

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; or
- (d) the consequences at law or in equity of an order under Part 2B Division 3 of this Act.

## 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*.
- (4) Nothing in this Part prevents a person becoming the mother or father of a child by virtue of the operation of any other law of the State (including by virtue of an order under Part 2B Division 3).

### **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

### Division 1—Interpretation

#### 10F—Interpretation

In this Part—

*procurator 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;

*recognised surrogacy agreement*—see section 10HA;

*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.

### Division 2—Certain contracts and activities relating to surrogacy illegal

#### 10G—Illegality of surrogacy and procurator contracts

- (1) A surrogacy contract is illegal and void.
- (2) A procurator 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.
- (4) This section does not apply in relation to a recognised surrogacy agreement.

### 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.

## Division 3—Lawful surrogacy under recognised agreements

### Subdivision 1—Recognised surrogacy agreements

#### 10HA—Recognised surrogacy agreements

- (1) In this section, unless the contrary intention appears—

*fertilisation procedure* has the same meaning as in Part 2A;

*human reproductive material* means—

- (a) human semen; or
- (b) a human ovum;

*husband* has the same meaning as under Part 2A;

*lawyer* means a person who is admitted as a barrister and solicitor of the Supreme Court and holds a current practising certificate;

*lawyer's certificate* means a certificate signed by a lawyer, and endorsed on an agreement, certifying that—

- (a) the lawyer explained the legal implications of the agreement to a party to the agreement named in the certificate; and
- (b) the party signed the agreement in the lawyer's presence;



*married woman* has the same meaning as under Part 2A;

*medical practitioner* means a legally qualified medical practitioner;

*Minister* means the Minister for Families and Communities;

*prescribed relative* means a mother, sister, step-sister or first-cousin.

- (2) A *recognised surrogacy agreement* is an agreement—
- (a) under which a woman (the *surrogate mother*) agrees—
    - (i) to become pregnant or to seek to become pregnant; and
    - (ii) to surrender custody of, and rights in relation to, a child born as a result of the pregnancy to 2 other persons (the *commissioning parents*); and
  - (b) in relation to which the following conditions are satisfied:
    - (i) the parties to the agreement are—
      - (A) the surrogate mother and, if she is a married woman, her husband; and
      - (B) the commissioning parents,  
and no other person;
    - (ii) all parties to the agreement are at least 18 years old;
    - (iii) the commissioning parents—
      - (A) are legally married; or
      - (B) have cohabited continuously together as *de facto* husband and wife
        - for the period of 3 years immediately preceding the date of the agreement; or
        - for periods aggregating not less than 3 years during the period of 4 years immediately preceding the date of the agreement;
    - (iv) the commissioning parents are domiciled in this State;
    - (v) either—
      - (A) the female commissioning parent is, or appears to be, infertile; or
      - (B) there appears to be a risk that a serious genetic defect, serious disease or serious illness would be transmitted to a child born to the female commissioning parent;
    - (vi) the surrogate mother has been assessed by and approved as a surrogate by a counselling service—
      - (A) that is accredited for the purposes of this subparagraph in accordance with the regulations; and
      - (B) in accordance with any relevant guidelines published by the National Health and Medical Research Council; and

- (C) in accordance with any other requirement that may be prescribed by the regulations for the purposes of this subparagraph;
  - (vii) the surrogate mother and both commissioning parents each have a certificate issued by a counselling service that complies with the requirements of subsection (3) (being, as between the surrogate mother on the one hand and the commissioning parents on the other hand, different counselling services);
  - (viii) the agreement states that the parties intend—
    - (A) that the pregnancy is to be achieved by the use of a fertilisation procedure carried out in this State; and
    - (B) that at least 1 of the commissioning parents will provide human reproductive material with respect to creating an embryo for the purposes of the pregnancy, unless the commissioning parents have a certificate issued under subsection (5);
  - (ix) the agreement states that no valuable consideration is payable under, or in respect of, the agreement, other than for expenses connected with—
    - (A) a pregnancy (including any attempt to become pregnant) that is the subject of the agreement; or
    - (B) the birth or care of a child born as a result of that pregnancy; or
    - (C) counselling or medical services provided in connection with the agreement (including after the birth of a child); or
    - (D) legal services provided in connection with the agreement (including after the birth of a child); or
    - (E) any other matter prescribed by the regulations for the purposes of this provision;
  - (x) the agreement states that the parties intend that the commissioning parents will apply for an order under section 10HB after the child is born.
- (3) For the purposes of subsection (2)(b)(vii), a certificate complies with the requirements of this subsection if—
- (a) the certificate is issued by a counselling service that is accredited for the purposes of this subsection in accordance with the regulations; and
  - (b) the certificate states—
    - (i) that the person to whom it relates has received counselling—
      - (A) individually; and
      - (B) if the person is married, or is 1 of the commissioning parents—as a couple,

- about personal and psychological issues that may arise in connection with a surrogacy arrangement; and
- (ii) that, in the opinion of the counsellor who undertook the counselling, the proposed recognised surrogacy agreement would not jeopardise the welfare of any child born as a result of the pregnancy that forms the subject of the agreement.
- (4) Without limiting any other kind of counselling that a person may seek, the counselling contemplated by subsections (2)(b)(vii) and (3)(b) must be consistent with—
- (a) any guidelines related to such counselling published by the Australian and New Zealand Infertility Counsellors Association; and
- (b) any relevant guidelines published by the National Health and Medical Research Council.
- (5) For the purposes of subsection (2)(b)(viii)(B), a certificate issued under this subsection—
- (a) must be issued by a medical practitioner; and
- (b) must relate to the persons who are seeking to be commissioning parents under the relevant agreement; and
- (c) must state that, in the opinion of the medical practitioner—
- (i) both prospective commissioning parents appear to be infertile; or
- (ii) there is a medical reason why it would be preferable not to use human reproductive material provided by the prospective commissioning parents to create an embryo for the purposes of achieving a pregnancy.
- (6) In addition, in order for an agreement to be taken to be a recognised surrogacy agreement—
- (a) the relevant terms of the agreement (as envisaged by subsection (1)) must be set out in a written agreement; and
- (b) the written agreement must be signed by each party to the agreement; and
- (c) the signatures of each party must be attested by a lawyer's certificate and the certificate with respect to the surrogate mother (and, if relevant, her husband) must be given by a lawyer who is independent of a lawyer who gives a certificate with respect to either or both of the commissioning parents.
- (7) An agreement or certificate under this section must comply with any other requirement prescribed by the regulations.

## **Subdivision 2—Orders**

### **10HB—Orders as to parents of child born under recognised surrogacy arrangements**

- (1) In this section—
- birth parent*, of a child, means—
- (a) the woman who gave birth to the child; or

(b) a man (if any) who is the father of the child under another Part of this Act (the *birth father*);

*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;

*commissioning parents* means the commissioning parents under a recognised surrogacy agreement;

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

- (2) This section applies to a child if—
- (a) the child was born under the terms of a recognised surrogacy agreement; and
  - (b) the commissioning parents under the surrogacy agreement are domiciled in this State; and
  - (c) the child was conceived as a result of a fertilisation procedure carried out in this State.
- (3) An application may be made to the Court for an order under this section in relation to a child.
- (4) The application may be made by either or both of the commissioning parents.
- (5) The application may only be made when the child is between the ages of 4 weeks and 6 months.
- (6) In deciding an application under this section, the welfare of the child must be regarded as the paramount consideration.
- (7) In addition to being satisfied as to the matters referred to above (including as to the validity of the relevant agreement as a recognised surrogacy agreement), the Court must not make an order under this section unless it is satisfied that the surrogate mother freely, and with a full understanding of what is involved, agrees to the making of the order.
- (8) However, the Court may dispense with the requirement under subsection (7)—
- (a) if satisfied that the surrogate mother is dead or incapacitated; or
  - (b) if satisfied that the applicants cannot contact the surrogate mother after making reasonable inquiries; or
  - (c) in any other circumstances prescribed by the regulations.
- (9) In deciding whether to make an order under this section, the Court must also take into account the following, if relevant:
- (a) whether the child's home is, and was at the time of the application, with both commissioning parents;
  - (b) if only 1 of the commissioning parents has applied for the order, and the other commissioning parent is alive at the time of the application, whether—
    - (i) the other commissioning parent freely, and with a full understanding of what is involved, agrees to the making of an order in favour of the applicant commissioning parent; or

- (ii) the applicant commissioning parent cannot, after making reasonable inquiries, contact the other commissioning parent to obtain his or her agreement under subparagraph (i);
  - (c) whether valuable consideration (other than for expenses of the kind allowed under section 10HA(2)(b)(ix)) has been given or received by either of the commissioning parents, or either of the child's birth parents, for or in consideration of—
    - (i) the making of the order; or
    - (ii) the handing over of the child to the commissioning parents; or
    - (iii) the making of any arrangements with a view to the making of the order;
  - (d) any submission made to the Court by, or on behalf of, the birth father.
- (10) The Court must also decide whether, in the opinion of the Court, the commissioning parents are fit and proper persons to assume the role of parents of the child.
- (11) The Court may take into account anything else it considers relevant.
- (12) The Court may, before deciding whether to make an order under this section, require any party to the proceedings to provide an assessment from a counselling service (obtained at the expense of the commissioning parents) in relation to the matter.
- (13) If the Court makes an order under this section, the effect of the order for the purposes of the laws of the State will be as follows:
- (a) the relationship between the child and the commissioning parent or each commissioning parent (as specified under the terms of the order) is to be treated as being that of child and parent;
  - (b) the relationship between the child and any birth parent is to be treated as not being that of child and parent; and
  - (c) the relationships of all other persons to the child are to be determined according to the operation and effect of paragraphs (a) and (b).
- (14) In the making of an order under this section in relation to a child, the child has as his or her name such name as the Court, on the application of either or both of the commissioning parents, approves in the order.
- (15) Subsection (14) does not prevent a name of a child being later changed in accordance with another law of the State.
- (16) If an order is made under this section, an appointment existing at the time the order is made of a person as the guardian of the child ceases to have effect.
- (17) If a child in relation to whom an application for an order has been made under this section has a living birth sibling—
- (a) the application will be taken to relate to the child and the birth sibling; and
  - (b) the Court may only make an order about the child if it makes a comparable order (in all respects apart from any given name or names) about the birth sibling; and
  - (c) this section will apply to the birth sibling in the same way as it applies to the child.

### 10HC—Ability to discharge an order

- (1) Terms used in this section have meanings consistent with the meanings they have in section 10HB.
- (2) The Court may, if satisfied as described in subsection (3), make an order discharging an order under section 10HB on receiving an application to do so from—
  - (a) the Attorney-General; or
  - (b) the chief executive of the administrative unit principally assisting in the administration of the *Adoption Act 1988*.
- (3) On an application under subsection (2), the Court may make an order discharging an order under section 10HB if it is satisfied that—
  - (a) the original order was obtained by fraud, duress or other improper means; or
  - (b) a consent relied on for the making of the original order was not an effective consent because it was obtained by fraud, duress or material inducement; or
  - (c) there is an exceptional reason why the original order should be discharged.
- (4) In the making of an order under this section in relation to a child, the Court is to declare the name by which the child is to be known, having regard to the principle that the child's first name should not be changed by the order except in exceptional circumstances.
- (5) Subsection (4) does not prevent a name of a child being later changed in accordance with another law of the State.
- (6) The Court is not to make an order under this section unless—
  - (a) to do so would be for the welfare and best interests of the child who would be affected by the order; and
  - (b) the Court is satisfied that reasonable efforts have been made to give notice of the application to—
    - (i) each of the birth parents of the child; and
    - (ii) each of the commissioning parents; and
    - (iii) if the Court considers it appropriate having regard to the child's age, the child.
- (7) Any person may apply for leave to intervene in an application under this section and the Court may make an order entitling the person to intervene in the application.
- (8) A person who is permitted under subsection (7) to intervene in an application under this section is to be treated as a party to the application with all the rights, duties and liabilities of a party, unless the Court orders otherwise.
- (9) If an order is made under this section, the Court may make any consequential or ancillary order it thinks fit in the interests of justice or for the welfare and in the best interests of the child to whom the order relates, including any 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) the domicile of the child.
- (10) If an order is made under this section, the rights, duties and relationships under the law of the State are to be as if the original order had not been made.
- (11) Subsection (10)—
  - (a) does not apply to the extent that its application would be inconsistent with any order made under subsection (9); and
  - (b) does not affect—
    - (i) anything lawfully done; or
    - (ii) the consequences of anything lawfully done; or
    - (iii) any proprietary right or interest that became vested in any person, while the original order was in force.

### **10HD—Court to notify Registrar of Births, Deaths and Marriages**

- (1) The Registrar of the Youth Court of South Australia is to give to the Registrar of Births, Deaths and Marriages written notice of the particulars described in subsection (2) if the Court makes an order under section 10HB or 10HC.
- (2) The particulars of which notice has to be given are—
  - (a) the date of the order; and
  - (b) the full name, address and occupation of each of the birth parents; and
  - (c) the full name, address and occupation of each of the commissioning parents; and
  - (d) the name by which the child to whom the order relates is known before, and is to be known after, the order becomes effective; and
  - (e) details of the date and place of birth of the child; and
  - (f) if relevant, the terms of any consequential or ancillary order made under section 10HC(9); and
  - (g) any particulars prescribed by the regulations; and
  - (h) if available, any other information required by the Registrar of Births, Deaths and Marriages in relation to registration under the *Births, Deaths and Marriages Registration Act 1996* of the birth of the child to whom the order relates.

### **10HE—Access to Court records**

Except as authorised by the Youth Court of South Australia, the records of proceedings for an order under section 10HB or 10HC will not be open to inspection.

### **10HF—Finality of orders**

An order under section 10HB cannot be appealed against, reviewed, called into question, or affected by any court, on any account, except under section 10HC.

### **Subdivision 3—Related matters**

#### **10HG—Power of court to cure irregularities**

- (1) In this section—

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

- (2) If the Court, on application under this section, is satisfied—

- (a) that—

- (i) there has been a failure to comply with a requirement under this Division with respect to any matter associated with an agreement intended to be a recognised surrogacy agreement; or
- (ii) there is a matter arising under this Division that a person cannot reasonably satisfy or achieve; and

- (b) that in the circumstances of the particular case it would be a just and appropriate course of action for the Court to exercise the powers conferred by this section,

the Court may excuse the failure or excuse compliance with the matter by ordering that, subject to such conditions as may be stipulated by the Court, the requirement or the matter (as the case requires) be dispensed with (to the necessary extent).

- (3) An order under subsection (2) may have effect for the purposes of any Act or law that may be connected to the status or operation of recognised surrogacy agreements or to the operation of this Division.

#### **10HH—Ministerial power of delegation**

- (1) The Minister may delegate to a person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Division.

- (2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the ability of the Minister to act in any matter; and
- (d) is revocable at will.

### **Division 4—Interaction with other laws**

#### **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 a 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 a 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 a 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 a court otherwise determines, a separate trial of any issues arising under this Act.

#### **15—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) make provisions of a savings or transitional nature consequent on the amendment of this Act by another Act or the commencement of specified regulations under this Act;
  - (b) incorporate or operate by reference to a specified code or standard as in force at a specified time or as in force from time to time;
  - (c) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;
  - (d) impose a penalty, not exceeding a fine of \$10 000, for contravention of, or non-compliance with, a regulation;
  - (e) fix expiation fees, not exceeding \$315, for alleged offences against the regulations.
- (3) The regulations may—
  - (a) be of general application or limited application;
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply;
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister.
- (4) If a code or standard is referred to or incorporated in the regulations—
  - (a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
  - (b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

## 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 29.1.1976 p356</i> )
1984	102	<i>Family Relationships Act Amendment Act 1984</i>	20.12.1984	14.2.1985 ( <i>Gazette 14.2.1985 p366</i> )
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 7.4.1988 p856</i> )
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 2 (ss 4—7)—1.6.2007 ( <i>Gazette 26.4.2007 p1352</i> )
2009	43	<i>Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009</i>	1.10.2009	Sch 1 (Pt 1)—1.9.2010 ( <i>Gazette 1.7.2010 p3338</i> )
<b>2009</b>	<b>64</b>	<b><i>Statutes Amendment (Surrogacy) Act 2009 as amended by 8/2010</i></b>	<b>26.11.2009</b>	<b>Pt 2 (ss 4—14) &amp; Sch 1—26.11.2010: s 2</b>
<b>2010</b>	<b>8</b>	<b><i>Statutes Amendment (Surrogacy) Amendment Act 2010</i></b>	<b>8.7.2010</b>	<b>26.11.2010 immediately after 64/2009: s 2</b>
2011	22	<i>Family Relationships (Parentage) Amendment Act 2011</i>	23.6.2011	uncommenced

### 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> <i>deleted by 2/1988 s 3</i>	14.2.1985 7.4.1988

**Family Relationships Act 1975—26.11.2010 to 20.7.2011**  
Legislative history

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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>	1.6.2007
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
<b>s 10</b>	<b>amended by 64/2009 s 4</b>	<b>26.11.2010</b>
Pt 2A	inserted by 102/1984 s 6	14.2.1985
heading	amended by 43/2009 Sch 1 cl 1	1.9.2010
s 10A		
s 10A(1)		
fertilisation procedure	substituted by 2/1988 s 4	7.4.1988
	substituted by 43/2009 Sch 1 cl 2	1.9.2010
s 10B		
s 10B(1)	substituted by 43/2009 Sch 1 cl 3	1.9.2010
s 10B(2)	<i>amended by 66/1986 s 2</i>	13.11.1986
	<i>deleted by 2/1988 s 5</i>	7.4.1988
<b>s 10B(4)</b>	<b>inserted by 64/2009 s 5</b>	<b>26.11.2010</b>
s 10D		
s 10D(3)	inserted by 43/2009 Sch 1 cl 4	1.9.2010
s 10EA	inserted by 43/2009 Sch 1 cl 5	1.9.2010
Pt 2B	inserted by 2/1988 s 6	7.4.1988
<b>Pt 2B Div 1</b>		
<b>heading</b>	<b>inserted by 64/2009 s 6</b>	<b>26.11.2010</b>
<b>s 10F</b>		
<b>recognised surrogacy agreement</b>	<b>inserted by 64/2009 s 7</b>	<b>26.11.2010</b>
<b>Pt 2B Div 2</b>		
<b>heading</b>	<b>inserted by 64/2009 s 8</b>	<b>26.11.2010</b>
<b>s 10G</b>		
<b>s 10G(4)</b>	<b>inserted by 64/2009 s 9</b>	<b>26.11.2010</b>
<b>Pt 2B Div 3</b>	<b>inserted by 64/2009 s 10</b>	<b>26.11.2010</b>
<b>Pt 2B Div 4</b>		
<b>heading</b>	<b>inserted by 64/2009 s 11</b>	<b>26.11.2010</b>
<i>Pt 3 before substitution by 43/2006</i>		
s 11		
s 11(1)	amended by 102/1984 s 7	14.2.1985
Pt 3	substituted by 43/2006 s 5	1.6.2007
Pt 4		

s 13	substituted by 43/2006 s 6	1.6.2007
s 13(4)	amended by 64/2009 s 12(1)—(3)	26.11.2010
s 14		
s 14(1)	amended by 64/2009 s 13(1)	26.11.2010
s 14(2)	amended by 64/2009 s 13(2)	26.11.2010
s 15	inserted by 64/2009 s 14	26.11.2010

## 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.

### *Statutes Amendment (Surrogacy) Act 2009, Sch 1—Transitional provisions (as amended by Statutes Amendment (Surrogacy) Amendment Act 2010, s 4)*

#### 1—Existing agreements

- (1) In this clause—

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

*surrogacy contract* means a surrogacy contract as defined by section 10F of the *Family Relationships Act 1975*.

- (2) Subject to this clause, if the Court, on application under this clause, is satisfied that in the circumstances of the particular case it would be an appropriate course of action for the Court to exercise the powers conferred by this clause, the Court may determine that a surrogacy contract entered into before the commencement of this clause should have effect as a recognised surrogacy agreement under section 10HA of the *Family Relationships Act 1975* (as enacted by this Act), despite the operation of Part 2B of that Act.
- (3) An application under this clause—
- (a) must be made by all parties to the surrogacy contract; and
  - (b) must be made within 15 months after the commencement of this clause.
- (4) An application cannot be made under this clause if a child has been born as a result of the relevant pregnancy and the child is more than 10 years old on the day on which the *Statutes Amendment (Surrogacy) Amendment Act 2010* comes into operation.
- (5) An application may be made under this clause, and the Court may make an order under this clause, despite the operation of sections 10G and 10H of the *Family Relationships Act 1975*.
- (6) The Attorney-General may intervene in any proceedings under this clause to make representations or tender evidence (or both).

- (7) If the Court makes an order under this clause—
- (a) the surrogacy contract will be taken to be a recognised surrogacy agreement validly entered into under section 10HA of the *Family Relationships Act 1975*; and
  - (b) a child within the contemplation or operation of the agreement will be taken to be a child born under the terms of a recognised surrogacy agreement; and
  - (c) the person or persons to whom custody or rights were to be surrendered under the surrogacy contract will be taken to be a commissioning parent or commissioning parents under a recognised surrogacy agreement; and
  - (d) the Court may consider and deal with an application under section 10HB of the *Family Relationships Act 1975* (as enacted by this Act) as if it applied to the surrogacy contract (and to the parties to the surrogacy contract) and, if relevant, as if subsections (2)(c) and (5) of that section did not apply; and
  - (e) the Court may make any other related order as it thinks fit.

## **Historical versions**

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