

South Australia

## **Family Relationships Act 1975**

An Act to abolish the legal consequences of illegitimacy under the law of this State; to invest courts of this State with power to make judgments declaratory of certain relationships; and for other purposes.

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Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Family Relationships Act 1975*.

### **4—Crown to be bound by this Act**

This Act binds the Crown.

### **5—Interpretation**

In this Act, unless the contrary intention appears—

*child born outside marriage* includes a child born to a married woman of which a man other than her lawful spouse is the father;

*Court* means the Supreme Court, the District Court or the Magistrates Court;

*father* or *natural father*, of a child, includes a person who is presumed to be the father of the child under Part 2A;

*instrument* means any instrument that creates, modifies or extinguishes legal or equitable rights, powers or liabilities.

## **Part 2—Children**

### **6—All children of equal status**

- (1) Subject to this Act, the relationship of parent and child exists, for the purposes of the law of this State, between a person and his natural father or mother, and other relationships of consanguinity or affinity shall be traced accordingly.
- (2) Subject to subsection (3) of this section, where an instrument contains an expression denoting a relationship of consanguinity or affinity, that expression shall be construed in accordance with the provisions of subsection (1) of this section, unless the contrary intention appears either expressly or by implication from the terms of the instrument, or from circumstances that can be properly taken into account in construing the instrument.
- (3) An instrument executed before the commencement of this Act shall be construed as if this Act had not been passed.
- (4) Whenever it is relevant under the law of this State to determine the relationship between persons, the provisions of this Part are, so far as they may be relevant, applicable—
  - (a) whether or not any of those persons is, or has ever been, domiciled in this State; and

- (b) whether or not any of those persons was born, or died, before the commencement of this Act.

### **7—Recognition of paternity**

A person shall be recognised as the father of a child born outside marriage only if—

- (a) he is recognised as father of the child by reason of legitimation of the child, or under the law relating to the adoption of children; or
- (b) he has acknowledged in proceedings for registration of the birth of the child (either in this State or in some other place) that he is the father of the child; or
- (c) he has been, during his lifetime, adjudged by a court of competent jurisdiction (either of this State, or of some other place) to be the father of the child; or
- (d) he has been adjudged under this Act to be the father of the child.

### **8—Presumption as to parenthood**

Subject to Part 2A, a child born to a woman during her marriage, or within ten months after the marriage has been dissolved by death or otherwise, shall, in the absence of proof to the contrary, be presumed to be the child of its mother and her husband or former husband (as the case may be).

### **9—Declaration of paternity**

- (1) Where—
  - (a) a female person alleges that a particular person is the father of her child; or
  - (b) a person alleges that the relationship of father and child exists between himself and a particular person; or
  - (c) a person whose pecuniary interests, or whose rights or obligations at law or in equity, are affected according to whether the relationship of father and child exists between two persons desires the court to determine whether the relationship of father and child exists between those persons,

that person may apply to the Court for a declaration of paternity, and if it is proved to the satisfaction of the Court that the relationship exists, the Court may make a declaration of paternity.

- (2) A declaration may be made under this section whether or not one or both of the persons in relation to whom the declaration is sought are dead.
- (3) The Court should not proceed to make a declaration under this section unless it is satisfied, as far as reasonably practicable, that all living persons whose interests are affected by the declaration have had the opportunity to make representations to the Court in relation to the subject matter of the proceedings.
- (4) Where a person claims that the relationship of father and child exists between two persons, and one or both of those persons are dead at the time of the proceedings, a declaration shall not be made under this section unless the claim is supported by credible corroborative evidence.

## 10—Saving provision

This Part does not affect—

- (a) the rules under which the domicile of a child is determined; or
- (b) the consequences at law or in equity of the adoption of a child made or recognised under the law of this State; or
- (c) any proceedings under the *Community Welfare Act 1972*, in which the paternity of a child is in issue.

## Part 2A—Children conceived following fertilisation procedures

### 10A—Interpretation

- (1) In this Part—

*fertilisation procedure* means—

- (a) assisted insemination (within the meaning of the *Assisted Reproductive Treatment Act 1988*); or
- (b) assisted reproductive treatment (within the meaning of the *Assisted Reproductive Treatment Act 1988*).

*married woman* or *wife* includes a woman who is living with a man as his wife on a genuine domestic basis; and *husband* has a correlative meaning.

- (2) A reference in this Part to the *husband* of a woman shall, where the woman has a lawful spouse but is living with some other man as his wife on a genuine domestic basis, be construed as a reference to the man with whom she is living and not the lawful spouse.

### 10B—Application of Part

- (1) Subject to this section, this Part applies—
  - (a) in respect of a fertilisation procedure carried out before or after the commencement of the *Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009* either within or outside the State; and
  - (b) in respect of a child born before or after commencement of the *Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009* either within or outside the State.
- (3) Nothing in this Part affects the vesting of property in possession or in interest before the commencement of the *Family Relationships Act Amendment Act 1984*.

### 10C—Rule relating to maternity

A woman who gives birth to a child is, for the purposes of the law of the State, the mother of the child, notwithstanding that the child was conceived by the fertilisation of an ovum taken from some other woman.

### **10D—Rule relating to paternity**

- (1) Where a married woman undergoes, with the consent of her husband, a fertilisation procedure in consequence of which she becomes pregnant, then, for the purposes of the law of the State, the husband—
  - (a) shall be conclusively presumed to have caused the pregnancy; and
  - (b) is the father of any child born as a result of the pregnancy.
- (2) In every case in which it is necessary to determine whether a husband consented to his wife undergoing a fertilisation procedure, that consent shall be presumed, but the presumption is rebuttable.
- (3) Subject to this Act, if a woman undergoes, in accordance with this or any other Act, a fertilisation procedure in consequence of which she becomes pregnant using the semen of a man—
  - (a) who has died; and
  - (b) who, immediately before his death, was living with the woman on a genuine domestic basis as her husband; and
  - (c) who had consented to the use of the semen for the purposes of the fertilisation procedure,the man—
  - (d) will be conclusively presumed to have caused the pregnancy; and
  - (e) will be taken to be the father of any child born as a result of the pregnancy.

### **10E—Donor of genetic material**

- (1) Where—
  - (a) a woman becomes pregnant in consequence of a fertilisation procedure; and
  - (b) the ovum used for the purposes of the procedure was taken from some other woman,then, for the purposes of the law of the State, the woman from whom the ovum was taken is not the mother of any child born as a result of the pregnancy.
- (2) Where—
  - (a) a woman becomes pregnant in consequence of a fertilisation procedure; and
  - (b) a man, (not being the woman's husband) produced sperm used for the purposes of the procedure,then, for the purposes of the law of the State, the man referred to in paragraph (b)—
  - (c) shall be conclusively presumed not to have caused the pregnancy; and
  - (d) is not the father of any child born as a result of the pregnancy.

### **10EA—Court order relating to paternity**

- (1) This section applies to a child if—
  - (a) the child is domiciled in this State; and

- (b) the child was conceived as a result of a fertilisation procedure carried out in this State; and
- (c) 1 or more of the following applies:
  - (i) the paternity of the child is not able to be determined by the operation of section 10D;
  - (ii) the operation of section 10E(2) does not reflect the wishes of both the provider of the sperm used for the purposes of the fertility procedure (the *sperm provider*) and the mother of the child;
  - (iii) the fertility procedure was carried out in any other circumstances brought within the ambit of this paragraph by the regulations.
- (2) The Court may, in relation to a child to which this section applies and on the application of the sperm provider in respect of the child, make an order under this section.
- (3) However, the Court must not make an order under this section unless satisfied that both the mother and the sperm provider freely, and with a full understanding of what is involved, agree to the making of the order.
- (4) The Court must, in deciding whether to make an order under this section, regard the welfare of the child as the paramount consideration.
- (5) In deciding whether to make an order under this section, the Court may take into account anything it considers relevant.
- (6) If the Court makes an order under this section, the effect of the order will be as follows:
  - (a) for the purposes of the law of the State—
    - (i) will be conclusively presumed to have caused the pregnancy; and
    - (ii) will be taken to be the father of any child born as a result of the pregnancy;
  - (b) the relationships of all other persons to the child will be determined according to the operation and effect of paragraph (a).
- (7) If the Court makes an order under this section, the Court may make any other ancillary order the Court thinks fit.
- (8) In this section—

*Court* means the *Youth Court of South Australia* constituted of a Judge.

## **Part 2B—Surrogacy**

### **10F—Interpretation**

In this Part—

*procuration contract* means a contract under which—

- (a) a person agrees to negotiate, arrange, or obtain the benefit of, a surrogacy contract on behalf of another; or
- (b) a person agrees to introduce prospective parties to a surrogacy contract;

**surrogacy contract** means a contract under which—

- (a) a person agrees—
  - (i) to become pregnant or to seek to become pregnant; and
  - (ii) to surrender custody of, or rights in relation to, a child born as a result of the pregnancy; or
- (b) a person who is already pregnant agrees to surrender custody of, or rights in relation to, a child born as a result of the pregnancy;

**valuable consideration**, in relation to a contract, means consideration consisting of money or any other kind of property that has a monetary value.

### **10G—Illegality of surrogacy and procurement contracts**

- (1) A surrogacy contract is illegal and void.
- (2) A procurement contract is illegal and void.
- (3) A person who gives any valuable consideration under, or in respect of, a procurement contract may recover the amount or value of that consideration, as a debt, from the person to whom the consideration was given.

### **10H—Offences**

A person who—

- (a) receives valuable consideration under a procurement contract, or enters into such a contract in the expectation of receiving valuable consideration; or
- (b) induces another to enter into a surrogacy contract, having received or in the expectation of receiving valuable consideration from a third person who seeks the benefit of that contract; or
- (c) publishes an advertisement or causes an advertisement to be published to the effect—
  - (i) that a person is or may be willing to enter into a surrogacy contract; or
  - (ii) that a person is seeking a person willing to enter into a surrogacy contract; or
  - (iii) that a person is willing to negotiate, arrange or obtain the benefit of a surrogacy contract on behalf of another,

is guilty of an offence.

Maximum penalty: \$4 000 or imprisonment for 12 months.

### **10I—Interaction with other laws**

This Part does not affect the operation of any law relating to the guardianship or adoption of children.

## Part 3—Domestic partners

### 11—Interpretation

In this Part—

*close personal relationship* means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

- (a) the relationship between a legally married couple; or
- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind.

**Note—**

Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

### 11A—Domestic partners

A person is, on a certain date, the *domestic partner* of another person if he or she is, on that date, living with that person in a close personal relationship and—

- (a) he or she—
  - (i) has so lived with that other person continuously for the period of 3 years immediately preceding that date; or
  - (ii) has during the period of 4 years immediately preceding that date so lived with that other person for periods aggregating not less than 3 years; or
- (b) a child, of whom he or she and the other person are the parents, has been born (whether or not the child is still living at that date).

### 11B—Declaration as to domestic partners

(1) A person whose rights or obligations depend on whether—

- (a) he or she and another person; or
- (b) 2 other persons,

were, on a certain date, domestic partners 1 of the other may apply to the Court for a declaration under this section.

(2) If, on an application, the Court is satisfied that—

- (a) the persons in relation to whom the declaration is sought were, on the date in question, domestic partners within the meaning of section 11A; or
- (b) in any other case—
  - (i) the persons in relation to whom the declaration is sought were, on the date in question, living together in a close personal relationship; and
  - (ii) the interests of justice require that such a declaration be made,

the Court must declare that the persons were, on the date in question, domestic partners 1 of the other.

- (3) When considering whether to make a declaration under this section, the Court must take into account all of the circumstances of the relationship between the persons in relation to whom the declaration is sought, including any 1 or more of the following matters as may be relevant in a particular case:
  - (a) the duration of the relationship;
  - (b) the nature and extent of common residence;
  - (c) the degree of financial dependence and interdependence, or arrangements for financial support;
  - (d) the ownership, use and acquisition of property;
  - (e) the degree of mutual commitment to a shared life;
  - (f) any domestic partnership agreement made under the *Domestic Partners Property Act 1996*;
  - (g) the care and support of children;
  - (h) the performance of household duties;
  - (i) the reputation and public aspects of the relationship.
- (4) A declaration may be made—
  - (a) whether or not 1 or both of the persons in relation to whom the declaration is sought are, or ever have been, domiciled in this State; or
  - (b) despite the fact that 1 or both of them are dead.
- (5) It must not be inferred from the fact that the Court has declared that 2 persons were domestic partners 1 of the other, on a certain date, that they were domestic partners as at any prior or subsequent date.
- (6) For the purpose of determining whether a person was, on a certain date, the domestic partner of another, circumstances occurring before or after the commencement of this Part may be taken into account.

## **Part 4—Miscellaneous**

### **12—Protection of administrators etc**

- (1) Where a person has an interest in property by reason of a relationship recognised under the law of this State by virtue of this Act—
  - (a) no action shall lie against an administrator or trustee of the property by virtue of any distribution of, or dealing with, the property made without actual notice of the relationship; and
  - (b) where any person has taken a beneficial interest in the property, his interest shall be undisturbed unless he took the interest with prior actual notice of the relationship.

- (2) Where a person claims an interest in property by reason of a relationship that would be recognised under the law of this State if it were adjudged, in pursuance of the provisions of this Act, to exist, or to have existed, an administrator or trustee of the property may by notice in writing require that person to take proceedings under this Act seeking the appropriate declaration, and if that person fails to commence such proceedings within three months after being served personally or by post with that notice, then—
- (a) no action shall lie against the administrator or trustee of the property by reason of any distribution of, or dealing with, the property made on the assumption that the relationship does not exist; and
  - (b) where any person has taken a beneficial interest in the property, his interest shall be undisturbed.

### 13—Confidentiality of proceedings

- (1) **Protected information** is information relating to an application under this Act (including images) that identifies, or may lead to the identification of—
- (a) an applicant; or
  - (b) a person who is related to, or associated with, an applicant or is, or is alleged to be, in any other way connected in the matter to which the application relates; or
  - (c) a witness in the hearing of the application.
- (2) A person who publishes protected information is guilty of an offence.  
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (3) A person who discloses protected information knowing that, in consequence of the disclosure, the information will, or is likely to, be published is guilty of an offence.  
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (4) This section does not apply to—
- (a) the publication or disclosure of material—
    - (i) by the Court or an employee of the Courts Administration Authority (so long as such publication or disclosure is made in connection with the administrative functions of the Court); or
    - (ii) for purposes associated with the administration of this Act or another Act relevant to the application; or
  - (b) the publication in printed or electronic form of material that—
    - (i) consists solely or primarily of the reported judgments or decisions of the Court; or
    - (ii) is of a technical nature designed primarily for use by legal practitioners.
- (5) In this section—  
**newspaper** means a newspaper, journal, magazine or other publication that is published at periodic intervals;

*publish* means publish by newspaper, radio or television, or on the internet, or by some other similar means of communication to the public.

**14—Claim under this Act may be brought in the course of other proceedings**

- (1) Where—
- (a) a person desires to institute proceedings in the Court; and
  - (b) it is necessary for the purposes of those proceedings to establish under this Act that a certain relationship exists,

he may commence the proceedings in the usual way, but he must endorse on the process by which the proceedings are instituted a statement to the effect that he seeks a declaration under this Act of a specified relationship.

- (2) In any such proceedings, there shall be, unless the Court otherwise determines, a separate trial of any issues arising under this Act.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1975	115	<i>Family Relationships Act 1975</i>	4.12.1975	29.1.1976 ( <i>Gazette</i> 29.1.1976 p356)
1984	102	<i>Family Relationships Act Amendment Act 1984</i>	20.12.1984	14.2.1985 ( <i>Gazette</i> 14.2.1985 p366)
1986	66	<i>Family Relationships Act Amendment Act 1986</i>	13.11.1986	13.11.1986
1988	2	<i>Family Relationships Act Amendment Act 1988</i>	3.3.1988	7.4.1988 ( <i>Gazette</i> 7.4.1988 p856)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 2 (ss 4—7)—1.6.2007 ( <i>Gazette</i> 26.4.2007 p1352)
<b>2009</b>	<b>43</b>	<b><i>Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009</i></b>	<b>1.10.2009</b>	<b>Sch 1 (Pt 1)—1.9.2010 (<i>Gazette</i> 1.7.2010 p3338)</b>
2009	64	<i>Statutes Amendment (Surrogacy) Act 2009 as amended by 8/2010</i>	26.11.2009	Pt 2 (ss 4—14) & Sch 1—26.11.2010: s 2
2010	8	<i>Statutes Amendment (Surrogacy) Amendment Act 2010</i>	8.7.2010	26.11.2010 immediately after 64/2009: s 2

### Provisions amended since 3 February 1976

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3	<i>amended by 102/1984 s 3</i>	14.2.1985
	<i>deleted by 2/1988 s 3</i>	7.4.1988
s 5		

child born outside marriage	substituted by 102/1984 s 4(a)	14.2.1985
<i>the Court</i>	<i>deleted by 43/2006 s 4</i>	<i>1.6.2007</i>
Court	inserted by 43/2006 s 4	1.6.2007
father	inserted by 102/1984 s 4(b)	14.2.1985
Pt 2		
s 8	amended by 102/1984 s 5	14.2.1985
s 10	amended by 64/2009 s 4	26.11.2010—not incorporated
Pt 2A	inserted by 102/1984 s 6	14.2.1985
<b>heading</b>	<b>amended by 43/2009 Sch 1 cl 1</b>	<b>1.9.2010</b>
s 10A		
s 10A(1)		
fertilisation procedure	substituted by 2/1988 s 4	7.4.1988
	<b>substituted by 43/2009 Sch 1 cl 2</b>	<b>1.9.2010</b>
s 10B		
<b>s 10B(1)</b>	<b>substituted by 43/2009 Sch 1 cl 3</b>	<b>1.9.2010</b>
<i>s 10B(2)</i>	<i>amended by 66/1986 s 2</i>	<i>13.11.1986</i>
	<i>deleted by 2/1988 s 5</i>	<i>7.4.1988</i>
s 10B(4)	inserted by 64/2009 s 5	26.11.2010—not incorporated
<b>s 10D</b>		
<b>s 10D(3)</b>	<b>inserted by 43/2009 Sch 1 cl 4</b>	<b>1.9.2010</b>
<b>s 10EA</b>	<b>inserted by 43/2009 Sch 1 cl 5</b>	<b>1.9.2010</b>
Pt 2B	inserted by 2/1988 s 6	7.4.1988
Pt 2B Div 1		
heading	inserted by 64/2009 s 6	26.11.2010—not incorporated
s 10F		
recognised surrogacy agreement	inserted by 64/2009 s 7	26.11.2010—not incorporated
Pt 2B Div 2		
heading	inserted by 64/2009 s 8	26.11.2010—not incorporated
s 10G		
s 10G(4)	inserted by 64/2009 s 9	26.11.2010—not incorporated
Pt 2B Div 3	inserted by 64/2009 s 10	26.11.2010—not incorporated
Pt 2B Div 4		
heading	inserted by 64/2009 s 11	26.11.2010—not incorporated
<i>Pt 3 before substitution by 43/2006</i>		
<i>s 11</i>		
<i>s 11(1)</i>	<i>amended by 102/1984 s 7</i>	<i>14.2.1985</i>
Pt 3	substituted by 43/2006 s 5	1.6.2007
Pt 4		
s 13	substituted by 43/2006 s 6	1.6.2007

## Family Relationships Act 1975—1.9.2010 to 25.11.2010

### Legislative history

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s 13(4)	amended by 64/2009 s 12(1)—(3)	26.11.2010—not incorporated
s 14		
s 14(1)	amended by 64/2009 s 13(1)	26.11.2010—not incorporated
s 14(2)	amended by 64/2009 s 13(2)	26.11.2010—not incorporated
s 15	inserted by 64/2009 s 14	26.11.2010—not incorporated

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Domestic Partners) Act 2006*

#### 7—Transitional provision

If, before the commencement of this section, a declaration has been made under Part 3 of the *Family Relationships Act 1975* that a person was, on a certain date, the putative spouse of another, the declaration will, if the case requires, be taken to be that the person was, on that date, the domestic partner of the other.

## Historical versions

Reprint No 1—1.7.1991

1.6.2007