

South Australia

Family Relationships (Parentage) Amendment Act 2011

An Act to amend the *Family Relationships Act 1975*.

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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 (Parentage) Amendment Act 2011*.

2—Commencement

This Act will come into operation—

- (a) on a day to be fixed by proclamation; or
 - (b) 12 months after the day on which it is assented to by the Governor,
- whichever is the sooner.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Family Relationships Act 1975*

4—Amendment of section 5—Interpretation

- (1) Section 5—after the definition of *child born outside marriage* insert:

co-parent, of a child, means a person who is taken to be a co-parent of the child under Part 2A;
- (2) Section 5—after the definition of *Court* insert:

domestic partner—see section 11A;
- (3) Section 5—after its present contents (now to be designated as subsection (1)) insert:
 - (2) A reference in this or any other Act to the mother, father or parent (however described) of a child will, unless the contrary intention appears, be taken to include a reference to a co-parent of the child (regardless of the sex of the co-parent).

5—Amendment of section 7—Recognition of paternity

- (1) Section 7(d)—delete "child." and substitute:

child,
- (2) Section 7—after paragraph (d) insert:

and no other person is, under this Act, taken to be the father or co-parent of the child.

6—Amendment of section 8—Presumption as to parentage

- (1) Section 8—after "husband" wherever occurring insert:

or domestic partner
- (2) Section 8—after its present contents (now to be designated as subsection (1)) insert:
 - (2) For the purposes of this section, a reference to a marriage includes a reference to a qualifying relationship (within the meaning of Part 2A).

7—Amendment of section 9—Declaration of parentage

- (1) Section 9(1)(a)—after "father" insert:

or co-parent
- (2) Section 9(1)(b)—delete "and child exists between himself and a particular person" and substitute:

or co-parent and child exists between that person and another person
- (3) Section 9(1)(c)—after "father" first occurring insert:

or co-parent

- (4) Section 9(1)(c)—delete "the relationship of father and child" and substitute:
such relationship
- (5) Section 9(1)—delete "paternity" first occurring and substitute:
parentage
- (6) Section 9(1)—delete "a declaration of paternity" and substitute:
such a declaration
- (7) Section 9(4)—after "father" insert:
or co-parent

8—Amendment of section 10—Saving provision

Section 10(d)—delete paragraph (d) and substitute:

- (d) the operation of, or the consequences at law or in equity of an order under, Part 2A or 2B of this Act.

9—Amendment of section 10A—Interpretation

- (1) Section 10A(1)—after the definition of *married woman* insert:
qualifying relationship means a marriage-like relationship between 2 people who are domestic partners (whether of the same or opposite sex);
- (2) Section 10A—after subsection (2) insert:
 - (3) For the purposes of this Part, a reference to the domestic partner of a person in respect of a qualifying relationship means the domestic partner comprising part of that qualifying relationship.

10—Amendment of section 10B—Application of Part

Section 10B(4)—delete subsection (4)

11—Substitution of sections 10C, 10D and 10E

Sections 10C, 10D and 10E—delete the sections and substitute:

10C—Rules relating to parentage

- (1) A woman who gives birth to a child is, for the purposes of the law of the State, the mother of the child (whether the child was conceived by the fertilisation of an ovum taken from that woman or another woman).
- (2) If—
 - (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 another woman,then, for the purposes of the law of the State, the woman from whom the ovum was taken will be taken not to be the mother of any child born as a result of the pregnancy.

- (3) If a woman who is legally married or in a qualifying relationship undergoes, with the consent of her husband or domestic partner (as the case requires), a fertilisation procedure in consequence of which she becomes pregnant, then, for the purposes of the law of the State, the husband or domestic partner—
- (a) will be conclusively presumed to have caused the pregnancy; and
 - (b) will be taken to be—
 - (i) in the case of a husband or male domestic partner—the father; or
 - (ii) in any other case—a co-parent, of any child born as a result of the pregnancy.
- (4) If—
- (a) a woman becomes pregnant in consequence of a fertilisation procedure; and
 - (b) a man (not being the woman's husband or, if she is in a qualifying relationship, her domestic partner) produced sperm used for the purposes of the procedure,
- then, for the purposes of the law of the State, the man—
- (c) will be conclusively presumed not to have caused the pregnancy; and
 - (d) will be taken not to be the father of any child born as a result of the pregnancy.
- (5) If a woman becomes pregnant in consequence of a fertilisation procedure using the semen of a man—
- (a) who has died; and
 - (b) who, immediately before his death, was the woman's husband, or was living with the woman in a qualifying relationship; 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.
- (6) For the purposes of this section, a husband or domestic partner will, in the absence of proof to the contrary, be presumed to have consented to a woman undergoing a fertilisation procedure.
- (7) This section applies in relation to a child regardless of when the child was born.

- (8) However, nothing in this section prevents a person becoming the mother, father or co-parent of a child in accordance with another provision of this Act, or any other Act or law.

Example—

An order may be made by the Court under Part 2B Division 3 of this Act.

12—Amendment of section 10EA—Court order relating to paternity

- (1) Section 10EA(1)(c)(i)—delete "section 10D" and substitute:
section 10C
- (2) Section 10EA(1)(c)(ii)—delete "section 10E(2)" and substitute:
section 10C(4)
- (3) Section 10EA(6)(a)—after "State—" insert:
the person specified by the Court

Schedule 1—Transitional provision

1—Immunity

Despite a provision of the *Births, Deaths and Marriages Registration Act 1996*, no liability attaches to a person for a failure to provide to the Registrar particulars of the person who is the father or co-parent of a child in the case where—

- (a) the child was born before the commencement of this clause; and
- (b) the person is only taken to be father or co-parent of the child by virtue of Part 2A of the *Family Relationships Act 1975* (as amended by this Act).