

2000
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mrs Carnell)

Artificial Conception Amendment Bill 2000

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2000
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mrs Carnell)

Artificial Conception Amendment Bill 2000

A BILL

FOR

**An Act to amend the *Artificial Conception Act 1985*, and for
other purposes**

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

PART 1—PRELIMINARY

1 Name of Act

5 This Act is the *Artificial Conception Amendment Act 2000*.

2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

5 *Note 1* The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Interpretation Act 1967*, s 10C (1)).

10 *Note 3* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

**PART 2—AMENDMENTS OF ARTIFICIAL CONCEPTION ACT
1985**

3 Act amended

This Part amends the *Artificial Conception Act 1985*.

5 **4 Long title**

The title is amended by adding at the end “and for other matters”.

5 Insertion

Before section 1 the following heading is inserted:

“PART 1—PRELIMINARY”.

10 **6 Substitution**

Sections 2 and 3 are repealed and the following sections substituted:

“2 Definitions for Act

In this Act:

adoptive parent has the same meaning as in the *Adoption Act 1993*.

15 **1 Term not defined in section 4 of the Adoption Act. Is the definition
satisfactory?**

birth father, of a child, means the man presumed under Part 2 of this Act, or under the *Birth (Equality of Status) Act 1988*, to be the father of the child.

20 *birth mother*, of a child, means the woman who gave birth to the child.

birth parent, of a child, means the child’s birth mother or the child’s birth father.

25 *birth relative*, of a prescribed child, means a person who was a grandparent, brother, sister, uncle or aunt of the child before the parentage order was made.

genetic father, of a child, means the man whose gametes were used to create the embryo.

genetic mother, of a child, means the woman whose gametes were used to create the embryo.

guardian, of a child, includes—

- 5
- (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 Territory, Commonwealth or State law.

parentage order means an order under section 11.

10 **prescribed child** means a child about whom a parentage order has been made.

prescribed father, of a prescribed child, means the male prescribed parent of the child.

15 **prescribed mother**, of a prescribed child, means the female prescribed parent of the child.

prescribed parent, of a prescribed child, means a substitute parent of the child in whose favour the parentage order has been made.

20 **prescribed relative**, of a prescribed child, means a person who is a grandparent, brother, sister, uncle or aunt of the child because of the parentage order.

procedure means—

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

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

30 **substitute parent**, of a child in relation to whom a parentage order is applied for, means a person who, because of a substitute parent agreement, has indicated his or her intention to become a prescribed parent of the child.

substitute parent agreement, about a child in relation to whom a parentage order is applied for, means a substitute parent

agreement within the meaning of the *Substitute Parent Agreements Act 1994* if—

- 5
- (a) under the agreement, a man and a woman have indicated their intention to become the prescribed parents of the child; and
 - (b) either the man is the child's genetic father, or the woman is the child's genetic mother; and
 - (c) the agreement is not a commercial substitute parent agreement within the meaning of that Act.

10 **“3 Meaning of *married woman, husband and wife***

“(1) A reference in this Act to a *married woman* includes a reference to a woman who is living with a man as his wife on a genuine domestic basis although not married to him.

15 “(2) A reference in this Act to the *husband* or *wife* of a person is, if the person is living with another person of the opposite sex (the *partner*) as the spouse of the partner on a genuine domestic basis although not married to the partner, and includes a reference to the partner to the exclusion of the spouse (if any) of the firstmentioned person.”.

7 **Insertion**

20 Before section 4 of the Principal Act the following heading is inserted:

“PART 2—PRESUMPTIONS ABOUT PARENTAGE”.

8 **Application**

Section 4 is amended—

- 25
- (a) by omitting from subsection (1) “Act” (first occurring) and substituting “Part”; and
 - (b) by omitting from paragraphs (1) (a) and (b) “Act” and substituting “Part”; and
 - (c) by omitting from subsection (2) “Act” and substituting “Part”; and
 - 30 (d) by omitting from subsection (3) “Act” (first occurring) and substituting “Part”.

9 Insertion

After section 7 the following Parts are inserted:

“PART 3—PARENTAGE ORDERS

“Division 3.1—Preliminary

5 **“8 References to prescribed parents where there is only 1**

If the parentage order about a prescribed child is in favour of only 1 prescribed parent, a reference in this Part to the prescribed parents, or both prescribed parents, of the prescribed child is a reference to the prescribed parent of the child.

10 ***“Division 3.2—Obtaining parentage order***

“9 Application of div 3.2

This Division applies 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
15 the child’s birth mother, and of a man who is not the child’s birth father, were used to create the embryo.

“10 Applying for an order

“(1) The substitute parents of a child may apply, in accordance with this section, to the Supreme Court for a parentage order about the child.

20 **“(2)** The application may be made by either or both of the substitute parents.

“(3) The application must be made within 6 months after the child was born, but not within 6 weeks after the child was born.

25 **“(4)** However, if the child was born before the commencement of this Division, the application may be made within 6 months after the commencement, but not within 6 weeks after the child was born.

“(5) Subsection (4) and this subsection expire 6 months after the commencement of this Division.

“11 Making an order

30 **“(1)** The Supreme Court must make a parentage order if—

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- 5
- (a) the court is satisfied that the making of the order is in the best interests and welfare of the child; and
- (b) the child's home is, and was at the time of the application, with both substitute parents; and
- (c) both substitute parents live in the Territory; and
- (d) both substitute parents are at least 18 years old; and
- (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; and
- 10 (f) if only 1 of the child's substitute parents has applied for the order, and the other substitute parent is alive at the time of the application—
- (i) the court is satisfied that the other substitute parent freely, and with a full understanding of what is involved, agrees to the making of the order in favour of the applicant substitute parent; or
- 15 (ii) the court is satisfied that, after making reasonable inquiries, the applicant substitute parent is unable to contact the other substitute parent to obtain his or her agreement under subparagraph (i) and that it would not be contrary to the welfare and interests of the child to make the order in favour of the applicant substitute parent in the absence of the agreement; and
- 20
- (g) the court is satisfied that, except as authorised by the court, no payment or reward (other than for expenses reasonably incurred) has been given or received by either of the child's substitute parents, or either of the child's birth parents, for or in consideration of—
- 25 (i) the making of the order; or
- (ii) the agreement required under paragraph (e); or
- 30 (iii) the handing over of the child to the substitute parents; or
- (iv) the making of any arrangements with a view to the making of the order; and
- (h) the court is satisfied that—
- 35 (i) both birth parents and both substitute parents have received appropriate counselling and assessment from a counselling service that is not connected with the doctor who carried

out the procedure that resulted in the birth of the child or the institution where the procedure was carried out; or

- (ii) although a birth parent or a substitute 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.

5

“(2) However, the Supreme Court may dispense with the requirement under paragraph (1) (e) for either or both birth parents to agree to the making of a parentage order if satisfied that—

- (a) the birth parent or birth parents are dead or incapacitated, and—

10

(i) it would not be contrary to the welfare and interests of the child to make the order in favour of the applicants; or

- (ii) if there is evidence before the court that the birth parent or birth parents, at the time of death or the onset of incapacity, no longer intended the applicants to be the prescribed parents of the child—it would be contrary to the welfare and interests of the child not to make the order in favour of the applicants; or

15

- (b) after making reasonable inquiries, the applicants are unable to contact the birth parent or birth parents to obtain the agreement, and—

20

(i) it would not be contrary to the welfare and interests of the child to make the order in favour of the applicants; or

- (ii) if there is evidence before the court that the birth parent or birth parents no longer intend the applicants to be the prescribed parents of the child—it would be contrary to the welfare and interests of the child not to make the order in favour of the applicants.

25

“(3) The Supreme Court must make a parentage order under subsection (1)—

30

- (a) if both substitute parents apply for the order—in favour of both substitute parents; or

- (b) if only 1 substitute parent applies for the order, and the other substitute parent is dead or incapacitated at the time of the application (unless the court is satisfied that, at the time of death, the deceased substitute parent no longer intended to become a prescribed parent of the child)—in favour of both substitute parents; or

35

- (c) if, in any other case, only 1 substitute parent applies for the order—in favour of the applicant substitute parent.

“12 Names of prescribed child

5 “(1) On the making of a parentage order, the prescribed child has as his or her surname—

- (a) if both prescribed parents are known by the same surname—that surname; or
- (b) in any other case—whichever of the following names that the Supreme Court, on the application of the prescribed parents, approves in the parentage order:
- 10 (i) the maiden name or other surname of the prescribed mother;
- (ii) the surname of the prescribed father;
- (iii) a surname formed by combining the prescribed mother’s maiden name or other surname and the prescribed father’s surname.
- 15

“(2) On the making of a parentage order, the prescribed child has as his or her given name or names the name or names that, on the application of the prescribed parents, the Supreme Court approves in the parentage order.

20 “(3) However, if, before a parentage order is made, the prescribed child had been generally known by a particular name, the Supreme Court may, in the parentage order, order that the child will have the name.

“(4) This section does not prevent the changing of a name of a prescribed child, after the parentage order is made, in accordance with Territory law.

25 *“Division 3.3—Effect of orders*

“13 General effect

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

- 30 (a) the prescribed child becomes in law a child of the prescribed parents, and the prescribed parents become in law the parents of the child as if the child had been born to the prescribed parents; and

- (b) the prescribed child ceases to be a child of the birth parents or of anyone who was an adoptive parent before the making of the parentage order, and any such person ceases to be a parent of the child; and
- 5 (c) the relationship to one another of everyone (including the prescribed child and the prescribed parents, birth parents or any former adoptive parent) is to be decided on the basis of paragraphs (a) and (b) so far as they are relevant; and
- 10 (d) any existing appointment of a person as guardian of the prescribed child ceases to have effect; and
- (e) any previous adoption of the prescribed child (whether or not under Territory law) ceases to have effect.

“(2) However, for any Territory law relating to a sexual offence where the relationship between people is relevant—

- 15 (a) a parentage order does not cause the cessation of any relationship that would otherwise have existed; and
- (b) any such relationship is taken to exist in addition to any relationship that exists because of the application of subsection (1).

20 **“14 Disposition of property**

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

- (a) whether by will or otherwise; and
- (b) whether made before or after the commencement of this Part.

25 “(2) However, subsection 13 (1) does not affect a disposition of property—

- (a) by a person who, or by people any of whom, died before the commencement of this Part; or
- (b) that has taken effect in possession before the commencement of this Part.

30 “(3) Subsection 13 (1) does not apply in relation to an agreement or instrument (other than a disposition of property) made or executed before the commencement of this Part.

“(4) If—

- 35 (a) before the commencement of this Part, a person made a disposition of property by an instrument other than a will; and

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

5

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

10 “(5) Section 13 and this section do not affect 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.

15 “(6) Section 13 and this section do not affect a right of inheritance that a prescribed child might have from or through his or her birth parent or former adoptive parent if the birth or former adoptive parent dies before the making of the parentage order about the child.

“15 Distribution of property by trustee or personal representative

20 “(1) Despite any other provision of this Part, a trustee or personal representative may convey, transfer or distribute property to or among the people appearing to be entitled to the property without having to find out whether or not a parentage order has been made that may affect a person’s entitlement to an interest in the property.

25 “(2) The trustee or personal representative is liable to a person claiming directly or indirectly an interest in the property because of the making of a parentage order only if the trustee or personal representative had notice of the claim before the conveyance, transfer or distribution.

30 “(3) This section does not affect the right of a person to follow property into the hands of someone else, other than a genuine purchaser for value without notice.

“16 Bequest by will to unascertained prescribed child

“**(1)** If, under a will made after the commencement of this Part—

- (a) a disposition of property or of an interest in property (a *bequest*) is expressed to be made by the testator to a person (the *beneficiary*)

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who is not named but is described as a child of the testator or of a spouse, parent, child, brother or sister of the testator; and

- (b) a parentage order was or has been made about the beneficiary; and
- (c) the testator's personal representative is unable to find out the name and location of the beneficiary;

5

the personal representative must give the public trustee a copy of the will and a statement that the personal representative is unable to find out the name and location of the beneficiary.

“(2) If the public trustee is given a copy of a will under subsection (1), the public trustee must, in writing, request the registrar-general to provide any information in his or her possession that may assist in finding out the name and location of the beneficiary.

10

“(3) If the registrar-general receives a request under subsection (2), the registrar-general must—

15

- (a) search the records in his or her possession to assist the public trustee to find out the name and location of the beneficiary; and
- (b) tell the public trustee of the results of the search.

“(4) If the public trustee finds out that the beneficiary has died, the public trustee must tell the personal representative.

20

“(5) If the public trustee finds out the name and location of the beneficiary and the beneficiary is at least 18 years old, the public trustee must—

25

- (a) find out whether the beneficiary wishes to accept the bequest; and
- (b) if the beneficiary does not wish to accept the bequest—tell the personal representative that the beneficiary does not wish to accept the bequest; and
- (c) if the beneficiary wishes to accept the bequest—tell 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 the proceeds, give them to the beneficiary.

30

“(6) If the public trustee finds out the name and location of the beneficiary but the beneficiary is younger than 18 years old, the public trustee must—

35

- (a) tell the personal representative that the proceeds of the bequest should be transferred to the public trustee to be held in trust for the beneficiary; and

(b) hold the proceeds on trust for the beneficiary on the trusts (if any) set out in or arising under the will until the beneficiary turns 18 years old; and

5 (c) on the beneficiary turning 18 years old, transfer the proceeds to the beneficiary, unless the beneficiary then disclaims the bequest.

“(7) If a personal representative transfers the proceeds of a bequest to the public trustee under this section, the personal representative is taken to have transferred the bequest to the beneficiary.

10 “(8) If a written statement to the effect that the beneficiary has disclaimed the bequest is given by the public trustee to the personal representative, the statement is, in the course of the administration of the estate, conclusive evidence that the beneficiary has disclaimed the bequest.

15 “(9) The public trustee must not include, in information given to a personal representative under this section, particulars that identify or tend to identify the beneficiary.

“17 Gifts between living people

20 Section 16 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 (the *donor*) to a person about whom a parentage order was or has been made 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 as if—

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

“Division 3.4—Access to information

30 “18 Definitions for div 3.4

In this Division:

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

- (a) the prescribed child; or

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

birth parent, of a prescribed child, includes anyone who was the guardian of the child before the parentage order was made.

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

- 10 (a) a copy of, or an extract from, an entry in the register of births about 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).

“19 Confidentiality of records

15 “(1) Except as provided in this Division—

- (a) the records of the Supreme Court (other than an order or decision of the court) relating to proceedings on an application for a parentage order; or
- 20 (b) an entry in the register of births about the birth of a prescribed child, or a copy of or extract from, such an entry;

must not be made available to, or be open to inspection by, anyone.

“(2) However this section does not prevent a person from having access to information if the person’s duties require the person to have access to the information for the administration of this Part.

25 **“20 Right of access to identifying information**

“(1) An associated person is entitled to apply for identifying information contained in records kept by the registrar-general.

“(2) A prescribed child (whether or not the child has turned 18 years old) is entitled to apply for—

- 30 (a) identifying information that consists of a copy of, or an extract from, an entry in the register of births about the prescribed child;
and
- (b) any other identifying information only with the written consent of—

- (i) each of the prescribed child's prescribed parents; and
- (ii) each of the child's birth parents; and
- (iii) if a birth relative may be identified from the information—
the birth relative.

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

“(4) The consent of a person is not required for subsection (2) or (3) if the registrar-general is satisfied that—

- 10 (a) the person is dead; or
- (b) the location of the person is unknown and could not be found out with reasonable inquiries.

“21 Provision of information by registrar-general

15 “(1) This section applies if, on an application for identifying information—

- (a) the registrar-general is satisfied that the applicant is entitled to apply for the information; and
- (b) the appropriate fee determined for section 43 of the *Births, Deaths and Marriages Registration Act 1997* has been paid.

20 “(2) The registrar-general must search the register of births and issue to the applicant—

- (a) a copy of, or extract from, the relevant entry; or
- (b) a notification of the result of the search.

25 “(3) However, the registrar-general may refuse to make the search, or issue the copy, extract or notification, if satisfied that—

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

30 **“22 Application to Supreme Court in absence of consent**

“(1) If—

- (a) a person would, under section 20, be entitled to apply for identifying information with the written consent of someone else; and

(b) that person has refused to consent;

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

5 “(2) The Supreme Court may, if satisfied that there are circumstances that justify the order, make an order declaring that the applicant is entitled to apply for the identifying information stated in the order.

“(3) If the Supreme Court makes an order under subsection (2), the applicant for the order is taken, for section 21, to be entitled to apply for the identifying information stated in the order.

10 **“23 Application to Supreme Court in other circumstances**

“(1) A person may apply to the Supreme Court for an order under subsection (2) if the person—

(a) is not entitled under section 20 or 22 to apply for identifying information; or

15 (b) has been refused access to identifying information under subsection 21 (3).

“(2) The Supreme Court may, if satisfied 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 stated in the order.

“(3) If the Supreme Court makes an order under subsection (2), the applicant for the order is taken, for sections 18 and 21, to be entitled to apply for, and to have access to, the identifying information stated in the order.

25 **“24 Medical information**

“(1) This section applies if—

(a) information about the medical or psychiatric condition of an associated person may be disclosed by a medical record holder under a Territory law; and

30 (b) the associated person applies to the medical record holder for the information; and

(c) the medical record holder considers that the disclosure might be prejudicial to the physical or mental health or wellbeing of the associated person.

“(2) The medical record holder may—

- (a) refuse to disclose the information to the associated person personally; and
5 (b) instead disclose it (without identifying anyone other than the associated person) to a doctor nominated by the associated person.

“Division 3.5—Other matters

“25 False statements

A person must not, orally or in writing, wilfully make a false statement for or in relation to an application for a parentage order.

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

“26 Impersonation of birth parents

A person must not impersonate or falsely represent himself or herself to be a birth parent for or in relation to an application for a parentage order.

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

“27 Presenting forged agreement

A person must not present to the Supreme Court in relation to 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 person’s knowledge, forged or
20 obtained by fraud, duress or other improper means.

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

“28 Legal representation of child

25 In proceedings on an application for a parentage order about a child, the Supreme Court may make an order for the legal representation of the child.

“29 Proof of parentage orders

In any proceeding in a court in the Territory, a document purporting to be—

- 30 (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.

5

“PART 4—MISCELLANEOUS

“30 Determination of fees

- (1) The Minister may determine fees for this Act.
(2) A determination under this section is a disallowable instrument.

“31 Regulation-making power

- 10 “(1) The Executive may make regulations for this Act.
“ (2) The regulations may make provision with respect to—
 (a) the forms to be used for the Act; or
 (b) forms and standards of counselling and assessment for
 subparagraph 11 (h) (i); or
15 (c) the provision of copies of, or extracts from, entries in the register
 of births about prescribed children; or
 (d) the making, correction or cancellation of entries in the register of
 births about prescribed children.”.

PART 3—OTHER AMENDMENTS

20 **10 Amendment of Births, Deaths and Marriages Registration Act
1997**

Part 2 of the *Births, Deaths and Marriages Registration Act 1997* is amended by inserting after Division 3 the following Division:

“Division 4—Substitute parent information

25 **“16A Registration of parentage order**

- “ (1) If the registrar-general receives a sealed copy of a parentage order under section 11 of the *Artificial Conception Act 1985*, the registrar-general must register the order.

“(2) The registrar-general must keep an index of registered parentage orders.

“(3) The registrar-general must bring this Division to the notice of anyone providing information to the registrar-general about the birth of a child about whom a parentage order has been made.

“16B Re-registration of birth where parentage order made

“(2) If the registrar-general receives a sealed copy of a parentage order mentioned in subsection 16A (1) for a child whose birth is registered under this Act, the registrar-general must re-register the birth of the child by entering in the register—

- (a) particulars, from the copy of the parentage order, of—
 - (i) the child’s name after the order was made; and
 - (ii) the child’s sex, date and place of birth; and
 - (iii) the prescribed parents of the child within the meaning of the *Artificial Conception Act 1985*; 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 subsection.

“(2) On re-registering the birth of a child under subsection (1), the registrar-general must sign and date a notation, written on the page of the register 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 stated page of the register.

“(3) If a parentage order relates to a child who has previously been adopted, the registrar-general must re-register the birth of the child as if the entry relating to the adoption were the original entry of the child’s birth.”.

11 Amendment of Substitute Parent Agreements Act 1994

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

“(2) For 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*.”.

Endnotes

Act amended

1 Republished as in force on 1 March 1999.

Penalty units

- 5 2 Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.