

South Australia

Surrogacy Bill 2018

A BILL FOR

An Act to recognise and regulate certain forms of surrogacy in South Australia, to ensure commercial surrogacy remains unlawful in South Australia, to make related amendments to the *Family Relationships Act 1975* and the *Assisted Reproductive Treatment Act 1988*, and for other purposes.

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The Parliament of South Australia enacts as follows:**Part 1—Preliminary****1—Short title**

This Act may be cited as the *Surrogacy Act 2018*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Simplified outline of Act

- 10 (1) This Act provides a scheme allowing for certain forms of surrogacy in South Australia. However, all other forms of surrogacy remain unlawful, and the Act provides for a number of offences relating to unlawful surrogacy.

(2) In this Act—

- Part 2 sets out principles that are to be applied in relation to the operation of the Act and to lawful surrogacy agreements;
- Part 3 sets out the scheme for surrogacy agreements that are lawful and legally recognised;
- Part 4 provides that all other surrogacy agreements are unlawful in this State;
- Part 5 sets out the role of the Court in relation to lawful surrogacy agreements (and, in particular, the making of parentage orders for children born as a result of such agreements);
- Part 6 contains miscellaneous provisions relating to surrogacy and the operation of the Act, including provisions protecting the privacy of children born as a result of a surrogacy agreement and a power to make regulations under the Act.

4—Interpretation

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

accredited counselling service means a counselling service that is accredited in accordance with the regulations for the purposes of this Act;

birth mother, of a child, means the woman who gave birth to the child;

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;

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

human reproductive material means human semen or a human ovum;

intended parent—see section 8(2)(b);

lawful surrogacy agreement means—

- (a) a surrogacy agreement recognised as a lawful surrogacy agreement under section 8; or
- (b) a surrogacy agreement (however described) entered into in accordance with a prescribed corresponding law of the Commonwealth or another State or Territory;

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

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

- (a) the lawyer explained the legal implications of the agreement to a party to the agreement named in the certificate; and
- (b) the lawyer gave the prescribed information in respect of the lawful surrogacy agreement to the party; and
- (c) the party signed the agreement in the lawyer's presence;

payment means money or any other kind of consideration that has a monetary value;

reasonable surrogacy costs—see section 9;

surrogate mother—see section 8(2)(a);

unlawful surrogacy agreement means an agreement (other than a lawful surrogacy agreement) under which—

- 5 (a) a woman agrees to—
- (i) become pregnant or attempt to become pregnant; and
 - (ii) surrender custody of, or rights in relation to, a child born as a result of the pregnancy to another person or persons; or
- 10 (b) a pregnant woman agrees to surrender custody of, or rights in relation to, a child born as a result of the pregnancy.
- (2) For the purposes of this Act, a reference to a lawful surrogacy agreement includes, unless the context requires otherwise, a reference to a proposed lawful surrogacy agreement.
- (3) For the purposes of this Act, a reference to a surrogate mother under a lawful
- 15 surrogacy agreement includes, unless the context requires otherwise, a reference to a person who is to be the surrogate mother pursuant to the lawful surrogacy agreement.
- (4) For the purposes of this Act, a person will be taken to have *impaired decision-making capacity* in respect of a particular decision if the person is not capable of—
- 20 (a) understanding any information that may be relevant to the decision (including information relating to the consequences of making a particular decision); or
- (b) retaining such information; or
- (c) using such information in the course of making the decision; or
- (d) communicating their decision in any manner,
- however—
- 25 (e) a person will not be taken to be incapable of understanding information merely because the person is not able to understand matters of a technical or trivial nature;
- (f) a person will not be taken to be incapable of retaining information merely because the person can only retain the information for a limited time;
- 30 (g) a person may fluctuate between having impaired decision-making capacity and full decision-making capacity;
- (h) a person's decision-making capacity will not be taken to be impaired merely because a decision made by the person results, or may result, in an adverse outcome for the person.

35 **5—Interaction with other Acts**

Nothing in this Act limits the operation of any law relating to the guardianship, custody, protection or adoption of children.

Part 2—Guiding principles for purposes of Act

6—Best interests of child paramount

- 5 (1) The best interests of any child born, or to be born, as a result of a lawful surrogacy agreement is to be a primary consideration in respect of the administration and operation of this Act.
- (2) To avoid doubt, the requirement under this section applies to the Court.

7—Surrogacy principles

- 10 (1) The following principles (the *surrogacy principles*) apply in relation to the lawful practice of surrogacy in South Australia:
- (a) the human rights of all parties to a lawful surrogacy agreement, including any child born as a result of the agreement, must be respected;
- (b) the surrogate mother under a lawful surrogacy agreement should not be financially disadvantaged as a result of her involvement in the lawful surrogacy agreement.
- 15 (2) The Minister, the Court, and each person or body engaged in the administration of this Act must exercise their powers and perform their functions so as to give effect to the surrogacy principles.
- (3) However, the surrogacy principles do not displace, and cannot be used to justify the displacement of, section 6.

20 Part 3—Lawful surrogacy agreements

Division 1—Lawful surrogacy agreements

8—Certain surrogacy agreements lawful in South Australia

- 25 (1) Subject to this Act, a surrogacy agreement that complies with the requirements under this section, and any regulations made for the purposes of this section, will, for all purposes, be taken to be a *lawful surrogacy agreement* and will have effect according to its terms.
- (2) Subject to this section, the following persons may be parties to a lawful surrogacy agreement:
- 30 (a) a woman (the *surrogate mother*) who is to have a child or children for the purposes of the lawful surrogacy agreement;
- (b) 1 or more persons (an *intended parent*) on whom parentage of the child or children born as a result of the lawful surrogacy agreement will be conferred in accordance with this Act.
- 35 (3) Subject to this Act, each of the following provisions must be satisfied by, or in respect of, the surrogate mother under a lawful surrogacy agreement:
- (a) the surrogate mother must be 25 years of age or older at the time the lawful surrogacy agreement is entered;

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- (b) the surrogate mother must not have impaired decision-making capacity in respect of the decision to enter a lawful surrogacy agreement;
- (c) the surrogate mother must be an Australian citizen or a permanent resident of Australia;
- 5 (d) the surrogate mother must not be pregnant at the time the lawful surrogacy agreement is entered;
- (e) the surrogate mother must not be a prohibited person within the meaning of the *Child Safety (Prohibited Persons) Act 2016* at the time the lawful surrogacy agreement is entered;
- 10 (f) the surrogate mother must—
- (i) be assessed by and approved as a surrogate mother by a counselling service—
 - (i) that is accredited for the purposes of this paragraph in accordance with the regulations; and
 - 15 (ii) in accordance with any relevant guidelines published by the National Health and Medical Research Council; and
 - (iii) in accordance with any other requirement that may be prescribed by the regulations for the purposes of this paragraph; and
 - (ii) be issued with a counselling certificate in the prescribed form by the
- 20 accredited counselling service;
- (g) the surrogate mother must comply with any other requirements set out in the regulations.
- (4) Subject to this Act, each of the following provisions must be satisfied by, or in respect
- 25 of, the intended parents under a lawful surrogacy agreement:
- (a) each intended parent must be 25 years of age or older at the time the lawful surrogacy agreement is entered;
 - (b) an intended parent must not have impaired decision making capacity in respect of the decision to enter a lawful surrogacy agreement;
 - 30 (c) each intended parent must be an Australian citizen or a permanent resident of Australia;
 - (d) at least 1 intended parent must be domiciled in South Australia at the time the lawful surrogacy agreement is entered;
 - (e) an intended parent must not be a prohibited person within the meaning of the
 - 35 *Child Safety (Prohibited Persons) Act 2016* at the time the lawful surrogacy agreement is entered;
 - (f) at least 1 of the following circumstances must exist in relation to the intended parents:
 - (i) at least 1 of the intended parents is a female person who is unlikely
 - 40 to become pregnant, or to be able to carry a pregnancy or give birth (whether because of infertility, other medical reasons, risk to an unborn child or for any other reason); or

- (ii) there is a risk that a serious genetic defect, serious disease or serious illness would be transmitted to a child born to an intended parent; or
- (iii) there is a risk that becoming pregnant or giving birth to a child would result in physical harm to an intended parent (being harm of a kind, or of a severity, unlikely to be suffered by women who become pregnant or give birth generally);
- (iv) it appears to be unlikely in all of the circumstances of the intended parent or parents that an intended parent would become pregnant, or be able to carry a pregnancy or give birth (whether because of gender identity, sexuality or any other reason);
- (g) each intended parent must—
- (i) receive counselling that complies with subsection (6) in relation to the lawful surrogacy agreement from an accredited counselling service; and
- (ii) be issued with a counselling certificate in the prescribed form by the accredited counselling service;
- (h) the intended parents must comply with any other requirements set out in the regulations.
- (5) Subject to this Act, a lawful surrogacy agreement must comply with each of the following provisions:
- (a) the lawful surrogacy agreement must be in writing in a form that complies with any requirements set out in the regulations;
- (b) the lawful surrogacy agreement must be signed by each party to the lawful surrogacy agreement (and each signature must be the subject of a lawyer's certificate);
- (c) the lawful surrogacy agreement must contain provisions setting out how pregnancy is to be achieved by the surrogate mother (being a manner that complies with section 10);
- (d) the lawful surrogacy agreement must contain provisions setting out the arrangements (if any) for the payment of reasonable surrogacy costs;
- (e) the lawful surrogacy agreement must contain provisions identifying the human reproductive material of 1 or both of the intended parents that is to be used in achieving a pregnancy;
- (f) the lawful surrogacy agreement must contain provisions setting out the Court orders under Part 5 that the intended parents will be likely to seek following the birth of a child under the lawful surrogacy agreement (however, nothing in this paragraph prevents the intended parents from seeking orders that differ from those set out in the agreement).
- (g) the lawful surrogacy agreement must comply with any other requirements set out in the regulations.
- (6) For the purposes of this section, the counselling that is provided to a surrogate mother or an intended parent must be consistent with any relevant guidelines published by—
- (i) the Australian and New Zealand Infertility Counsellors Association; and

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(ii) the National Health and Medical Research Council.

(7) Without limiting this section, a lawful surrogacy agreement may contain such other lawful provisions as the parties to the lawful surrogacy agreement think fit.

9—Extent to which surrogacy costs are payable

5 (1) Despite any other Act or law, no payment of any form may be made (whether to a surrogate mother, an intended parent or any other person or body) in relation to a lawful surrogacy agreement except payment of the following kinds (the *reasonable surrogacy costs*)—

10 (a) such reasonable costs as may be incurred, or likely to be incurred, in respect of the lawful surrogacy agreement, being:

(i) costs relating to the pregnancy (including any attempt to become pregnant) that is the subject of the lawful surrogacy agreement;

(ii) costs relating to the birth or a child born as a result of the lawful surrogacy agreement;

15 (iii) costs relating to the postnatal care of a child born as a result of the lawful surrogacy agreement;

(iv) medical, counselling or legal services provided in relation to the lawful surrogacy agreement;

20 (v) reasonable out of pocket expenses incurred by the surrogate mother in relation to the lawful surrogacy agreement;

(vi) any other costs, or costs of a kind, prescribed by the regulations for the purposes of this paragraph; or

(b) any other payment of a kind relating to the lawful surrogacy agreement of a kind prescribed by the regulations.

25 (2) A provision of a lawful surrogacy agreement that is inconsistent with subsection (1) is void and of no effect.

(3) Nothing in this section authorises regulations to be made that allow for commercial surrogacy (however described).

10—Pregnancy to be achieved using assisted reproductive technology

30 (1) For the purposes of this Act, a pregnancy under a lawful surrogacy agreement must be achieved by assisted reproductive treatment provided in accordance with the *Assisted Reproductive Treatment Act 1988*.

(2) For the purposes of this Act, a pregnancy under a lawful surrogacy agreement must be achieved utilising human reproductive material obtained from at least 1 of the
35 intended parents.

(3) Subject to this Act, if a pregnancy under a lawful surrogacy agreement is achieved in contravention of this section, the lawful surrogacy agreement will be taken to be void and of no effect (including, to avoid doubt, any provisions of the lawful surrogacy agreement relating to the payment of reasonable surrogacy costs).

(4) In this section—

assisted reproductive treatment has the same meaning as in the *Assisted Reproductive Treatment Act 1988* and includes, to avoid doubt, assisted insemination (within the meaning of that Act).

5 **11—Variation of lawful surrogacy agreement**

The parties to a lawful surrogacy agreement may, by instrument in writing signed by each party, vary a lawful surrogacy agreement.

12—Extent to which lawful surrogacy agreement can be enforced

- 10 (1) Except as is provided for in this section, a lawful surrogacy agreement, or a provision of a lawful surrogacy agreement, is not enforceable.
- (2) A provision of a lawful surrogacy arrangement relating to the payment or reimbursement of reasonable surrogacy costs (being costs that have, in fact, been incurred) is enforceable in a court of competent jurisdiction.
- (3) However, subsection (2) does not apply where the surrogate mother—
- 15 (a) refuses or fails to relinquish the custody and guardianship of a child born as a result of the lawful surrogacy arrangement to the intended parents; or
- (b) does not consent to the making of an order under section 23.

Division 2—Preservation of certain rights of surrogate mother

13—Rights of surrogate mother to manage pregnancy and birth

- 20 (1) A surrogate mother has the same rights to manage her pregnancy and birth as any other pregnant woman.
- (2) A provision of a lawful surrogacy agreement that is inconsistent with subsection (1), or that purports to require the consent of the intended parents in relation to the management of the surrogate mother's pregnancy, the health of the unborn child to which the lawful surrogacy agreement relates, or the birth of a child to which the lawful surrogacy agreement relates, is void and of no effect.
- 25 (3) This section applies despite any provision of a lawful surrogacy agreement to the contrary.

14—Medical decisions affecting surrogate mother or child

- 30 (1) For the purposes of this Act, the *Consent to Medical Treatment and Palliative Care Act 1995* and any other Act or law, a question relating to any medical treatment to be provided to a surrogate mother, or to an unborn child to which a lawful surrogacy agreement relates, is to be determined as if the lawful surrogacy agreement did not exist.
- 35 (2) Nothing in this section limits the operation of an advance care directive under the *Advance Care Directives Act 2013*.

Division 3—Obligations arising out of pregnancy under lawful surrogacy agreement

15—Intended parents to ensure counselling available to surrogate mother during pregnancy and after birth

- 5 (1) The intended parents under a lawful surrogacy agreement must take reasonable steps to ensure that—
- (a) the surrogate mother under the lawful surrogacy agreement is, in accordance with any requirements in the regulations, offered counselling—
 - 10 (i) during any period in which the surrogate mother is attempting to become pregnant for the purpose of the lawful surrogacy agreement; and
 - (ii) during any pregnancy to which the lawful surrogacy agreement relates; and
 - (b) if the surrogate mother undergoes such counselling—the reasonable costs associated with the counselling are paid by the intended parents.
- 15 (2) If the intended parents under a lawful surrogacy agreement refuse or fail to comply with subsection (1), each intended parent is guilty of an offence.
Maximum penalty: \$5 000.
- 20 (3) The reasonable costs of any counselling contemplated by this section may be recovered against the intended parents as a debt in a court of competent jurisdiction.

Division 4—Registration of birth etc under lawful surrogacy agreement

16—Provision of information etc for purposes of *Births, Deaths and Marriages Registration Act 1996*

- 25 Except as provided for in this section, nothing in this Act affects the requirement of the parents of a child born as a result of a surrogacy agreement to have the child's birth registered under the *Births, Deaths and Marriages Registration Act 1996*.

Part 4—Unlawful surrogacy agreements and related offences

17—Certain surrogacy agreements void and of no effect

- 30 Except as may be provided for in this Act, a surrogacy agreement (however described) is void and of no effect.

18—Offence to enter etc surrogacy agreement other than in accordance with Act

- 35 (1) A person who enters a surrogacy agreement other than in accordance with this Act is guilty of an offence.
Maximum penalty: Imprisonment for 12 months.

- (2) In proceedings for an offence against this section, it is a defence for the defendant to prove that they believed on reasonable grounds that the surrogacy agreement to which the offence relates was a lawful surrogacy agreement.
- (3) In proceedings for an offence against this section, the prosecution need not prove that a woman became pregnant, or a child was or is to be born, pursuant to the surrogacy agreement.

19—Offence to arrange etc surrogacy agreement for another person

- (1) A person who, for valuable consideration—
- (a) negotiates, or arranges or obtains the benefit of, a surrogacy agreement on behalf of another; or
 - (b) offers to negotiate, or arrange or obtain the benefit of a surrogacy agreement on behalf of another; or
 - (c) arranges, or offers to arrange, introductions between people seeking to enter a surrogacy agreement,
- is guilty of an offence.
Maximum penalty: Imprisonment for 12 months.
- (2) Subsection (1) does not apply to—
- (a) the negotiation, or arranging or obtaining the benefit of, a lawful surrogacy agreement by an intended parent on behalf of another intended parent under the lawful surrogacy agreement; or
 - (b) any other act, or act of a kind, prescribed by the regulations.
- (3) In proceedings for an offence against this section, the prosecution need not prove that—
- (a) a surrogacy agreement was, in fact, entered; or
 - (b) a woman became pregnant, or a child was or is to be born, pursuant to the surrogacy agreement.
- (4) To avoid doubt, this section applies whether the surrogacy agreement is a lawful or an unlawful surrogacy agreement.

20—Offence to induce person to enter surrogacy agreement

- (1) A person who, by threat of harm, or by dishonesty or undue influence, induces another to enter a surrogacy agreement is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (2) A person who, for valuable consideration, induces another to enter into a surrogacy agreement is guilty of an offence.
Maximum penalty: Imprisonment for 2 years.
- (3) In proceedings for an offence against this section, the prosecution need not prove that a woman became pregnant, or a child was or is to be born, pursuant to the surrogacy agreement.
- (4) To avoid doubt, this section applies whether the surrogacy agreement is a lawful or an unlawful surrogacy agreement.

Part 5—Court orders relating to lawful surrogacy agreements

21—Court may require separate representation of child

- 5 (1) In proceedings before the Court under this Act relating to a child born, or to be born, as a result of a lawful surrogacy agreement, the Court may, if it thinks it appropriate to do so—
- (a) order that the child is to be separately represented in the proceedings; and
 - (b) make any other orders the Court considers necessary or appropriate to secure that separate representation.
- 10 (2) A legal practitioner representing a child in proceedings under this Act must act in the best interests of the child, having regard to any evidence reasonably available to the legal practitioner.

22—Court may terminate lawful surrogacy agreement

- 15 (1) The Court may, on application under this section, terminate a lawful surrogacy agreement if the Court is satisfied that to do so is in the best interest of a child born, or to be born, as a result of the lawful surrogacy agreement.
- (2) An application under this section may be made by—
- (a) the surrogate mother under the lawful surrogacy agreement; or
 - (b) 1 or both of the intended parents under the lawful surrogacy agreement.

23—Court may make orders as to parentage of child born as a result of lawful surrogacy agreement

- 20 (1) Subject to this section, the Court may, on an application by 1 or both of the intended parents under a lawful surrogacy agreement, make 1 or more of the following orders in relation to a child born as a result of the lawful surrogacy agreement:
- 25 (a) an order declaring—
 - (i) that the relationship between the child and the intended parent or parents is as specified in the order; and
 - (ii) that the relationship between the child and the surrogate mother is as specified in the order; and
 - 30 (iii) that the relationships of all other persons to the child are to be determined according to the operation and effect of the preceding subparagraphs;
 - (b) an order declaring that the name of the child will be as specified in the order;
 - (c) such consequential or ancillary orders as the Court considers appropriate.
- 35 (2) In the case where a child born as a result of the lawful surrogacy agreement has 1 or more birth siblings—
- (a) the application will be taken to relate to the child and each birth sibling; and
 - (b) the Court may only make an order under subsection (1)(a) in relation to the child if it makes a comparable order in relation to each birth sibling.

- (3) The Court may not make an order under subsection (1) unless satisfied that—
- (a) making the order is in the best interests of the child; and
 - (b) the intended parent or parents are fit and proper to assume the role of parent of the child; and
 - 5 (c) subject to this section, the surrogate mother under the lawful surrogacy agreement consents to the making of the order; and
 - (d) subject to this section, each intended parent under the lawful surrogacy agreement consents to the making of the order.
- (4) However, the Court may dispense with the requirement under subsection (3)(c)—
- 10 (a) if satisfied that the surrogate mother is dead or incapacitated; or
 - (b) if satisfied that the applicants cannot contact the surrogate mother after making reasonable inquiries; or
 - (c) in any other circumstances prescribed by the regulations.
- (5) The Court may, in the case where only 1 intended parent has applied for the order, and the other intended parent is alive at the time of the application, make an order under subsection (1) in favour of the applicant intended parent only—
- 15 (a) if the other intended parent consents to the making of an order in favour of the applicant intended parent; or
 - (b) if the applicant intended parent cannot, after making reasonable inquiries, contact the other intended parent to obtain their consent to the making of an order in favour of the applicant intended parent; or
 - 20 (c) in any other circumstances prescribed by the regulations.
- (6) Without limiting subsection (3), the Court may make an order under this section despite the fact that a requirement under Part 3 relating to lawful surrogacy agreements has not been satisfied in the purported lawful surrogacy agreement to which the order relates if the Court is satisfied that—
- 25 (a) the surrogate mother, or the intended parents, (as the case requires) under the lawful surrogacy agreement could not reasonably satisfy the relevant requirement; and
 - 30 (b) it is, having regard to the best interests of the child, appropriate to make the order,
- (and, if the Court makes an order under this section, the purported lawful surrogacy agreement to which the order relates will be taken to be, and always to have been, a lawful surrogacy agreement).
- (7) The Court may, before deciding whether to make an order under this section, require any party to the proceedings to provide an assessment of a specified kind from a counselling service (obtained at the expense of the intended parents) in relation to the matter.
- (8) On the making of an order under subsection (1)(a)—
- 40 (a) the appointment of a person or persons as guardian of the child in force immediately before the order is made will be taken to be revoked; and

(b) any order of the Court under a child protection law placing the child in the custody of a person or persons in force immediately before the order is made will be taken to be revoked; and

(c) any presumptions as to parentage of the child under the *Family Relationships Act 1975* will be taken not to apply in relation to the child.

(9) The orders made under this section have effect for all purposes (including, to avoid doubt, in relation to offences committed under the *Criminal Law Consolidation Act 1935* or any other Act or law).

(10) To avoid doubt, the Court, in proceedings under this section—

(a) is not bound by the rules of evidence but may inform itself as it thinks fit; and

(b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and

(c) may take into account anything it considers relevant.

(11) Nothing in this section prevents the name of a child being later changed in accordance with another law of the State.

24—Court may revoke order under section 23

(1) Subject to this section, the Court may, on an application by—

(a) the Attorney-General; or

(b) the Chief Executive of the administrative unit of the Public Service responsible under a Minister for the administration of the *Adoption Act 1988*,

make an order revoking an order under section 23 (the *original order*) relating to a child, and any comparable order under that section relating to the birth siblings of the child.

(2) The Court must not make an order under this subsection (1) unless satisfied that—

(a) making the order is in the best interest of the child; and

(b) 1 or more of the following circumstances applies in relation to the original order:

(i) the original order was obtained by fraud, duress or other improper means;

(ii) a consent relied on for the making of the original order was not an effective consent because it was obtained by fraud, duress or inducement;

(iii) there are exceptional reasons why the original order should be discharged; and

(c) reasonable efforts have been made to give notice of the application to—

(i) the birth mother of the child; and

(ii) each intended parent under the relevant lawful surrogacy agreement; and

(iii) if the Court considers it appropriate having regard to the child's age, the child.

- (3) If the Court makes an order under subsection (1), the Court must also make the following ancillary orders:
- (a) an order declaring—
 - (i) that the relationship between the child and the birth mother is as specified in the order; and
 - (ii) that the relationship between the child and the intended parents is as specified in the order; and
 - (iii) that the relationships of all other persons to the child are to be determined according to the operation and effect of the preceding subparagraphs;
 - (b) an order declaring that the name of the child will be as specified in the order (having regard to the principle that the child's first name should not be changed by the order except in exceptional circumstances),
- and may make such other consequential or ancillary orders as the Court considers appropriate.
- (4) The Court may, in the case where only 1 intended parent has applied for the order, and the other intended parent is alive at the time of the application, make an order under subsection (1) in favour of the applicant intended parent only—
- (a) if the other intended parent consents to the making of an order in favour of the applicant intended parent; or
 - (b) if the applicant intended parent cannot, after making reasonable inquiries, contact the other intended parent to obtain their consent to the making of an order in favour of the applicant intended parent; or
 - (c) in any other circumstances prescribed by the regulations.
- (5) Any person may apply for leave to intervene in an application under this section and the Court may make an order permitting the person to intervene in the application.
- (6) Except where the Court orders otherwise, a person who is permitted to intervene in an application under this section will be taken to be a party to the application.
- (7) Subject to any orders made under subsection (3), if an original order is revoked under this section, any rights, duties and relationships under the law of the State (including, to avoid doubt, parentage relationships determined under the *Family Relationships Act 1975*) are to be determined as if the original order had not been made.
- (8) Subject to any order made under this section, nothing in this section affects anything lawfully done, or any proprietary right or interest created in a person, while the original order was in force.
- (9) Nothing in this section prevents the name of a child being later changed in accordance with another law of the State.

25—Court to notify Registrar of Births, Deaths and Marriages

The Registrar of the Court must, as soon as is reasonably practicable after the Court makes an order under section 23 or 24 relating to a child, give to the Registrar of Births, Deaths and Marriages written notice of the following matters:

- (a) the date of the order;

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- (b) the full name, address and occupation of the birth mother of the child;
- (c) the full name, address and occupation of each of the intended parents of the child under the relevant lawful surrogacy agreement;
- 5 (d) the name by which the child is known before, and is to be known after, the order becomes effective;
- (e) details of the date and place of birth of the child;
- (f) the terms of any relevant consequential or ancillary orders made;
- 10 (g) if known, such other information as may be reasonably required by the Registrar of Births, Deaths and Marriages for the purposes of registration of the birth of the child to whom the order relates.

26—Access to Court records

Except as may be authorised by the Court, the records of proceedings relating to an order under section 23 or 24 will not be open to inspection.

Part 6—Miscellaneous**27—Limitation of liability**

15 Except as specifically provided in this Act, no civil or criminal liability attaches to the Crown, or a person exercising powers and functions under this Act in respect of an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power, function or duty conferred or imposed by or under this Act.

28—Confidentiality

20 A person must not, directly or indirectly, disclose information obtained in the course of the administration or operation of this Act except—

- (a) for the purposes of the administration or enforcement of this Act; or
- (b) for the purposes of referring the matter to a law enforcement agency; or
- 25 (c) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
- (d) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
- 30 (e) if the disclosure is reasonably necessary for the protection of the lawful interests of that person; or
- (f) as is otherwise required or authorised by or under this or any other Act.

Maximum penalty: \$10 000.

29—Service

35 Except where this Act requires otherwise, a notice or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or

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- (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- 5 (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
- 10 (e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

30—Review of Act

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the review to be prepared and submitted to the Minister.
- 15 (2) The review and the report must be completed after the fifth, but before the sixth, anniversary of the commencement of this Act.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

31—Regulations

- 20 (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 provide for—
- (a) fees in respect of any matter under this Act and their payment, recovery or waiver; and
- (b) fines, not exceeding \$10 000, for offences against the regulations; and
- 25 (c) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
- (a) be of general or limited application; and
- (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
- 30 (c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and
- (d) 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 or any other
- 35 specified person or body; and
- (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.

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- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
- (b) evidence of the contents of the code, standard or other document 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, standard or other document.

Schedule 1—Related amendments and transitional provisions etc

Part 1—Preliminary

1—Amendment provisions

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

Part 2—Amendment of *Assisted Reproductive Treatment Act 1988*

2—Amendment of section 3—Interpretation

Section 3, definition of *recognised surrogacy agreement*—delete the definition and substitute: "Part 2B of the *Family Relationships Act 1975*" and substitute:

the *Surrogacy Act 2018*

Part 3—Amendment of *Family Relationships Act 1975*

3—Repeal of Part 2B

Part 2B—delete Part 2B