



Australian Capital Territory

# **Parentage Act 2004**

**A2004-1**

**Republication No 1**

**Effective: 22 March 2004 – 22 March 2006**

Republication date: 22 March 2004

Act not amended

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Parentage Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 22 March 2004. It also includes any amendment, repeal or expiry affecting the republished law.

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

### Kinds of republications

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

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

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

### Editorial changes

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

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

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

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Parentage Act 2004

## Contents

---

	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
3	Dictionary 2
4	Notes 2
5	Offences against Act—application of Criminal Code etc 2
<b>Part 2</b>	<b>Establishing parentage</b>
<b>Division 2.1</b>	<b>General</b>
6	Purpose of pt 2 4
<b>Division 2.2</b>	<b>Presumptions about parentage</b>
7	Presumptions arising from marriage 4
8	Presumption arising from domestic partnership 5
9	Presumptions arising from registered information 5

---

R1  
22/03/04

Parentage Act 2004  
Effective: 22/03/04-22/03/06

contents 1

## Contents

---

	Page
10	Presumptions arising from findings of courts 6
11	Presumptions arising from procedure 6
<b>Division 2.3 Effect of presumptions</b>	
12	Whether presumptions conclusive or rebuttable 8
13	Conflicting presumptions 8
14	Presumptions not to allow more than 2 parents 9
<b>Division 2.4 Parentage declarations</b>	
15	Application for parentage declaration 9
16	Further application for parentage declaration 9
17	Refusal to hear application 10
18	Adjournment of hearing 11
19	Parentage declaration 11
20	Application for annulment of parentage declaration 11
21	Adjournment of hearing 12
22	Annulment of parentage declaration 12
<b>Division 2.5 Parentage orders</b>	
23	Definitions for div 2.5 13
24	Application of div 2.5 14
25	Application for parentage order 15
26	Parentage order 15
27	Multiple births 17
28	Name of child 18
29	Effect of parentage order and access to information 18
30	Medical information 19
31	Effect of substitute parent agreements 20
<b>Division 2.6 Use of medical tests in establishing parentage</b>	
32	Definition for div 2.6 21
33	Application of div 2.6 21
34	Order to carry out medical tests 21
35	Effect of failure to comply with parentage testing order 22
36	Reports of medical tests 23
37	Offences related to medical tests 24

---

	Page
<b>Part 3</b>	<b>Status of children</b>
38	Children all of equal status 25
39	Construction of instruments 25
<b>Part 4</b>	<b>Offences relating to substitute parent agreements</b>
40	Meaning of <i>commercial substitute parent agreement</i> 28
41	Commercial substitute parent agreements prohibited 28
42	Procuration of substitute parent agreements 28
43	Advertising in relation to substitute parent agreements 29
44	Facilitating pregnancy 30
45	Geographical nexus for offences 30
<b>Part 5</b>	<b>Miscellaneous</b>
46	Joinder of parties 31
47	Notification of court orders to registrar-general 31
48	Proof of orders about parentage 31
49	Approved forms 32
50	Regulation-making power 32
<b>Dictionary</b>	33
<b>Endnotes</b>	
1	About the endnotes 35
2	Abbreviation key 35
3	Legislation history 36
4	Amendment history 36





Australian Capital Territory

# Parentage Act 2004

---

An Act relating to parentage, and for other purposes

---

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Parentage Act 2004*.

### 3 Dictionary

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

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

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

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

### 4 Notes

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

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

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

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

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

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



*Note 2 Penalty units*

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

## Part 2                      Establishing parentage

### Division 2.1              General

#### 6                      Purpose of pt 2

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

*Note*      **Parent** is defined in the Legislation Act, dict, pt 1 as follows:

**parent**, of a child, means—

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

### Division 2.2              Presumptions about parentage

#### 7                      Presumptions arising from marriage

- (1) A child born to a woman while she is married is presumed to be a child of the woman and her husband.
- (2) A child born to a woman within 44 weeks after the death of her husband is presumed to be the child of the woman and her husband who died.
- (3) A child born to a woman within 44 weeks after the annulment of her purported marriage is presumed to be the child of the woman and her purported husband.
- (4) A child born to a woman after the dissolution of her marriage, but within 44 weeks after she last separated from her husband in that marriage, is presumed to be the child of the woman and her husband in that marriage.

**8 Presumption arising from domestic partnership**

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

**9 Presumptions arising from registered information**

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

*register* means—

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

**10                    Presumptions arising from findings of courts**

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

**11                    Presumptions arising from procedure**

- (1) This section sets out presumptions that arise if a woman undergoes a procedure as a result of which she becomes pregnant.
- (2) The woman is conclusively presumed to be the mother of any child born as a result of the pregnancy.
- (3) If the ovum used in the procedure was produced by another woman, that other woman is conclusively presumed not to be the mother of any child born as a result of the pregnancy.

- (4) If the woman undergoes the procedure with the consent of her domestic partner at the time of the procedure, the domestic partner is conclusively presumed to be a parent of any child born as a result of the pregnancy.
- (5) If semen used in the procedure was produced by a man other than the woman's domestic partner at the time of the procedure, the man who produced the semen is conclusively presumed not to be the father of any child born as a result of the pregnancy.
- (6) For subsection (4), a person is presumed to consent to the carrying out of a procedure in relation to the person's domestic partner, but the presumption is rebuttable.
- (7) The presumptions set out in this section apply—
- (a) whenever the pregnancy happened and whether or not it resulted from a procedure carried out in the ACT; and
  - (b) in relation to any child born as a result of the pregnancy, whether or not the child was born in the ACT.
- (8) However, this section does not affect the vesting in possession or in interest of any property that happened before the commencement of this Act.
- (9) In this section:
- procedure*** means—
- (a) artificial insemination; or
  - (b) the procedure of transferring into the uterus of a woman an embryo derived from an ovum fertilised outside her body; or
  - (c) any other way (whether medically assisted or not) by which a woman can become pregnant other than by having sexual intercourse with a man.

## **Division 2.3            Effect of presumptions**

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

In a proceeding—

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

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

### **13            Conflicting presumptions**

- (1) This section applies if—
  - (a) 2 or more presumptions about the parentage of a child are relevant in a proceeding; and
  - (b) the presumptions conflict with each other.
- (2) If 1 of the presumptions arises under section 10 (1) (Presumptions arising from findings of courts), that presumption prevails over any other presumption.
- (3) If 1 of the presumptions arises under section 11 (Presumptions arising from procedure), that presumption prevails over any presumption other than a presumption that arises under section 10 (1).
- (4) If no presumption arises under section 10 (1) or section 11, the court must decide which presumption prevails having regard to the interests of justice and the best interests of the child.

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

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

**Division 2.4 Parentage declarations**

**15 Application for parentage declaration**

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

**16 Further application for parentage declaration**

- (1) This section applies if—
  - (a) an application for a parentage declaration (or an appeal against an order dismissing an application) has been dismissed because the relationship claimed in the application has not been established; or
  - (b) a parentage declaration has been set aside on appeal because the relationship stated in the declaration has not been established.

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

## **17            Refusal to hear application**

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



**18 Adjourment of hearing**

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

**19 Parentage declaration**

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

**20 Application for annulment of parentage declaration**

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

- (a) the applicant for the declaration; or
- (b) a person named in the declaration; or

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

## **21            Adjournment of hearing**

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

## **22            Annulment of parentage declaration**

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

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

## **Division 2.5                  Parentage orders**

### **23                  Definitions for div 2.5**

In this division:

*birth parent*, of a child, means—

- (a) the woman who gave birth to the child; or
- (b) the other person (if any) presumed under division 2.2 to be a parent of the child.

*birth sibling*, of a child, means a brother or sister of the child who is born as a result of the same pregnancy as the child.

*commercial substitute parent agreement*—see section 40.

*parentage order* means an order under section 26.

*procedure* means the procedure of transferring into the uterus of a woman an embryo derived from an ovum fertilised outside her body.

*substitute parent*, of a child—see section 24 (1) (c).

*substitute parent agreement* means a contract, agreement, arrangement or understanding under which—

- (a) a woman agrees—
  - (i) that the woman will become, or attempt to become, pregnant; and
  - (ii) that a child born as a result of the pregnancy will be taken to be (whether by adoption, agreement or otherwise) the child of someone else; or
- (b) a woman who is pregnant agrees that a child born as a result of the pregnancy will be taken to be (whether by adoption, agreement or otherwise) the child of someone else.

## **24            Application of div 2.5**

- (1) This division applies to a child if—
  - (a) the child was conceived as a result of a procedure carried out in the ACT; and
  - (b) neither birth parent of the child is a genetic parent of the child; and
  - (c) there is a substitute parent agreement, other than a commercial substitute parent agreement, under which 2 people (the *substitute parents*) have indicated their intention to apply for a parentage order about the child; and
  - (d) at least 1 of the substitute parents is a genetic parent of the child; and
  - (e) the substitute parents live in the ACT.

- (2) For subsection (1) (a), it does not matter whether the procedure was carried out before or after the commencement of this Act.
- (3) Subsection (2) and this subsection expire 2 years after the day this section commences.

## **25 Application for parentage order**

- (1) An application may be made to the Supreme Court for a parentage order about the child.
- (2) The application may be made by either or both of the substitute parents.
- (3) The application may only be made when the child is between the ages of 6 weeks and 6 months.

## **26 Parentage order**

- (1) The Supreme Court must make a parentage order about the child if satisfied that—
  - (a) the making of the order is in the best interests of the child; and
  - (b) both birth parents freely, and with a full understanding of what is involved, agree to the making of the order.
- (2) However, the Supreme Court may dispense with the requirement under subsection (1) (b) in relation to a birth parent if satisfied that—
  - (a) the birth parent is dead or incapacitated; or
  - (b) the applicants cannot contact the birth parent after making reasonable inquiries.
- (3) In deciding whether to make a parentage order, the Supreme Court must take the following into consideration, if relevant:
  - (a) whether the child's home is, and was at the time of the application, with both substitute parents;

- (b) whether both substitute parents are at least 18 years old;
  - (c) 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, whether—
    - (i) 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
    - (ii) the applicant substitute parent cannot contact the other substitute parent to obtain his or her agreement under subparagraph (i);
  - (d) whether 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—
    - (i) the making of the order; or
    - (ii) the agreement mentioned in subsection (1) (b); or
    - (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;
  - (e) whether both birth parents and both substitute parents have received appropriate counselling and assessment from an independent counselling service;
  - (f) if a birth parent is dead or incapacitated or cannot be contacted—any evidence before the court that the birth parent no longer intended or intends the substitute parents to obtain a parentage order about the child.
- (4) The Supreme Court may take into consideration anything else it considers relevant.

- (5) For subsection (3) (e), a counselling service is not *independent* if it is connected with—
- (a) the doctor who carried out the procedure that resulted in the birth of the relevant child; or
  - (b) the institution where the procedure was carried out; or
  - (c) another entity involved in carrying out the procedure.
- (6) The Supreme Court must make a parentage order under subsection (1)—
- (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 or incapacitation, the deceased or incapacitated substitute parent no longer intended or intends to apply for a parentage order about the child)—in favour of both substitute parents; or
  - (c) if, in any other case, only 1 substitute parent applies for the order—in favour of the applicant substitute parent.

## **27 Multiple births**

- (1) This section applies if a child about whom an application for a parentage order has been made has a living birth sibling.
- (2) Despite section 26 (1), the Supreme Court may make a parentage order about the child only if it also makes a parentage order about each living birth sibling of the child.

**28                      Name of child**

- (1) On the making of a parentage order about a child, the child has as his or her surname—
  - (a) if the order is made in favour of both substitute parents and they are both known by the same surname—that surname; or
  - (b) in any other case—a name the Supreme Court, on the application of either or both of the substitute parents, approves in the parentage order.
- (2) On the making of a parentage order about a child, the child has as his or her given name or names a name or names the Supreme Court, on the application of either or both of the substitute parents, approves in the parentage order.
- (3) Despite subsection (2), if the child has been generally known by a particular name or names, the Supreme Court may, in the parentage order, order that the child will have that name or those names as his or her given name or names.
- (4) This section does not prevent a name of a child being later changed in accordance with Territory law.

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

- (1) If a parentage order is made about a child, the provisions of the *Adoption Act 1993* mentioned in subsection (3) (the ***applied provisions***) apply in relation to the parentage order as if the parentage order were an order made under that Act for the adoption of the child and the child were an adopted child.
- (2) For that application—
  - (a) a reference in an applied provision to the adoptive parent or adoptive parents is a reference to the substitute parent or substitute parents in whose favour the parentage order was made; and



- (b) a reference in an applied provision to the adopted child or adopted person is a reference to the child about whom the parentage order was made; and
  - (c) a reference in an applied provision to the commencement of the *Adoption Act 1993* were a reference to the commencement of this Act; and
  - (d) a reference in section 48 to the chief executive were a reference to the registrar-general; and
  - (e) any other necessary changes were made.
- (3) The applied provisions of the *Adoption Act 1993* are as follows:
- section 43 (General effect) other than subsections (1) (c) and (2)
  - section 44 (Disposition of property)
  - section 47 (Distribution of property by trustee or personal representative)
  - section 48 (Bequest by will to unascertained adopted person)
  - section 49 (Gifts inter vivos)
  - section 60 (Confidentiality of records) other than subsection (1) (a)
  - section 62 (3) (Provision of information)
  - division 5.3 (Identifying information) other than section 77, section 78 and section 79.

### **30 Medical information**

- (1) This section applies if—
- (a) information about the medical or psychiatric condition of a relevant person may be disclosed by a medical record holder under a law in force in the Territory; and
  - (b) the relevant person applies to the medical record holder for the information; and

- (c) the medical record holder considers that the disclosure might be prejudicial to the physical or mental health or wellbeing of the relevant person.
- (2) The medical record holder may—
  - (a) refuse to disclose the information to the relevant person personally; and
  - (b) instead disclose it (without identifying anyone other than the relevant person) to a doctor nominated by the relevant person.
- (3) In this section:  
*relevant person* means—
  - (a) the child about whom a parentage order is made; or
  - (b) a birth parent of the child; or
  - (c) a person who was a grandparent, brother, sister, uncle or aunt of the child before the parentage order was made; or
  - (d) a person who is a grandparent, brother, sister, uncle or aunt of the child because of the parentage order; or
  - (e) a descendent of the child (including his or her own child).

### **31            Effect of substitute parent agreements**

A substitute parent agreement has no legal effect other than under this division.

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

### **32                      Definition for div 2.6**

In this division:

*parentage testing order*—see section 34.

### **33                      Application of div 2.6**

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

### **34                      Order to carry out medical tests**

- (1) The court may make an order (a *parentage testing order*) requiring stated medical tests that are relevant to establishing the parentage of the child to be carried out on a stated person within a stated time and in accordance with any stated conditions.
- (2) The court may make the parentage testing order—
  - (a) on its own initiative; or
  - (b) on the application of a party to the proceeding; or
  - (c) if the child is not a party—on the application of the child.
- (3) If the child makes an application, the child must be joined as a party to the proceeding.
- (4) When deciding whether to make the parentage testing order, the court must take into account any objection made on medical, religious or other grounds by the person to whom a copy of the order must be given.

- (5) A copy of the parentage testing order must be given—
  - (a) if the stated person is under 18 years old—to the person who has custody of the stated person; or
  - (b) if the stated person is of unsound mind or for any other reason incapable of consenting to having the medical tests carried out—to the person who has the care and control of the stated person; or
  - (c) in any other case—to the stated person.
- (6) The court may at any time revoke or vary the parentage testing order.

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

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

**36 Reports of medical tests**

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

**37                      Offences related to medical tests**

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

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

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

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

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

Maximum penalty: 30 penalty units.

## Part 3                      Status of children

### 38                      Children all of equal status

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

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

### 39                      Construction of instruments

- (1) Subsections (2) and (3) apply to—
  - (a) an instrument other than a will or codicil that was signed after 24 March 1989; or
  - (b) an instrument other than a will or codicil that—
    - (i) was signed before that date; and
    - (ii) under the law of the place where the instrument was signed, would be interpreted without regard to the illegitimacy of people mentioned in, or taking under, the instrument.

- (2) Any rule of law that a disposition in favour of an exnuptial child not conceived or born when an instrument takes effect is void for being contrary to public policy is abolished.
- (3) In an instrument other than a will or codicil—
  - (a) a reference (however expressed) to a child of a person includes a reference to an exnuptial child of the person; and
  - (b) a reference (however expressed) to a person related to someone else in another way includes a reference to anyone who is related in that way regardless of whether he or she or another person through whom the relationship is traced is or was an exnuptial child.
- (4) An instrument (other than an instrument mentioned in subsection (1) or a will or codicil) that was executed before 24 March 1989 must be interpreted as if the *Birth (Equality of Status) Act 1988* or this Act had not been made.
- (5) The *Birth (Equality of Status) Act 1988*, part 3 and part 4 apply in relation to the interpretation of a will or codicil if the testator died on or after 24 March 1989 and before the commencement of this Act, but a will or codicil must otherwise be interpreted as if that Act had not been made.
- (6) This Act applies to the interpretation of a will or codicil if the testator died on or after the commencement of this Act, but a will or codicil must otherwise be interpreted as if this Act had not been made.
- (7) If an instrument contains a special power of appointment in favour of a class of people, nothing in the *Birth (Equality of Status) Act 1988* or this Act extends the class of people in whose favour the appointment may be made or causes the exercise of the power to be interpreted to include anyone who is not a member of that class.



(8) In this section:

*exnuptial child* means a child whose father and mother were not married to each other when the child was conceived and have not later married each other (other than a child who is a legitimate child, or is taken to be a legitimate child, under the *Marriage Act 1961* (Cwlth), part 6).

## Part 4 Offences relating to substitute parent agreements

### 40 Meaning of *commercial substitute parent agreement*

In this Act:

*commercial substitute parent agreement* means a substitute parent agreement under which a person agrees to make or give to someone else a payment or reward, other than for expenses connected with—

- (a) a pregnancy (including any attempt to become pregnant) that is the subject of the agreement; or
- (b) the birth or care of a child born as a result of that pregnancy.

*Note* For the meaning of *substitute parent agreement*, see s 23.

### 41 Commercial substitute parent agreements prohibited

A person commits an offence if the person intentionally enters into a commercial substitute parent agreement.

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

### 42 Procurement of substitute parent agreements

- (1) A person commits an offence if the person procures someone to enter into a substitute parent agreement with a third person.

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

- (2) However, a person does not commit an offence under subsection (1) if the person intends to be a party to the agreement.

---

**43 Advertising in relation to substitute parent agreements**

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

Maximum penalty:

- (a) if the offence relates to a commercial substitute parent agreement—50 penalty units, imprisonment for 6 months or both; or
  - (b) in any other case—50 penalty units.
- (2) In this section:
- publish***—something is ***published*** if it is—
- (a) included in a newspaper, periodical publication or other publication; or
  - (b) publicly exhibited in, on, over or under a building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of people on a street or in a public place; or
  - (c) contained in a document given to someone or left on premises where someone lives or works; or
  - (d) broadcast by radio or television; or

- (e) electronically disseminated in another way (for example, by inclusion on a web site).

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

#### **44 Facilitating pregnancy**

A person commits an offence if—

- (a) the person intentionally provides a professional or technical service to someone else; and
- (b) the person knows the other person is, or intends to be, a party to a commercial substitute parent agreement; and
- (c) the person provides the service with the intention of assisting the other person to become pregnant for the purpose of the agreement.

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

#### **45 Geographical nexus for offences**

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

## Part 5                      Miscellaneous

### 46                      Joinder of parties

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

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

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

### 48                      Proof of orders about parentage

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

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

**49 Approved forms**

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

*Note* For other provisions about forms, see Legislation Act, s 255.

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

*Note* A notifiable instrument must be notified under the Legislation Act.

**50 Regulation-making power**

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

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) Without limiting subsection (1), the regulations may make provision in relation to—
  - (a) the carrying out of medical tests for division 2.6 (Use of medical tests in establishing parentage); and
  - (b) the preparation of reports in relation to the information obtained because of the carrying out of the medical tests.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

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

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

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

***commercial substitute parent agreement***—see section 40.

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

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

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

***parentage order***—see section 23.

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

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

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

***substitute parent***, of a child, for division 2.5 (Parentage orders)—see section 24 (1) (c).

***substitute parent agreement***—see section 23.



## Endnotes

### 1 About the endnotes

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

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

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

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

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

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

## Endnotes

3 Legislation history

---

### 3 Legislation history

#### Parentage Act 2004 A2004-1

notified LR 18 February 2004

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

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

### 4 Amendment history

#### Commencement

s 2 om LA s 89 (4)

#### Application of div 2.5

s 24 (2), (3) exp 22 March 2006 (s 24 (3))

#### Repeals and consequential amendments

pt 6 hdg om LA s 89 (3)

#### Legislation repealed

s 51 om LA s 89 (3)

#### Legislation amended—sch 1

s 52 om LA s 89 (3)

#### Consequential amendments

sch 1 om LA s 89 (3)

© Australian Capital Territory 2004