

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.

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 parentage
- 9 Declaration of parentage
- 10 Saving provision

Part 2A—Children conceived following fertilisation procedures

- 10A Interpretation
- 10B Application of Part
- 10C Rules relating to parentage
- 10EA Court order relating to paternity

Part 3—Domestic partners

- 11 Interpretation
- 11A Domestic partners
- 11B Declaration as to domestic partners (other than domestic partners in registered relationship)

Part 4—Miscellaneous

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

Schedule 1—Transitional provisions

- 1 Transitional provisions (*Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019*)

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

- (1) 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;

co-parent, of a child, means a person who is taken to be a co-parent of the child under Part 2A;

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

domestic partner—see section 11A;

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.

- (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).

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,

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

8—Presumption as to parentage

- (1) Subject to Part 2A, a child born to a woman during her marriage or qualifying relationship, or within ten months after the marriage or qualifying relationship 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 spouse or partner or former spouse or partner (as the case may be).
- (2) In this section—
qualifying relationship has the same meaning as in Part 2A.

9—Declaration of parentage

- (1) Where—
 - (a) a female person alleges that a particular person is the father or co-parent of her child; or
 - (b) a person alleges that the relationship of father or co-parent and child exists between that person and another 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 or co-parent and child exists between two persons desires the court to determine whether such relationship exists between those persons,that person may apply to the Court for a declaration of parentage, and if it is proved to the satisfaction of the Court that the relationship exists, the Court may make such a declaration.
- (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 or co-parent 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 operation of, or the consequences at law or in equity of an order under, Part 2A 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*).

qualifying relationship means a marriage-like relationship between 2 people who are partners (irrespective of their sex or gender identity), and includes a relationship that is registered under the *Relationships Register Act 2016*.

- (2) A reference in this Part to the ***spouse*** of a woman is, where the woman has a lawful spouse but is living with another person as that person's partner on a genuine domestic basis, to be construed as a reference to the person with whom she is living and not the lawful spouse.
- (3) For the purposes of this Part, a reference to the partner of a person in respect of a qualifying relationship means the partner comprising part of that qualifying relationship.

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—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 spouse or 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 spouse or partner—
 - (a) will be conclusively presumed to have caused the pregnancy; and
 - (b) will be taken to be—
 - (i) in the case of a male spouse or 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 spouse or, if she is in a qualifying relationship, her 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 spouse, 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 woman's spouse, or partner with whom she is in a qualifying relationship, will, in the absence of proof to the contrary, be presumed to have consented to the 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.

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 10C;
 - (ii) the operation of section 10C(4) 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, the person specified by the Court—
 - (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.
- (7a) This section does not apply in relation to a child born as a result of a lawful surrogacy agreement under the *Surrogacy Act 2019* (whether or not an order under section 18 of that Act has been, or could be, made in respect of the parentage of the child).
- (8) In this section—
- Court** means the *Youth Court of South Australia* constituted of the Judge of the Court or a magistrate.

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 sex or gender identity) 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.

registered relationship means a relationship that is registered under the *Relationships Register Act 2016*, and includes a corresponding law registered relationship under that Act.

11A—Domestic partners

A person is, on a certain date, the **domestic partner** of another if—

- (a) the person is, on that date, in a registered relationship with the other; or
- (b) the person is, on that date, living with the other in a close personal relationship and—
 - (i) the person—
 - (A) has so lived with the other continuously for the period of 3 years immediately preceding that date; or
 - (B) has during the period of 4 years immediately preceding that date so lived with the other for periods aggregating not less than 3 years; or

- (ii) a child, of whom the 2 persons are the parents, has been born (whether or not the child is still living at that date).

11B—Declaration as to domestic partners (other than domestic partners in registered relationship)

- (1) Subject to subsection (3), a person whose rights or obligations depend on whether—
 - (a) the person 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.

- (2a) This section does not apply to domestic partners who are in a registered relationship who may provide evidence that they were, on a certain date, in the registered relationship by producing a certificate issued by the Registrar of Births, Deaths and Marriages under section 21 of the *Relationships Register Act 2016*.
- (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*;
 - (fa) any Part VIIIAB financial agreement made under the *Family Law Act 1975* of the Commonwealth;
 - (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.

Schedule 1—Transitional provisions

1—Transitional provisions (*Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019*)

- (1) A reference to a husband in section 10C(3) as in force immediately before the commencement of the amending Act will, during the prescribed period, be taken to have been a reference to a spouse.
- (2) To avoid doubt, a partner of a woman who was taken to be a father or co-parent of a child born as a result of the woman's pregnancy in consequence of a fertilisation procedure under section 10C(3a) as in force immediately before the commencement of the amending Act will continue to be taken to be the father or co-parent (as the case may be) of that child notwithstanding the repeal of section 10C(3a) by the amending Act.
- (3) A female spouse or partner of a surrogate mother may only be a party to a recognised surrogacy agreement for the purposes of section 10HA(2a)(a)(i) as amended by the amending Act if that agreement was entered into after the commencement of this clause.
- (4) In this section—

amending Act means the *Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019*;

prescribed period means the period commencing on the recognition day and ending on the day before the amending Act commenced;

recognition day means the day on which Part 1 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth commenced.

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.

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>)
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
2011	22	<i>Family Relationships (Parentage) Amendment Act 2011</i>	23.6.2011	15.12.2011 (<i>Gazette 15.12.2011 p4987</i>)
2011	27	<i>Statutes Amendment (De Facto Relationships) Act 2011</i>	21.7.2011	Pt 3 (s 5)—21.7.2011: s 2(1)
2012	22	<i>Family Relationships (Surrogacy) Amendment Act 2012</i>	7.6.2012	7.6.2012
2015	15	<i>Family Relationships (Surrogacy) Amendment Act 2015</i>	16.7.2015	Pt 2 (ss 3—9)—16.7.2015
2016	30	<i>Family Relationships (Parentage Presumptions) Amendment Act 2016</i>	23.6.2016	Pt 2 (s 4)—23.9.2016: s 2
2016	32	<i>Statutes Amendment (Youth Court) Act 2016</i>	30.6.2016	Pt 6 (ss 23—25)—1.1.2017 (<i>Gazette 8.12.2016 p4903</i>)
2016	35	<i>Statutes Amendment (Gender Identity and Equity) Act 2016</i>	4.8.2016	Pt 8 (s 33)—8.9.2016 (<i>Gazette 8.9.2016 p3676</i>)

Family Relationships Act 1975—1.9.2020

Legislative history

2017	6	<i>Statutes Amendment (Surrogacy Eligibility) Act 2017</i>	15.3.2017	Pt 4 (ss 9—13)—21.3.2017 (<i>Gazette 21.3.2017 p926</i>)
2017	13	<i>Statutes Amendment (Registered Relationships) Act 2017</i>	26.4.2017	Pt 2 (ss 4—6)—1.8.2017 (<i>Gazette 1.8.2017 p3039</i>)
2019	31	Surrogacy Act 2019	7.11.2019	Sch 1 (cll 8 to 11)—1.9.2020 (<i>Gazette 18.6.2020 p3392</i>)
2019	46	Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019	19.12.2019	Pt 7 (ss 15 to 17 & 19)—1.7.2020 (<i>Gazette 30.4.2020 p838</i>); s 18 immediately before Sch 1 (cl 10) of 31/2019—1.9.2020 (<i>Gazette 18.6.2020 p3392</i>)
2024	8	<i>Assisted Reproductive Treatment (Posthumous Use of Material and Donor Conception Register) Amendment Act 2024</i>	28.3.2024	Sch 1 (cl 5)—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>	14.2.1985
	<i>deleted by 2/1988 s 3</i>	7.4.1988
s 5		
s 5(1)	s 5 redesignated as s 5(1) by 22/2011 s 4(3)	15.12.2011
child born outside marriage	substituted by 102/1984 s 4(a)	14.2.1985
co-parent	inserted by 22/2011 s 4(1)	15.12.2011
<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
domestic partner	inserted by 22/2011 s 4(2)	15.12.2011
father	inserted by 102/1984 s 4(b)	14.2.1985
s 5(2)	inserted by 22/2011 s 4(3)	15.12.2011
Pt 2		
s 7	amended by 22/2011 s 5(1), (2)	15.12.2011
s 8		
s 8(1)	s 8 amended by 102/1984 s 5	14.2.1985
	s 8 amended and redesignated as s 8(1) by 22/2011 s 6(1), (2)	15.12.2011
	amended by 46/2019 s 15(1)—(3)	1.7.2020
s 8(2)	inserted by 22/2011 s 6(2)	15.12.2011
	substituted by 46/2019 s 15(4)	1.7.2020
s 9		

s 9(1)	amended by 22/2011 s 7(1)—(6)	15.12.2011
s 9(4)	amended by 22/2011 s 7(7)	15.12.2011
s 10	amended by 64/2009 s 4	26.11.2010
	amended by 22/2011 s 8	15.12.2011
	amended by 31/2019 Sch 1 cl 8	1.9.2020
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
<i>married woman or wife</i>	<i>deleted by 46/2019 s 16(1)</i>	<i>1.7.2020</i>
qualifying relationship	inserted by 22/2011 s 9(1)	15.12.2011
	amended by 35/2016 s 33	8.9.2016
	substituted by 6/2017 s 9	21.3.2017
	amended by 46/2019 s 16(2)	1.7.2020
s 10A(2)	substituted by 46/2019 s 16(3)	1.7.2020
s 10A(3)	inserted by 22/2011 s 9(2)	15.12.2011
	amended by 46/2019 s 16(4)	1.7.2020
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>	<i>13.11.1986</i>
	<i>deleted by 2/1988 s 5</i>	<i>7.4.1988</i>
s 10B(4)	<i>inserted by 64/2009 s 5</i>	<i>26.11.2010</i>
	<i>deleted by 22/2011 s 10</i>	<i>15.12.2011</i>
s 10C	substituted by 22/2011 s 11	15.12.2011
s 10C(3)	amended by 46/2019 s 17(1), (2)	1.7.2020
s 10C(3a)	<i>inserted by 30/2016 s 4</i>	<i>23.9.2016</i>
	<i>amended by 6/2017 s 10</i>	<i>21.3.2017</i>
	<i>deleted by 46/2019 s 17(3)</i>	<i>1.7.2020</i>
s 10C(4)	amended by 46/2019 s 17(4), (5)	1.7.2020
s 10C(5)	amended by 46/2019 s 17(6)	1.7.2020
s 10C(6)	amended by 46/2019 s 17(7), (8)	1.7.2020
<i>s 10D before deletion by 22/2011</i>		
s 10D(3)	<i>inserted by 43/2009 Sch 1 cl 4</i>	<i>1.9.2010</i>
ss 10D and 10E	<i>deleted by 22/2011 s 11</i>	<i>15.12.2011</i>
s 10EA	inserted by 43/2009 Sch 1 cl 5	1.9.2010
s 10EA(1)	amended by 22/2011 s 12(1), (2)	15.12.2011
s 10EA(6)	amended by 22/2011 s 12(3)	15.12.2011
s 10EA(7a)	inserted by 31/2019 Sch 1 cl 9	1.9.2020

Family Relationships Act 1975—1.9.2020

Legislative history

s 10EA(8)		
Court	amended by 32/2016 s 23	1.1.2017
Pt 2B	<i>inserted by 2/1988 s 6</i>	7.4.1988
	<i>deleted by 31/2019 Sch 1 cl 10</i>	1.9.2020
Pt 2B Div 1		
heading	<i>inserted by 64/2009 s 6</i>	26.11.2010
s 10F		
commissioning parents	<i>inserted by 15/2015 s 3(1)</i>	16.7.2015
prescribed international surrogacy agreement	<i>inserted by 15/2015 s 3(1)</i>	16.7.2015
procuration contract	<i>deleted by 15/2015 s 3(2)</i>	16.7.2015
recognised surrogacy agreement	<i>inserted by 64/2009 s 7</i>	26.11.2010
	<i>substituted by 15/2015 s 3(3)</i>	16.7.2015
registered relationship	<i>inserted by 6/2017 s 11</i>	21.3.2017
State Framework for Altruistic Surrogacy or Framework	<i>inserted by 15/2015 s 3(4)</i>	16.7.2015
surrogacy contract	<i>amended by 15/2015 s 3(5)</i>	16.7.2015
surrogate mother	<i>inserted by 15/2015 s 3(6)</i>	16.7.2015
Pt 2B Div 1A	<i>inserted by 15/2015 s 4</i>	16.7.2015
Pt 2B Div 2		
heading	<i>inserted by 64/2009 s 8</i>	26.11.2010
s 10G		
s 10G(2) and (3)	<i>deleted by 15/2015 s 5</i>	16.7.2015
s 10G(4)	<i>inserted by 64/2009 s 9</i>	26.11.2010
	<i>deleted by 15/2015 s 5</i>	16.7.2015
s 10H	<i>substituted by 15/2015 s 6</i>	16.7.2015
Pt 2B Div 3	<i>inserted by 64/2009 s 10</i>	26.11.2010
s 10HA		
s 10HA(1)		
husband	<i>deleted by 46/2019 s 18(1)</i>	1.9.2020
married woman	<i>deleted by 46/2019 s 18(2)</i>	1.9.2020
Minister	<i>deleted by 46/2019 s 18(3)</i>	1.9.2020
prescribed relative	<i>deleted by 15/2015 s 7(1)</i>	16.7.2015
qualifying relationship	<i>inserted by 46/2019 s 18(3)</i>	1.9.2020
s 10HA(1a)	<i>inserted by 46/2019 s 18(4)</i>	1.9.2020

<i>s 10HA(2)</i>	<i>amended by 22/2012 s 3</i>	7.6.2012
	<i>amended by 15/2015 s 7(2)—(7)</i>	16.7.2015
	<i>substituted by 6/2017 s 12(1)</i>	21.3.2017
<i>s 10HA(2a)</i>	<i>inserted by 6/2017 s 12(1)</i>	21.3.2017
	<i>amended by 46/2019 s 18(5)—(8)</i>	1.9.2020
<i>s 10HA(3)</i>	<i>amended by 15/2015 s 7(8), (9)</i>	16.7.2015
	<i>amended by 6/2017 s 12(2), (3)</i>	21.3.2017
<i>s 10HA(4)</i>	<i>deleted by 15/2015 s 7(10)</i>	16.7.2015
<i>s 10HA(5)</i>	<i>amended by 6/2017 s 12(4)</i>	21.3.2017
<i>s 10HA(6)</i>	<i>amended by 6/2017 s 12(5), (6)</i>	21.3.2017
	<i>amended by 46/2019 s 18(9)</i>	1.9.2020
<i>s 10HAB</i>	<i>inserted by 15/2015 s 8</i>	16.7.2015
<i>s 10HB</i>		
<i>s 10HB(1)</i>		
<i>commissioning parents</i>	<i>deleted by 15/2015 s 9(1)</i>	16.7.2015
<i>Court</i>	<i>amended by 32/2016 s 24</i>	1.1.2017
<i>s 10HB(2)</i>	<i>(c) deleted by 15/2015 s 9(2)</i>	16.7.2015
<i>s 10HB(9)</i>	<i>amended by 15/2015 s 9(3)</i>	16.7.2015
	<i>amended by 6/2017 s 13</i>	21.3.2017
<i>s 10HG(1)</i>		
<i>Court</i>	<i>amended by 32/2016 s 25</i>	1.1.2017
<i>Pt 2B Div 4</i>		
<i>heading</i>	<i>inserted by 64/2009 s 11</i>	26.11.2010
<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>	14.2.1985
<i>Pt 3</i>	<i>substituted by 43/2006 s 5</i>	1.6.2007
<i>s 11</i>		
<i>close personal relationship</i>	<i>amended by 13/2017 s 4(1)</i>	1.8.2017
<i>registered relationship</i>	<i>inserted by 13/2017 s 4(2)</i>	1.8.2017
<i>s 11A</i>	<i>substituted by 13/2017 s 5</i>	1.8.2017
<i>s 11B</i>		
<i>s 11B(1)</i>	<i>amended by 13/2017 s 6(1), (2)</i>	1.8.2017
<i>s 11B(2a)</i>	<i>inserted by 13/2017 s 6(3)</i>	1.8.2017
<i>s 11B(3)</i>	<i>amended by 27/2011 s 5</i>	21.7.2011
<i>Pt 4</i>		
<i>s 13</i>	<i>substituted by 43/2006 s 6</i>	1.6.2007
<i>s 13(4)</i>	<i>amended by 64/2009 s 12(1)—(3)</i>	26.11.2010
<i>s 14</i>		
<i>s 14(1)</i>	<i>amended by 64/2009 s 13(1)</i>	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
Sch 1	inserted by 46/2019 s 19	1.7.2020

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—
- must be made by all parties to the surrogacy contract; and
 - 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—
- 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.

Family Relationships (Parentage) Amendment Act 2011, Sch 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).

Surrogacy Act 2019, Sch 1 Pt 5—Transitional and saving provisions etc

11—Continuation of recognised surrogacy agreements under *Family Relationships Act 1975* as lawful surrogacy agreements

- (1) A recognised surrogacy agreement under Part 2B of the *Family Relationships Act 1975* that was in force immediately before the commencement of this clause—
 - (a) will, on the commencement of clause 10 of this Schedule, be taken to continue in force in accordance with its terms; and
 - (b) will be taken to be a lawful surrogacy agreement under this Act.
- (2) Any counselling, certificate or other matter done under the *Family Relationships Act 1975* in respect of a recognised surrogacy agreement continued under this clause will be taken to have effect as if it were counselling, a certificate or matter done under this Act.
- (3) A reference in any Act or law, or contract or other instrument, to a recognised surrogacy agreement (being a recognised surrogacy agreement continued under this clause) will be taken to be a reference to the agreement as so continued.

Historical versions

Reprint No 1—1.7.1991

1.6.2007

1.9.2010

26.11.2010

21.7.2011

15.12.2011

7.6.2012

16.7.2015

8.9.2016

23.9.2016

1.1.2017

21.3.2017

1.8.2017

1.7.2020