



Queensland

Surrogacy Act 2010

Act No. 2 of 2010



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Queensland

Surrogacy Act 2010

Act No. 2 of 2010

An Act about surrogacy arrangements, to provide for the court-sanctioned transfer of parentage of children born as a result of particular surrogacy arrangements, to prohibit commercial surrogacy arrangements, to make particular related amendments of the Adoption Act 2009, the Births, Deaths and Marriages Registration Act 2003 and the regulation under that Act, the Criminal Code, the Domicile Act 1981, the Evidence Act 1977, the Guardianship and Administration Act 2000 and the Powers of Attorney Act 1998, to amend the Status of Children Act 1978 for particular purposes and to make minor and consequential amendments of Acts as stated in schedule 1

[Assented to 16 February 2010]

The Parliament of Queensland enacts—

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Surrogacy Act 2010*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Dictionary

The dictionary in schedule 2 defines particular words used in this Act.

Part 2 Application, objects and guiding principles

4 Act binds all persons

- (1) This Act binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and all the other States.
- (2) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.

5 Main objects of Act

The main objects of this Act are—

- (a) to regulate particular matters in relation to surrogacy arrangements, including by prohibiting commercial surrogacy arrangements and providing, in particular circumstances, for the court-sanctioned transfer of parentage of a child born as a result of a surrogacy arrangement; and
- (b) in the context of a surrogacy arrangement that may result in the court-sanctioned transfer of parentage of a child born as a result—
 - (i) to establish procedures to ensure parties to the arrangement understand its nature and implications; and
 - (ii) to safeguard the child’s wellbeing and best interests.

6 Guiding principles

- (1) This Act is to be administered according to the principle that the wellbeing and best interests of a child born as a result of a surrogacy arrangement, both through childhood and for the rest of his or her life, are paramount.
- (2) Subject to subsection (1), this Act is to be administered according to the following principles—
 - (a) a child born as a result of a surrogacy arrangement should be cared for in a way that—
 - (i) ensures a safe, stable and nurturing family and home life; and
 - (ii) promotes openness and honesty about the child’s birth parentage; and
 - (iii) promotes the development of the child’s emotional, mental, physical and social wellbeing;

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- (b) the same status, protection and support should be available to a child born as a result of a surrogacy arrangement regardless of—
 - (i) how the child was conceived under the arrangement; or
 - (ii) whether there is a genetic relationship between the child and any of the parties to the arrangement; or
 - (iii) the relationship status of the persons who become the child's parents as a result of a transfer of parentage;
- (c) the long-term health and wellbeing of parties to a surrogacy arrangement and their families should be promoted;
- (d) the autonomy of consenting adults in their private lives should be respected.

Part 3 **Key concepts**

7 **Meaning of *surrogacy arrangement***

- (1) A *surrogacy arrangement* means an arrangement, agreement or understanding between a woman and another person or persons under which—
 - (a) the woman agrees to become, or try to become, pregnant with the intention that—
 - (i) a child born as a result of the pregnancy is to be treated as the child, not of the woman, but of the other person or persons; and
 - (ii) the woman will relinquish to the other person or persons custody and guardianship of a child born as a result of the pregnancy; and

-
- (b) the other person or persons agree to become permanently responsible for the custody and guardianship of a child born as a result of the pregnancy.

Note—

Section 7(1) sets out only the minimum requirements for a surrogacy arrangement. There are many additional requirements which must be satisfied to obtain a parentage order under chapter 3. For example, independent legal advice must be obtained before entering into a surrogacy arrangement if transfer of parentage of the child born as a result of the arrangement is desired—see section 22(2)(e)(i).

- (2) There may be other parties to a surrogacy arrangement, for example, the woman's spouse.

Notes—

- 1 The woman's spouse (if any) must be a party to the arrangement if transfer of parentage of the child born as a result of the arrangement is desired—see section 22(2)(e)(v).
 - 2 *Spouse* is defined in the *Acts Interpretation Act 1954*, section 36 to include a de facto partner.
- (3) Also, there may be other matters dealt with in a surrogacy arrangement.

8 Meaning of *birth mother*, *birth mother's spouse* and *birth parents*

- (1) The *birth mother* is the woman who agrees to the matters mentioned in section 7(1)(a) under a surrogacy arrangement.
- (2) The *birth mother's spouse* means the birth mother's spouse at the time when the birth mother entered into the surrogacy arrangement.
- (3) A *birth parent*, of a child, means a person (other than an intended parent) who is recognised at law as being a parent of the child at the time when the child is born.

9 Meaning of *intended parent* and *couple*

- (1) An *intended parent* is a person who agrees to the matter

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mentioned in section 7(1)(b) under a surrogacy arrangement.

Note—

Parentage of a child born as a result of a surrogacy arrangement may only be transferred to 1 intended parent who is single or 2 intended parents who are a couple—see section 22(2)(c).

- (2) A *couple* is a person and the person's spouse.

10 Meaning of *commercial surrogacy arrangement*

A surrogacy arrangement is a *commercial surrogacy arrangement* if a person receives a payment, reward or other material benefit or advantage (other than the reimbursement of the birth mother's surrogacy costs) for the person or another person—

- (a) agreeing to enter into or entering into the surrogacy arrangement; or
- (b) permanently relinquishing to 1 or more intended parents the custody and guardianship of a child born as a result of the surrogacy arrangement; or
- (c) consenting to the making of a parentage order for a child born as a result of the surrogacy arrangement.

11 Meaning of *birth mother's surrogacy costs*

- (1) A *birth mother's surrogacy costs* are the birth mother's reasonable costs associated with any of the following matters—
- (a) becoming or trying to become pregnant;
 - (b) a pregnancy or a birth;
 - (c) the birth mother and the birth mother's spouse (if any) being a party to a surrogacy arrangement or proceedings in relation to a parentage order.
- (2) Without limiting subsection (1), the following amounts are a birth mother's surrogacy costs—

- (a) a reasonable medical cost for the birth mother associated with any of the matters mentioned in subsection (1);

Example of a reasonable medical cost for paragraph (a)—

a cost incurred before conception if the birth mother consults a medical practitioner to find out if she is capable of carrying a pregnancy before undergoing a fertilisation procedure

- (b) a reasonable cost, including a reasonable medical cost, for a child born as a result of the surrogacy arrangement;
- (c) a premium payable for health, disability or life insurance that would not have been obtained by the birth mother if the surrogacy arrangement had not been entered into;
- (d) a reasonable cost of counselling associated with any of the matters mentioned in subsection (1), including—
- (i) the cost of counselling obtained by the birth mother or the birth mother's spouse (if any) before or after entering into the surrogacy arrangement; or
 - (ii) the cost relating to the preparation of a surrogacy guidance report under section 32;
- (e) a reasonable legal cost for the birth mother and the birth mother's spouse (if any) relating to the surrogacy arrangement and the transfer of parentage;
- (f) the value of the birth mother's actual lost earnings because of leave taken—
- (i) for a period of not more than 2 months during which a birth happened or was expected to happen; or
 - (ii) for any other period during the pregnancy when the birth mother was unable to work on medical grounds;
- (g) another reasonable cost associated with the surrogacy arrangement or the making of the order transferring parentage.

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Examples of other reasonable costs for paragraph (g)—

- travel and accommodation costs for a birth mother who lives interstate and travels to Queensland to undertake a fertility treatment, to consult with an obstetrician or to give birth
- travel and accommodation costs associated with a birth mother's attendance at a court hearing about an application for a parentage order if the birth mother does not live near the court

(3) In this section—

legal cost includes fees for obtaining legal advice and legal representation, court fees, and registry fees associated with registration of a birth and transfer of parentage.

medical cost means a medical cost to the extent that it is not recoverable under Medicare or any health insurance or other scheme.

12 **Meaning of *parentage order* and *discharge order***

- (1) A ***parentage order*** is an order made by the court under chapter 3 for the transfer of the parentage of a child born as a result of a surrogacy arrangement.
- (2) A ***discharge order*** is an order made by the court under chapter 3 discharging a parentage order.

13 **Meaning of *court***

The ***court*** is the Childrens Court constituted by a Childrens Court judge.

14 **Meaning of *medical or social need for a surrogacy arrangement* and *eligible woman***

- (1) For an application for a parentage order—
 - (a) if there is 1 intended parent under the surrogacy arrangement—there is a medical or social need for the

- surrogacy arrangement if the intended parent is a man or an eligible woman; or
- (b) if there are 2 intended parents under the surrogacy arrangement—there is a medical or social need for the surrogacy arrangement if the intended parents are—
 - (i) a man and an eligible woman; or
 - (ii) 2 men; or
 - (iii) 2 eligible women.
- (2) An *eligible woman* is a woman who—
- (a) is unable to conceive; or
 - (b) if able to conceive—
 - (i) is likely to be unable, on medical grounds, either to carry a pregnancy or to give birth; or
 - (ii) either—
 - (A) is unlikely to survive a pregnancy or birth; or
 - (B) is likely to have her health significantly affected by a pregnancy or birth; or
 - (iii) is likely to conceive—
 - (A) a child affected by a genetic condition or disorder, the cause of which is attributable to the woman; or
 - (B) a child who is unlikely to survive a pregnancy or birth; or
 - (C) a child whose health is likely to be significantly affected by a pregnancy or birth.

Chapter 2 Surrogacy arrangements

15 Enforcement

- (1) A surrogacy arrangement is not enforceable.
- (2) However, an obligation under a surrogacy arrangement to pay or reimburse the birth mother's surrogacy costs is enforceable unless—
 - (a) a child is born as a result of the surrogacy arrangement; and
 - (b) the birth mother—
 - (i) does not relinquish the custody and guardianship of the child to an intended parent; or
 - (ii) on an application (if any) for a parentage order in relation to the child, does not consent to the making of the order.

16 Rights of birth mother to manage pregnancy and birth

- (1) This section applies to a surrogacy arrangement despite anything that the parties to the arrangement may have agreed, whether or not in writing.
- (2) A birth mother has the same rights to manage her pregnancy and birth as any other pregnant woman.

17 Presumptions under the *Status of Children Act 1978*

To remove any doubt, it is declared that, unless and until a parentage order is made under chapter 3 transferring the parentage of a child born as a result of a surrogacy arrangement, the parentage presumptions under the *Status of Children Act 1978* apply to the child.

18 Registration of birth requirements

To remove any doubt, it is declared that the requirement under the *Births, Deaths and Marriages Registration Act 2003* to register the birth of a child applies to the birth parents of a child born as a result of a surrogacy arrangement.

Chapter 3 Parentage orders

Part 1 Introduction

19 Definitions for chapter

In this chapter—

appropriately qualified means—

- (a) for a counsellor swearing an affidavit verifying a report prepared by the counsellor, a person who—
 - (i) is one of the following—
 - (A) a member of the Australian and New Zealand Infertility Counsellors Association;
 - (B) a psychiatrist who is a member of the Royal Australian and New Zealand College of Psychiatrists;
 - (C) a psychologist who is a member of the Australian Psychological Society;
 - (D) a social worker who is a member of the Australian Association of Social Workers; and
 - (ii) has the experience, skills or knowledge appropriate to prepare the report; or

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- (b) for a medical practitioner swearing an affidavit mentioned in section 25(1)(j), a medical practitioner who has the qualifications, experience, skills or knowledge appropriate to prepare the report.

child, other than in part 4, means a child born as a result of a surrogacy arrangement.

consent means consent freely and voluntarily given by a person with capacity, within the meaning of the *Guardianship and Administration Act 2000*, to give the consent.

independent, for a counsellor in relation to an application for a parentage order in relation to a child, means the counsellor—

- (a) did not give counselling about the surrogacy arrangement to the birth mother, the birth mother's spouse (if any) or an intended parent; and
- (b) is not, and has not been, directly connected with a medical practitioner who carried out a procedure that resulted in the birth of the child.

Example of direct connection—

A counsellor is directly connected with a medical practitioner if the counsellor is engaged to give fertility counselling at the fertility clinic where the medical practitioner carried out a procedure that resulted in the birth of the child.

Part 2 Making a parentage order

20 Purpose

This part facilitates the transfer, in particular circumstances, of the parentage of a child born as a result of a surrogacy arrangement that satisfies particular requirements.

21 Application for a parentage order

- (1) An application for a parentage order in relation to a child may be made—
 - (a) not less than 28 days and not more than 6 months after the child's birth; or
 - (b) at a later time with the court's leave.
- (2) The court may grant leave under subsection (1)(b) only if it considers the making of the late application is justified because of exceptional circumstances and that it is for the wellbeing, and in the best interests, of the child to grant the leave.
- (3) Subsections (4) and (5) apply if there are 2 intended parents under the surrogacy arrangement and the 2 intended parents were a couple when the surrogacy arrangement was made.
- (4) The application for the parentage order may be made only by the 2 intended parents jointly.
- (5) However, if the 2 intended parents are no longer a couple or 1 of them has died, 1 of the intended parents may apply for a parentage order.
- (6) If there is 1 intended parent under the surrogacy arrangement and the intended parent did not have a spouse when the surrogacy arrangement was made, the intended parent may apply for a parentage order.
- (7) To the extent practicable, the documents mentioned in section 25 must be filed with the application.

22 Making a parentage order

- (1) On an application under this part, the court may make a parentage order for the transfer of parentage of a child to the applicant, or joint applicants.
- (2) The court may make the parentage order only if it is satisfied of all of the following matters—

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- (a) the proposed order will be for the wellbeing, and in the best interests, of the child;
- (b) the child—
 - (i) has resided with the applicant, or joint applicants, for at least 28 consecutive days before the day the application was made; and
 - (ii) was residing with the applicant, or joint applicants, when the application was made; and
 - (iii) is residing with the applicant, or joint applicants, at the time of the hearing;
- (c) the applicant, or joint applicants, were entitled to apply under section 21;
- (d) there is evidence of a medical or social need for the surrogacy arrangement;
- (e) the surrogacy arrangement—
 - (i) was made after—
 - (A) the birth mother and the birth mother's spouse (if any), jointly or separately; and
 - (B) the applicant, or joint applicants (jointly or separately);obtained independent legal advice about the surrogacy arrangement and its implications; and
 - (ii) was made after each of the birth mother, the birth mother's spouse (if any) and the applicant, or joint applicants, obtained counselling from an appropriately qualified counsellor about the surrogacy arrangement and its social and psychological implications; and
 - (iii) was made with the consent of the birth mother, the birth mother's spouse (if any) and the applicant, or joint applicants; and
 - (iv) was made before the child was conceived; and

- (v) is in writing and signed by the birth mother, the birth mother's spouse (if any) and the applicant, or joint applicants; and
- (vi) is not a commercial surrogacy arrangement;
- (f) the birth mother and the birth mother's spouse (if any) were at least 25 years when the surrogacy arrangement was made;
- (g) the applicant, or each of the joint applicants—
 - (i) was at least 25 years when the surrogacy arrangement was made; and
 - (ii) is resident in Queensland;
- (h) the birth mother, the birth mother's spouse (if any), another birth parent (if any) and the applicant, or joint applicants, consent to the making of the parentage order at the time of the hearing;
- (i) a surrogacy guidance report under section 32 supports the making of the proposed order.

23 Dispensing with a requirement

- (1) The court may not dispense with a requirement mentioned in section 22(2)(a) or (e)(iii), (iv) or (vi).
- (2) The court may dispense with a requirement mentioned in section 22(2)(b) to (d), (e)(i), (ii) or (v), or (f) to (i) only if the court is satisfied—
 - (a) there are exceptional circumstances for giving the dispensation; and

Example of exceptional circumstances for dispensing with the requirement under section 22(2)(g)(ii) —

One of the joint applicants is temporarily residing outside Queensland because of work commitments but is still in a spousal relationship with the other joint applicant who is resident in Queensland.

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- (b) the dispensation will be for the wellbeing, and in the best interests, of the child.
- (3) However, to dispense with the requirement under section 22(2)(h) for a person to consent to the making of the parentage order, the exceptional circumstances for giving the dispensation must be either that—
 - (a) the person has died or is not a person with capacity to give the consent; or
 - (b) an applicant can not locate the person after making all reasonable enquiries.

24 Additional requirement if multiple births

- (1) This section applies if a child has a living birth sibling.
- (2) Despite any other provision of this Act, the court may make a parentage order about the child in favour of an applicant, or joint applicants, only if it also makes a parentage order about each living birth sibling of the child in favour of the applicant, or joint applicants.
- (3) In this section—

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.

25 Documents and information to be produced to court

- (1) For an application for a parentage order, the following documents must be produced to the court—
 - (a) a copy of the child's birth certificate;
 - (b) a copy of the surrogacy arrangement;
 - (c) an affidavit under section 26 sworn by the applicant, or joint applicants;
 - (d) an affidavit under section 27 sworn by the birth mother;

- (e) an affidavit under section 28 sworn by the birth mother's spouse (if any);
 - (f) an affidavit under section 29 sworn by another birth parent (if any);
 - (g) for the applicant, or each joint applicant, the birth mother and the birth mother's spouse (if any)—an affidavit under section 30 sworn by the lawyer who gave legal advice to the person before the surrogacy arrangement was made;
 - (h) an affidavit under section 31 sworn by the appropriately qualified counsellor who gave counselling to the birth mother, the birth mother's spouse (if any) and the applicant, or each joint applicant, before the surrogacy arrangement was made;
 - (i) an affidavit—
 - (i) sworn by the independent and appropriately qualified counsellor who, for the purpose of the application, interviewed the birth mother, the birth mother's spouse (if any), another birth parent (if any) and the applicant, or joint applicants; and
 - (ii) verifying a surrogacy guidance report under section 32 prepared by the counsellor;
 - (j) for each applicant who is a woman, an affidavit from an appropriately qualified medical practitioner verifying a report prepared by the medical practitioner as to why the applicant is an eligible woman.
- (2) Despite subsection (1)(d), (e) and (f), a single affidavit satisfying the requirements mentioned in sections 27 to 29 may be sworn by the birth mother, the birth mother's spouse (if any) and another birth parent (if any).
- (3) Despite subsection (1)(g), a single affidavit satisfying the requirements mentioned in section 30 may be sworn by the following—

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- (a) a lawyer who gave legal advice to the birth mother and the birth mother's spouse jointly;
 - (b) a lawyer who gave legal advice to joint applicants jointly.
- (4) Despite subsection (1)(h), if the same counsellor did not give counselling to the birth mother, the birth mother's spouse (if any) and the applicant, or joint applicants, affidavits under section 31 may be sworn by more than 1 counsellor.

26 Applicant's or joint applicants' affidavit

The affidavit sworn by the applicant, or joint applicants, must address the matters mentioned in section 22(2) (to the extent they are not matters regarding the birth mother, the birth mother's spouse (if any) or another birth parent (if any)), including by stating—

- (a) the current and proposed care arrangements for the child; and
- (b) the understanding of the applicant, or joint applicants, of the social, psychological and legal implications of the surrogacy arrangement and the making of a parentage order; and
- (c) the understanding of the applicant, or joint applicants, in relation to openness and honesty about the child's birth parentage being for the wellbeing, and in the best interests, of the child; and
- (d) the proposed name for the child; and
- (e) for each applicant—the applicant's date of birth and occupation (as at the date of the child's birth).

27 Birth mother's affidavit

The affidavit sworn by the birth mother must address the matters mentioned in section 22(2)(a), (e), (f) and (h) (to the

extent they are matters regarding the birth mother), and (2)(e)(iv) and (vi), including by stating—

- (a) the understanding of the birth mother of the social, psychological and legal implications of the surrogacy arrangement and the making of a parentage order; and
- (b) the understanding of the birth mother in relation to openness and honesty about the child's birth parentage being for the wellbeing, and in the best interests, of the child; and
- (c) that the birth mother did not receive any payment, reward or other material benefit or advantage, other than the birth mother's surrogacy costs, for a matter mentioned in section 10(a), (b), or (c); and
- (d) the birth mother's date of birth.

28 Birth mother's spouse's affidavit

The affidavit sworn by the birth mother's spouse must address the matters mentioned in section 22(2)(a), (e), (f) and (h) (to the extent they are matters regarding the birth mother's spouse) and (2)(e)(iv) and (vi), including by stating—

- (a) the understanding of the birth mother's spouse of the social, psychological and legal implications of the surrogacy arrangement and the making of a parentage order; and
- (b) the understanding of the birth mother's spouse in relation to openness and honesty about the child's birth parentage being for the wellbeing, and in the best interests, of the child; and
- (c) that the birth mother's spouse did not receive any payment, reward or other material benefit or advantage for a matter mentioned in section 10(a), (b), or (c); and
- (d) the birth mother's spouse's date of birth.

29 Other birth parent's affidavit

The affidavit sworn by the other birth parent must address the matters mentioned in section 22(2)(a) and (h) (to the extent it is a matter regarding the other birth parent) and (2)(e)(vi), including by stating—

- (a) the understanding of the other birth parent of the social, psychological and legal implications of the surrogacy arrangement and the making of a parentage order; and
- (b) the understanding of the other birth parent in relation to openness and honesty about the child's birth parentage being for the wellbeing, and in the best interests, of the child; and
- (c) that the other birth parent did not receive any payment, reward or other material benefit or advantage for a matter mentioned in section 10(a), (b), or (c).

30 Lawyer's affidavit

- (1) The affidavit sworn by the lawyer who gave legal advice to a person must address the matter mentioned in section 22(2)(e)(i), including by stating—
 - (a) separate and independent legal advice was given to the person before the surrogacy arrangement was made; and
 - (b) the legal advice included advice about the following matters—
 - (i) the unenforceable nature of the arrangement, other than as provided under section 15;
 - (ii) the person's legal obligations under the arrangement and this Act;
 - (iii) the legal implications if the birth mother does not relinquish the child, including whether child support would be payable by the child's biological father under the *Child Support (Assessment) Act 1989* (Cwlth);

-
- (iv) the legal implications if, after the birth of the child, the intended parents do not want to be permanently responsible for the child's custody and guardianship;
 - (v) the legal implications if, after the birth of the child, the birth mother, the birth mother's spouse (if any), another birth parent (if any) and the intended parents do not want to be permanently responsible for the child's custody and guardianship;
 - (vi) the legal implications of the making of a parentage order;
 - (vii) that this Act promotes openness and honesty about the child's birth parentage; and
- (c) the lawyer's belief that the person appeared to understand the legal advice given.
- (2) To remove any doubt, it is declared that this Act does not affect the law relating to legal professional privilege.

Example—

The lawyer is not obliged under this Act to disclose information or a document if the information or document is protected by legal professional privilege.

31 Initial counsellor's affidavit

The affidavit sworn by the appropriately qualified counsellor who gave counselling to the birth mother, the birth mother's spouse (if any) and the intended parents (the *relevant persons*) must verify a report prepared by the counsellor addressing the matter mentioned in section 22(2)(e)(ii), including by stating—

- (a) the reasons the counsellor is an appropriately qualified counsellor; and
- (b) that counselling about the surrogacy arrangement and its social and psychological implications was given to the

relevant persons before the surrogacy arrangement was made.

32 Surrogacy guidance report

- (1) A surrogacy guidance report must be prepared by an independent and appropriately qualified counsellor and state the following matters—
 - (a) the reasons the counsellor is an independent and appropriately qualified counsellor;
 - (b) that, for the application, the counsellor interviewed the birth mother, the birth mother's spouse (if any), another birth parent (if any) and the applicant, or joint applicants, (the *relevant persons*);
 - (c) the date or dates of the interviews;
 - (d) the counsellor's opinion formed as a result of the interviews relevant to the application for a parentage order including, for example, about the following matters—
 - (i) each relevant person's understanding of—
 - (A) the social and psychological implications of the making of a parentage order on the child and relevant persons;
 - (B) openness and honesty about the child's birth parentage being for the wellbeing, and in the best interests, of the child;
 - (ii) the care arrangements that the applicant, or joint applicants, have proposed for the child;
 - (iii) whether the making of a parentage order would be for the wellbeing, and in the best interests, of the child.

33 Court may require attendance

On an application for a parentage order, the court may, for the purpose of deciding whether the proposed order will promote the child's wellbeing and best interests, require the attendance before it of the birth mother, the birth mother's spouse (if any), the other birth parent (if any), the applicant, or joint applicants, or another person who has sworn an affidavit for the application to—

- (a) give evidence in relation to the application; or
- (b) produce stated documents or things.

34 Form of parentage order

A parentage order must state the following details—

- (a) the date of the order;
- (b) the first name and surname of the child—
 - (i) before the order was made; and
 - (ii) on the making of the order;
- (c) the date of birth of the child;
- (d) the place of birth of the child;
- (e) for each applicant, the applicant's first name and surname, address and occupation;
- (f) the first name and surname and address of each of the the child's birth parents;
- (g) the terms of any ancillary orders.

35 Child's name

- (1) On the making of a parentage order, the child's names are the names the court approves for the child in the parentage order.
- (2) In approving a name under this section, the court must have regard to the child's wellbeing and best interests and must not

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approve a name that is a prohibited name under the *Births, Deaths and Marriages Registration Act 2003*.

- (3) This section does not prevent a name of the child being changed later under a law of the State or the Commonwealth.

36 Other orders

If the court makes a parentage order, it may also make any other order it considers appropriate in the interests of justice or to ensure the child's wellbeing and best interests.

37 Other order if deceased intended parent

- (1) This section applies if—
 - (a) there were 2 intended parents under a surrogacy arrangement and the 2 intended parents were a couple when the surrogacy arrangement was made; and
 - (b) one of the intended parents dies before a parentage order is made.
- (2) Without limiting section 36, if the court makes a parentage order transferring parentage of the child to the surviving intended parent, the court may also make an order declaring that the deceased intended parent is taken to have been a parent of the child.

38 Notice if child in need of protection

If, on an application under this chapter in relation to a child, the court considers the child is a child in need of protection within the meaning of the *Child Protection Act 1999*, the court may under that Act notify the chief executive within the meaning of that Act.

Part 3 Effect of a parentage order

39 Effect on relationships

- (1) This section applies if the court makes a parentage order in relation to a child in favour of an intended parent, or intended parents.
- (2) On the making of the parentage order—
 - (a) the child becomes a child of the intended parent, or intended parents, and the intended parent, or intended parents, become the parent, or parents, of the child; and
 - (b) the child stops being a child of a birth parent and a birth parent stops being a parent of the child.
- (3) Other relationships are determined in accordance with subsection (2).
- (4) However, for the purpose of applying a law relating to a sexual offence where a familial relationship is relevant, the child is taken to have both the familial relationships that existed before the making of the parentage order as well as the familial relationships that result from the making of the parentage order.

40 Effect for property

- (1) Section 39(2) and (3) has effect in relation to—
 - (a) dispositions of property whether by will or otherwise; and
 - (b) devolutions of property in relation to which a person dies intestate.
- (2) However, section 39 does not affect the operation of a will or other instrument that distinguishes between children who were born as a result of a surrogacy arrangement (*surrogacy arrangement children*) and children other than surrogacy arrangement children.

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41 Public trustee to make inquiries if bequest to unlocatable child

- (1) This section applies if—
 - (a) under a will made after the commencement of this section, the testator makes a disposition of property to a person who is described—
 - (i) as being a child of the testator or of another person; and
 - (ii) as having had his or her parentage transferred to another person or persons as a result of a parentage order; and
 - (b) the personal representative of the testator is unable to find out the name and address of the child.
- (2) The personal representative must give the public trustee a copy of the will and a notice stating that the personal representative is unable to find out the name and address of the child.
- (3) On receipt of the copy and notice, the public trustee must take steps to find out the name and address of the child and, if the child has died, the date of the death by asking for information from the registrar of the court and the registrar under the *Births, Deaths and Marriages Registration Act 2003*.
- (4) Despite any other Act or law, if the registrar of the court receives a request from the public trustee under subsection (3), the registrar must provide the public trustee with the name and address of the child, on the making of the parentage order, held in the court's records.
- (5) The *Births, Deaths and Marriages Registration Act 2003*, section 44 does not apply to a request for information made under subsection (3) to the registrar under that Act.
- (6) If, after taking the steps mentioned in subsection (3)—
 - (a) the public trustee finds out the name, address or date of death of the child, the public trustee must give a notice to the personal representative stating—

- (i) that the name or address has been found out; or
 - (ii) that it has been found out that the child has died;
and
- (b) to the extent the public trustee is unable to find out the name and address of the child or whether the child has died, the public trustee must give a notice to the personal representative stating what details the public trustee has been unable to find out.

42 Public trustee is trustee if bequest to unlocatable child

- (1) This section applies if—
- (a) under a will made after the commencement of this section, the testator makes a disposition of property to a person who is described—
 - (i) as being a child of the testator or of another person;
and
 - (ii) as having had his or her parentage transferred to another person or persons as a result of a parentage order; and
 - (b) the personal representative of the testator is given a notice by the public trustee under section 41(6).
- (2) The public trustee is a trustee for the child on the trusts stated in, or arising under, the will.
- (3) If the personal representative transfers property to the public trustee as trustee for the child, the personal representative is taken to have transferred the property to the child.
- (4) Subsections (2) and (3) do not apply if the child died before the testator or, for another reason, is not entitled to an interest under the will.
- (5) If the public trustee gives the personal representative a notice that the child has disclaimed property to which the child was entitled under the will, the notice is, for the purpose of

administering the estate, sufficient evidence that the child has disclaimed the property.

43 Public trustee's fees for involvement

- (1) The public trustee may charge fees for taking steps under section 41(3) or (6) or for acting as trustee under section 42.
- (2) The personal representative must pay to the public trustee out of the testator's estate any fees charged by the public trustee under subsection (1) and any fees or costs incurred by the public trustee in taking steps under section 41(3) or (6) or in acting as trustee under section 42.

44 Transfer or distribution of property by trustee

- (1) Subject to this section, a trustee may transfer or distribute property to persons who appear entitled to it without finding out whether or not a parentage order has been made because of which a person is or is not entitled to an interest in the property.
- (2) A trustee who transfers or distributes property under subsection (1) is not liable to a person claiming directly or indirectly because of a parentage order unless the trustee has written or other notice of the claim before the transfer or distribution.
- (3) This section does not affect a person's right to follow property into the hands of a person, other than a purchaser for value, who has received it.
- (4) In this section—
trustee includes a personal representative.

Part 4 Discharge of a parentage order

45 Definitions for part

In this part—

child means a child whose parentage was transferred to an intended parent, or intended parents, under a parentage order.

interested person, for an application for a discharge order, means—

- (a) if the child is 18 years or more—the child; or
- (b) each of the child’s birth parents and intended parents; or
- (c) the Attorney-General.

46 Application for a discharge order

- (1) An interested person may apply to the court for a discharge order discharging a parentage order in relation to a child on the ground that—
 - (a) the parentage order was obtained by fraud, duress or other improper means; or
 - (b) a consent required for the making of the parentage order was, in fact, not given or was given for payment, reward or other material benefit or advantage (other than the birth mother’s surrogacy costs); or
 - (c) there is an exceptional reason why the parentage order should be discharged.
- (2) The applicant must state the ground on which the application is made.
- (3) As soon as practicable after filing the application, the applicant must serve a copy of it on each other interested person (other than the Attorney-General).

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- (4) If the child is under 18 years, the applicant must also serve a copy of the application on the child if the court considers it appropriate having regard to the child's age.
- (5) A served copy must state where and when the application is to be heard.
- (6) The court may dispense with the requirement to serve a copy of the application on a person if the court is satisfied—
 - (a) the applicant can not locate the person after making all reasonable enquiries; or
 - (b) the person has died.

47 Making a discharge order

- (1) On an application under this part, the court may make a discharge order discharging a parentage order in relation to a child.
- (2) The court may make the discharge order only if the court is satisfied of all of the following matters—
 - (a) reasonable efforts have been made to serve the application on—
 - (i) each other interested person (other than the Attorney-General); and
 - (ii) if the child is under 18 years but the court considers it appropriate having regard to the child's age—the child;
 - (b) one of the grounds mentioned in section 46(1)(a), (b) or (c).
- (3) If the court makes a discharge order, the court must, in the same order, declare the first name and surname by which the child is to be known after the making of the discharge order.
- (4) In declaring a first name under subsection (3), the court must have regard to the principle that a child's first name should be retained except in special circumstances.

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- (5) Also, if the child has been served with a copy of the application, in declaring a name under subsection (3) the court must consider the child's views about his or her name.
 - (6) A declaration of names in a discharge order does not prevent a subsequent change of name under a law of the State or the Commonwealth.
 - (7) If the court makes a discharge order, it may also make any other order it considers appropriate in the interests of justice or to ensure the child's wellbeing and best interests, including an order relating to—
 - (a) the ownership or possession of property; or
 - (b) any matter affecting the child in relation to the duties, powers, responsibilities and authority which, by law, parents have in relation to children; or
 - (c) where the child is to live.

48 Effect of discharge order

- (1) On the making of a discharge order, the rights, privileges, duties, liabilities and relationships of the child and all other persons are the same as if the parentage order being discharged had not been made.
- (2) However, the making of the discharge order does not affect—
 - (a) anything lawfully done, or the consequences of anything lawfully done, while the parentage order was in force; or
 - (b) a right, privilege or liability acquired, accrued or incurred while the parentage order was in force.
- (3) Also, for the purpose of applying a law relating to a sexual offence where a familial relationship is relevant, the child is taken, after the discharge order is made, to have both the familial relationships that resulted from the making of the parentage order as well as the familial relationships that result from the making of the discharge order.

Part 5 Appeals

49 Appellants and appellable decisions

- (1) Any of the birth parents or intended parents may appeal to the Court of Appeal against a decision refusing an application by an intended parent, or intended parents, for a parentage order.
- (2) Any of the following persons may appeal to the Court of Appeal against a decision granting or refusing an application for a discharge order—
 - (a) the child if 18 years or more or if, for section 46(4), the court considered the child should be served with the application;
 - (b) the birth parents;
 - (c) the intended parent, or intended parents;
 - (d) if the Attorney-General made the application—the Attorney-General.

50 Appeal by rehearing

An appeal to the Court of Appeal is an appeal by way of rehearing.

Part 6 Privacy

51 Hearing not to be in public

- (1) This section applies to the hearing in the court or the Court of Appeal of a proceeding under this Act relating to a child.
- (2) The hearing for the proceeding is not open to the public.
- (3) Despite section 20 of the *Childrens Court Act 1992*, a court must exclude from the room in which the court is sitting a

person who is not—

- (a) the child; or
 - (b) an applicant or an appellant; or
 - (c) a respondent; or
 - (d) a birth parent; or
 - (e) an intended parent; or
 - (f) a lawyer of a party to the proceeding or of a person mentioned in paragraphs (a) to (e); or
 - (g) a witness giving evidence.
- (4) However, the court may permit a person to be present during the hearing if the court is satisfied it is in the interests of justice to do so.

52 Access to court records

- (1) A person may not have access to the record of proceedings in the court or the Court of Appeal in relation to a proceeding under this Act relating to a child unless the court has, on application by the person, given approval to the access.

Note—

Despite subsection (1), if the registrar of the court receives a request from the public trustee under section 41(3), the registrar must provide the public trustee with the name and address of the child—see section 41(4).

- (2) Any of the following persons may apply for access to the record of proceedings—
- (a) the child if 18 years or more or if, for section 46(4), the court considered the child should be served with the application;
 - (b) a birth parent;
 - (c) an intended parent;
 - (d) the Attorney-General;

[s 53]

- (e) the chief executive.
- (3) The court may give access to all or part of the record of proceedings.
- (4) Without limiting the reasons for which the court may refuse to give a person access on an application under subsection (2), the court may refuse to give access if—
 - (a) the person has not produced to the registrar or another appropriate officer of the court proof of the person's identity; or
 - (b) the person has not complied with a requirement of the court under any law or rule of practice relating to inspection of and release of information generally from its record of proceedings.
- (5) In this section—

record of proceedings includes—

 - (a) a written transcript of the proceedings; and
 - (b) the documents in the court file for the proceedings; and
 - (c) an appeal book in relation to the proceedings.

53 Publishing identifying material

- (1) This section applies to material (*identifying material*) that identifies, or is likely to lead to the identification of, a person as—
 - (a) a child born as result of a surrogacy arrangement or a child to whom a court proceeding under this Act relates; or
 - (b) a party to a surrogacy arrangement; or
 - (c) a party to a court proceeding under this Act; or
 - (d) a person whose consent to a surrogacy arrangement, or the making of a parentage order, is or was required.

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- (2) A person must not publish identifying material unless written consent to the publication has been given, for each identified person, by—
- (a) for an identified person who is an adult—that person; or
 - (b) for an identified person who is the child and under 18 years—
 - (i) if the child is residing with the birth mother—the birth mother; or
 - (ii) otherwise—the intended parent, or intended parents.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
 - (b) for a corporation—1000 penalty units.
- (3) In this section—

identified person, in relation to identifying material, means a person identified by the material as a person mentioned in subsection (1)(a) to (d).

publish means publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.

Chapter 4 Miscellaneous

Part 1 Offences

54 Territorial application

This part applies in relation to—

[s 55]

- (a) acts done in Queensland regardless of the whereabouts of the offender at the time the act is done; or
- (b) acts done outside Queensland if the offender is ordinarily resident in Queensland at the time the act is done.

55 Advertisements and other published matters

- (1) A person must not publish an advertisement, statement, notice or other material that—
- (a) is intended or likely to induce a person to agree to act as a birth mother; or
 - (b) seeks or purports to seek a person willing to act as a birth mother; or
 - (c) states or implies that a person is willing to agree to act as a birth mother; or
 - (d) states or implies that a person is willing to enter into a surrogacy arrangement.

Maximum penalty—100 penalty units or 3 years imprisonment.

- (2) In this section—

publish means publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.

56 Commercial surrogacy arrangements prohibited

A person must not enter into or offer to enter into a commercial surrogacy arrangement.

Maximum penalty—100 penalty units or 3 years imprisonment.

57 Giving or receiving consideration

- (1) A person must not give a payment, reward or other material benefit or advantage (other than the reimbursement of the birth mother's surrogacy costs) for another person—
- (a) agreeing to enter into or entering into a surrogacy arrangement; or
 - (b) giving the intended parent, or intended parents, under a surrogacy arrangement the permanent custody and guardianship of a child born as a result of the surrogacy arrangement; or
 - (c) consenting to the making of a parentage order for a child born as a result of a surrogacy arrangement.

Maximum penalty—100 penalty units or 3 years imprisonment.

- (2) A person must not receive a payment, reward or other material benefit or advantage (other than the reimbursement of the birth mother's surrogacy costs) for the person or another person—
- (a) agreeing to enter into or entering into a surrogacy arrangement; or
 - (b) giving the intended parent, or intended parents, under a surrogacy arrangement the permanent custody and guardianship of a child born as a result of the surrogacy arrangement; or
 - (c) consenting to the making of a parentage order for a child born as a result of a surrogacy arrangement.

Maximum penalty—100 penalty units or 3 years imprisonment.

58 Providing technical, professional or medical services for a commercial surrogacy arrangement

- (1) A person must not intentionally provide a technical, professional or medical service to another person if—

[s 59]

- (a) the person knows the other person is, or intends to be, party to a commercial surrogacy arrangement; and
- (b) the person provides the service with the intention of assisting the other person to become pregnant for the purpose of the arrangement.

Maximum penalty—100 penalty units or 3 years imprisonment.

- (2) A person does not commit an offence under subsection (1) if the person provides a technical, professional or medical service to a woman after she has become pregnant.

Part 2 Court matters

59 Court rules

- (1) The *Uniform Civil Procedure Rules 1999* apply in relation to proceedings under this Act as if the proceedings were proceedings in the District Court.
- (2) However, the *Uniform Civil Procedure Rules 1999* do not apply for a matter in relation to a proceeding in the Childrens Court that is provided for under the *Childrens Court Rules 1997*.

60 Court fees and other matters

The *Uniform Civil Procedure (Fees) Regulation 2009* applies in relation to proceedings in the Childrens Court under this Act as if the proceedings were proceedings in the District Court.

Chapter 5 Repeal and transitional provisions

Part 1 Repeal

61 Repeal of Surrogate Parenthood Act 1988

The Surrogate Parenthood Act 1988, No. 65 is repealed.

Part 2 Transitional provisions for Surrogacy Act 2010

62 Definitions for part

In this part—

commencement means the commencement of this section.

pre-commencement birth mother, for a pre-commencement surrogacy arrangement, means a person who, before the commencement, corresponded to a birth mother under a surrogacy arrangement.

pre-commencement intended parent, for a pre-commencement surrogacy arrangement, means a person who, before the commencement, corresponded to an intended parent under a surrogacy arrangement.

pre-commencement surrogacy arrangement means an arrangement entered into between a pre-commencement birth mother and a pre-commencement intended parent, or pre-commencement intended parents, before the commencement that corresponded to a surrogacy arrangement.

63 Application for parentage order in relation to pre-commencement surrogacy arrangement

- (1) This section applies if—
 - (a) a pre-commencement birth mother and a pre-commencement intended parent, or pre-commencement intended parents, were parties to a pre-commencement surrogacy arrangement; and
 - (b) the pre-commencement surrogacy arrangement was not a commercial surrogacy arrangement; and
 - (c) a child has been born as a result of the pre-commencement surrogacy arrangement; and
 - (d) the pre-commencement surrogacy arrangement was made before the child was conceived.
- (2) Within 2 years after the commencement, the pre-commencement intended parent, or pre-commencement intended parents, may apply to the court for a parentage order.
- (3) Chapter 3 applies in relation to the application and any parentage order made on the application is a parentage order under chapter 3.
- (4) In addition to the court's power under section 23, the court may dispense with a requirement under chapter 3 (other than a requirement mentioned in section 22(2)(e)(iii)) if the court considers it is—
 - (a) for the wellbeing, and in the best interests, of the child born as a result of the pre-commencement surrogacy arrangement to dispense with the requirement; or
 - (b) otherwise impractical for the pre-commencement intended parent, or pre-commencement intended parents, to comply with the requirement.

Example for paragraph (b)—

It was impracticable to obtain independent legal advice before entering into the pre-commencement surrogacy arrangement.

- (5) However, to dispense with the requirement under section 22(2)(h) for a person to consent to the making of the parentage order, the circumstances for giving the dispensation must be either that—
- (a) the person has died or is not a person with capacity to give the consent; or
 - (b) an applicant can not locate the person after making all reasonable enquiries.

Chapter 6 Amendments

Part 1 Amendment of this Act

64 Act amended

This part amends this Act.

65 Amendment of long title

- (1) Long title, ‘arrangements, to prohibit’—
omit, insert—
‘arrangements and to prohibit’.
- (2) Long title, from ‘, to make particular’—
omit.

[s 66]

Part 2 **Amendment of Adoption Act 2009**

66 Act amended

This part amends the *Adoption Act 2009*.

67 Amendment of s 76 (Eligibility for inclusion in register)

Section 76(1)—

insert—

‘(ea) the person—

- (i) is not an intended parent under a surrogacy arrangement within the meaning of the *Surrogacy Act 2010*; and
- (ii) if the person has been an intended parent for a surrogacy arrangement within the meaning of the *Surrogacy Act 2010*—the surrogacy arrangement ended not less than 6 months earlier; and’.

Part 3 **Amendment of Births, Deaths and Marriages Registration Act 2003**

68 Act amended

This part and schedule 1 amend the *Births, Deaths and Marriages Registration Act 2003*.

69 Amendment of s 3 (Objects)

(1) Section 3(a)(ii)—

renumber as section 3(a)(iii).

(2) Section 3(a)—

insert—

‘(ii) changes of parentage under the *Surrogacy Act 2010*; and’.

70 Insertion of new s 10A

After section 10—

insert—

‘10A Limitation on registration of parentage details

‘(1) In relation to the registration of a relevant event for a child—

- (a) the child’s parent, or 1 of the child’s parents, must be registered as the child’s mother or as the child’s father; and
- (b) not more than 1 person may be registered as the child’s mother or as the child’s father; and
- (c) not more than 2 people in total may be registered as the child’s parents (however described).

‘(2) In this section—

relevant event, for a child, means—

- (a) the child’s birth; or
- (b) the child’s adoption; or
- (c) the child’s change of parentage under a parentage order or discharge order.’.

71 Amendment of s 13 (Application to change child’s first name within a year of birth)

Section 13(2), (3) and (4), ‘register of births or adopted children register’—

[s 72]

omit, insert—
'relevant child register'.

72 Amendment of s 14 (Reregistering a birth or adoption)

(1) Section 14, 'birth or adoption'—

omit, insert—
'relevant event'.

(2) Section 14(1)—

insert—
'(c) a person's parentage is changed by a parentage order.'

(3) Section 14(5)(a), 'register'—

omit, insert—
'relevant child register'.

(4) Section 14—

insert—

'(10) In this section—

relevant event, for a person, means the most recent of the following events for the person—

- (a) birth;
- (b) adoption;
- (c) change of parentage under a parentage order.'

73 Amendment of s 15 (Change of name by registration)

Section 15—

insert—

'(5) Also, changes to a person's name under a parentage order or discharge order are not dealt with under this part but under sections 41D and 41E.'

74 Amendment of s 17 (Application to register change of child's name)

Section 17(3), 'register of births or adopted children register'—

omit, insert—

'relevant child register'.

75 Amendment of s 19 (Registration of change of name)

(1) Section 19(3), 'the register,'—

omit, insert—

'the relevant child register,'.

(2) Section 19(3), 'the register of births or adopted children register'—

omit, insert—

'the relevant child register'.

76 Amendment of s 20 (Notation of change of name other than by registration)

(1) Section 20(2), (3) and (5), 'register of births or adopted children register'—

omit, insert—

'relevant child register'.

(2) Section 20(4)(a), 'register of births'—

omit, insert—

'relevant child register'.

77 Amendment of s 41 (Registering events other than adoptions in register)

(1) Section 41, heading, after 'adoptions'—

[s 78]

insert—

‘or changes of parentage’.

(2) Section 41(1), after ‘adoption’—

insert—

‘or a change of parentage under a parentage order or discharge order’.

78 Insertion of new ss 41D and 41E

After section 41C—

insert—

‘41D Registering change of parentage under parentage order

‘(1) This section applies if—

- (a) a parentage order is made in relation to a child whose birth was registered in Queensland; and
- (b) the registrar receives—
 - (i) an application to register the order and the application contains the information prescribed under a regulation; and
 - (ii) an original copy of the parentage order.

‘(2) The registrar must register the transfer of parentage by incorporating into the parentage order register information from the application to register the parentage order and the original copy of the parentage order.

‘(3) Also, the registrar must close the child’s birth entry by—

- (a) noting, on the birth entry (the *closed entry*), a reference to the parentage order entry; and
- (b) noting, on the new parentage order entry, a reference to the closed entry.

‘41E Reregistering birth if discharge order

- ‘(1) This section applies if—
- (a) the registrar has registered under section 41D the transfer of a person’s parentage; and
 - (b) a discharge order is made in relation to the parentage order for the person; and
 - (c) the registrar receives—
 - (i) an application to register the discharge order and the application contains the information prescribed under a regulation; and
 - (ii) an original copy of the discharge order.
- ‘(2) The registrar must close the entry in the parentage order register for the person by—
- (a) incorporating, in the entry, information from the application to register the discharge order and the original copy of the discharge order; and
 - (b) noting on the entry—
 - (i) that the parentage order has been discharged; and
 - (ii) that the person’s birth has been reregistered under this section; and
 - (iii) a reference to the new entry made under subsection (3).
- ‘(3) The registrar must also reregister the person’s birth by making a new entry in the birth register that includes—
- (a) the person’s names as declared in the discharge order; and
 - (b) all the information that was in the entry that was closed under section 41D (other than the person’s names and information about the parentage order or discharge order); and
 - (c) a note that the new entry was made under this section; and

[s 79]

- (d) a reference to the entry closed under subsection (2).
- ‘(4) The registrar may make any other notations in the birth register or parentage order register that the registrar considers necessary to ensure the registers include the correct information for the person.’.

79 Amendment of s 44 (Obtaining information from the registrar)

- (1) Section 44(13)—
renumber as section 44(19).
 - (2) Section 44—
insert—
- ‘(13) The registrar may only give requested information relating to an entry closed under section 41D or 41E to any of the following persons—
- (a) a birth parent for the parentage order;
 - (b) an intended parent for the parentage order;
 - (c) if the child for the parentage order is at least 18 years—the child;
 - (d) a guardian appointed under the *Guardianship and Administration Act 2000* for any of the persons mentioned in paragraphs (a) to (c);
 - (e) if an administrator has been appointed under the *Guardianship and Administration Act 2000*, section 14, for the child—the administrator;
 - (f) if a personal representative has been appointed for the child—the personal representative;
 - (g) an officer of, or person acting for, a law enforcement body;
 - (h) the Attorney-General.

-
- ‘(14) When applying for information from a closed entry, a person mentioned in subsection (13)(d), (e) or (f) must—
- (a) produce to the registrar—
 - (i) a document verifying the person’s identity; and
 - (ii) the person’s instrument of appointment; and
 - (b) show that the information is required to discharge a function under the person’s appointment.
- ‘(15) When applying for information from a closed entry, a person mentioned in subsection (13)(g) must—
- (a) produce a document verifying the person’s identity to the registrar; and
Example of documentary proof of an officer’s identity—
 - an identity card issued by a law enforcement body, with a photo of the officer, that states the officer’s name, rank and registered number
 - (b) show that the information is required to discharge—
 - (i) a function of the law enforcement body; or
 - (ii) the person’s duty as an officer of the law enforcement body.
- ‘(16) Despite subsection (13), the registrar may give requested information relating to an entry closed under section 41D or 41E to a child who is under 18 years if the birth parents and the intended parent, or intended parents, for the parentage order consent to the child’s application for the information.
- ‘(17) For subsection (16), a person’s consent is not required if—
- (a) the person has died; or
 - (b) the child can not locate the person after making all reasonable enquiries.
- ‘(18) If the registrar issues a certificate from an entry closed under section 41D or 41E, the registrar must stamp the certificate or mark it in another way to indicate that the certificate is not for official use.’.

[s 80]

(3) Section 44(19)—

insert—

‘birth parent means—

- (a) for a parentage order under the *Surrogacy Act 2010*—a birth parent under that Act; or
- (b) for another parentage order—a person corresponding, under the law of another Australian jurisdiction where the order was made, to a birth parent under the *Surrogacy Act 2010*.

intended parent means—

- (a) for a parentage order under the *Surrogacy Act 2010*—an intended parent under that Act; or
- (b) for another parentage order—a person corresponding, under the law of another Australian jurisdiction where the order was made, to an intended parent under the *Surrogacy Act 2010*.

law enforcement body means—

- (a) the Queensland Police Service or a police service of another State; or
- (b) the Australian Federal Police; or
- (c) the Crime and Misconduct Commission; or
- (d) the Australian Crime Commission.’.

80 Insertion of new s 44A

After section 44—

insert—

‘44A Addendum to birth certificate

‘(1) This section applies if—

- (a) a person (the ***applicant***)—

-
- (i) applies to the registrar, in writing, for information about an event that is, or may be, in a register kept by the registrar; and
 - (ii) is at least 18 years at the time of making the application; and
 - (b) the applicant's birth was registered in Queensland; and
 - (c) a parentage order in relation to the applicant was registered in the parentage order register under section 41D (even if the entry in the parentage order register was later closed under section 41E); and
 - (d) the registrar issues a certificate certifying particulars contained in an entry about the birth of the applicant.
- ‘(2) When the registrar issues a certificate mentioned in subsection (1)(d), the registrar must attach an addendum to the certificate stating that further information is available about the entry.
- ‘(3) To remove any doubt, it is declared that the registrar must not issue the addendum to any person other than the applicant.’

81 Insertion of new pt 9, div 5

Part 9, after section 62—

insert—

**‘Division 5 Transitional provisions for
Surrogacy Act 2010**

**‘63 Application to alter or add parentage details as result
of amendments to the Status of Children Act 1978**

- ‘(1) This section applies if—
- (a) a woman (the *mother*) has undergone a fertilisation procedure within the meaning of the *Status of Children Act 1978*, as a result of which she became pregnant and gave birth to a child; and

[s 81]

- (b) by application of a presumption in that Act the mother's partner is presumed to be a parent of the child; and
 - (c) the child's birth was registered before the commencement of this section.
- '(2) An application may be made to the registrar for the addition of information in the register of births about the identity of the mother's partner as a parent of the child.
- '(3) The registrar must include the additional information in the register of births if the registrar is satisfied in relation to the matters mentioned in subsections (4) and (5).
- '(4) The registrar must not include additional information in the child's birth entry about the identity of the mother's partner as a parent of the child unless—
- (a) the application is made jointly by the mother and the mother's partner; and
 - (b) if the child's birth entry already includes information that identifies a person as the father of the child—
 - (i) the Supreme Court has made an order for the removal of the particulars from the birth entry that identifies the father of the child; and
 - (ii) the registrar removes those particulars from the birth entry; and
 - (c) the application is accompanied by a statutory declaration made by the mother and the mother's partner stating that—
 - (i) they were in a de facto relationship at the time the mother underwent the procedure mentioned in subsection (1)(a); and
 - (ii) the mother's partner consented to the procedure that resulted in the pregnancy.
- '(5) An application made under this section must be in the approved form.

‘(6) This section has effect despite sections 10 and 42 and the *Status of Children Act 1978*, section 37.

‘64 Amendment of regulation by Surrogacy Act 2010 does not affect powers of Governor in Council

‘The amendment of the *Births, Deaths and Marriages Registration Regulation 2003* by the *Surrogacy Act 2010* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

82 Amendment of sch 2 (Dictionary)

(1) Schedule 2—

insert—

‘discharge order means—

- (a) a discharge order under the *Surrogacy Act 2010*; or
- (b) an order of another Australian jurisdiction that corresponds to an order mentioned in paragraph (a).

parentage order means—

- (a) a parentage order under the *Surrogacy Act 2010*; or
- (b) an order of another Australian jurisdiction that corresponds to an order mentioned in paragraph (a).

relevant child register, for a person, means whichever of the following registers has an open entry for the person—

- (a) the birth register;
- (b) the adopted children register;
- (c) the parentage order register.’.

(2) Schedule 2, definition *registrable event*, paragraph (c)—

renumber as paragraph (d).

(3) Schedule 2, definition *registrable event*—

[s 83]

insert—

‘(c) a change of parentage under a parentage order; or’.

Part 4 Amendment of Births, Deaths and Marriages Registration Regulation 2003

83 Regulation amended

This part amends the *Births, Deaths and Marriages Registration Regulation 2003*.

84 Amendment of s 13 (Information and documents for registering events in register—Act, s 41)

(1) Section 13, heading, ‘s 41’—

omit, insert—

‘**ss 41, 41D or 41E**’.

(2) Section 13—

insert—

‘(5) For sections 41D(1) and 41E(1) of the Act, the information in schedule 1, part 1 is prescribed information for an application to register a parentage order or discharge order.’.

85 Amendment of s 15 (Information that may be obtained from register—Act, s 44)

Section 15(5)—

omit, insert—

‘(5) For section 44(6)(c) of the Act, the following information is prescribed for a birth—

- (a) all information about any marriage of the child's parents;
- (b) if a woman registered as the child's mother or parent has, or has had, surnames other than the surname recorded at the child's birth or the woman's maiden surname—the other surnames;
- (c) if 2 persons are registered as the child's parents (however described) and either person has children that are not the other person's children—the names of those children.'

86 Amendment of s 16 (Information for commemorative birth certificate)

Section 16(1)(b) and (c)—

omit, insert—

- '(b) the full names of a father or adoptive father of the child at the time of the child's birth;
- (c) the first names, and maiden surname, of a mother or adoptive mother of the child at the time of the child's birth;
- (ca) if a person is registered as a parent, but not as the father or mother, of the child—the full name of the person at the time of the child's birth;'

87 Amendment of sch 1 (Application information)

- (1) Schedule 1, part 1, items 5 to 7—

renumber as items 6 to 8.

- (2) Schedule 1, part 1—

insert—

'5 If a person is registered as a parent, but not as the father or mother, of the child, the person's—

- (a) name at the time of the birth; and

[s 88]

- (b) place of birth; and
- (c) age at the time of the birth; and
- (d) occupation at the time of the birth.’.

88 Amendment of sch 2 (Information for certificates)

- (1) Schedule 2, part 1, items 5 to 10—
renumber as items 6 to 11.
- (2) Schedule 2, part 1—
insert—
‘5 If a person is registered as a parent, but not as the father or mother, of the child, the person’s—
 - (a) name at the time of the birth; and
 - (b) place of birth; and
 - (c) age at the time of the birth; and
 - (d) occupation at the time of the birth.’.
- (3) Schedule 2, part 4, items 7 to 17—
renumber as items 8 to 18.
- (4) Schedule 2, part 4, items 5 and 6—
omit, insert—
‘7 For a parent, other than the father or mother, of the deceased—
 - (a) the parent’s name; and
 - (b) the parent’s occupation.’.

Part 5 Amendment of the Criminal Code

89 Act amended

This part and schedule 1 amend the Criminal Code.

90 Amendment of s 222 (Incest)

Section 222—

insert—

‘(7A) Also, if a parentage order is made under the *Surrogacy Act 2010*, a reference in this section to an offspring or other lineal descendant, or a sibling or a parent includes a relationship of that type that—

- (a) existed before the making of the order; or
- (b) came into existence as a result of the making of the order regardless of whether the order has been discharged.’.

91 Amendment of s 363 (Child-stealing)

(1) Section 363(2)—

omit.

(2) Section 363(3)—

renumber as section 363(2).

(3) Section 363—

insert—

‘(3) In this section—

corresponding parentage order means an order under a law of another State that provides for a parentage order similar to a parentage order under the *Surrogacy Act 2010*.

[s 92]

parent includes—

- (a) for a child who has been legally adopted in Queensland or in another State—a person who has adopted the child; or
- (b) for a child whose parentage has been transferred by a parentage order under the *Surrogacy Act 2010* or a corresponding parentage order—a person who is a parent of the child under the order;

but does not include a natural parent of the child.’.

Part 6 Amendment of Domicile Act 1981

92 Act amended

This part amends the *Domicile Act 1981*.

93 Amendment of s 8 (Domicile of certain children)

- (1) Section 8(4) to (6)—
 renumber as section 8(6) to (8)—
- (2) Section 8—
 insert—
 ‘(4) Subsection (5) applies if a child’s parentage has been transferred by—
 - (a) a parentage order under the *Surrogacy Act 2010*; or
 - (b) an order of another Australian jurisdiction (also a *parentage order*) that corresponds to a parentage order made under the *Surrogacy Act 2010*.
- ‘(5) From the time the parentage order is made, the child’s domicile is—

- (a) if, on the making of the parentage order, the child has 2 parents—the domicile the child would have if the child were a child born in wedlock to those parents; and
 - (b) if, on the making of the parentage order, the child has 1 parent only—the domicile of that parent or, if that parent has died, the domicile that parent had at the time of death.’.
- (3) Section 8(7), as renumbered, ‘(2) or (3)’—
omit, insert—
‘(2), (3) or (5)’.
- (4) Section 8—
insert—
- ‘(9) Subsection (10) applies if a parentage order for a child is discharged by—
- (a) a discharge order under the *Surrogacy Act 2010*; or
 - (b) an order of another Australian jurisdiction (also a ***discharge order***) that corresponds to a discharge order made under the *Surrogacy Act 2010*.
- ‘(10) The child’s domicile is—
- (a) the domicile stated in, or dealt with under, the discharge order; or
 - (b) if there is no provision in the discharge order dealing with the child’s domicile—the domicile the child would have if the transfer of parentage under the parentage order had not taken place.’.

[s 94]

Part 7 Amendment of Evidence Act 1977

94 Act amended

This part amends the *Evidence Act 1977*.

95 Amendment of s 21AC (Definitions for div 4A)

(1) Section 21AC—

insert—

'parentage order relationship means a relationship arising because of—

- (a) a parentage order under the *Surrogacy Act 2010*; or
- (b) an order of another Australian jurisdiction that corresponds to a parentage order made under that Act.'

(2) Section 21AC, definition *prescribed relationship*, paragraph (a), 'or step relationship'—

omit, insert—

`, step or parentage order relationship`.

Part 8 Amendment of Guardianship and Administration Act 2000

96 Act amended

This part and schedule 1 amend the *Guardianship and Administration Act 2000*.

97 Amendment of sch 2 (Types of matters)

Schedule 2, part 2, section 3—

insert—

- ‘(f) entering into, or agreeing to enter into, a surrogacy arrangement under the *Surrogacy Act 2010*;
- (g) consenting to the making or discharge of a parentage order under the *Surrogacy Act 2010*.’.

Part 9 Amendment of Powers of Attorney Act 1998

98 Act amended

This part amends the *Powers of Attorney Act 1998*.

99 Amendment of sch 2 (Types of matters)

Schedule 2, part 2, section 3—

insert—

- ‘(f) entering into, or agreeing to enter into, a surrogacy arrangement under the *Surrogacy Act 2010*;
- (g) consenting to the making or discharge of a parentage order under the *Surrogacy Act 2010*.’.

Part 10 **Amendment of Status of Children Act 1978**

100 Act amended

This part and schedule 1 amend the *Status of Children Act 1978*.

101 Amendment of s 4 (Definitions)

Section 4—

insert—

‘artificial insemination means the insertion of semen into a woman’s reproductive tract otherwise than by sexual intercourse and regardless of whether the insertion is done by the woman or another person.

semen means semen or sperm.

womb includes fallopian tubes.’.

102 Amendment of s 8 (Recognition of paternity)

Section 8(1)(c) and (3), ‘paternity’—

omit, insert—

‘parentage’.

103 Amendment of s 9 (Filing of certain instruments with registrar-general)

Section 9(3), ‘paternity’—

omit, insert—

‘parentage’.

104 Amendment of s 10 (Declaration of paternity)

(1) Section 10, heading, ‘paternity’—

omit, insert—

‘parentage’.

(2) Section 10(1)—

omit, insert—

‘(1) A person who—

(a) alleges that any named person is the parent of her child;
or

(b) alleges that the relationship of parent and child exists
between the person and another named person; or

(c) having a proper interest in the result, wishes to have
determined the question whether the relationship of
parent and child exists between 2 named persons;

may apply to the Supreme Court for a declaration of parentage
and the Supreme Court may, if it is proved to its satisfaction
that the relationship exists, make the declaration whether the
parent or the child or both of them are living or dead.’.

(3) Section 10(2), ‘father’—

omit, insert—

‘parent’.

**105 Amendment of s 18 (Implantation
procedure—Presumption as to status where donor
semen used)**

Section 18(1)—

omit, insert—

‘(1) A reference in this section to a fertilisation procedure is a
reference to the procedure of implanting in the womb of a
woman—

[s 106]

- (a) an embryo derived from an ovum produced by her and fertilised outside her body by semen produced by a man other than her husband; or
- (b) for the purpose of fertilising an ovum inside her body, an ovum produced by her together with semen produced by a man other than her husband.’.

106 Amendment of s 19 (Implantation procedure—Presumption as to status where donor ovum used)

Section 19(1)—

omit, insert—

- ‘(1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—
- (a) an embryo derived from an ovum produced by another woman and fertilised by—
 - (i) semen produced by the husband of the first-mentioned woman; or
 - (ii) semen produced by a man other than the husband of the first-mentioned woman; or
 - (b) for the purpose of fertilising an ovum inside her body, an ovum produced by another woman together with semen produced by the husband of the first-mentioned woman or by a man other than her husband.’.

107 Insertion of new pt 3, div 2, sdiv 2A

Part 3, division 2—

insert—

‘Subdivision 2A Fertilisation procedures—women with female de facto partner’s consent

‘19A Interpretation

‘In this subdivision—

fertilisation procedure means a procedure mentioned in sections 19C to 19E.

‘19B Application of sdiv 2A

‘This subdivision applies if a woman has a female de facto partner and undergoes a fertilisation procedure with the consent of the de facto partner.

Note—

For the meaning of *de facto partner* see the *Acts Interpretation Act 1954*, section 32DA.

‘19C Artificial insemination—Presumption as to status

- ‘(1) A reference in this section to a fertilisation procedure is a reference to the procedure of artificial insemination.
- ‘(2) If semen is used in a fertilisation procedure of the woman, the man who produced the semen has no rights or liabilities relating to a child born as a result of a pregnancy for which the semen has been used.
- ‘(3) The woman’s de facto partner is presumed, for all purposes, to be a parent of any child born as a result of the pregnancy.

‘19D Implantation procedure—Presumption as to status where donor semen used

- ‘(1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—

[s 107]

- (a) an embryo derived from an ovum produced by her and fertilised outside her body by semen produced by a man who is not her husband; or
 - (b) for the purpose of fertilising an ovum inside her body, an ovum produced by the woman together with semen produced by a man other than her husband.
- ‘(2) If the woman has undergone a fertilisation procedure as a result of which she has become pregnant, the man who produced the semen has no rights or liabilities relating to any child born as a result of a pregnancy for which the semen has been used.
- ‘(3) The woman’s de facto partner is presumed, for all purposes, to be a parent of any child born as a result of the pregnancy.

‘19E Implantation procedure—Presumption as to status where donor ovum used

- ‘(1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—
- (a) an embryo derived from an ovum produced by another woman and fertilised by semen produced by a man who is not the husband of the first-mentioned woman; or
 - (b) for the purpose of fertilising an ovum inside her body, an ovum produced by another woman together with semen produced by a man other than the first-mentioned woman’s husband.
- ‘(2) If a woman has undergone a fertilisation procedure as a result of which she has become pregnant—
- (a) the woman is presumed, for all purposes, to have become pregnant as a result of the fertilisation of an ovum produced by her and to be the mother of any child born as a result of the pregnancy; and
 - (b) the other woman who produced the ovum from which the embryo used in the procedure was derived is

presumed, for all purposes, not to be the mother of any child born as a result of the pregnancy.

- ‘(3) The woman’s de facto partner is presumed, for all purposes, to be a parent of the child.
- ‘(4) Also, the man who produced the semen has no rights or liabilities relating to any child born as a result of a pregnancy for which the semen has been used.

‘19F Irrebuttable presumptions

‘A presumption declared to exist under sections 19C to 19E is irrebuttable.

‘19G Presumption without consent

- ‘(1) In any proceedings in relation to the operation of this division a de facto partner’s consent mentioned in section 19B must be presumed unless the contrary is proved.
- ‘(2) The presumption is rebuttable.’.

108 Replacement of s 20 (Application of sdiv 3)

Section 20—

omit, insert—

‘20 Application of sdiv 3

‘This subdivision applies if—

- (a) a married woman undergoes a fertilisation procedure other than with her husband’s consent; or
- (b) a woman who is not married and does not have a de facto partner undergoes a fertilisation procedure; or
- (c) a woman who has a de facto partner undergoes a fertilisation procedure other than with her partner’s consent.’.

[s 109]

109 Amendment of s 22 (Implantation procedure—Presumption as to status where donor semen used)

Section 22(1)—

omit, insert—

- ‘(1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—
- (a) an embryo derived from an ovum produced by her and fertilised outside her body by semen produced by a man who is not her husband; or
 - (b) for the purpose of fertilising an ovum inside her body, an ovum produced by the woman together with semen produced by a man who is not her husband.’.

110 Amendment of s 23 (Implantation procedure—Presumption as to status where donor ovum used)

Section 23(1)—

omit, insert—

- ‘(1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman—
- (a) an embryo derived from an ovum produced by another woman and fertilised by semen produced by a man who is not the husband of the first-mentioned woman; or
 - (b) for the purpose of fertilising an ovum inside her body, an ovum produced by another woman together with semen produced by a man who is not the husband of the first-mentioned woman.’.

111 Insertion of new pt 5, div 3

After section 35—

insert—

‘Division 3 Transitional provisions for Surrogacy Act 2010

‘36 Parentage presumption of children conceived by particular fertilisation procedures occurring before commencement

- ‘(1) This section applies if, before the commencement of this section—
- (a) a woman underwent a fertilisation procedure mentioned in section 18, 19, 22 or 23; and
 - (b) a child was born as a result of the fertilisation procedure.
- ‘(2) The presumptions arising under sections 18, 19, 22 and 23 apply.
- ‘(3) However, the presumptions do not apply so as to affect the vesting in possession or in interest of any property before the commencement of this section.

‘37 Parentage presumption of children conceived by particular fertilisation procedures occurring before commencement for women with female de facto partner

- ‘(1) This section applies if, before the commencement of the relevant provision—
- (a) a woman had a female de facto partner and underwent a fertilisation procedure mentioned in sections 19C to 19E; and
 - (b) a child was born as a result of the fertilisation procedure; and
 - (c) the de facto partner consented to the fertilisation procedure.

[s 112]

- ‘(2) Part 3, division 2, subdivision 2A applies as if the relevant provision had commenced immediately before the woman underwent the fertilisation procedure.
- ‘(3) However, the presumptions arising under sections 19C, 19D and 19E do not apply so as to affect the vesting in possession or in interest of any property before the commencement of the relevant provision.
- ‘(4) In this section—
relevant provision means the *Surrogacy Act 2010*, section 107.’.

Chapter 7 Amendments of Acts

112 Acts amended

- (1) Schedule 1 amends the Acts it mentions.
- (2) However, subsection (1) does not apply in relation to a particular Act if another provision of this Act states that the schedule amends the particular Act.

Schedule 1 Minor amendments of Acts

section 112

Births, Deaths and Marriages Registration Act 2003

1 Section 10(2)(b) and (4), ‘section 18C’—

omit, insert—

‘section 26’.

2 Section 48A(3)(a)(vii), after ‘;’—

insert—

‘and’.

3 Section 50(2)(b), ‘if the person’—

omit.

Criminal Code

1 Section 1—

insert—

‘Evidence Act section 93A device statement, for chapter 62, chapter division 3, see section 590AD.

view, for chapter 62, chapter division 3, see section 590AD.’.

- 2 Section 15, ‘Land and Marine Defence Force’—**
omit, insert—
‘Australian Defence Force’.
- 3 Sections 54A(1)(a) to (c), 213(6)(a), 219(6)(a), after ‘;’—**
insert—
‘or’.
- 4 Section 98, definitions *municipal election* and *polling booth*—**
omit.
- 5 Section 228E(5)(a), ‘R 18+ or X’—**
omit, insert—
‘R 18+’.
- 6 Sections 568(10)(a) and (b), 694(a) and (b), ‘or’—**
omit.
- 7 Section 694, ‘either’—**
omit, insert—
‘any’.
- 8 Section 719(3), ‘section 642(2)’—**
omit, insert—
‘section 641(2)’.

Guardianship and Administration Act 2000

- 1 Sections 5(e), 6(a) and (b), 7(d) and 9(2)(a), editor’s note, ‘decision making’—**
omit, insert—
‘decision-making’.
- 2 Section 9(2)(a), editor’s note, ‘decision maker’—**
omit, insert—
‘decision-maker’.
- 3 Sections 8(1)(a), 9(2)(a) and (b)(iv) and (v), 10, 11(1), 14(3) and (5), 56(4) definition *know*, 65(4), 66(3), 66A(1), 67(1), 68(2), 69(2), 72(1) and (3)(a), 79(1)(c), 80A definition *chapter 5A application*, 92(1), 160(1), 177(1) and (4)(b), 182(4), 183(1), 201(1), 215(1), 232(1), 262D(2), ‘*Editor’s note*’—**
omit, insert—
‘*Note*’.
- 4 Schedule 2, sections 2(h), 3, 6, 7(a) and 18(c), ‘*Editor’s note*’—**
omit, insert—
‘*Note*’.

Status of Children Act 1978

- 1 Section 12(8), ‘subsection (6)’—**
omit, insert—
‘subsection (7)’.

Schedule 2 Dictionary

section 3

appropriately qualified, for chapter 3, see section 19.

birth mother see section 8(1).

birth mother's spouse see section 8(2).

birth mother's surrogacy costs see section 11.

birth parent see section 8(3).

child, for chapter 3 (other than part 4), see section 19.

child, for chapter 3, part 4, see section 45.

commencement, for chapter 5, part 2, see section 62.

commercial surrogacy arrangement see section 10.

consent, for chapter 3, see section 19.

couple see section 9(2).

court see section 13.

discharge order see section 12(2).

eligible woman see section 14(2).

independent, for a counsellor, for chapter 3, see section 19.

intended parent see section 9.

interested person for chapter 3, part 4, see section 45.

lawyer means an Australian legal practitioner under the *Legal Profession Act 2007*.

medical or social need for a surrogacy arrangement see section 14(1).

parentage order see section 12(1).

pre-commencement birth mother, for chapter 5, part 2, see section 62.

pre-commencement intended parent, for chapter 5, part 2, see section 62.

pre-commencement surrogacy arrangement, for chapter 5, part 2, see section 62.

surrogacy arrangement see section 7.

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