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Surrogacy Act 2012 (No. 34 of 2012)

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Surrogacy Act 2012

An Act to provide for the transfer of parentage of children in relation to whom certain non-commercial surrogacy arrangements are made before their birth, to prohibit commercial surrogacy arrangements and certain associated actions, and for related matters

[Royal Assent 26 October 2012]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the Surrogacy Act 2012.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

PART 2 - Interpretative Provisions

3. Guiding principles

(1) This Act is to be administered according to the principle that the wellbeing and best interests of a child born as a result of a surrogacy arrangement, both through childhood and for the rest of his or her life, are paramount.

(2) Subject to subsection (1), this Act is to be administered according to the following principles:

(a) a child born as a result of a surrogacy arrangement should be cared for in a way that

(i) ensures a safe, stable and nurturing family and home life; and

(ii) promotes openness and honesty about the child's birth parentage; and

(iii) promotes the development of the child's emotional, mental, physical and social wellbeing;

(b) the same status, protection and support should be available to a child born as a result of a surrogacy arrangement regardless of

(i) how the child was conceived under the arrangement; or

(ii) whether there is a genetic relationship between the child and any of the parties to the arrangement; or

(iii) the relationship status of the intended parents of the child;

(c) the long-term health and wellbeing of parties to a surrogacy arrangement and their families should be promoted;

(d) the autonomy of consenting adults in their private lives should be respected.

4. Interpretation

In this Act, unless the contrary intention appears

accredited counsellor means a person accredited under section 47;

birth mother see section 5;

birth mother's spouse see section 6;

birth mother's surrogacy costs see section 9;

birth parent see section 6;

child means a child born, or to be born, as a result of a surrogacy arrangement, and includes, where the context requires, an adult who is born as a result of a surrogacy arrangement;

consent means informed consent freely and voluntarily given by a person with the capacity to give the consent;

corresponding law means a law, of another State or a Territory, that corresponds to this Act and includes a prescribed law of another State or a Territory;

corresponding order means an order that is

(a) a member of a prescribed class of orders; or

(b) in the opinion of the registrar, the equivalent, under a law of another State, a Territory or a foreign country, of a parentage order;

court means the Magistrates Court (Children's Division);

intended parent see section 5;

parentage order means a parentage order made under section 16 or section 22;

register means the Register maintained under section 40 of the Births, Deaths and Marriages Registration Act 1999;

registrar means the Registrar of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act 1999;

relationship status means the status of being, having been, or becoming, any of the following:

(a) a husband or a wife;

(b) a party to a significant relationship within the meaning of section 4 of the Relationships Act 2003;

(c) a sexual partner of another person of either sex;

(d) unmarried, not a party to a significant relationship within the meaning of section 4 of the Relationships Act 2003 or not a sexual partner of another person of either sex;

relevant party, in relation to a child, means

(a) the birth mother of the child; or

(b) the birth mother's spouse, if any; or

(c) the spouse, if any, of the birth mother of the child; or

(d) a birth parent, if any, of the child; or

(e) each of the intended parents of the child;

spouse, in relation to a person, means

(a) the husband or wife of the person; or

(b) if the person is a party to a significant relationship within the meaning of section 4 of the Relationships Act 2003, the other party to that relationship;

surrogacy arrangement see section 5;

surrogacy record means the surrogacy record established under section 32.

5. Meaning of surrogacy arrangement, birth mother and intended parent

(1) In this Act, a surrogacy arrangement is an arrangement for

(a) a female person (the birth mother) to seek to become pregnant and give birth to a child; and

(b) the child to be treated as the child of a person or persons other than the birth mother (the intended parent or intended parents).

(2) The birth mother and the intended parent or intended parents in relation to a child must be parties to a surrogacy arrangement in relation to the child.

(3) There may be other parties to a surrogacy arrangement, for example, a birth mother's spouse.

(4) Also, there may be other matters dealt with in a surrogacy arrangement.

(5) To remove any doubt, it is declared that a surrogacy arrangement

(a) does not include an arrangement made after the birth mother becomes pregnant; but

(b) may include a variation, made after the birth mother becomes

pregnant, of an obligation under the arrangement to pay or reimburse the birth mother's surrogacy costs.

(6) A surrogacy arrangement may be made orally or in writing.

6. Meaning of birth mother's spouse and birth parent

(1) A birth mother's spouse, for a surrogacy arrangement, is a spouse of the birth mother at the time when the birth mother entered into the surrogacy arrangement.

(2) A birth parent, of a child, is a person (other than an intended parent) who is recognised at law as being a parent of the child at the time when the child is born.

7. Meaning of medical or social need

(1) For the purposes of this Act, there is a medical or social need for a surrogacy arrangement if

(a) there is only one intended parent under the surrogacy arrangement and the intended parent is a man or an eligible woman; or

(b) there are 2 intended parents under the surrogacy arrangement and the intended parents are

(i) a man and an eligible woman; or

(ii) two men; or

(iii) two women, each of whom is an eligible woman.

(2) For the purposes of subsection (1), an eligible woman is a woman who

(a) is unable, on medical grounds, to conceive a child; or

(b) is likely to be unable, on medical grounds, to carry a pregnancy or give birth; or

(c) is unlikely to survive a pregnancy or birth or is likely to have her health significantly affected by a pregnancy or birth; or

(d) if she were to conceive a child, is likely to conceive

(i) a child who is likely to be affected by a genetic condition or genetic disorder, the cause of which is attributable to the woman;
or

(ii) a child who is unlikely to survive the pregnancy or birth or whose health is likely to be significantly affected by the pregnancy or birth.

8. Meaning of commercial surrogacy arrangement

A surrogacy arrangement is a commercial surrogacy arrangement if it provides for a person to receive a payment, reward or other material benefit or advantage (other than the reimbursement of the birth mother's surrogacy costs) for the person or another person

(a) agreeing to enter into, or entering into, the surrogacy arrangement; or

(b) giving up a child born as a result of the surrogacy arrangement to be raised by the intended parent or intended parents; or

(c) consenting to the making of a parentage order in relation to a child born as a result of the surrogacy arrangement.

9. Meaning of birth mother's surrogacy costs

(1) In this section

legal cost includes fees for obtaining legal advice and legal representation, court fees, and registry fees associated with registration of a birth and transfer of parentage;

medical cost means a medical cost to the extent that it is not recoverable under Medicare or any health insurance or other scheme.

(2) A birth mother's surrogacy costs are the birth mother's reasonable costs associated with any of the following matters in relation to a surrogacy arrangement to which the birth mother is a party:

(a) becoming, or trying to become, pregnant;

(b) a pregnancy or birth;

(c) the birth mother and the birth mother's spouse, if any, being a party to the surrogacy arrangement or proceedings in relation to the obtaining of a parentage order or a parentage order that has been obtained.

(3) Without limiting subsection (2), the following amounts are a birth mother's surrogacy costs in relation to a surrogacy arrangement to which the birth mother is a party:

(a) a reasonable medical cost, for the birth mother, associated with any of the matters mentioned in subsection (2);

(b) a reasonable cost, including a reasonable medical cost, for a child born as a result of the surrogacy arrangement;

(c) a premium payable for health, disability or life insurance that would not have been obtained by the birth mother if the surrogacy arrangement had not been entered into;

(d) a reasonable cost of counselling associated with any of the matters mentioned in subsection (2), including the cost of counselling, in relation to the surrogacy arrangement, obtained by the birth mother or the birth mother's spouse, if any;

(e) a reasonable legal cost for the birth mother and the birth mother's spouse, if any, relating to the surrogacy arrangement, the obtaining of a parentage order or a parentage order that has been obtained;

(f) the value of the birth mother's actual lost earnings because of leave taken

(i) for a period of not more than 2 months during which a birth happened or was expected to happen; or

(ii) for any other period during or after the pregnancy when the birth mother was unable to work on medical grounds associated with the pregnancy or the end of a pregnancy;

(g) travel and accommodation costs associated with the surrogacy arrangement;

(h) another reasonable cost associated with the surrogacy arrangement,

the obtaining of a parentage order or a parentage order that has been obtained.

PART 3 - Surrogacy Arrangements

10. Enforcement

(1) A surrogacy arrangement is not enforceable.

(2) However, an obligation under a surrogacy arrangement to pay or reimburse the birth mother's surrogacy costs is enforceable if

(a) the birth mother has tried to become pregnant for the purposes of the surrogacy arrangement, but no child is born as a result of the surrogacy arrangement; or

(b) the birth mother has become pregnant for the purposes of the surrogacy arrangement but the pregnancy ceases for a relevant reason; or

(c) a child is born as a result of the surrogacy arrangement, unless

(i) the birth parent or birth parents have not consented to the making of a parentage order in relation to the child; or

(ii) no parentage order is made in relation to the child without the consent of the birth parent or birth parents; or

(d) a child is born as a result of the surrogacy arrangement and any of the following has occurred:

(i) no intended parent has made an application under section 13 in relation to the child within 6 months after the child is born;

(ii) no intended parent has made an application under section 20 in relation to the child within 6 months after the commencement of Division 2 of Part 4;

(iii) all applications made under section 13 or section 20 in relation to the child have been withdrawn;

(iv) no intended parent consents to the making of a parentage order in respect of the child.

(3) For the purposes of subsection (2)(b), a birth mother's pregnancy ceases for a relevant reason only if

(a) the pregnancy has miscarried; or

(b) the pregnancy is terminated because

(i) the birth mother was unlikely to survive the pregnancy or a birth arising from the pregnancy; or

(ii) the health of the birth mother was likely to be significantly affected by the pregnancy or a birth arising from the pregnancy; or

(c) the pregnancy is terminated because

(i) the child was likely to be affected by a genetic condition or genetic disorder; or

(ii) the child was unlikely to survive the pregnancy or its birth; or

(iii) the health of the child was likely to be significantly affected by the pregnancy or birth.

11. Right of birth mother to manage pregnancy

(1) This section applies in relation to a surrogacy arrangement despite anything that the parties to the arrangement may have agreed, whether orally or in writing.

(2) A birth mother has, while pregnant with a child, the same right to make decisions, and to take actions, which decisions or actions

(a) relate to the child or may affect the child; and

(b) determine the circumstances in which she gives birth, or does not give birth, to the child

as does a woman pregnant with a child to which no surrogacy arrangement relates.

PART 4 - Parentage Orders

Division 1 - New surrogacy arrangements

12. Application of this Division

This Division applies only in relation to a surrogacy arrangement made on or after the commencement of this section.

13. Applications for parentage orders

(1) The intended parent, or intended parents, in relation to a child may apply to the court for a parentage order in relation to the child.

(2) An application may only be made under subsection (1) in accordance with sections 14 and 15.

(3) An application under subsection (1) must be

- (a) in the approved form; and
- (b) accompanied by the prescribed fee; and
- (c) lodged with the court.

(4) An intended parent who makes an application under subsection (1) in relation to a child must serve on the birth parent, or birth parents, of the child a copy of the application.

14. Persons who may apply for parentage orders

(1) A person who is, under a surrogacy arrangement, the only intended parent in relation to a child may apply under section 13(1) for a parentage order in relation to the child.

(2) Subsection (1) only applies in relation to a person if, at the time the surrogacy arrangement is made

- (a) the person does not have a spouse; or
- (b) the person is living separately and apart from the person's spouse.

(3) If there are, under a surrogacy arrangement in relation to a child, 2 intended parents who were, at the time the arrangement was made,

and are, at the time of the application, spouses of one another, an application under section 13(1) for a parentage order in relation to the child may only be made by both intended parents jointly.

(4) If there are 2 intended parents under a surrogacy arrangement in relation to a child who were, at the time the arrangement was made, spouses of one another, but who are, at the time of the application, no longer spouses of one another

(a) the application may be made under section 13(1) by both intended parents jointly; or

(b) each of the intended parents may separately apply under section 13(1) for a parentage order naming him or her as becoming a parent in relation to the child.

(5) If there are 2 intended parents under a surrogacy arrangement in relation to a child who were not, at the time the arrangement was made, spouses of one another, neither intended parent may apply under section 13(1) for a parentage order in relation to the child.

(6) An intended parent who makes, in accordance with subsection (4)(b), an application under section 13(1) for a parentage order in relation to a child must ensure that, at least 14 days before the date of the hearing in respect of the application, the other intended parent is served with a copy of the application.

(7) If both intended parents, in accordance with subsection (4)(b), make separate applications under section 13(1) for a parentage order in relation to the child, the court must deal with the applications together.

(8) If there are 2 intended parents under a surrogacy arrangement in relation to a child and one of them has died, the surviving intended parent may apply under section 13(1) for a parentage order in relation to the child.

15. When applications for parentage orders may be made

(1) An application under section 13 for a parentage order in relation to a child

(a) may be made not less than 30 days, and not more than 6 months, after the day on which the child is born; or

(b) may, if the application is to be made by a person on whom a copy of an application is served under section 14(6), be made within 14 days after the copy is so served; or

(c) may be made at a later time, with the court's leave.

(2) The court may only grant leave under subsection (1)(c) for an application to be made under section 13 in relation to a child after 6 months after the day on which the child is born if it considers that

(a) there are exceptional circumstances that justify the making of such an application after that period; and

(b) granting leave is in the best interests of the child.

16. Making of parentage orders

(1) The court may make a parentage order on an application under section 13.

(2) The court may make a parentage order under subsection (1) only if it is satisfied as to all of the following matters:

(a) the surrogacy arrangement

(i) was made after each person who was a relevant party at the time the arrangement was entered into received independent legal advice about the arrangement and its implications and the implications of a parentage order; and

(ii) was not a commercial surrogacy arrangement;

(b) the intended parent or, if there are 2 intended parents, both of the intended parents were 21 years of age or more when the surrogacy arrangement was made;

(c) the birth mother was 25 years of age or more when the surrogacy arrangement was made;

(d) the birth mother has previously given birth to a live child;

(e) the surrogacy arrangement is in writing, contains the names of the birth mother and the intended parent or intended parents, contains

clauses in relation to the prescribed matters, if any, and is signed by each of the parties to the agreement;

(f) each person who, at the time the surrogacy arrangement was made, was a relevant party received

(i) before the arrangement was entered into; and

(ii) after the birth of the child and before the application for a parentage order was made

counselling from an accredited counsellor about the arrangement and its social and psychological implications;

(g) each party to the surrogacy arrangement, at the time the arrangement was entered into, was resident in Tasmania;

(h) there is a medical or social need for the surrogacy arrangement;

(i) if there were 2 intended parents under the surrogacy arrangement and they have not applied jointly for the parentage order, the intended parent who is to be named in the order as becoming a parent of the child has served the other intended parent under section 14(6) with a copy of the application within the period referred to in that subsection;

(j) at the time of the hearing

(i) the child is living with the intended parent, or one of the intended parents, who is to be named in the order as becoming a parent of the child; and

(ii) each intended parent who is to be named in the order as becoming a parent of the child is resident in Tasmania; and

(iii) each person who is a relevant party at the time of the hearing consents to the making of the parentage order;

(k) the proposed order is in the best interests of the child.

(3) Despite subsection (2), the court may make a parentage order even though it is not satisfied

(a) as to a matter mentioned in subsection (2)(a)(i), subsection (2)(c), subsection (2)(d), subsection (2)(e), subsection (2)(f), subsection (2)(g), subsection (2)(h) or subsection (2)(j)(i) or (ii); or

(b) that a birth parent (apart from the birth mother or birth mother's spouse) has consented to the making of the parentage order as required under subsection (2)(j)(iii); or

(c) that, where there were 2 intended parents, both of them have consented to the making of the parentage order as required under subsection (2)(j)(iii)

if the court considers that making the parentage order is in the best interests of the child.

(4) Despite subsection (2), the court may make a parentage order even though the birth mother, or the birth mother's spouse, has not consented, at the time of the hearing, to the making of the order, if

(a) the birth mother or birth mother's spouse

(i) does not have the mental capacity to give consent; or

(ii) has died; or

(iii) cannot be contacted, despite reasonable efforts having been made to do so; and

(b) the child is living with an intended parent who applied for a parentage order in relation to the child; and

(c) the court considers that making the parentage order is in the best interests of the child.

(5) Subject to Division 3, in deciding whether to make the parentage order, the court may have regard to any other matter it considers relevant.

17. Additional requirements if multiple births

(1) In this section

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.

(2) This section applies if a child has a living birth sibling.

(3) Despite any other provision of this Act, the court may make a parentage order under which the child becomes a child of the intended parent or parents named in the order only if

(a) the court also makes a parentage order, about each living birth sibling of the child, under which the birth sibling becomes a child of the intended parent or parents; or

(b) the court considers the order will be in the best interests of the child even if a parentage order about each living birth sibling of the child is not made as mentioned in paragraph (a).

18. Court may request report from independent counsellor

(1) The court may make an order that an independent counsellor, specified in the order, is to provide to the court, within a period, and in a form, specified in the order, a report as to the counsellor's assessment of the matters, specified in the order, in relation to a surrogacy arrangement.

(2) The matters, in relation to a surrogacy arrangement, that may be specified in an order under subsection (1) include, but are not limited to including, the following matters:

(a) the understanding, of the social and psychological implications of the making of a parentage order, of each relevant party to the surrogacy arrangement;

(b) each relevant party's understanding of the principle that openness and honesty about a child's birth parentage is in the best interests of the child;

(c) the care arrangements proposed by the intended parents in relation to the child;

(d) any arrangements proposed for the child to have contact with his or her birth parent or birth parents or a person, other than an intended parent, who has provided some of the child's genetic material;

(e) the capacity of the intended parent or intended parents to care for the child;

(f) whether any consent given by the birth parent or birth parents is informed consent that has been given freely and voluntarily;

(g) the wishes of the child, if the counsellor is of the opinion that the child is of sufficient maturity to express his or her wishes;

(h) any other matters the counsellor thinks fit.

(3) The provisions of any law or rules of court relating to the adducing of opinion evidence apply in relation to a report provided in accordance with an order under subsection (1), unless such a provision is inconsistent with the requirements of this section.

(4) For the purposes of this section, an independent counsellor, in relation to a surrogacy arrangement, is an accredited counsellor who

(a) is not the accredited counsellor who counselled any relevant party in relation to the surrogacy arrangement for the purposes of section 16 (2)(f); or

(b) is not, and is not associated with, a medical practitioner who carried out a procedure that resulted in the conception or birth of the child to which the arrangement relates; or

(c) is not, and is not associated with, a medical practitioner or other person who has been providing health care, or other care, to the person to whom the counselling is to be provided.

Division 2 - Pre-existing surrogacy arrangements

19. Application of this Division

This Division applies only in relation to a surrogacy arrangement made before the commencement of section 12.

20. Applications for parentage orders

(1) The intended parent, or intended parents, in relation to a child may apply to the court for a parentage order in relation to the child.

(2) An application under subsection (1) may only be made in accordance with section 21.

(3) An application under subsection (1) must be

- (a) in the approved form; and
- (b) accompanied by the prescribed fee; and
- (c) lodged with the court.

21. Persons who may apply for parentage orders

(1) A person who is, under a surrogacy arrangement, the only intended parent in relation to a child may apply under section 20(1) for a parentage order in relation to the child.

(2) Subsection (1) only applies in relation to a person if, at the time the surrogacy arrangement is made

- (a) the person does not have a spouse; or
- (b) the person is living separately and apart from the person's spouse.

(3) If there are, under a surrogacy arrangement in relation to a child, 2 intended parents who were, at the time the arrangement was made, and are, at the time of the application, spouses of one another, an application under section 20(1) for a parentage order in relation to the child may only be made by both intended parents jointly.

(4) If there are 2 intended parents under a surrogacy arrangement in relation to a child who, at the time the arrangement was made, were spouses of one another, but who are, at the time of the application, no longer spouses of one another

- (a) the application may be made under section 20(1) by both intended parents jointly; or
- (b) each of the intended parents may separately apply under section 20(1) for a parentage order naming him or her as becoming a parent in relation to the child.

(5) An intended parent who makes, in accordance with subsection (4) (b), an application under section 20(1) for a parentage order in relation to the child must ensure that, at least 14 days before the date of the hearing in respect of the application, the other intended parent is served with a copy of the application.

(6) If there are 2 intended parents under a surrogacy arrangement in relation to a child who were not, at the time the arrangement was made, spouses of one another, neither intended parent may apply under section 20(1) for a parentage order in relation to the child.

(7) A person on whom a copy of an application is served under subsection (5) may make an application under section 20(1) in accordance with subsection (4)(b) within 14 days after the copy is so served or, with the court's leave, at a later time.

(8) If both intended parents, in accordance with subsection (4)(b), make separate applications under section 20(1) for a parentage order in relation to the child, the court must deal with the applications together.

(9) If there are 2 intended parents under a surrogacy arrangement in relation to a child and one of them has died, the surviving intended parent may apply under section 20(1) for a parentage order in relation to the child.

22. Making of parentage orders

(1) The court may make a parentage order on an application under section 20.

(2) The court may make a parentage order under subsection (1) only if it is satisfied as to all of the following matters:

(a) the surrogacy arrangement was not a commercial surrogacy arrangement;

(b) if there were 2 intended parents under the surrogacy arrangement and they have not applied jointly for the order, the intended parent who is to be named in the order as becoming a parent of the child has served the other intended parent under section 21(5) with a copy of the application within the period referred to in that subsection;

(c) at the time of the hearing

(i) the child is being raised by the intended parent, or one of the intended parents, who is to be named in the order as becoming a parent of the child; and

(ii) each intended parent who is to be named in the order as becoming a parent of the child is resident in Tasmania; and

(iii) the child is under 18 years of age; and

(iv) each person who is a relevant party at the time of the hearing consents to the making of the parentage order;

(d) where the court is satisfied that the child is able to adequately form and express the child's opinion as to whether the child wishes to become the child of one or both of the intended parents, the child consents to becoming the child of the intended parent who is to be named in the order as becoming a parent of the child;

(e) the proposed order is in the best interests of the child.

(3) Despite subsection (2), the court may make a parentage order even though it is not satisfied

(a) as to a matter mentioned in subsection (2)(b) or subsection (2)(c) (i), (ii) or (iii); or

(b) that a birth parent (other than the birth mother or the birth mother's spouse) has consented to the making of the parentage order as required under subsection (2)(c)(iv); or

(c) that, where there were 2 intended parents, both of them have consented to the making of the parentage order as required under subsection (2)(c)(iv)

if the court considers that making the parentage order is in the best interests of the child.

(4) Despite subsection (2), the court may make a parentage order in relation to a child even though the birth mother, or the birth mother's spouse, has not consented, at the time of the hearing, to the making of the order, if

(a) the birth mother or birth mother's spouse

(i) does not have the mental capacity to be able to consent; or

(ii) has died; or

(iii) cannot be contacted, despite reasonable efforts having been

made to do so; and

(b) the child is being raised by an intended parent who applied for a parentage order in relation to the child; and

(c) the court considers that making the parentage order is in the best interests of the child.

(5) Subject to Division 3, in deciding whether to make the parentage order, the court may have regard to any other matter it considers relevant.

Division 3 - Matters to be taken into account

23. Method of conception, &c., irrelevant to whether parentage order ought to be made

The manner by which a child was conceived is not to be taken into account in determining whether a parentage order is to be made in relation to the child.

Division 4 - Miscellaneous

24. Other orders

If the court makes a parentage order under section 16 or section 22 it may make any other order (including any orders as to the disposition of property) that it considers is required in order to deal with matters relating to, or arising from, the order or the surrogacy arrangement to which the order relates.

25. Appeal against decision in relation to application for parentage order

(1) A relevant party may, under section 20 of the Magistrates Court (Children's Division) Act 1998, appeal to the Supreme Court against a decision under this Act granting or refusing an application for a parentage order, as if the relevant party were a party to the proceedings under that Act.

(2) An application under this section may only be made by a person within 30 days after the day on which notice of the decision appealed against was received by the person.

26. Effect of parentage orders on legal relationships

(1) On the making of a parentage order in relation to a child

(a) the child becomes a child of the intended parent or parents named in the order as becoming parents of the child and the intended parent or parents named in the order become the parents of the child; and

(b) the child ceases to be a child of a birth parent; and

(c) each birth parent of the child ceases to be a parent of the child.

(2) Other relationships are determined in accordance with subsection (1).

(3) Despite subsection (1), if the relationship between persons is relevant for the purposes of any law relating to a sexual offence

(a) a parentage order in relation to a child, or the discharge of such an order, does not cause the cessation of a relationship that would have existed if the order, or its discharge, as the case may be, had not been made; and

(b) any such relationship is to be taken to exist in addition to any relationship that exists by virtue of the application of that subsection in relation to that order or by virtue of that discharge.

PART 5 - Discharge of Parentage Orders

27. Applications for discharge of parentage orders

(1) In this section

interested person, for an application for discharge of a parentage order, means

(a) the child, if he or she is 18 years of age or more; or

(b) a relevant party in relation to the child; or

(c) the Attorney-General.

(2) An interested person may apply to the court for discharge of a parentage order in relation to a child on the ground that

(a) the parentage order was obtained by fraud, duress or other improper

means; or

(b) a consent that the court making the parentage order considered had been given to the making of the parentage order was, in fact, not given or was given for payment, reward or other material benefit or advantage (other than the birth mother's surrogacy costs); or

(c) there is an exceptional reason why the parentage order should be discharged.

(3) An application under subsection (2) is to be

(a) in the approved form; and

(b) accompanied by the prescribed fee; and

(c) lodged with the court.

28. Orders for discharge of parentage orders

(1) On an application under section 27, the court may make an order discharging a parentage order.

(2) A court may only make an order discharging a parentage order if the court is satisfied of one of the grounds mentioned in section 27(2).

(3) The court may, on an application under section 27, make any other orders it thinks fit.

29. Effect of discharge of parentage order

(1) This section applies except to the extent that the court orders otherwise.

(2) On the making of an order discharging a parentage order, the rights, privileges, duties, liabilities and relationships of the child and all other persons are the same as if the parentage order had not been made.

(3) However, the making of an order discharging a parentage order does not affect

(a) anything lawfully done, or the consequences of anything lawfully done, while the parentage order was in force; or

(b) a right, privilege or liability acquired, accrued or incurred while the parentage order was in force.

30. Appeal against decision granting or refusing discharge of parentage order

(1) Any of the following persons may, under section 20 of the Magistrates Court (Children's Division) Act 1998, appeal to the Supreme Court against a decision under this Act granting, or refusing, an application for discharge of a parentage order, as if the person were a party to the proceedings under that Act:

- (a) the child, if he or she is 18 years of age or more;
- (b) the birth parents;
- (c) the intended parents named in the parentage order as becoming parents of the child;
- (d) the Attorney-General, if he or she made the application;
- (e) another person served with the application.

(2) An application under this section may only be made by a person within 30 days after the day on which notice of the decision appealed against was received by the person.

PART 6 - Registration of Orders

31. Duty of parents not abrogated by Act

Nothing in this Act affects the responsibility of the persons who are parents of a child before a parentage order is made in relation to the child to have the child's birth registered under the Births, Deaths and Marriages Registration Act 1999.

32. Surrogacy record

- (1) The registrar is to establish and maintain a surrogacy record.
- (2) The surrogacy record is to contain the information the registrar is required to enter in the record under this Act.
- (3) The surrogacy record is to be maintained in the form the registrar thinks fit.

33. Copy of parentage orders and orders discharging parentage orders to be sent to registrar

The registrar of the court must, as soon as reasonably practicable after the making of

- (a) a parentage order; or
- (b) an order discharging such an order

cause to be sent to the registrar, within the meaning of this Act, a copy of the order.

34. Record of parentage orders, &c., of child born in Tasmania to be made in birth register

(1) The registrar is to re-register, in accordance with this section, the birth of a child whose birth is registered in Tasmania, if the registrar receives

- (a) a copy of a parentage order, sent to the registrar under section 33, in respect of the child; or
- (b) a memorandum, sent to the registrar under a provision, of a corresponding law, that corresponds to section 37, of the making of a corresponding order in respect of the child; or
- (c) an application under subsection (2) for the re-registration of a child to whom a corresponding order relates.

(2) Any of the following persons may apply to the registrar for the re-registration of a child, to whom a corresponding order relates, whose birth is registered in Tasmania:

- (a) the child;
- (b) a person, referred to in a corresponding order, who was named in the order as becoming a parent of the child.

(3) An application under subsection (2) is to be accompanied by a certified copy of the corresponding order in relation to the child.

(4) For the purposes of this section, the re-registration of the birth of a child is to be made

(a) by the registrar making an entry in the surrogacy record and by endorsing that entry with

(i) a reference to this section; and

(ii) a reference identifying the entry of birth of that person as shown in the register before the parentage order or corresponding order was made; and

(b) by altering the entry of birth and endorsing the entry of the birth of the child as shown in the register with

(i) a reference to this section; and

(ii) a reference identifying the entry, made in relation to the child, in the surrogacy record; and

(c) if there is a previous entry relating to the child in the surrogacy record, by endorsing it with a reference to the entry of the birth of that person as re-registered under this section.

35. Record of parentage orders of persons born outside Tasmania

The registrar, on receiving under section 33 a copy of a parentage order in relation to a child whose birth is not registered in Tasmania, must cause an entry to be made in the surrogacy record.

36. Alteration of records, &c., where parentage orders discharged

(1) In this section

relevant document means

(a) a copy, of an order discharging a parentage order, that is received under section 33; or

(b) information received under section 38 from the Registrar of the Supreme Court about the discharge of a parentage order; or

(c) a memorandum, of an order discharging a corresponding order, sent to the registrar under a provision, of a corresponding law, that corresponds to section 37.

(2) The registrar, on receiving a relevant document in relation to a child whose birth is registered in Tasmania, must

(a) cause the entry made in relation to that person in the surrogacy record to be cancelled; and

(b) cause the endorsement, if any, made under section 34(4)(b) on the entry of the birth of that person in the register to be cancelled and reinstate the original entry of birth as shown on the register before the parentage order or corresponding order was made.

(3) The registrar, on receiving under section 33 a copy of an order discharging a parentage order in relation to a child whose birth is not registered in Tasmania, must cause any entry made in relation to the child in the surrogacy record to be cancelled.

37. Sending of memoranda, &c., of orders to other States, &c.

(1) In this section

corresponding officer means a person in another State or a Territory who has functions in relation to the registration of births that correspond to those of the registrar.

(2) If the registrar

(a) has received under section 33 a copy of a parentage order, or of an order discharging a parentage order, in relation to a child; and

(b) has reason to believe the birth of the child is registered in another State or a Territory

the registrar must cause a memorandum, certified to contain a true copy of the order, to be sent to the corresponding officer of that State or Territory.

38. Registrar of Supreme Court may provide registrar with certain information

The Registrar of the Supreme Court may provide information to the registrar

in relation to the making or discharge of parentage orders.

39. Copies of entries in register or surrogacy record

(1) On application, the registrar must issue, subject to the same terms, conditions and regulations as to the payment of fees and otherwise as are applicable under the Births, Deaths and Marriages Registration Act 1999, an extract from, or certified copy of, an entry in the register or the surrogacy record.

(2) Despite subsection (1), the registrar may only issue, to a child in relation to whom a surrogacy record is made, an extract from, or certified copy of, an entry, in the surrogacy record, in relation to the child if the registrar sights a relevant document in relation to the child.

(3) For the purposes of subsection (2), a relevant document in relation to a child is

(a) if the child is resident in Tasmania, a statutory declaration signed by a person who is an accredited counsellor; or

(b) if the child is not resident in Tasmania, a statutory declaration, or its equivalent in the jurisdiction in which the child is resident, signed by a person who is, in the opinion of the registrar, a suitable person to provide counselling in respect of surrogacy arrangements

stating that the child has received from the person counselling in relation to the surrogacy arrangement in relation to the child.

(4) Subsection (2) does not apply in relation to a child if the registrar is satisfied that the child knows the name of his or her birth parents.

(5) An extract from, or certified copy of an entry in, the register or the surrogacy record is not to contain a reference to any matter referred to in section 34(4)(a).

PART 7 - Offences and Prosecutions

40. Commercial surrogacy arrangements prohibited

A person must not enter into, or offer to enter into, a commercial surrogacy arrangement.

Penalty:

Fine not exceeding 100 penalty units.

41. Commercial brokerage or advertising of surrogacy arrangements prohibited

(1) In this section

payment means

(a) payment in money or money's worth, other than payment of the birth mother's reasonable surrogacy costs; and

(b) for reward or other material benefit or advantage, other than payment of any of the birth mother's reasonable surrogacy costs.

(2) A person must not, for payment, or in anticipation of receiving payment

(a) initiate or take part in any negotiations with a view to the making of a surrogacy arrangement; or

(b) offer or agree to negotiate the making of a surrogacy arrangement; or

(c) compile any information with a view to its use in making, or negotiating the making of, any surrogacy arrangements; or

(d) knowingly cause another person to do any of the acts referred to in paragraph (a), (b) or (c).

Penalty:

Fine not exceeding 100 penalty units.

42. Reporting of applications prohibited

(1) In this section

relevant matter means

(a) a consent given, or dispensed with, under this Act or under a law of another State or a Territory, for a parentage order, a

corresponding order, or the discharge of either such order; or

(b) an application made under this Act, or under a law of another State or a Territory, for a parentage order, a corresponding order, or the discharge of either such order; or

(c) the proceedings on an application referred to in paragraph (b).

(2) A person must not at any time publish, or cause to be published, in relation to a relevant matter

(a) the name of any intended parent; or

(b) the name of a child; or

(c) the name of the birth mother, the birth mother's spouse, a birth parent or a guardian of the child; or

(d) any matter reasonably likely to enable any of those persons to be identified.

(3) In subsection (2), to publish means to publish in a newspaper or periodical, or by means of broadcasting, television, on the internet or public exhibition.

(4) Subsection (2) does not apply in relation to the publishing of matter

(a) with the authority of the court

(i) to which the application for a parentage order, a corresponding order, or the discharge of either such order, is made; or

(ii) to which an application is made under subsection (5); or

(b) that consists of information that has been obtained under Part 6 by the person publishing it.

(5) A person who is a relative of a child may apply to the court for authority to publish matter, in relation to a child, to which subsection (2) applies, if the child is 18 years of age or more.

43. Prosecutions and enforcement of certain surrogacy arrangements

(1) Section 10 applies in relation to a surrogacy arrangement (other than a commercial surrogacy arrangement) made before the commencement of this section even though the arrangement was, under the Surrogacy Contracts Act 1993, illegal and void.

(2) A person is not liable to be prosecuted for an offence against the Surrogacy Contracts Act 1993, other than an offence for which the person could have, under this Act, been found guilty, if this Act had been in force at the relevant time.

PART 8 - Miscellaneous

44. Hearings to be private

(1) An application under this Act must not be heard in open court.

(2) Persons who are not parties to proceedings in relation to an application under this Act, or their legal representatives, are, except as otherwise directed by the court, to be excluded during the hearing of such an application.

(3) A court may, at the hearing of an application under this Act

(a) at any time during the hearing, order a child to leave the room or other place in which the court is hearing the application if it is of the opinion that such an order should be given in the interests of the child; and

(b) order a person to leave the room or other such place during the examination of a witness.

45. Representation of child

(1) In any proceedings before a court under this Act, whether or not the child is represented by a legal practitioner, if the court thinks it is in the best interests of the child to do so, the court may

(a) order that the child is to be separately represented; and

(b) make any other orders it considers necessary or appropriate to secure that separate representation.

(2) In any proceedings before a court under this Act, a legal

practitioner representing a child is to act in the best interests of the child, having regard to any evidence reasonably available to the legal practitioner.

46. Access to court records

(1) In this section

record of proceedings includes

- (a) a written transcript of the proceedings; and
- (b) the documents in the court file for the proceedings; and
- (c) an appeal book in relation to the proceedings.

(2) A person may not have access to the record of proceedings in the court or the Supreme Court in relation to a proceeding under this Act or an appeal under the Magistrates Court (Children's Division) Act 1998 under section 25 or section 30 unless the court or Supreme Court, respectively, has, on application by the person, given approval to the access.

(3) Only the following persons may apply to a court for approval to the access to a record in proceedings referred to in subsection (2) in relation to a child:

- (a) the child;
- (b) a birth parent;
- (c) an intended parent;
- (d) the Attorney-General.

(4) The court may give access to all or part of the record of proceedings.

(5) The court may only give access, to all or part of a record of proceedings, to a child to whom the proceedings relate if the court sights a relevant document in relation to the child.

(6) For the purposes of subsection (5), a relevant document in relation to a child is

(a) if the child is resident in Tasmania, a statutory declaration signed by a person who is an accredited counsellor; or

(b) if the child is not resident in Tasmania, a statutory declaration, or its equivalent in the jurisdiction in which the child is resident, signed by a person who is, in the opinion of the court, a suitable person to provide counselling in respect of surrogacy arrangements

stating that the child has received from the person counselling in relation to the surrogacy arrangement in relation to the child.

(7) Subsection (5) does not apply in relation to a child if the court is satisfied that the child knows the name of his or her birth parents.

47. Accreditation of counsellors

The Secretary of the Department may, by notice in writing, accredit as a counsellor for the purposes of this Act a person who

(a) has a tertiary qualification or its equivalent in social work, psychology, counselling or another relevant field; and

(b) in the opinion of the Secretary, has appropriate experience.

48. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may require any information or document that is required to be provided or given to any person, for the purposes of the regulations, to be verified by statutory declaration.

(3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may

(a) provide that a contravention of any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units.

(5) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by the registrar or any other person or body specified in the regulations.

49. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990

(a) the administration of this Act is assigned to the Minister for Justice; and

(b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

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House of Assembly on 5 APRIL 2011

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