



# **Surrogacy Act 2010**

**Current as at 23 September 2013**





Queensland

# Surrogacy Act 2010

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# Surrogacy Act 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 and to prohibit commercial surrogacy arrangements**

## 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.





- (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;
  - (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*, schedule 1 to include a de facto partner and a registered partner.
- (3) Also, there may be other matters dealt with in a surrogacy arrangement.

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**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 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;

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- (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.

*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
- (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.



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## 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—
  - (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

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*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.

- (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).

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- (3) Despite subsection (1)(g), a single affidavit satisfying the requirements mentioned in section 30 may be sworn by the following—
- (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

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relevant persons before the surrogacy arrangement was made.

### **32 Surrogacy guidance report**

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 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

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.



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#### **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).
- (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.
- (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.

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- (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;
  - (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.
- (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—

- (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.

[s 58]

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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—
  - (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.

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## **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 rules of court made under the *Childrens Court Act 1992*.

### **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.



- (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.

## 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.

## 1 Index to endnotes

- 2 Date to which amendments incorporated
- 3 Key
- 4 Table of reprints
- 5 List of legislation
- 6 List of annotations
- 7 Forms notified or published in the gazette

## 2 Date to which amendments incorporated

This is the reprint date mentioned in the **Reprints Act 1992**, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 23 September 2013. Future amendments of the *Surrogacy Act 2010* may be made in accordance with this reprint under the **Reprints Act 1992**, section 49.

## 3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amd	= amendment	prov	= provision
t			
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated



<b>Key</b>	<b>Explanation</b>	<b>Key</b>	<b>Explanation</b>
<b>hdg</b>	= heading	<b>renu</b>	= renumbered
		<b>m</b>	
<b>ins</b>	= inserted	<b>rep</b>	= repealed
<b>lap</b>	= lapsed	<b>(retro</b>	= retrospectively
		<b>)</b>	
<b>notf</b>	= notified	<b>rv</b>	= revised version
<b>d</b>			
<b>num</b>	= numbered	<b>s</b>	= section
<b>o in</b>	= order in council	<b>sch</b>	= schedule
<b>c</b>			
<b>om</b>	= omitted	<b>sdiv</b>	= subdivision
<b>orig</b>	= original	<b>SIA</b>	= Statutory Instruments Act 1992
<b>p</b>	= page	<b>SIR</b>	= Statutory Instruments Regulation 2012
<b>para</b>	= paragraph	<b>SL</b>	= subordinate legislation
<b>prec</b>	= preceding	<b>sub</b>	= substituted
<b>pres</b>	= present	<b>unnu</b>	= unnumbered
		<b>m</b>	
<b>prev</b>	= previous		

## 4 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by

contacting the Office of the Queensland Parliamentary Counsel by telephone on 3237 0466 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

<b>Reprint No.</b>	<b>Amendments included</b>	<b>Effective</b>	<b>Notes</b>
1	2010 Act No. 2	1 June 2010	
1A	2011 Act No. 46	23 February 2012	
1B	2012 Act No. 12	27 June 2012	
1C	2012 Act No. 17	14 August 2012	

<b>Current as at</b>	<b>Amendments included</b>	<b>Notes</b>
23 September 2013	2013 Act No. 39	

## 5 List of legislation

### **Surrogacy Act 2010 No. 2**

date of assent 16 February 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 2010 (2010 SL No. 86)

amending legislation—

### **Surrogacy Act 2010 No. 2 ss 1–2, ch 6 pt 1**

date of assent 16 February 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 2010 (2010 SL No. 86)

### **Civil Partnerships Act 2011 No. 46 ss 1–2, pt 6 div 22**

date of assent 6 December 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 23 February 2012 (2012 SL No. 15)

### **Civil Partnerships and Other Legislation Amendment Act 2012 No. 12 ss 1, 59(3) sch pt 3**

date of assent 27 June 2012

commenced on date of assent

**Penalties and Sentences and Other Legislation Amendment Act 2012 No. 17 ss 1, 51 sch**

date of assent 14 August 2012

commenced on date of assent

**Treasury and Trade and Other Legislation Amendment Act 2013 No. 39 ss 1, 110(1) sch 3 pt 1**

date of assent 23 September 2013

commenced on date of assent

**6 List of annotations****Long title** amd 2010 No. 2 s 65**Meaning of surrogacy arrangement**

s 7 amd 2011 No. 46 s 91; 2012 No. 12 s 59 sch pt 3; 2013 No. 39 s 110(1) sch 3 pt 1

**Court rules**

s 59 amd 2012 No. 17 s 51 sch

**CHAPTER 6—AMENDMENTS**

ch hdg om R1 (see RA s 7(1)(k))

**PART 1—AMENDMENT OF THIS ACT**

pt 1 (ss 64–65) om R1 (see RA ss 7(1)(k) and 37)

**PART 2—AMENDMENT OF ADOPTION ACT**

pt 2 (ss 66–67) om R1 (see RA ss 7(1)(k) and 40)

**PART 3—AMENDMENT OF BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT 2003**

pt 3 (ss 68–82) om R1 (see RA ss 7(1)(k) and 40)

**PART 4—AMENDMENT OF BIRTHS, DEATHS AND MARRIAGES REGISTRATION REGULATION 2003**

pt 4 (ss 83–88) om R1 (see RA ss 7(1)(k) and 40)

**PART 5—AMENDMENT OF THE CRIMINAL CODE**

pt 5 (ss 89–91) om R1 (see RA ss 7(1)(k) and 40)

**PART 6—AMENDMENT OF DOMICILE ACT 1981**

pt 6 (ss 92–93) om R1 (see RA ss 7(1)(k) and 40)

**PART 7—AMENDMENT OF EVIDENCE ACT 1977**

pt 7 (ss 94–95) om R1 (see RA ss 7(1)(k) and 40)

**PART 8—AMENDMENT OF GUARDIANSHIP AND ADMINISTRATION ACT 2000**

pt 8 (ss 96–97) om R1 (see RA ss 7(1)(k) and 40)

**PART 9—AMENDMENT OF POWERS OF ATTORNEY ACT 1998**

pt 9 (ss 98–99) om R1 (see RA ss 7(1)(k) and 40)

**PART 10—AMENDMENT OF STATUS OF CHILDREN ACT 1978**

**pt 10 (ss 100–111)** om R1 (see RA ss 7(1)(k) and 40)

**CHAPTER 7—AMENDMENTS OF ACTS**

**ch 7 (s 112)** om R1 (see RA ss 7(1)(k) and 40)

**SCHEDULE 1—MINOR AMENDMENTS OF ACTS**

om R1 (see RA s 40)

## **7 Forms notified or published in the gazette**

Lists of forms are no longer included in reprints. Now see the separate forms document published on the website of the Office of the Queensland Parliamentary Counsel at <[www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)> under Information—Current annotations. This document is updated weekly and the most recent changes are marked with a change bar.

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