

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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### **Contents**

#### **Part 1—Preliminary**

- 1 Short title
- 4 Crown to be bound by this Act
- 5 Interpretation

#### **Part 2—Children**

- 6 All children of equal status
- 7 Recognition of paternity
- 8 Presumption as to parenthood
- 9 Declaration of paternity
- 10 Saving provision

#### **Part 2A—Children conceived following medical procedures**

- 10A Interpretation
- 10B Application of Part
- 10C Rule relating to maternity
- 10D Rule relating to paternity
- 10E Donor of genetic material

#### **Part 2B—Surrogacy**

- 10F Interpretation
- 10G Illegality of surrogacy and procurement contracts
- 10H Offences
- 10I Interaction with other laws

#### **Part 3—Putative spouses**

- 11 Putative spouses

#### **Part 4—Miscellaneous**

- 12 Protection of administrators etc
- 13 Confidentiality of proceedings under this Act
- 14 Claim under this Act may be brought in the course of other proceedings

#### **Legislative history**

**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;

*the Court* means—

- (a) the Supreme Court; or
- (b) a local court of full jurisdiction;

*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 medical procedures

### 10A—Interpretation

- (1) In this Part—

*fertilisation procedure* means—

- (a) artificial insemination; or
- (b) the procedure of fertilising a human ovum outside the body and transferring the fertilised ovum into the body; or
- (c) the procedure of transferring an unfertilised human ovum into the body for the purpose of fertilisation within the body;

*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 *Family Relationships Act Amendment Act 1984* either within or outside the State; and
- (b) in respect of a child born before or after commencement of the *Family Relationships Act Amendment Act 1984* 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.

### 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.

## Part 2B—Surrogacy

### 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;

*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.

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—Putative spouses**

### **11—Putative spouses**

- (1) A person is, on a certain date, the putative spouse of another if he is, on that date, cohabiting with that person as the husband or wife *de facto* of that other person and—
  - (a) he—
    - (i) has so cohabited with that other person continuously for the period of five years immediately preceding that date; or
    - (ii) has during the period of six years immediately preceding that date so cohabited with that other person for periods aggregating not less than five years; or

- (b) a child, of which he and that other person are the parents, has been born (whether or not the child is still living at the date referred to above).
- (2) A person whose pecuniary interests, or whose rights or obligations at law or in equity, are affected according to whether—
  - (a) he was, on a certain date, the putative spouse of another; or
  - (b) two other persons were, on a certain date, putative spouses one of the other,may apply to the Court for a declaration under this section, and if it is proved to the satisfaction of the Court that the persons in relation to whom the declaration is sought were, on the date in question, putative spouses one of the other, the Court may make a declaration accordingly.
- (3) Subject to the provisions of any other Act, a person shall not be recognised under the law of this State as the putative spouse of another unless a declaration of the relationship has been made under this section.
- (4) 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—
  - (a) are, or have ever been, domiciled in this State; or
  - (b) are dead.
- (5) Where a person claims that two persons were putative spouses, one of the other, 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.
- (6) It shall not be inferred from the fact that the Court has declared that two persons were putative spouses, one of the other, on a certain date, that they were putative spouses as at any prior or subsequent date.
- (7) A declaration may be made under this section whether or not either, or both, of the persons in relation to whom the declaration is sought are, or have ever been, domiciled in this State.

## **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 under this Act**

- (1) Unless the Court otherwise determines, proceedings under this Act shall be held in a room that is not open to the public.
- (2) Any person who publishes by newspaper, radio or television the name of any person by, or in relation to, whom proceedings are taken under this Act unless authorised to do so by the Court shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

### **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.
- 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> )

### 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
father	inserted by 102/1984 s 4(b)	14.2.1985
Pt 2		
s 8	amended by 102/1984 s 5	14.2.1985
Pt 2A	inserted by 102/1984 s 6	14.2.1985
s 10A		
s 10A(1)		
fertilisation procedure	substituted by 2/1988 s 4	7.4.1988
s 10B		
s 10B(2)	<i>amended by 66/1986 s 2</i>	13.11.1986

**Family Relationships Act 1975—7.4.1988 to 31.5.2007**  
Legislative history

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	<i>deleted by 2/1988 s 5</i>	7.4.1988
Pt 2B	inserted by 2/1988 s 6	7.4.1988
Pt 3		
s 11		
s 11(1)	amended by 102/1984 s 7	14.2.1985