

2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Human Rights)

Parentage (Surrogacy) Amendment Bill 2023

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Human Rights)

Parentage (Surrogacy) Amendment Bill 2023

A Bill for

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

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

1 **1 Name of Act**

2 This Act is the *Parentage (Surrogacy) Amendment Act 2023*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

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

7 **3 Legislation amended**

8 This Act amends the *Parentage Act 2004*.

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

11 **4 New Parentage Regulation—sch 2**

12 (1) The provisions set out in schedule 2 are taken to be a regulation made
13 under the *Parentage Act 2004*, section 50.

14 (2) The regulation—

15 (a) is taken to be notified under the [Legislation Act](#) on the day this
16 Act is notified; and

17 (b) commences on the commencement of schedule 2; and

18 (c) is not required to be presented to the Legislative Assembly under
19 the [Legislation Act](#), section 64 (1); and

20 (d) may be amended or repealed as if it had been made under the
21 *Parentage Act 2004*, section 50.

22 (3) This Act is taken to be an amending law for the [Legislation Act](#),
23 section 89 (Automatic repeal of certain laws and provisions) despite
24 this section not being a provision mentioned in section 89 (12),
25 definition of *amending law*.

1 **5 Dictionary**
2 **Section 3, note 1**

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

7 *substitute*
8 For example, the signpost definition '*birth parent*, of a child, for division
9 2.5 (Surrogacy)—see section 23.' means that the term 'birth parent' is
10 defined in that section.

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

13 *omit*
14 the procedure of transferring
15 *substitute*
16 a clinical process to transfer

17 **7 Division 2.5 heading**

18 *substitute*

19 **Division 2.5 Surrogacy**

20 **Subdivision 2.5.1 Definitions—div 2.5**

1 **8 Sections 23 to 28**

2 *substitute*

3 **23 Definitions—div 2.5**

4 In this division:

5 *birth parent*, of a child, means the person who intends to give birth
6 or gave birth to the child.

7 *birth sibling*, of a child, means any other child who is born as a result
8 of the same pregnancy as the child.

9 *intended parent* means a person who will be taken to be the parent of
10 a child born under a surrogacy arrangement.

11 *partner*, of a birth parent, means the other person, if any, presumed
12 under division 2.2 to be a parent of the child.

13 *presumed parent*, of a child, means—

- 14 (a) the birth parent; or
15 (b) the birth parent's partner.

16 *procedure* means—

- 17 (a) artificial insemination; or
18 (b) a clinical process to transfer into the uterus of a person an
19 embryo derived from an ovum fertilised outside the person's
20 body.

1 **24** **Meaning of *reasonable expense***

2 In this Act:

3 *reasonable expense*, in relation to a presumed parent under a
4 surrogacy arrangement, means a financial amount paid or owing that
5 is—

- 6 (a) verified by receipt, however described, or any other
7 documentation; and
- 8 (b) reasonably necessary for, or incidental to, costs of the kind
9 prescribed by regulation in relation to any of the following:
- 10 (i) becoming or trying to become pregnant;
- 11 (ii) a pregnancy or a birth;
- 12 (iii) entering into and giving effect to a surrogacy arrangement.

13 **Subdivision 2.5.2 Surrogacy arrangements**

14 **25** **Surrogacy arrangement must be in writing**

15 A surrogacy arrangement must be in writing.

16 **26** **Parties to surrogacy arrangement**

17 The parties to a surrogacy arrangement are—

- 18 (a) the birth parent; and
- 19 (b) the birth parent's partner, if any; and
- 20 (c) each intended parent.

1 **27 Legal advice**

- 2 (1) Each party to a surrogacy arrangement must, before entering into the
3 arrangement, obtain legal advice about its effect.
- 4 (2) The intended parent or parents must obtain legal advice that is
5 independent to the legal advice obtained by the birth parent and their
6 partner, if any.
- 7 (3) If there are 2 intended parents to the surrogacy arrangement, they may
8 obtain the legal advice jointly or separately.
- 9 (4) If the birth parent’s partner is a party to the surrogacy arrangement,
10 the birth parent and their partner may obtain the legal advice jointly
11 or separately.

12 **28 Counselling**

- 13 (1) Each party to a surrogacy arrangement must, before entering into the
14 arrangement, receive counselling from a counselling service about its
15 effect.
- 16 (2) The intended parent or parents must receive counselling from a
17 counselling service that is different to the counselling service for
18 which the birth parent and their partner, if any, receive their
19 counselling.
- 20 (3) If there are 2 intended parents to the surrogacy arrangement, they may
21 receive the counselling jointly or separately.
- 22 (4) If the birth parent’s partner is a party to the surrogacy arrangement,
23 the birth parent and their partner may receive the counselling jointly
24 or separately.
- 25 (5) If the birth parent is to undergo a procedure with the intention of
26 becoming pregnant as a result of the procedure, the counselling each
27 party must receive under this section must be from a counselling
28 service that is not connected with—
- 29 (a) the doctor who will carry out the procedure; or

- 1 (b) the institution where the procedure will be carried out; or
2 (c) another entity involved in carrying out the procedure.

3 **28A Age of intended parent**

4 Each intended parent must be at least 18 years old when they enter
5 into a surrogacy arrangement.

6 **28B Age of birth parent**

- 7 (1) A birth parent must be at least 18 years old when they enter into a
8 surrogacy arrangement.
- 9 (2) However, a birth parent who is not yet 25 years old must not enter
10 into a surrogacy arrangement unless—
- 11 (a) the birth parent has received counselling about the surrogacy
12 arrangement and its social and psychological implications; and
- 13 (b) the counsellor was satisfied that the birth parent was of sufficient
14 maturity to understand the surrogacy arrangement and its social
15 and psychological implications.
- 16 (3) If the birth parent is to undergo a procedure with the intention of
17 becoming pregnant as a result of the procedure, the counselling they
18 must receive under subsection (2) must be from a counselling service
19 that is not connected with—
- 20 (a) the doctor who will carry out the procedure; or
21 (b) the institution where the procedure will be carried out; or
22 (c) another entity involved in carrying out the procedure.

23 **28C Reasonable expenses incurred**

24 A surrogacy arrangement may provide for the payment or
25 reimbursement of only the reasonable expenses in relation to the
26 surrogacy arrangement.

1 **28D Rights of birth parent**

2 A birth parent has the same rights to manage their pregnancy and birth
3 as any other pregnant person.

4 **Subdivision 2.5.3 Parentage orders**

5 **28E Application—subdiv 2.5.3**

6 (1) This subdivision applies to a child if—

7 (a) there is a surrogacy arrangement, other than a commercial
8 surrogacy arrangement, under which the intended parent or
9 intended parents have indicated their intention to apply for a
10 parentage order about the child; and

11 (b) the intended parent or intended parents of the child live in the
12 ACT.

13 (2) This subdivision also applies to a child if—

14 (a) there is a commercial surrogacy arrangement of a kind described
15 in section 40 (1) (a) under which the intended parent or intended
16 parents have indicated their intention to be taken to be the parent
17 or parents of the child; and

18 (b) the intended parent or intended parents of the child live in the
19 ACT.

20 **28F Application for parentage order**

21 (1) The intended parent or intended parents of a child mentioned in
22 section 28E may make an application to the Supreme Court for a
23 parentage order about the child.

24 (2) If there are 2 intended parents to an arrangement mentioned in
25 section 28E, the application must be made jointly by both intended
26 parents, unless the Supreme Court gives leave to only 1 intended
27 parent to make the application.

- 1 (3) The application may only be made—
2 (a) for a child mentioned in section 28E (1)—after the child is at
3 least 4 weeks old but before the child is 6 months old; or
4 (b) for a child mentioned in section 28E (2)—at any time after the
5 child is at least 4 weeks old.

6 **28G Making of parentage order**

- 7 (1) The Supreme Court may make a parentage order about a child
8 mentioned in section 28E (1) if satisfied that—
9 (a) the making of the order is in the best interests of the child; and
10 (b) each presumed parent freely, and with a full understanding of
11 what is involved, agrees to the making of the order; and
12 (c) the requirements of subdivision 2.5.2 are met.
- 13 (2) The Supreme Court may make a parentage order about a child
14 mentioned in section 28E (2) if satisfied that—
15 (a) the making of the order is in the best interests of the child; and
16 (b) there is a pressing disadvantage facing the child that would be
17 alleviated by making a parentage order about the child; and
18 (c) each presumed parent freely, and with a full understanding of
19 what is involved, agrees to the making of the order; and
20 (d) the requirements of subdivision 2.5.2, other than the
21 requirement in section 28C (Reasonable expenses incurred), are
22 met as if the commercial surrogacy arrangement mentioned in
23 section 28E (2) (a) were a surrogacy arrangement mentioned in
24 section 28E (1) (a); and

1 (e) it is reasonable in all the circumstances to make the parentage
2 order.

3 *Note* The making of a parentage order about a child born under a commercial
4 surrogacy arrangement does not affect a person's criminal responsibility
5 under pt 4—see s 31 (Effect of surrogacy arrangements).

6 (3) In making an order under subsection (1) or (2), the Supreme Court
7 may do any of the following:

8 (a) dispense with the requirement under subsection (1) (b) or (2) (c)
9 in relation to a presumed parent if satisfied that the presumed
10 parent is dead or incapacitated or, despite reasonable steps
11 having been taken, cannot be contacted;

12 (b) dispense with the following requirements of subdivision 2.5.2 if
13 satisfied that doing so is in the best interests of the child:

14 (i) section 25 (Surrogacy arrangement must be in writing);

15 (ii) section 27 (Legal advice);

16 (iii) section 28 (Counselling).

17 **28H Relevant considerations for making of parentage order**

18 (1) In deciding whether to make a parentage order, the Supreme Court
19 may take the following, if relevant, into consideration:

20 (a) whether the child's home is, and was at the time of the
21 application, with the intended parent or intended parents;

22 (b) if there are 2 intended parents to the arrangement but only
23 1 intended parent has applied for the order (the *applicant*
24 *intended parent*), and the other intended parent is alive at the
25 time of the application, whether—

26 (i) the other intended parent freely, and with a full
27 understanding of what is involved, agrees to the making of
28 the order in favour of the applicant intended parent; or

- 1 (ii) the applicant intended parent, despite taking reasonable
2 steps, cannot contact the other intended parent to obtain
3 their agreement under subparagraph (i);
- 4 (c) if a presumed parent is dead or incapacitated or cannot be
5 contacted—any evidence before the court that the parent no
6 longer agreed or agrees that the intended parent or intended
7 parents obtain a parentage order about the child;
- 8 (d) if the birth parent was not yet 25 years old, but was at least
9 18 years old, when they entered into the arrangement—any
10 evidence before the court of compliance with section 28B (2).
- 11 (2) The Supreme Court may take into consideration anything else it
12 considers relevant.

13 **28I Content of parentage order**

- 14 (1) If the Supreme Court makes a parentage order, the order must state—
- 15 (a) for an application made jointly by 2 intended parents to an
16 arrangement mentioned in section 28E—that the order is in
17 favour of both intended parents; or
- 18 (b) for an application made by only 1 of 2 intended parents to an
19 arrangement mentioned in section 28E—
- 20 (i) if the application was made by the applicant intended
21 parent because the other intended parent is dead or
22 incapacitated—
- 23 (A) that the order is in favour of both intended parents;
24 or
- 25 (B) if the court is satisfied that, at the time of the other
26 intended parent’s death or incapacitation, the
27 deceased or incapacitated intended parent no longer
28 intended or intends to apply for a parentage order
29 about the child—that the order is in favour of the
30 applicant intended parent; or

- 1 (ii) in any other case—that the order is in favour of the
2 applicant intended parent; or
- 3 (c) for an application made by 1 intended parent who is the only
4 intended parent to an arrangement—that the order is in favour
5 of the intended parent.

6 (2) In this section:

7 *applicant intended parent*—see section 28H (1) (b).

8 **28J Multiple births**

- 9 (1) This section applies if a child about whom an application for a
10 parentage order has been made has a living birth sibling.
- 11 (2) Despite section 28G (1) or (2), the Supreme Court may make a
12 parentage order about the child only if it also makes a parentage order
13 about each living birth sibling of the child.

14 **28K Name of child**

- 15 (1) On the making of a parentage order about a child, the child has as
16 their surname—
- 17 (a) if the order is made in favour of 1 intended parent—the surname
18 of the intended parent; or
- 19 (b) if the order is made in favour of 2 intended parents and they are
20 both known by the same surname—that surname; or
- 21 (c) in any other case—a name the Supreme Court, on the
22 application of the intended parent or intended parents, approves
23 in the parentage order.
- 24 (2) On the making of a parentage order about a child, the child has as
25 their given name or names a name or names the Supreme Court, on
26 the application of the intended parent or intended parents, approves
27 in the parentage order.

- 1 (3) Despite subsection (2), if the child has been generally known by a
 2 particular name or names, the Supreme Court may, in the parentage
 3 order, order that the child will have that name or those names as their
 4 given name or names.
- 5 (4) This section does not prevent a name of a child being later changed
 6 in accordance with territory law.

7 **9 Effect of parentage order and access to information**
 8 **Section 29 (2) (a)**

- 9 *omit*
- 10 substitute parent or substitute parents
- 11 *substitute*
- 12 intended parent or intended parents

13 **10 Section 29 (3)**

- 14 *omit*
- 15 • division 5.3 (Identifying information) other than section 77,
 16 section 78 and section 79.
- 17 *insert*
- 18 • division 5.3 (Identifying information) other than
 19 sections 70, 71, 77, 78 and 79.

20 **11 Medical information**
 21 **Section 30 (3), definition *relevant person*, paragraph (b)**

- 22 *omit*
- 23 birth parent
- 24 *substitute*
- 25 presumed parent

1 **12 Section 31**

2 *substitute*

3 **31 Effect of surrogacy arrangements**

- 4 (1) The legal effect of a surrogacy arrangement is limited only to this
5 division.
- 6 (2) The making of a parentage order about a child born under a
7 commercial surrogacy arrangement does not affect a person's
8 criminal responsibility under part 4 in relation to the commercial
9 surrogacy arrangement.

10 **13 New subdivision 2.5.4**

11 *insert*

12 **Subdivision 2.5.4 Parentage orders—particular**
13 **arrangements entered into before**
14 **Parentage (Surrogacy) Amendment**
15 **Act 2023**

16 **31A Definitions—subdiv 2.5.4**

17 In this subdivision:

18 *commencement day* means the day the *Parentage (Surrogacy)*
19 *Amendment Act 2023*, section 8 commences.

20 *commercial arrangement* means an arrangement in the nature of a
21 surrogacy arrangement that also includes an agreement by any person
22 to make or give to someone else payment or reward, other than
23 reasonable expenses incurred in relation to the arrangement.

24 *payment or reward*—see section 40 (2).

- 1 **31B Parentage order—commercial arrangement made and**
2 **child born before commencement day**
- 3 (1) This section applies if—
- 4 (a) a commercial arrangement was entered into before the
5 commencement day; and
- 6 (b) a person gave birth to a child, under the commercial
7 arrangement, before the commencement day; and
- 8 (c) there is no parentage order in force in relation to the child before
9 the commencement day; and
- 10 (d) subdivision 2.5.3 would apply to the child had the arrangement
11 been an arrangement mentioned in section 28E (2) (a) entered
12 into on or after the commencement day; and
- 13 (e) the person or people who intend to be taken to be the parent or
14 parents of the child under the arrangement live in the ACT.
- 15 (2) The person or people may apply to the Supreme Court under
16 section 28F for a parentage order for the child as if—
- 17 (a) the commercial arrangement is a commercial surrogacy
18 arrangement of a kind described in section 40 (1) (a); and
- 19 (b) the person or people were the intended parent or intended
20 parents of the child under the commercial surrogacy
21 arrangement.
- 22 (3) The Supreme Court may make a parentage order about the child under
23 section 28G (2) as if the child were a child mentioned in
24 section 28E (2).
- 25 (4) In making a parentage order about the child, the Supreme Court need
26 not be satisfied under section 28G (2) (d) that the requirements of
27 subdivision 2.5.2 are met.

- 1 **31C** **Effect of parentage order mentioned in s 31B and access**
2 **to information**
- 3 (1) This section applies instead of section 29 in relation to a parentage
4 order mentioned in section 31B (3).
- 5 (2) The provisions of the *Adoption Act 1993* mentioned in subsection (4)
6 (the *applied provisions*) apply in relation to the parentage order as if
7 the parentage order were an order made under that Act for the
8 adoption of the child and the child were an adopted child.
- 9 (3) For that application—
- 10 (a) a reference in an applied provision to the adoptive parent or
11 adoptive parents is a reference to the intended parent or intended
12 parents in whose favour the parentage order was made; and
- 13 (b) a reference in an applied provision to the adopted child or
14 adopted person is a reference to the child about whom the
15 parentage order was made; and
- 16 (c) a reference in an applied provision to the commencement of the
17 *Adoption Act 1993* were a reference to the commencement day;
18 and
- 19 (d) a reference in the *Adoption Act 1993*, section 48 to the
20 director-general were a reference to the registrar-general; and
- 21 (e) any other necessary changes were made.
- 22 (4) The applied provisions of the *Adoption Act 1993* are as follows:
- 23 (a) section 43 (General effect) other than subsections (1) (c) and (2);
24 (b) section 44 (Disposition of property);
25 (c) section 47 (Distribution of property by trustee or personal
26 representative);
27 (d) section 48 (Bequest by will to unascertained adopted person);
28 (e) section 49 (Gifts between living people);

- 1 (f) section 60 (Confidentiality of records) other than
2 subsection (1) (a);
3 (g) section 62 (3) (Provision of information);
4 (h) division 5.3 (Identifying information) other than sections 70, 71,
5 77, 78 and 79.

6 **31D Effect of parentage order on commercial substitute**
7 **parent agreement**

- 8 (1) The making of a parentage order about a child born under a
9 commercial substitute parent agreement does not affect a person's
10 criminal responsibility under part 4, as in force immediately before
11 the commencement day, in relation to the commercial substitute
12 parent agreement.
13 (2) In this section:
14 *commercial substitute parent agreement*—see section 40, as in force
15 immediately before the commencement day.

16 **14 Part 4 heading**

17 *substitute*

18 **Part 4 Offences relating to surrogacy**
19 **arrangements**

- 20 *Note* The making of a parentage order about a child born under a commercial
21 surrogacy arrangement does not affect a person's criminal responsibility
22 under this part—see s 31 (Effect of surrogacy arrangements).

1 **15 Section 40**

2 *substitute*

3 **40 Meaning of *commercial surrogacy arrangement***

4 (1) In this Act:

5 *commercial surrogacy arrangement* means—

6 (a) a surrogacy arrangement under which a person agrees to make
7 or give to someone else a payment or reward, other than for
8 reasonable expenses incurred in relation to the arrangement; or

9 (b) a contract, agreement, arrangement or understanding under
10 which—

11 (i) a person who is pregnant agrees that a child born as a result
12 of the pregnancy will be taken to be the child of someone
13 else; and

14 (ii) a person agrees to make or give to someone else a payment
15 or reward, other than for reasonable expenses incurred in
16 relation to the contract, agreement, arrangement or
17 understanding as if the contract, agreement, arrangement
18 or understanding was a surrogacy arrangement.

19 (2) In this section:

20 *payment or reward* includes a payment or reward for or in
21 consideration of—

22 (a) the making of a parentage order; or

23 (b) an agreement by each presumed parent to the making of a
24 parentage order; or

25 (c) the handing over of a child to the intended parent or intended
26 parents; or

27 (d) the making of any arrangements with a view to the making of a
28 parentage order.

1	16	Section 41 heading
2		<i>substitute</i>
3	41	Commercial surrogacy arrangements prohibited
4	17	Section 41
5		<i>omit</i>
6		substitute parent agreement
7		<i>substitute</i>
8		surrogacy arrangement
9	18	Section 42 heading
10		<i>substitute</i>
11	42	Procuring commercial surrogacy arrangements
12	19	Section 42 (1)
13		<i>omit</i>
14		substitute parent agreement
15		<i>substitute</i>
16		commercial surrogacy arrangement
17	20	Section 42 (2)
18		<i>omit</i>
19	21	Section 43 heading
20		<i>substitute</i>
21	43	Advertising in relation to commercial surrogacy
22		arrangements

1	22	Section 43
2		<i>omit</i>
3		substitute parent agreement
4		<i>substitute</i>
5		commercial surrogacy arrangement
6	23	Section 43 (1), penalty
7		<i>substitute</i>
8		Maximum penalty: 50 penalty units, imprisonment for 6 months or
9		both.
10	24	Facilitating pregnancy
11		Section 44 (b)
12		<i>omit</i>
13		substitute parent agreement
14		<i>substitute</i>
15		surrogacy arrangement
16	25	Section 44 (c)
17		<i>omit</i>
18		agreement
19		<i>substitute</i>
20		arrangement

26 **New part 7****Part 7** **Transitional—Parentage
(Surrogacy) Amendment
Act 2023****53** **Definitions—pt 7**

In this part:

arrangement means an arrangement in the nature of a surrogacy arrangement.

commencement day means the day the *Parentage (Surrogacy) Amendment Act 2023*, section 8 commences.

commercial arrangement means an arrangement that also includes an agreement by any person to make or give to someone else payment or reward, other than reasonable expenses incurred in relation to the arrangement.

payment or reward—see section 40 (2).

54 **Parentage order—substitute parent agreement and no
parentage order before commencement day**

(1) This section applies if—

(a) a substitute parent agreement was entered into before the commencement day; and

(b) the substitute parent or substitute parents under the agreement—

(i) had not made an application for a parentage order immediately before the commencement day; or

(ii) made an application for a parentage order which had not been decided by the Supreme Court immediately before the commencement day; and

1 (c) division 2.5, as in force immediately before the commencement
2 day, applies to the child under the substitute parent arrangement.

3 *Note* See s 24 (Application of div 2.5) as in force immediately before the
4 commencement day.

5 (2) Division 2.5, as in force immediately before the commencement day,
6 continues to apply in relation to—

7 (a) an application for, or the making of, the parentage order about
8 the child; and

9 (b) the effect of the parentage order, if made.

10 (3) In this section:

11 *parentage order* means an order under section 26 as in force
12 immediately before the commencement day.

13 *substitute parent*, of a child—see section 24 (c) as in force
14 immediately before the commencement day.

15 *substitute parent agreement*—see section 23 as in force immediately
16 before the commencement day.

17 **55 Parentage order—arrangement made and child born**
18 **before commencement day**

19 (1) This section applies if—

20 (a) an arrangement, other than a commercial arrangement, was
21 entered into before the commencement day; and

22 (b) a person gave birth to a child, under the arrangement, before the
23 commencement day; and

24 (c) there is no parentage order in force in relation to the child before
25 the commencement day; and

- 1 (d) division 2.5, as in force immediately before the commencement
2 day, does not apply to the child, but division 2.5, as in force after
3 the commencement day, would apply to the child had the
4 arrangement been an arrangement mentioned in
5 section 28E (1) (a) entered into on or after the commencement
6 day; and
- 7 (e) the person or people who intend to be taken to be the parent or
8 parents of the child under the arrangement live in the ACT.
- 9 (2) The person or people may apply to the Supreme Court under
10 section 28F for a parentage order for the child as if—
- 11 (a) the arrangement was a surrogacy arrangement; and
12 (b) the person or people were the intended parent or intended
13 parents of the child under the surrogacy arrangement; and
14 (c) section 28F (3) does not apply.
- 15 (3) An application mentioned in subsection (2) may only be made in the
16 5-year period beginning on the commencement day.
- 17 (4) The Supreme Court may make a parentage order about the child under
18 section 28G (1) as if the child were a child mentioned in
19 section 28E (1).
- 20 (5) In making a parentage order about the child, the Supreme Court need
21 not be satisfied under section 28G (1) (c) that the requirements of
22 subdivision 2.5.2 are met.

23 **56 Parentage order—arrangement made, but child not born,**
24 **before commencement day**

- 25 (1) This section applies if—
- 26 (a) an arrangement, other than a commercial arrangement, was
27 entered into before the commencement day; and
- 28 (b) a person has not given birth to a child under the arrangement
29 before the commencement day; and

- 1 (c) the person or people who intend to be taken to be the parent or
2 parents of the child under the arrangement live in the ACT.
- 3 (2) The person or people may apply to the Supreme Court under
4 section 28F for a parentage order for the child as if—
- 5 (a) the arrangement was a surrogacy arrangement; and
6 (b) the person or people were the intended parent or intended
7 parents of the child under the surrogacy arrangement.
- 8 (3) The Supreme Court may make a parentage order about the child under
9 section 28G (1) as if the child were a child mentioned in
10 section 28E (1).
- 11 (4) In making a parentage order about the child, the Supreme Court need
12 not be satisfied under section 28G (1) (c) that the requirements of
13 subdivision 2.5.2 are met.

14 **57 Parentage order—commercial arrangement made, but**
15 **child not born, before commencement day**

- 16 (1) This section applies if—
- 17 (a) a commercial arrangement was entered into before the
18 commencement day; and
- 19 (b) a person has not given birth to a child under the commercial
20 arrangement before the commencement day; and
- 21 (c) the person or people who intend to be taken to be the parent or
22 parents of the child under the commercial arrangement live in
23 the ACT.
- 24 (2) The person or people may apply to the Supreme Court under
25 section 28F for a parentage order for the child as if—
- 26 (a) the arrangement was a commercial surrogacy arrangement of a
27 kind described in section 40 (1) (a); and

- 1 (b) the person or people were the intended parent or intended
2 parents of the child under the surrogacy arrangement.
- 3 (3) The Supreme Court may make a parentage order about the child under
4 section 28G (2) as if the child were a child mentioned in
5 section 28E (2).
- 6 (4) In making a parentage order about the child, the Supreme Court need
7 not be satisfied under section 28G (2) (d) that the requirements of
8 subdivision 2.5.2 are met.

9 **58 Effect of parentage order mentioned in s 55 (4) and**
10 **access to information**

- 11 (1) This section applies instead of section 29 in relation to a parentage
12 order mentioned in section 55 (4).
- 13 (2) The provisions of the *Adoption Act 1993* mentioned in subsection (4)
14 (the *applied provisions*) apply in relation to the parentage order as if
15 the parentage order were an order made under that Act for the
16 adoption of the child and the child were an adopted child.
- 17 (3) For that application—
- 18 (a) a reference in an applied provision to the adoptive parent or
19 adoptive parents is a reference to the intended parent or intended
20 parents in whose favour the parentage order was made; and
- 21 (b) a reference in an applied provision to the adopted child or
22 adopted person is a reference to the child about whom the
23 parentage order was made; and
- 24 (c) a reference in an applied provision to the commencement of the
25 *Adoption Act 1993* were a reference to the commencement day;
26 and
- 27 (d) a reference in the *Adoption Act 1993*, section 48 to the
28 director-general were a reference to the registrar-general; and
- 29 (e) any other necessary changes were made.

- 1 (4) The applied provisions of the *Adoption Act 1993* are as follows:
- 2 (a) section 43 (General effect) other than subsections (1) (c) and (2);
- 3 (b) section 44 (Disposition of property);
- 4 (c) section 47 (Distribution of property by trustee or personal
- 5 representative);
- 6 (d) section 48 (Bequest by will to unascertained adopted person);
- 7 (e) section 49 (Gifts between living people);
- 8 (f) section 60 (Confidentiality of records) other than
- 9 subsection (1) (a);
- 10 (g) section 62 (3) (Provision of information);
- 11 (h) division 5.3 (Identifying information) other than sections 70, 71,
- 12 77, 78 and 79.

13 **59 Effect of parentage order on commercial substitute**

14 **parent agreement**

- 15 (1) The making of a parentage order about a child born under a
- 16 commercial substitute parent agreement does not affect a person’s
- 17 criminal responsibility under part 4, as in force immediately before
- 18 the commencement day, in relation to the commercial substitute
- 19 parent agreement.
- 20 (2) In this section:
- 21 *commercial substitute parent agreement*—see section 40, as in force
- 22 immediately before the commencement day.

23 **60 Expiry—pt 7**

24 This part expires 5 years after the commencement day.

25 *Note* A transitional provision is repealed on its expiry but continues to have

26 effect after its repeal (see [Legislation Act](#), s 88).

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

1 *substitute*

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

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

28 Dictionary, definition of *commercial substitute parent agreement*

5 *omit*

29 Dictionary, new definitions

8 *insert*

9 *commencement day*, for subdivision 2.5.4 (Parentage orders—
10 particular arrangements entered into before Parentage (Surrogacy)
11 Amendment Act 2023)—see section 31A.

12 *commercial arrangement*, for subdivision 2.5.4 (Parentage orders—
13 particular arrangements entered into before Parentage Surrogacy)
14 Amendment Act 2023—see section 31A.

15 *commercial surrogacy arrangement*—see section 40.

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

30 Dictionary, definition of *parentage order*

19 *substitute*

20 *parentage order* means an order under section 28G.

31 Dictionary, new definitions

22 *insert*

23 *partner*, of a birth parent, for division 2.5 (Surrogacy)—see
24 section 23.

1 *payment or reward*, for subdivision 2.5.4 (Parentage orders—
2 particular arrangements entered into before Parentage (Surrogacy)
3 Amendment Act 2023)—see section 40 (2).

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

6 **32 Dictionary, definition of *procedure***

7 *substitute*

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

9 **33 Dictionary, new definition of *reasonable expense***

10 *insert*

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

13 **34 Dictionary, definitions of *substitute parent* and *substitute*
14 *parent agreement***

15 *omit*

16 **35 Dictionary, new definition of *surrogacy arrangement***

17 *insert*

18 *surrogacy arrangement* means a contract, agreement, arrangement or
19 understanding under which a birth parent and an intended parent or 2
20 intended parents agree—

21 (a) that the birth parent will become, or attempt to become,
22 pregnant; and

23 (b) that the child born as a result of the pregnancy will be taken to
24 be (whether by adoption, agreement or otherwise) the child of
25 the intended parent or intended parents.

1 **Schedule 1 Births, Deaths and Marriages**
2 **Registration Act 1997—**
3 **Consequential amendments**
4 (see s 3)

5 **[1.1] Division 2.4 heading**

6 *substitute*

7 **Division 2.4 Intended parent information**

8 **[1.2] Section 16A (1)**

9 *omit*

10 section 26

11 *substitute*

12 section 28G

13 **[1.3] Section 16B (1) (a) (iii)**

14 *omit*

15 *substitute*

16 *insert*

17 intended

18 **[1.4] Section 70 (4), definition of *relevant children***

19 *omit*

20 section 26

21 *substitute*

22 section 28G

1 **Schedule 2** **New Parentage Regulation**

2 (see s 4)



Australian Capital Territory

3 **Parentage Regulation 2023**

4 **Subordinate Law SL2023–**

5 made under the

6 **Parentage Act 2004**

7 **1** **Name of regulation**

8 This regulation is the *Parentage Regulation 2023*.

9 **2** **Dictionary**

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

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

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

1 **3** **Notes**

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

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

5 **4** **Reasonable expenses—Act, s 24, def *reasonable***
6 ***expense, par (b)***

7 (1) Costs of the following kind are prescribed in relation to becoming or
8 trying to become pregnant and a pregnancy or a birth (both antenatal
9 and postnatal):

- 10 (a) any reasonable medical costs incurred by the birth parent;
- 11 (b) any reasonable travel or accommodation costs incurred by a
12 presumed parent;
- 13 (c) if the birth parent obtains insurance—the insurance premium
14 paid or increase in an existing insurance premium paid;
- 15 (d) for becoming or trying to become pregnant—the cost of
16 reimbursing the birth parent for a loss of earnings as a result of
17 any unpaid leave taken;
- 18 (e) for a pregnancy or a birth—the cost of reimbursing the birth
19 parent for a loss of earnings as a result of unpaid leave taken,
20 but only for the following periods:
- 21 (i) a period of not more than 2 months during which the birth
22 happened or was expected to happen;
- 23 (ii) any other period during the pregnancy when the birth
24 parent was unable to work on medical grounds related to
25 pregnancy or birth;
- 26 (f) if the birth parent is the primary caregiver for another child, any
27 reasonable out-of-pocket costs associated with child care—
- 28 (i) incurred by the birth parent; and

- 1 (ii) including the cost of reimbursing the birth parent's partner
2 for a loss of earnings as a result of unpaid leave taken to
3 care for the child while the birth parent is unable to care
4 for the child;
- 5 (g) the cost of reimbursing the birth parent's partner for a loss of
6 earnings as a result of unpaid leave taken to care for the birth
7 parent on medical grounds in accordance with a carer's medical
8 certificate provided by a doctor;
- 9 (h) any reasonable costs, including reasonable medical costs,
10 incurred in respect of the child of the surrogacy arrangement.
- 11 (2) Costs of the following kind are prescribed in relation to entering into
12 and giving effect to a surrogacy arrangement:
- 13 (a) the reasonable costs associated with a presumed parent receiving
14 counselling in relation to the surrogacy arrangement;
- 15 (b) the reasonable costs associated with a presumed parent
16 obtaining legal advice in relation to the surrogacy arrangement;
- 17 (c) the reasonable costs associated with an application for a
18 parentage order, including reasonable travel and
19 accommodation costs.
- 20 (3) In this section:
- 21 *medical costs* do not include amounts that are recoverable by the
22 presumed parent under—
- 23 (a) Medicare, in accordance with the *Health Insurance Act 1973*
24 (Cwlth); or
- 25 (b) any health insurance or other scheme.
- 26 *obtains insurance* means enter into a contract for health, life or
27 disability insurance or increase the level of insurance on an existing
28 contract for the insurance.

1 Dictionary

2 (see s 2)

3 *Note 1* The [Legislation Act](#) contains definitions relevant to this regulation.
4 For example:

- 5 • prescribed.

6 *Note 2* Terms used in this regulation have the same meaning that they have in
7 the [Parentage Act 2004](#). For example, the following terms are defined in
8 the Act, dict:

- 9 • birth parent
- 10 • partner
- 11 • presumed parent
- 12 • surrogacy arrangement.

Endnotes

1 Presentation speech

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

2 Notification

Notified under the [Legislation Act](#) on _____ 2023.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
