has been paid;

30 subject to subsection (2), the Registrar-General shall search the Register of Births and issue to the applicant—

(c) a copy of, or extract from, the relevant entry; or

(d) a notification of the result of the search;

as the case requires.

“(2) Where the Registrar-General is of the opinion that—

- (a) a search, copy or extract is required for an improper reason; or
- (b) the person requiring the search, copy or extract does not have a proper reason for requiring it;

5 the Registrar-General may refuse to make the search or issue the copy or extract.

Application to Court in absence of consent

“21. (1) Where—

10 (a) a person would, under this Division, be entitled to apply for identifying information with the consent in writing of another person; and

(b) that other person has refused to give that consent;

the first-mentioned person may apply to the Court for an order under subsection (2).

15 “(2) The Court may, if of the opinion that there are circumstances that justify the order, make an order declaring that the applicant is entitled to apply for the identifying information specified in the order.

20 “(3) Where the Court makes an order under subsection (2), the applicant for the order shall, for the purposes of section 20, be taken to be entitled to apply for identifying information of the kind specified in the order.

Application to Court in other circumstances

“22. (1) A person who—

25 (a) is not entitled under any other provision of this Division to apply for identifying information; or

(b) has been refused access to identifying information under subsection 20 (2);

may apply to the Court for an order under subsection (2).

30 “(2) The Court may, if of the opinion that there are circumstances that justify the order, make an order declaring that the applicant is entitled to apply for, and to have access to, the identifying information specified in the order.

35 “(3) Where the Court makes an order under subsection (2), the applicant for the order shall, for the purposes of subsection 18 (1), be taken to be entitled to apply for, and to have access to, identifying information of the kind specified in the order.

Medical information

“23. Where—

- 5 (a) information concerning the medical or psychiatric condition of an associated person may be disclosed by a medical record holder under a law of the Territory; and
- (b) the medical record holder considers that the disclosure might be prejudicial to the physical or mental health or well-being of the associated person;

10 the medical record holder may, on application by the associated person for the information—

- (c) refuse to disclose the information to the applicant personally; and
- (d) instead disclose it (without identifying a person other than the applicant) to a medical practitioner nominated by the applicant.

“Division 4—Other matters

15 **False statements**

“24. A person shall not, whether orally or in writing, wilfully make a false statement for the purpose of or in connection with an application for a parentage order.

Penalty: 200 penalty units or imprisonment for 2 years, or both.

20 **Personation of birth parents**

“25. A person shall not personate or falsely represent himself or herself to be a birth parent for the purpose of or in connection with an application for a parentage order.

Penalty: 200 penalty units or imprisonment for 2 years, or both.

25 **Presenting forged agreement**

30 “26. A person shall not present, or cause to be presented, to the Court in connection with an application for a parentage order a document purporting to be an instrument of agreement to the making of the order signed by a birth parent if the signature to the document was, to the knowledge of the first-mentioned person, forged or obtained by fraud, duress or other improper means.

Penalty: 200 penalty units or imprisonment for 2 years, or both.

Legal representation of child

35 “27. In proceedings on an application for a parentage order, the Court may make an order for the legal representation of the child.

Proof of parentage orders

“28. In any proceedings in a court in the Territory, a document purporting to be—

- 5
- (a) the original or a certified copy or certified extract of a parentage order; or
 - (b) an official certificate, entry or record of the making of a parentage order;

is evidence of the facts stated in, and matters appearing from, the document.

“PART IV—MISCELLANEOUS

10 **Determined fees**

“29. The Minister may, by notice in the *Gazette*, determine fees for the purposes of this Act.

Regulations

15 “30. The Executive has power to make regulations under this Act and, in particular, may make regulations in relation to—

- (a) the forms to be used for the purposes of this Act;
- (b) the furnishing of copies of, or extracts from, entries in the Register of Births relating to prescribed children; and
- 20 (c) the making, correction or cancellation of entries in the Register of Births relating to prescribed children.”.

Amendment of Registration of Births, Deaths and Marriages Act 1963

10. Part VI of the *Registration of Births, Deaths and Marriages Act 1963* is amended by adding at the end the following Division:

25 ***“Division 3—Substitute parent information***

Registration of parentage order

30 “46H. (1) Where the Registrar-General receives a sealed copy of a parentage order under section 10 of the *Artificial Conception Act 1985*, the Registrar-General shall register the order in the Substitute Parent Information Register.

“2) The Registrar-General shall keep an index of parentage orders registered in the Substitute Parent Information Register.

“(3) The Registrar-General shall bring this Division to the notice of any person providing information to the Registrar-General concerning the birth of a child in respect of whom a parentage order has been made.

Re-registration of birth where parentage order made

5 “46J. (1) On receipt of a sealed copy of a parentage order referred to in subsection 46H (1) in respect of a child whose birth is registered in the Register of Births, the Registrar-General shall re-register the birth of the child by entering in the Register of Births—

(a) particulars, ascertained from the copy of the parentage order, of—

- 10 (i) the child’s name after the order was made;
(ii) the sex, date and place of birth of the child; and
(iii) the genetic parents; and

(b) a notation to the entry, signed and dated by the Registrar-General, to the effect that the birth of the child is registered under this
15 subsection.

“(2) On re-registering the birth of a child under subsection (1), the Registrar-General shall sign and date a notation, written on the page of the Register of Births that contains the original entry of the birth, to the effect that the birth of the child has been re-registered under subsection (1) on a
20 specified page of the Register.

“(3) Where a parentage order relates to a child who has previously been adopted, the Registrar-General shall re-register the birth of the child as if the entry relating to the adoption were the original entry of the birth of the child.”

25 **Amendment of *Substitute Parent Agreements Act 1994***

11. Section 10 of the *Substitute Parent Agreements Act 1994* is amended by adding at the end the following subsection:

30 “(2) For the purposes of subsection (1), an action or proceeding in connection with a substitute parent agreement does not include a proceeding on an application for a parentage order under the *Artificial Conception Act 1985*.”

NOTE

Principal Act

1. Reprinted as at 31 August 1993. See also Act No. 26, 1994.

Penalty units

See section 33AA of the *Interpretation Act 1967*.