



Queensland

# **Family (Surrogacy) Bill 2009**





## Queensland

# Family (Surrogacy) Bill 2009

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# 2009

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## A Bill

for

**An Act about surrogacy arrangements, to provide for the court-sanctioned transfer of parentage of children born as a result of particular surrogacy arrangements, to prohibit particular surrogacy arrangements including commercial surrogacy arrangements and to make particular related amendments of the *Adoption Act 2009*, the *Births, Deaths and Marriages Registration Act 2003* and the regulation under that Act, the Criminal Code, the *Domicile Act 1981*, the *Evidence Act 1977*, the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998***

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<b>The Parliament of Queensland enacts—</b>	<b>1</b>
<b>Chapter 1          Preliminary</b>	<b>2</b>
<b>Part 1                Introduction</b>	<b>3</b>
<b>1          Short title</b>	<b>4</b>
This Act may be cited as the <i>Family (Surrogacy) Act 2009</i> .	5
<b>2          Commencement</b>	<b>6</b>
This Act commences on 1 April 2010.	7
<b>3          Dictionary</b>	<b>8</b>
The dictionary in the schedule defines particular words used in this Act.	9 10
<b>Part 2                Application, objects and                           guiding principles</b>	<b>11 12</b>
<b>4          Act binds all persons</b>	<b>13</b>
(1) This Act binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and all the other States.	14 15 16
(2) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.	17 18

<b>5</b>	<b>Main objects and guiding principles</b>	<b>1</b>
(1)	The main objects of this Act are—	2
(a)	to regulate particular matters in relation to surrogacy arrangements, including by prohibiting surrogacy arrangements except in particular circumstances; and	3 4 5
(b)	to provide for the court-sanctioned transfer of parentage of a child born as a result of a surrogacy arrangement in those particular circumstances; and	6 7 8
(c)	in the context of a surrogacy arrangement that may result in the court-sanctioned transfer of parentage of a child born as a result—	9 10 11
(i)	to establish procedures to ensure parties to the arrangement understand its nature and implications; and	12 13 14
(ii)	to safeguard the child's wellbeing and best interests.	15 16
(2)	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.	17 18 19 20
(3)	Subject to subsection (2), this Act is to be administered according to the following principles—	21 22
(a)	a child born as a result of a surrogacy arrangement should be cared for in a way that—	23 24
(i)	ensures a safe, stable and nurturing family and home life; and	25 26
(ii)	promotes openness and honesty about the child's birth parentage; and	27 28
(iii)	promotes the development of the child's emotional, mental, physical and social wellbeing;	29 30
(b)	the same status, protection and support should be available to a child born as a result of a surrogacy arrangement regardless of—	31 32 33

[s 6]

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	(i) how the child was conceived under the arrangement; or	1 2
	(ii) whether there is a genetic relationship between the child and any of the parties to the arrangement; or	3 4
	(iii) the relationship status of the persons who become the child's parents as a result of a transfer of parentage;	5 6 7
	(c) the long-term health and wellbeing of parties to a surrogacy arrangement and their families should be promoted;	8 9 10
	(d) the autonomy of consenting adults in their private lives should be respected.	11 12
<b>6</b>	<b>Act applies despite Anti-Discrimination Act 1991</b>	13
	(1) Despite the <i>Anti-Discrimination Act 1991</i> , a person may make a decision or do another act that is necessary to comply with, or is specifically authorised by, this Act.	14 15 16
	(2) Without limiting subsection (1), a person may make a decision or do another act under this Act to comply with the main guiding principle under section 5(2).	17 18 19

## Part 3                      Core concepts 20

<b>7</b>	<b>Meaning of <i>surrogacy arrangement</i> and <i>eligible surrogacy arrangement</i></b>	21 22
	(1) A <i>surrogacy arrangement</i> means an arrangement, agreement or understanding between a woman and another person or persons under which—	23 24 25
	(a) the woman agrees to become, or try to become, pregnant with the intention that—	26 27

- 
- (i) a child born as a result of the pregnancy is to be treated as the child, not of the woman, but of the other person or persons; and
- (ii) the woman will relinquish to the other person or persons custody and guardianship of a child born as a result of the pregnancy; and
- (b) the other person or persons agree to become permanently responsible for the custody and guardianship of a child born as a result of the pregnancy.
- Note—*
- Surrogacy arrangements other than eligible surrogacy arrangements are prohibited—see section 56.
- (2) An ***eligible surrogacy arrangement*** means a surrogacy arrangement where the intended parents are an eligible couple.
- Note—*
- There are many additional requirements which must be satisfied to obtain a parentage order under chapter 4 in relation to a child born as the result of an eligible surrogacy arrangement. For example, independent legal advice must be obtained before entering into the eligible surrogacy arrangement—see section 22(2)(e)(i).
- (3) There may be other parties to a surrogacy arrangement, for example, the woman’s spouse.
- Notes—*
- 1 The woman’s spouse (if any) must be a party to the eligible surrogacy arrangement if transfer of parentage of the child born as a result of the arrangement is desired—see section 22(2)(e)(v).
- 2 *Spouse* is defined in the *Acts Interpretation Act 1954*, section 36 to include a de facto partner.
- (4) Also, there may be other matters dealt with in a surrogacy arrangement.

[s 8]

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<b>8</b>	<b>Meaning of <i>birth mother</i>, <i>birth mother's spouse</i> and <i>birth parents</i></b>	1 2
(1)	The <i>birth mother</i> is the woman who agrees to the matters mentioned in section 7(1)(a) under an eligible surrogacy arrangement.	3 4 5
(2)	The <i>birth mother's spouse</i> means the birth mother's spouse at the time when the birth mother entered into the eligible surrogacy arrangement.	6 7 8
(3)	A <i>birth parent</i> , of a child, means 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.	9 10 11
<b>9</b>	<b>Meaning of <i>intended parents</i> and <i>eligible couple</i></b>	12
(1)	The <i>intended parents</i> are the eligible couple who agree to the matter mentioned in section 7(1)(b).	13 14
(2)	An <i>eligible couple</i> , for an eligible surrogacy arrangement, is—	15 16
(a)	a married couple; or	17
(b)	a de facto couple comprising a male de facto partner and a female de facto partner who, when the eligible surrogacy arrangement was made, have lived together in a de facto relationship for at least 2 years.	18 19 20 21
(3)	Also, if, at the time the eligible surrogacy arrangement was made, the intended parents were an eligible couple and, at a later relevant time, are no longer an eligible couple, a reference to the intended parents includes—	22 23 24 25
(a)	if 1 of the intended parents has died, a reference to the surviving intended parent; or	26 27
(b)	otherwise, a reference to the person formerly part of the eligible couple who makes an application under chapter 4.	28 29 30

<b>10</b>	<b>Meaning of <i>commercial surrogacy arrangement</i></b>	<b>1</b>
	An eligible surrogacy arrangement is a <i>commercial surrogacy arrangement</i> if a person receives 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—	2
	(a) agreeing to enter into or entering into the eligible surrogacy arrangement; or	3
	(b) permanently relinquishing to the intended parents the custody and guardianship of a child born as a result of the eligible surrogacy arrangement; or	4
	(c) consenting to the making of a parentage order for a child born as a result of the eligible surrogacy arrangement.	5
<b>11</b>	<b>Meaning of <i>birth mother's surrogacy costs</i></b>	<b>6</b>
	(1) A <i>birth mother's surrogacy costs</i> are the birth mother's reasonable costs associated with any of the following matters—	7
	(a) becoming or trying to become pregnant;	8
	(b) a pregnancy or a birth;	9
	(c) the birth mother and the birth mother's spouse (if any) being a party to an eligible surrogacy arrangement or proceedings in relation to a parentage order.	10
	(2) Without limiting subsection (1), the following amounts are a birth mother's surrogacy costs—	11
	(a) a reasonable medical cost for the birth mother associated with any of the matters mentioned in subsection (1);	12
	<i>Example—</i>	13
	This may be incurred before conception if the birth mother consults a medical practitioner to find out if she is capable of carrying a pregnancy before undergoing a fertilisation procedure.	14

[s 11]

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- |     |   |                      |
|-----|---|----------------------|
| (b) | a reasonable cost, including a reasonable medical cost, for a child born as a result of the eligible surrogacy arrangement;   | 1<br>2<br>3          |
| (c) | a premium payable for health, disability or life insurance that would not have been obtained by the birth mother if the eligible surrogacy arrangement had not been entered into;       | 4<br>5<br>6<br>7     |
| (d) | a reasonable cost of counselling associated with any of the matters mentioned in subsection (1), including—   | 8<br>9               |
|     | (i) the cost of counselling obtained by the birth mother or the birth mother's spouse (if any) before or after entering into the eligible surrogacy arrangement; or                     | 10<br>11<br>12<br>13 |
|     | (ii) the cost relating to the preparation of a surrogacy guidance report under section 32;  | 14<br>15             |
| (e) | a reasonable legal cost for the birth mother and the birth mother's spouse (if any) relating to the eligible surrogacy arrangement and the transfer of parentage;                       | 16<br>17<br>18       |
| (f) | the value of the birth mother's actual lost earnings because of leave taken—  | 19<br>20             |
|     | (i) for a period of not more than 2 months during which a birth happened or was expected to happen; or  | 21<br>22<br>23       |
|     | (ii) for any other period during the pregnancy where the birth mother was unable to work on medical grounds;  | 24<br>25<br>26       |
| (g) | another reasonable cost associated with the eligible surrogacy arrangement or the making of the order transferring parentage.   | 27<br>28<br>29       |
|     | <i>Examples of other reasonable costs for paragraph (g)—</i>  | 30                   |
|     | • travel and accommodation costs for a birth mother who lives interstate and travels to Queensland to undertake a fertility treatment, to consult with an obstetrician or to give birth | 31<br>32<br>33       |



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•	travel and accommodation costs associated with a birth mother's attendance at a court hearing about an application for a parentage order if the birth mother does not live near the court	1 2 3 4
(3)	In this section—	5
	<i>legal cost</i> includes fees for obtaining legal advice and legal representation, court fees, and registry fees associated with registration of a birth and transfer of parentage.	6 7 8
	<i>medical cost</i> means a medical cost to the extent that it is not recoverable under Medicare or any health insurance or other scheme.	9 10 11
12	<b>Meaning of <i>parentage order</i> and <i>discharge order</i></b>	12
(1)	A <i>parentage order</i> is an order made by the court under chapter 4 for the transfer of the parentage of a child born as a result of an eligible surrogacy arrangement.	13 14 15
(2)	A <i>discharge order</i> is an order made by the court under chapter 4 discharging a parentage order.	16 17
13	<b>Meaning of <i>medical or social need for an eligible surrogacy arrangement</i> and <i>eligible woman</i></b>	18 19
(1)	There is a <i>medical or social need for an eligible surrogacy arrangement</i> if the female intended parent is an eligible woman.	20 21 22
(2)	An <i>eligible woman</i> is a woman who—	23
(a)	is unable to conceive; or	24
(b)	if able to conceive—	25
(i)	is likely to be unable, on medical grounds, either to carry a pregnancy or to give birth; or	26 27
(ii)	either—	28
(A)	is unlikely to survive a pregnancy or birth; or	29

[s 14]

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	(B) is likely to have her health significantly affected by a pregnancy or birth; or	1 2
	(iii) is likely to conceive—	3
	(A) a child affected by a genetic condition or disorder, the cause of which is attributable to the woman; or	4 5 6
	(B) a child who is unlikely to survive a pregnancy or birth; or	7 8
	(C) a child whose health is likely to be significantly affected by a pregnancy or birth.	9 10 11
<b>Chapter 2</b>	<b>Surrogacy arrangements other than eligible surrogacy arrangements</b>	12 13 14
<b>14</b>	<b>Enforcement</b>	15
	(1) This section does not apply in relation to an eligible surrogacy arrangement.	16 17
	(2) A surrogacy arrangement is void.	18
	<i>Note—</i>	19
	Surrogacy arrangements other than eligible surrogacy arrangements are prohibited—see section 56.	20 21
	(3) A proceeding may not be started or decided in a court of Queensland—	22 23
	(a) for the enforcement of a surrogacy arrangement; or	24
	(b) for the recovery of any amount or other thing paid or given in connection with a surrogacy arrangement.	25 26

- 
- (4) Subsection (3) applies regardless of where the surrogacy arrangement was made or what law may be the proper law of the surrogacy arrangement. 1  
2  
3

## **Chapter 3            Eligible surrogacy arrangements** 4 5

- 15            Enforcement** 6
- (1) An eligible surrogacy arrangement is not enforceable. 7
- (2) However, an obligation under an eligible surrogacy arrangement to pay or reimburse the birth mother's surrogacy costs is enforceable unless— 8  
9  
10
- (a) a child is born as a result of a eligible surrogacy arrangement; and 11  
    12
- (b) the birth mother— 13
- (i) does not relinquish the custody and guardianship of the child to the intended parents; or 14  
        15
- (ii) on an application (if any) for a parentage order in relation to the child—does not consent to the making of the order. 16  
        17  
        18
- 16            Rights of birth mother to manage pregnancy and birth** 19
- (1) This section applies to an eligible surrogacy arrangement despite anything that the parties to the arrangement may have agreed, whether or not in writing. 20  
21  
22
- (2) A birth mother has the same rights to manage her pregnancy and birth as any other pregnant woman. 23  
24

[s 17]

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<b>17</b>	<b>Presumptions under the <i>Status of Children Act 1978</i></b>	<b>1</b>
	To remove any doubt, it is declared that, unless and until a	2
	parentage order is made under chapter 4 transferring the	3
	parentage of a child born as a result of an eligible surrogacy	4
	arrangement, the parentage presumptions under the <i>Status of</i>	5
	<i>Children Act 1978</i> apply to the child.	6
<b>18</b>	<b>Registration of birth requirements</b>	<b>7</b>
	To remove any doubt, it is declared that the requirement under	8
	the <i>Births, Deaths and Marriages Registration Act 2003</i> to	9
	register the birth of a child applies to the birth parents of a	10
	child born as a result of an eligible surrogacy arrangement.	11
<b>Chapter 4</b>	<b>Parentage orders for child</b>	<b>12</b>
	<b>born as a result of eligible</b>	<b>13</b>
	<b>surrogacy arrangement</b>	<b>14</b>
<b>Part 1</b>	<b>Introduction</b>	<b>15</b>
<b>19</b>	<b>Definitions for chapter</b>	<b>16</b>
	In this chapter—	17
	<i>appropriately qualified</i> , for a counsellor or medical	18
	practitioner swearing an affidavit verifying a report prepared	19
	by the counsellor or medical practitioner, includes having the	20
	qualifications, experience, skills or knowledge appropriate to	21
	prepare the report.	22

*Examples of an appropriately qualified counsellor—*

- a person who is a member of the Australia and New Zealand Infertility Counsellors Association
- a psychiatrist
- a psychologist
- a social worker

***child***, other than in part 4, means a child born as a result of an eligible surrogacy arrangement.

***consent*** means consent freely and voluntarily given by a person with capacity, within the meaning of the *Guardianship and Administration Act 2000*, to give the consent.

***independent***, for a counsellor in relation to an application for a parentage order in relation to a child, means the counsellor—

- (a) did not give counselling about the eligible surrogacy arrangement to the birth mother, the birth mother's spouse (if any) or the intended parents; and
- (b) is not, and has not been, directly connected with a medical practitioner who carried out a procedure that resulted in the birth of the child.

*Example—*

A counsellor is directly connected with a medical practitioner if the counsellor is engaged to give fertility counselling at the fertility clinic where the medical practitioner carried out a procedure that resulted in the birth of the child.

## Part 2 Making a parentage order

### 20 Purpose

This part facilitates the transfer, in particular circumstances, of the parentage of a child born as a result of an eligible surrogacy arrangement that satisfies particular requirements.

[s 21]

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<b>21</b>	<b>Application for a parentage order</b>	1
(1)	Intended parents may apply to the court for a parentage order in relation to a child.	2 3
(2)	The application may be made—	4
(a)	not less than 28 days and not more than 6 months after the child’s birth; or	5 6
(b)	at a later time with the court’s leave.	7
(3)	The court may grant leave under subsection (2)(b) only if it considers the making of the late application is justified because of exceptional circumstances and that it is for the wellbeing, and in the best interests, of the child to grant the leave.	8 9 10 11 12
(4)	To the extent practicable, the documents mentioned in section 25 must be filed with the application.	13 14
<b>22</b>	<b>Making a parentage order</b>	15
(1)	On an application under this part, the court may make a parentage order for the transfer of parentage of a child to the intended parents.	16 17 18
(2)	The court may make the parentage order only if it is satisfied of all of the following matters—	19 20
(a)	the proposed order will be for the wellbeing, and in the best interests, of the child;	21 22
(b)	the child—	23
(i)	has resided with the intended parents for at least 28 consecutive days before the application was made; and	24 25 26
(ii)	was residing with the intended parents when the application was made; and	27 28
(iii)	is residing with the intended parents at the time of the hearing;	29 30

[s 22]

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- |  |                                  |
|--|----------------------------------|
| (c) the intended parents were an eligible couple when the surrogacy arrangement was made;  | 1<br>2                           |
| (d) there is evidence of a medical or social need for the surrogacy arrangement;   | 3<br>4                           |
| (e) the surrogacy arrangement—   | 5                                |
| (i) was made after—  | 6                                |
| (A) the birth mother and the birth mother's spouse (if any), jointly or separately; and  | 7<br>8                           |
| (B) the intended parents, jointly or separately; obtained independent legal advice about the eligible surrogacy arrangement and its implications; and  | 9<br>10<br>11<br>12              |
| (ii) was made after the birth mother, the birth mother's spouse (if any) and the intended parents each obtained counselling from an appropriately qualified counsellor about the eligible surrogacy arrangement and its social and psychological implications; and | 13<br>14<br>15<br>16<br>17<br>18 |
| (iii) was made with the consent of the birth mother, the birth mother's spouse (if any) and the intended parents; and  | 19<br>20<br>21                   |
| (iv) was made before the child was conceived; and  | 22                               |
| (v) is in writing and signed by the birth mother, the birth mother's spouse (if any) and the intended parents; and   | 23<br>24<br>25                   |
| (vi) is not a commercial surrogacy arrangement;  | 26                               |
| (f) the birth mother and the birth mother's spouse (if any) were at least 25 years when the eligible surrogacy arrangement was made;   | 27<br>28<br>29                   |
| (g) each intended parent—  | 30                               |
| (i) was at least 25 years when the eligible surrogacy arrangement was made; and  | 31<br>32                         |
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[s 23]

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	(ii) is resident in Queensland;	1
(h)	the birth mother, the birth mother's spouse (if any), another birth parent (if any) and the intended parents consent to the making of the parentage order at the time of the hearing;	2 3 4 5
(i)	a surrogacy guidance report under section 32 supports the making of the proposed order.	6 7
<b>23</b>	<b>Dispensing with a requirement</b>	8
(1)	The court may not dispense with a requirement mentioned in section 22(2)(a) or section 22(2)(e)(iii), (iv) or (vi).	9 10
(2)	The court may dispense with a requirement mentioned in section 22(2) (other than a requirement mentioned in section 22(2)(a) or section 22(2)(e)(iii), (iv) or (vi)) only if the court is satisfied—	11 12 13 14
(a)	there are exceptional circumstances for giving the dispensation; and	15 16
	<i>Example of exceptional circumstances—</i>	17
	A requirement under section 22(2)(g)(ii) may be dispensed with if an intended parent is temporarily residing outside Queensland because of work commitments but is still in a spousal relationship with the other intended parent who is resident in Queensland.	18 19 20 21 22
(b)	the dispensation will be for the wellbeing, and in the best interests, of the child.	23 24
(3)	However, to dispense with the requirement under section 22(2)(h) for a person to consent to the making of the parentage order, the exceptional circumstances for giving the dispensation must be either that—	25 26 27 28
(a)	the person has died or is not a person with capacity to give the consent; or	29 30
(b)	an applicant can not locate the person after making all reasonable enquiries.	31 32



<b>24</b>	<b>Additional requirement if multiple births</b>	1
(1)	This section applies if a child has a living birth sibling.	2
(2)	Despite any other provision in this Act, the court may make a parentage order about the child only if it also makes a parentage order about each living birth sibling of the child in favour of the intended parents of the child.	3 4 5 6
(3)	In this section—	7
	<i>birth sibling</i> , of a child, means a brother or sister of the child who is born as a result of the same pregnancy as the child.	8 9
<b>25</b>	<b>Documents and information to be produced to court</b>	10
(1)	For an application for a parentage order, the following documents must be produced to the court—	11 12
(a)	a copy of the child's birth certificate;	13
(b)	a copy of the eligible surrogacy arrangement;	14
(c)	an affidavit under section 26 sworn by the intended parents;	15 16
(d)	an affidavit under section 27 sworn by the birth mother;	17
(e)	an affidavit under section 28 sworn by the birth mother's spouse (if any);	18 19
(f)	an affidavit under section 29 sworn by another birth parent (if any);	20 21
(g)	for each intended parent, the birth mother and the birth mother's spouse (if any)—an affidavit under section 30 sworn by the lawyer who gave legal advice to the person before the eligible surrogacy arrangement was made;	22 23 24 25
(h)	an affidavit under section 31 sworn by the appropriately qualified counsellor who gave counselling to the birth mother, the birth mother's spouse (if any) and the intended parents before the eligible surrogacy arrangement was made;	26 27 28 29 30
(i)	an affidavit—	31

[s 26]

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	(i) sworn by the independent and appropriately qualified counsellor who, for the purpose of the application, interviewed the birth mother, the birth mother's spouse (if any), another birth parent (if any) and the intended parents; and	1 2 3 4 5
	(ii) verifying a surrogacy guidance report under section 32 prepared by the counsellor;	6 7
	(j) an affidavit from an appropriately qualified medical practitioner verifying a report prepared by the medical practitioner as to why the female intended parent is an eligible woman.	8 9 10 11
(2)	Despite subsection (1)(d), (e) and (f), a single affidavit satisfying the requirements mentioned in sections 27 to 29 may be sworn by the birth mother, the birth mother's spouse (if any) and another birth parent (if any).	12 13 14 15
(3)	Despite subsection (1)(g), a single affidavit satisfying the requirements mentioned in section 30 may be sworn by the following—	16 17 18
	(a) a lawyer who gave legal advice to the birth mother and the birth mother's spouse jointly;	19 20
	(b) a lawyer who gave legal advice to the intended parents jointly.	21 22
(4)	Despite subsection (1)(h), if the same counsellor did not give counselling to the birth mother, the birth mother's spouse (if any) and the intended parents, affidavits under section 31 may be sworn by more than 1 counsellor.	23 24 25 26
<b>26</b>	<b>Intended parents' affidavit</b>	27
	The affidavit sworn by the intended parents must address the matters mentioned in section 22(2) (to the extent they are not matters regarding the birth mother, the birth mother's spouse (if any) or another birth parent (if any)), including by stating—	28 29 30 31 32

[s 27]

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|---|-------------------|
| (a) the current and proposed care arrangements for the child; and   | 1<br>2            |
| (b) the understanding of the intended parents of the social, psychological and legal implications of the eligible surrogacy arrangement and the making of a parentage order; and          | 3<br>4<br>5<br>6  |
| (c) the understanding of the intended parents in relation to openness and honesty about the child's birth parentage being for the wellbeing, and in the best interests, of the child; and | 7<br>8<br>9<br>10 |
| (d) the proposed name for the child; and  | 11                |
| (e) each intended parent's date of birth and occupation (as at the date of the child's birth).  | 12<br>13          |

**27 Birth mother's affidavit** 14

The affidavit sworn by the birth mother must address the matters mentioned in section 22(2)(a), (e), (f) and (h) (to the extent they are matters regarding the birth mother), and 22(2)(e)(iv) and (vi), including by stating— 15  
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|--|----------------------|
| (a) the understanding of the birth mother of the social, psychological and legal implications of the eligible surrogacy arrangement and the making of a parentage order; and                                   | 19<br>20<br>21<br>22 |
| (b) the understanding of the birth mother in relation to openness and honesty about the child's birth parentage being for the wellbeing, and in the best interests, of the child; and                          | 23<br>24<br>25<br>26 |
| (c) that the birth mother did not receive any payment, reward or other material benefit or advantage, other than the birth mother's surrogacy costs, for a matter mentioned in section 10(a), (b), or (c); and | 27<br>28<br>29<br>30 |
| (d) the birth mother's date of birth.  | 31                   |

[s 28]

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<b>28</b>	<b>Birth mother's spouse's affidavit</b>	1
	The affidavit, sworn by the birth mother's spouse must	2
	address the matters mentioned in section 22(2)(a), (e), (f) and	3
	(h) (to the extent they are matters regarding the birth mother's	4
	spouse) and 22(2)(e)(iv) and (vi), including by stating—	5
	(a) the understanding of the birth mother's spouse of the	6
	social, psychological and legal implications of the	7
	eligible surrogacy arrangement and the making of a	8
	parentage order; and	9
	(b) the understanding of the birth mother's spouse in	10
	relation to openness and honesty about the child's birth	11
	parentage being for the wellbeing, and in the best	12
	interests, of the child; and	13
	(c) that the birth mother's spouse did not receive any	14
	payment, reward or other material benefit or advantage	15
	for a matter mentioned in section 10(a), (b), or (c); and	16
	(d) the birth mother's spouse's date of birth.	17
<b>29</b>	<b>Other birth parent's affidavit</b>	18
	The affidavit sworn by the other birth parent must address the	19
	matters mentioned in section 22(2)(a) and (h) (to the extent it	20
	is a matter regarding the other birth parent) and 22(2)(e)(vi),	21
	including by stating—	22
	(a) the understanding of the other birth parent of the social,	23
	psychological and legal implications of the eligible	24
	surrogacy arrangement and the making of a parentage	25
	order; and	26
	(b) the understanding of the other birth parent in relation to	27
	openness and honesty about the child's birth parentage	28
	being for the wellbeing, and in the best interests, of the	29
	child; and	30
	(c) that the other birth parent did not receive any payment,	31
	reward or other material benefit or advantage for a	32
	matter mentioned in section 10(a), (b), or (c).	33

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**30      Lawyer's affidavit**

The affidavit sworn by the lawyer who gave legal advice to a person must address the matter mentioned in section 22(2)(e)(i), including by stating—

- (a) separate and independent legal advice was given to the person before the eligible surrogacy arrangement was made; and
- (b) the legal advice included advice about the following matters—
  - (i) the unenforceable nature of the arrangement, except as provided under section 15;
  - (ii) the person's legal requirements under the arrangement and this Act;
  - (iii) the legal implications if the birth mother does not relinquish the child, including whether child support would be payable by the child's biological father under the *Child Support (Assessment) Act 1989* (Cwlth);
  - (iv) the legal implications if, after the birth of the child, none of the birth mother, the birth mother's spouse (if any), another birth parent (if any) and the intended parents want to be permanently responsible for the child's custody and guardianship;
  - (v) the legal implications of the making of a parentage order;
  - (vi) that this Act promotes openness and honesty about the child's birth parentage; and
- (c) the lawyer's belief that the person understood the legal advice given.

[s 31]

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<b>31</b>	<b>Initial counsellor’s affidavit</b>	1
	The affidavit sworn by the appropriately qualified counsellor	2
	who gave counselling to the birth mother, the birth mother’s	3
	spouse (if any) and the intended parents (the <i>relevant</i>	4
	<i>persons</i> ) must verify a report prepared by the counsellor	5
	addressing the matter mentioned in section 22(2)(e)(ii),	6
	including by stating—	7
	(a) the reasons the counsellor is an appropriately qualified	8
	counsellor; and	9
	(b) that counselling about the eligible surrogacy	10
	arrangement and its social and psychological	11
	implications was given to the relevant persons before the	12
	surrogacy arrangement was made.	13
<b>32</b>	<b>Surrogacy guidance report</b>	14
	(1) A surrogacy guidance report must be prepared by an	15
	independent and appropriately qualified counsellor and state	16
	the following matters—	17
	(a) the reasons the counsellor is an independent and	18
	appropriately qualified counsellor;	19
	(b) that, for the application, the counsellor interviewed the	20
	birth mother, the birth mother’s spouse (if any), another	21
	birth parent (if any) and the intended parents (all of	22
	whom are <i>relevant persons</i> );	23
	(c) the date or dates of the interviews;	24
	(d) the counsellor’s opinion formed as a result of the	25
	interviews relevant to the application for a parentage	26
	order including, for example, about the following	27
	matters—	28
	(i) each relevant person’s understanding of—	29
	(A) the social and psychological implications of	30
	the making of a parentage order on the child	31
	and relevant persons;	32

[s 33]

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(B)	openness and honesty about the child's birth parentage being for the wellbeing, and in the best interests, of the child;	1 2 3
(ii)	the care arrangements that the intended parents have proposed for the child;	4 5
(iii)	whether the making of a parentage order would be for the wellbeing, and in the best interests, of the child.	6 7 8
<b>33</b>	<b>Court may require attendance</b>	9
	On an application for a parentage order, for the purpose of deciding whether the proposed order will promote the child's wellbeing and best interests, the court may require the attendance before it of the birth mother, the birth mother's spouse (if any), the other birth parent (if any), the intended parents or another person who has sworn an affidavit for the application to—	10 11 12 13 14 15 16
	(a) give evidence in relation to the application; or	17
	(b) produce stated documents or things.	18
<b>34</b>	<b>Form of parentage order</b>	19
	A parentage order must state the following details—	20
	(a) the date of the order;	21
	(b) the first name and surname of the child—	22
	(i) before the order was made; and	23
	(ii) on the making of the order;	24
	(c) the date of birth of the child;	25
	(d) the place of birth of the child;	26
	(e) the first name and surname, address and occupation of each of the intended parents;	27 28

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[s 35]

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	(f) the first name and surname and address of each of the the child's birth parents;	1 2
	(g) the terms of any ancillary orders.	3
<b>35</b>	<b>Child's name</b>	4
	(1) On the making of a parentage order, the child's names are the names the court approves for the child in the parentage order.	5 6
	(2) In approving a name under this section, the court must have regard to the child's wellbeing and best interests and must not approve a name that is a prohibited name under the <i>Births,</i> <i>Deaths and Marriages Registration Act 2003</i> .	7 8 9 10
	(3) This section does not prevent a name of the child being changed later under a law of the State or the Commonwealth.	11 12
<b>36</b>	<b>Other orders</b>	13
	If the court makes a parentage order, it may also make any other order it considers appropriate in the interests of justice or to ensure the child's wellbeing and best interests.	14 15 16
<b>37</b>	<b>Other order if deceased intended parent</b>	17
	(1) This section applies if 1 of the intended parents under an eligible surrogacy arrangement dies before a parentage order is made.	18 19 20
	(2) Without limiting section 36, if the court makes a parentage order transferring parentage of the child to the surviving intended parent, the court may also make an order declaring that the deceased intended parent is taken to have been a parent of the child.	21 22 23 24 25
<b>38</b>	<b>Notice if child in need of protection</b>	26
	If, on an application under this chapter in relation to a child, the court considers the child is a child in need of protection	27 28



within the meaning of the *Child Protection Act 1999*, the court 1  
may notify the chief executive under that Act. 2

## **Part 3                      Effect of a parentage order                      3**

### **39              Effect on relationships                      4**

- (1) This section applies if the intended parents apply to the court 5  
for a parentage order in relation to a child and the court makes 6  
the order. 7
- (2) On the making of the parentage order— 8
  - (a) the child becomes a child of the intended parents and the 9  
intended parents become parents of the child; and 10
  - (b) the child stops being a child of a birth parent and a birth 11  
parent stops being a parent of the child. 12
- (3) Other relationships are determined in accordance with 13  
subsection (2). 14
- (4) However, for the purpose of applying a law relating to a 15  
sexual offence where a familial relationship is relevant, the 16  
child is taken to have both the familial relationships that 17  
existed before the making of the parentage order as well as the 18  
familial relationships that result from the making of the 19  
parentage order. 20

### **40              Effect for property                      21**

- (1) Section 39(2) and (3) has effect in relation to— 22
  - (a) dispositions of property whether by will or otherwise; 23  
and 24
  - (b) devolutions of property in relation to which a person 25  
dies intestate. 26

[s 41]

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- (2) However, section 39 does not affect the operation of a will or other instrument that distinguishes between children who were born as a result of an eligible surrogacy arrangement (*surrogacy arrangement children*) and children other than surrogacy arrangement children.

**41 Public trustee to make inquiries if bequest to unlocatable child**

- (1) This section applies if—
- (a) under a will made after the commencement of this section, the testator makes a disposition of property to a person who is described—
- (i) as being a child of the testator or of another person; and
- (ii) as having had his or her parentage transferred to another person or persons as a result of a parentage order; and
- (b) the personal representative of the testator is unable to find out the name and address of the child.
- (2) The personal representative must give the public trustee a copy of the will and a notice stating that the personal representative is unable to find out the name and address of the child.
- (3) On receipt of the copy and notice, the public trustee must take steps to find out the name and address of the child and, if the child has died, the date of the death by asking for information from the registrar of the court and the registrar under the *Births, Deaths and Marriages Registration Act 2003*.
- (4) Despite any other Act or law, if the registrar of the court receives a request from the public trustee under subsection (3), the registrar must provide the public trustee with the name and address of the child, on the making of the parentage order, held in the court's records.

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- (5) The *Births, Deaths and Marriages Registration Act 2003*, section 44 does not apply to a request for information made under subsection (3) to the registrar under that Act.

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  - (6) If, after taking the steps mentioned in subsection (3)—

    - (a) the public trustee finds out the name, address or date of death of the child, the public trustee must give a notice to the personal representative stating—

      - (i) that the name or address has been found out; or
      - (ii) that it has been found out that the child has died; and

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    - (b) to the extent the public trustee is unable to find out the name and address of the child or whether the child has died, the public trustee must give a notice to the personal representative stating what details the public trustee has been unable to find out.

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  - 42 Public trustee is trustee if bequest to unlocatable child**

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  - (1) This section applies if—

    - (a) under a will made after the commencement of this section, the testator makes a disposition of property to a person who is described—

      - (i) as being a child of the testator or of another person; and
      - (ii) as having had his or her parentage transferred to another person or persons as a result of a parentage order; and

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    - (b) the personal representative of the testator is given a notice by the public trustee under section 41(6).

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  - (2) The public trustee is a trustee for the child on the trusts stated in, or arising under, the will.

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  - (3) If the personal representative transfers property to the public trustee as trustee for the child, the personal representative is taken to have transferred the property to the child.

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[s 43]

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(4)	Subsections (2) and (3) do not apply if the child died before the testator or, for another reason, is not entitled to an interest under the will.	1 2 3
(5)	If the public trustee gives the personal representative a notice that the child has disclaimed property to which the child was entitled under the will, the notice is, for the purpose of administering the estate, sufficient evidence that the child has disclaimed the property.	4 5 6 7 8
<b>43</b>	<b>Public trustee's fees for involvement</b>	9
(1)	The public trustee may charge fees for taking steps under section 41(3) or (6) or for acting as trustee under section 42.	10 11
(2)	The personal representative must pay to the public trustee out of the testator's estate any fees charged by the public trustee under subsection (1) and any fees or costs incurred by the public trustee in taking steps under section 41(3) or (6) or in acting as trustee under section 42.	12 13 14 15 16
<b>44</b>	<b>Transfer or distribution of property by trustee</b>	17
(1)	Subject to this section, a trustee may transfer or distribute property to persons who appear entitled to it without finding out whether or not a parentage order has been made because of which a person is or is not entitled to an interest in the property.	18 19 20 21 22
(2)	A trustee who transfers or distributes property under subsection (1) is not liable to a person claiming directly or indirectly because of a parentage order unless the trustee has written or other notice of the claim before the transfer or distribution.	23 24 25 26 27
(3)	This section does not affect a person's right to follow property into the hands of a person, other than a purchaser for value, who has received it.	28 29 30
(4)	In this section—  <i>trustee</i> includes a personal representative.	31  32

<b>Part 4</b>	<b>Discharge of a parentage order</b>	1
<b>45</b>	<b>Definitions for part</b>	2
	In this part—	3
	<i>child</i> means a child whose parentage was transferred under a parentage order.	4 5
	<i>interested person</i> , for an application for a discharge order, means—	6 7
	(a) if the child is 18 years—the child; and	8
	(b) each of the child’s birth parents and intended parents; and	9 10
	(c) the Attorney-General.	11
<b>46</b>	<b>Application for a discharge order</b>	12
	(1) An interested person may apply to the court for a discharge order discharging a parentage order in relation to a child on the ground that—	13 14 15
	(a) the parentage order was obtained by fraud, duress or other improper means; or	16 17
	(b) a consent required for 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	18 19 20 21
	(c) there is an exceptional reason why the parentage order should be discharged.	22 23
	(2) The applicant must state the ground on which the application is made.	24 25
	(3) As soon as practicable after filing the application, the applicant must serve a copy of it on each interested person (other than the Attorney General).	26 27 28

[s 47]

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|-----------|--|----------------|
| (4)       | If the child is under 18 years, the applicant must also serve a copy of the application on the child if the court considers it appropriate having regard to the child's age.           | 1<br>2<br>3    |
| (5)       | A served copy must state where and when the application is to be heard.  | 4<br>5         |
| (6)       | The court may dispense with the requirement to serve a copy of the application on a person if the court is satisfied—  | 6<br>7         |
| (a)       | the applicant can not locate the person after making all reasonable enquiries; or  | 8<br>9         |
| (b)       | the person has died.   | 10             |
| <b>47</b> | <b>Making a discharge order</b>  | 11             |
| (1)       | On an application under this part, the court may make a discharge order discharging a parentage order in relation to a child.  | 12<br>13<br>14 |
| (2)       | The court may make the discharge order only if the court is satisfied of all of the following matters—   | 15<br>16       |
| (a)       | reasonable efforts have been made to serve the application on—   | 17<br>18       |
| (i)       | each other interested person (other than the Attorney General); and  | 19<br>20       |
| (ii)      | if the child is under 18 years but the court considers it appropriate having regard to the child's age—the child;  | 21<br>22<br>23 |
| (b)       | 1 of the grounds mentioned in section 46(1)(a), (b) or (c).  | 24<br>25       |
| (3)       | If the court makes a discharge order, the court must, in the same order, declare the first name and surname by which the child is to be known after the making of the discharge order. | 26<br>27<br>28 |
| (4)       | In declaring a first name under subsection (3), the court must have regard to the principle that a child's first name should be retained except in special circumstances.              | 29<br>30<br>31 |

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- (5) Also, if the child has been served with a copy of the application, in declaring a name under subsection (3) the court must consider the child's views about his or her name.
- (6) A declaration of names in a discharge order does not prevent a subsequent change of name under a law of the State or the Commonwealth.
- (7) If the court makes a discharge order, it may also make any other order it considers appropriate in the interests of justice or to ensure the child's wellbeing and best interests, including an order relating to—
- (a) the ownership or possession of property; or
  - (b) any matter affecting the child in relation to the duties, powers, responsibilities and authority which, by law, parents have in relation to children; or
  - (c) where the child is to live.

#### **48 Effect of discharge order**

- (1) On the making of a discharge order, the rights, privileges, duties, liabilities and relationships of the child and all other persons are the same as if the parentage order being discharged had not been made.
- (2) However, the making of the discharge 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.
- (3) Also, for the purpose of applying a law relating to a sexual offence where a familial relationship is relevant, the child is taken, after the discharge order is made, to have both the familial relationships that resulted from the making of the parentage order as well as the familial relationships that result from the making of the discharge order.

[s 49]

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<b>Part 5</b>	<b>Appeals</b>	1
<b>49</b>	<b>Appellants and appellable decisions</b>	2
(1)	Any of the birth parents or intended parents may appeal to the Court of Appeal against a decision refusing an application for a parentage order.	3 4 5
(2)	Any of the following persons may appeal to the Court of Appeal against a decision granting or refusing an application for a discharge order—	6 7 8
(a)	the child if 18 years or more or if, for section 46(4), the court considered the child should be served with the application;	9 10 11
(b)	the birth parents;	12
(c)	the intended parents;	13
(d)	if the Attorney-General made the application—the Attorney-General.	14 15
<b>50</b>	<b>Appeal by rehearing</b>	16
	An appeal to the Court of Appeal is an appeal by way of rehearing.	17 18
<b>Part 6</b>	<b>Privacy</b>	19
<b>51</b>	<b>Hearing not to be in public</b>	20
(1)	This section applies to the hearing in the court or the Court of Appeal of a proceeding under this Act relating to a child.	21 22
(2)	The hearing for the proceeding is not open to the public.	23
(3)	Despite section 20 of the <i>Childrens Court Act 1992</i> , a court must exclude from the room in which the court is sitting a	24 25



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- person who is not— 1
- (a) the child; or 2
  - (b) an applicant or appellant; or 3
  - (c) a respondent; or 4
  - (d) a birth parent; or 5
  - (e) an intended parent; or 6
  - (f) a lawyer of a party to the proceeding or of a person 7  
mentioned in paragraphs (a) to (e); or 8
  - (g) a witness required by the court to give evidence. 9
- (4) However, the court may permit a person to be present during 10  
the hearing if the court is satisfied it is in the interests of 11  
justice to do so. 12

## **52 Access to court records 13**

- (1) A person may not have access to the record of proceedings in 14  
the court or the Court of Appeal in relation to a proceeding 15  
under this Act relating to a child unless the court has, on 16  
application by the person, given approval to the access. 17

*Note—* 18

Despite subsection (1), if the registrar of the court receives a request 19  
from the public trustee under section 41(3), the registrar must provide 20  
the public trustee with the name and address of the child—see section 21  
41(4). 22

- (2) Any of the following persons may apply for access to the 23  
record of proceedings— 24
- (a) the child if the child is at least 18 years; 25
  - (b) a birth parent; 26
  - (c) an intended parent; 27
  - (d) the Attorney-General; 28
  - (e) the chief executive. 29

[s 53]

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(3)	The court may give access to all or part of the record of proceedings.	1 2
(4)	Without limiting the reasons for which the court may refuse to give a person access on an application under subsection (2), the court may refuse to give access if—	3 4 5
(a)	the person has not produced to the registrar or another appropriate officer of the court proof of the person's identity; or	6 7 8
(b)	the person has not complied with a requirement of the court under any law or rule of practice relating to inspection of and release of information generally from its record of proceedings.	9 10 11 12
(5)	In this section—	13
	<i>record of proceedings</i> includes—	14
(a)	the transcript of the proceedings; and	15
(b)	the documents in the court file for the proceedings; and	16
(c)	an appeal book in relation to the proceedings.	17
<b>53</b>	<b>Publishing identifying material</b>	18
(1)	This section applies to material ( <i>identifying material</i> ) that identifies, or is likely to lead to the identification of, a person as—	19 20 21
(a)	a child born as result of an eligible surrogacy arrangement or a child to whom a court proceeding under this Act relates; or	22 23 24
(b)	a party to an eligible surrogacy arrangement; or	25
(c)	a party to a court proceeding under this Act; or	26
(d)	a person whose consent to an eligible surrogacy arrangement, or the making of a parentage order, is or was required.	27 28 29

(2)	A person must not publish identifying material unless written consent to the publication has been given, for each identified person, by—	1 2 3
(a)	for an identified person who is an adult—that person; or	4
(b)	for an identified person who is the child and under 18 years—	5 6
(i)	if the child is residing with the birth mother—the birth mother; or	7 8
(ii)	otherwise—the intended parents.	9
	Maximum penalty—	10
(a)	for an individual—100 penalty units or 2 years imprisonment; or	11 12
(b)	for a corporation—1000 penalty units.	13
(3)	In this section—	14
	<i>identified person</i> , in relation to published material, means a person identified by the material as a person mentioned in subsection (1)(a) to (d).	15 16 17

<b>Chapter 5</b>	<b>Offences</b>	18
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<b>54</b>	<b>Territorial application</b>	19
	This part applies in relation to—	20
(a)	acts done in Queensland regardless of the whereabouts of the offender at the time the act is done; or	21 22
(b)	acts done outside Queensland if the offender is ordinarily resident in Queensland at the time the act is done.	23 24 25

[s 55]

<b>55</b>	<b>Advertisements and other published matters</b>	<b>1</b>
	A person must not publish an advertisement, statement, notice or other material that—	2
		3
	(a) is intended or likely to induce a person to agree to act as a birth mother; or	4
		5
	(b) seeks or purports to seek a person willing to act as a birth mother; or	6
		7
	(c) states or implies that a person is willing to agree to act as a birth mother; or	8
		9
	(d) states or implies that a person is willing to enter into a surrogacy arrangement.	10
		11
	Maximum penalty—100 penalty units or 3 years imprisonment.	12
		13
<b>56</b>	<b>Surrogacy arrangements other than eligible surrogacy arrangements prohibited</b>	<b>14</b>
		15
	A person must not enter into or offer to enter into a surrogacy arrangement that is not an eligible surrogacy arrangement.	16
		17
	Maximum penalty—100 penalty units or 3 years imprisonment.	18
		19
<b>57</b>	<b>Commercial surrogacy arrangements prohibited</b>	<b>20</b>
	A person must not enter into or offer to enter into a commercial surrogacy arrangement.	21
		22
	Maximum penalty—100 penalty units or 3 years imprisonment.	23
		24
<b>58</b>	<b>Giving or receiving consideration</b>	<b>25</b>
	(1) A person must not give a payment, reward or other material benefit or advantage (other than the reimbursement of the birth mother's surrogacy costs) for another person—	26
		27
		28

[s 59]

(a)	agreeing to enter into or entering into a surrogacy arrangement; or	1 2
(b)	giving the intended parents under a surrogacy arrangement the permanent custody and guardianship of a child born as a result of the surrogacy arrangement; or	3 4 5
(c)	consenting to the making of a parentage order for a child born as a result of an eligible surrogacy arrangement.	6 7
	Maximum penalty—100 penalty units or 3 years imprisonment.	8 9
(2)	A person must not 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—	10 11 12 13
(a)	agreeing to enter into or entering into a surrogacy arrangement; or	14 15
(b)	giving the intended parents under a surrogacy arrangement the permanent custody and guardianship of a child born as a result of the surrogacy arrangement; or	16 17 18
(c)	consenting to the making of a parentage order for a child born as a result of an eligible surrogacy arrangement.	19 20
	Maximum penalty—100 penalty units or 3 years imprisonment.	21 22
(3)	In this section—	23
	<i>intended parents</i> means the person or persons who agree to the matter mentioned in section 7(1)(b).	24 25
<b>59</b>	<b>Providing technical, professional or medical services for a commercial surrogacy arrangement</b>	26 27
(1)	A person commits an offence if—	28
(a)	the person intentionally provides a technical, professional or medical service to another person; and	29 30
(b)	the person knows the other person is, or intends to be, party to a commercial surrogacy arrangement; and	31 32

[s 60]

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	(c) the person provides the service with the intention of assisting the other person to become pregnant for the purpose of the arrangement.	1 2 3
	Maximum penalty—100 penalty units or 3 years imprisonment.	4 5
	(2) However a person does not commit an offence under subsection (1) if the person provides a technical, professional or medical service to a woman after she has become pregnant.	6 7 8
<b>Chapter 6</b>	<b>Repeal and transitional provisions</b>	9 10
<b>Part 1</b>	<b>Repeal</b>	11
<b>60</b>	<b>Repeal of Surrogate Parenthood Act 1988</b>	12
	The Surrogate Parenthood Act 1988, No. 65 is repealed.	13
<b>Part 2</b>	<b>Transitional provisions for Family (Surrogacy) Act 2009</b>	14 15
<b>61</b>	<b>Definitions for part</b>	16
	In this part—	17
	<i>commencement</i> means the commencement of this section.	18
	<i>pre-commencement birth mother</i> , for a pre-commencement eligible surrogacy arrangement, means a person who, before	19 20

the commencement, corresponded to a birth mother under an eligible surrogacy arrangement. 1  
2

*pre-commencement eligible surrogacy arrangement* means 3  
an arrangement entered into between a pre-commencement 4  
birth mother and pre-commencement intended parents before 5  
the commencement that corresponded to an eligible surrogacy 6  
arrangement. 7

*pre-commencement intended parents*, for a 8  
pre-commencement eligible surrogacy arrangement, means 9  
persons who, before the commencement, corresponded to 10  
intended parents under an eligible surrogacy arrangement. 11

**62 Application for parentage order in relation to 12**  
**pre-commencement eligible surrogacy arrangement 13**

- (1) This section applies if— 14
- (a) a pre-commencement birth mother and 15  
pre-commencement intended parents were parties to a 16  
pre-commencement eligible surrogacy arrangement; and 17
  - (b) the pre-commencement eligible surrogacy arrangement 18  
was not a commercial surrogacy arrangement; and 19
  - (c) a child has been born as a result of the 20  
pre-commencement eligible surrogacy arrangement; and 21
  - (d) the pre-commencement eligible surrogacy arrangement 22  
was made before the child was conceived. 23
- (2) Within 2 years after the commencement, the 24  
pre-commencement intended parents may apply to the court 25  
for a parentage order. 26
- (3) Chapter 4 applies in relation to the application and any 27  
parentage order made on the application is a parentage order 28  
under chapter 4. 29
- (4) In addition to the court's power under section 23, the court 30  
may dispense with a requirement under chapter 4 (other than a 31  
requirement mentioned in section 22(2)(e)(iii)) if the court 32  
considers it is— 33

[s 63]

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- (a) for the wellbeing, and in the best interests, of the child  
born as a result of the pre-commencement eligible  
surrogacy arrangement to dispense with the  
requirement; or
  - (b) otherwise impractical for the pre-commencement  
intended parents to comply with the requirement.
- Example for paragraph (b)—*
- Independent legal advice was not obtained before entering into  
the pre-commencement eligible surrogacy arrangement.
- (5) However, to dispense with the requirement under section  
22(2)(h) for a person to consent to the making of the  
parentage order, the circumstances for giving the dispensation  
must be either that—
- (a) the person has died or is not a person with capacity to  
give the consent; or
  - (b) an applicant can not locate the person after making all  
reasonable enquiries.

**Chapter 7                      Amendments** 18

**Part 1                              Amendment of this Act** 19

- 63              Act amended** 20
- This part amends this Act. 21
- 64              Amendment of long title** 22
- (1) Long title, ‘arrangements, to prohibit’— 23
- omit, insert—* 24
-



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	‘arrangements and to prohibit’.	1
(2)	Long title, from ‘, to make particular’—	2
	<i>omit.</i>	3
<b>Part 2</b>	<b>Amendment of Adoption Act 2009</b>	4
		5
<b>65</b>	<b>Act amended</b>	6
	This part amends the <i>Adoption Act 2009</i> .	7
<b>66</b>	<b>Amendment of s 76 (Eligibility for inclusion in register)</b>	8
	Section 76(1)—	9
	<i>insert—</i>	10
	‘(ea) the person—	11
	(i) is not an intended parent under an eligible	12
	surrogacy arrangement within the meaning of the	13
	<i>Family (Surrogacy) Act 2009</i> ; and	14
	(ii) if the person has been an intended parent for an	15
	eligible surrogacy arrangement within the meaning	16
	of the <i>Family (Surrogacy) Act 2009</i> —the eligible	17
	surrogacy arrangement ended not less than 6	18
	months earlier; and’.	19

[s 67]

<b>Part 3</b>	<b>Amendment of Births, Deaths and Marriages Registration Act 2003</b>	1 2 3
<b>67</b>	<b>Act amended</b>	4
	This part amends the <i>Births, Deaths and Marriages Registration Act 2003</i> .	5 6
<b>68</b>	<b>Amendment of s 3 (Objects)</b>	7
	(1) Section 3(a)(ii)—	8
	<i>renumber</i> as section 3(a)(iii).	9
	(2) Section 3(a)—	10
	<i>insert</i> —	11
	‘(ii) changes of parentage under the <i>Family (Surrogacy) Act 2009</i> ; and’.	12 13
<b>69</b>	<b>Amendment of s 13 (Application to change child’s first name within a year of birth)</b>	14 15
	Section 13(2), (3) and (4), ‘register of births or adopted children register’—	16 17
	<i>omit, insert</i> —	18
	‘relevant child register’.	19
<b>70</b>	<b>Amendment of s 14 (Reregistering a birth or adoption)</b>	20
	(1) Section 14, ‘birth or adoption’—	21
	<i>omit, insert</i> —	22
	‘relevant event’.	23
	(2) Section 14(1)—	24
	<i>insert</i> —	25

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‘(c) a person’s parentage is changed by a parentage order.’.	1
(3) Section 14(5)(a), ‘register’—	2
<i>omit, insert—</i>	3
‘relevant child register’.	4
(4) Section 14—	5
<i>insert—</i>	6
‘(10) In this section—	7
<i>relevant event</i> , for a person, means the most recent of the	8
following events for the person—	9
(a) birth;	10
(b) adoption;	11
(c) change of parentage under a parentage order.’.	12
<b>71 Amendment of s 15 (Change of name by registration)</b>	13
Section 15—	14
<i>insert—</i>	15
‘(5) Also, changes to a person’s name under a parentage order or	16
discharge order are not dealt with under this part but under	17
sections 41D and 41E.’.	18
<b>72 Amendment of s 17 (Application to register change of child’s name)</b>	19
Section 17(3), ‘register of births or adopted children	21
register’—	22
<i>omit, insert—</i>	23
‘relevant child register’.	24
<b>73 Amendment of s 19 (Registration of change of name)</b>	25
(1) Section 19(3), ‘the register,’—	26

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[s 74]

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	<i>omit, insert—</i>	1
	‘the relevant child register.’	2
(2)	Section 19(3), ‘the register of births or adopted children register’—	3 4
	<i>omit, insert—</i>	5
	‘the relevant child register.’	6
<b>74</b>	<b>Amendment of s 20 (Notation of change of name other than by registration)</b>	7 8
(1)	Section 20(2), (3) and (5), ‘register of births or adopted children register’—	9 10
	<i>omit, insert—</i>	11
	‘relevant child register.’	12
(2)	Section 20(4)(a), ‘register of births’—	13
	<i>omit, insert—</i>	14
	‘relevant child register.’	15
<b>75</b>	<b>Amendment of s 41 (Registering events other than adoptions in register)</b>	16 17
(1)	Section 41, heading, after ‘adoptions’—	18
	<i>insert—</i>	19
	‘ <b>or changes of parentage</b> ’.	20
(2)	Section 41(1), after ‘adoption’—	21
	<i>insert—</i>	22
	‘or a change of parentage under a parentage order or discharge order’.	23 24
<b>76</b>	<b>Insertion of new ss 41D and 41E</b>	25
	After section 41C—	26

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<i>insert—</i>	1
<b>‘41D Registering change of parentage under parentage order</b>	2
	3
‘(1) This section applies if—	4
(a) a parentage order is made in relation to a child whose birth was registered in Queensland; and	5
	6
(b) the registrar receives—	7
(i) an application to register the order and the application contains the information prescribed under a regulation; and	8
	9
(ii) an original copy of the parentage order.	10
	11
‘(2) The registrar must register the transfer of parentage by incorporating into the parentage order register information from the application to register the parentage order and the original copy of the parentage order.	12
	13
	14
	15
‘(3) Also, the registrar must close the child’s birth entry by—	16
(a) noting, on the birth entry (the <i>closed entry</i> ), a reference to the parentage order entry; and	17
	18
(b) noting, on the new parentage order entry, a reference to the closed entry.	19
	20
 <b>‘41E Reregistering birth if discharge order</b>	21
‘(1) This section applies if—	22
(a) the registrar has registered under section 41D the transfer of a person’s parentage; and	23
	24
(b) a discharge order is made in relation to the parentage order for the person; and	25
	26
(c) the registrar receives—	27
(i) an application to register the discharge order and the application contains the information prescribed under a regulation; and	28
	29
	30

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[s 77]

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(ii)	an original copy of the discharge order.	1
‘(2)	The registrar must close the entry in the parentage order register for the person by—	2
		3
(a)	incorporating, in the entry, information from the application to register the discharge order and the original copy of the discharge order; and	4
		5
		6
(b)	noting on the entry—	7
(i)	that the parentage order has been discharged; and	8
(ii)	that the person’s birth has been reregistered under this section; and	9
		10
(iii)	a reference to the new entry made under subsection (3).	11
		12
‘(3)	The registrar must also reregister the person’s birth by making a new entry in the birth register that includes—	13
		14
(a)	the person’s names as declared in the discharge order; and	15
		16
(b)	all the information that was in the entry that was closed under section 41D (other than the person’s names and information about the parentage order or discharge order); and	17
		18
		19
		20
(c)	a note that the new entry was made under this section; and	21
		22
(d)	a reference to the entry closed under subsection (2).	23
‘(4)	The registrar may make any other notations in the birth register or parentage order register that the registrar considers necessary to ensure the registers include the correct information for the person.’.	24
		25
		26
		27
<b>77</b>	<b>Amendment of s 44 (Obtaining information from the registrar)</b>	28
		29
(1)	Section 44(13)—	30
	<i>renumber</i> as section 44(19).	31

- 
- |   |    |
|---|----|
| (2) Section 44—   | 1  |
| <i>insert—</i>  | 2  |
| ‘(13) The registrar may only give requested information relating to | 3  |
| an entry closed under section 41D or 41E to any of the              | 4  |
| following persons—  | 5  |
| (a) the birth parents for the parentage order;                      | 6  |
| (b) the intended parents for the parentage order;                   | 7  |
| (c) if the child for the parentage order is at least 18             | 8  |
| years—the child;  | 9  |
| (d) a guardian appointed under the <i>Guardianship and</i>          | 10 |
| <i>Administration Act 2000</i> for any of the persons               | 11 |
| mentioned in paragraphs (a) to (c);                                 | 12 |
| (e) if an administrator has been appointed under the                | 13 |
| <i>Guardianship and Administration Act 2000</i> , section 14,       | 14 |
| for the child—the administrator;                                    | 15 |
| (f) if a personal representative has been appointed for the         | 16 |
| child—the personal representative;                                  | 17 |
| (g) an officer of, or person acting for, a law enforcement          | 18 |
| body;   | 19 |
| (h) the Attorney-General.   | 20 |
| ‘(14) When applying for information from a closed entry, a person   | 21 |
| mentioned in subsection (13)(d), (e) or (f) must—                   | 22 |
| (a) produce to the registrar—                                       | 23 |
| (i) a document verifying the person’s identity; and                 | 24 |
| (ii) the person’s instrument of appointment; and                    | 25 |
| (b) show that the information is required to discharge a            | 26 |
| function under the person’s appointment.                            | 27 |
| ‘(15) When applying for information from a closed entry, a person   | 28 |
| mentioned in subsection (13)(g) must—                               | 29 |
| (a) produce a document verifying the person’s identity to           | 30 |
| the registrar; and  | 31 |
-

[s 77]

- 
- Example of documentary proof of an officer's identity—* 1
- an identity card issued by a law enforcement body, with a photo 2  
of the officer, that states the officer's name, rank and registered 3  
number 4
- (b) show that the information is required to discharge— 5
- (i) a function of the law enforcement body; or 6
- (ii) the person's duty as an officer of the law 7  
enforcement body. 8
- ‘(16) Despite subsection (13), the registrar may give requested 9  
information relating to an entry closed under section 41D or 10  
41E to a child who is less than 18 years if the birth parents and 11  
the intended parents for the parentage order consent to the 12  
child's application for the information. 13
- ‘(17) For subsection (16), a person's consent is not required if— 14
- (a) the person has died; or 15
- (b) the child can not locate the person after making all 16  
reasonable enquiries. 17
- ‘(18) If the registrar issues a certificate from an entry closed under 18  
section 41D or 41E, the registrar must stamp the certificate or 19  
mark it in another way to indicate that the certificate is not for 20  
official use.’. 21
- (3) Section 44(19)— 22
- insert—* 23
- ‘birth parents** means— 24
- (a) for a parentage order under the *Family (Surrogacy) Act* 25  
2009— birth parents under that Act; or 26
- (b) for another parentage order—persons corresponding, 27  
under the law of another Australian jurisdiction where 28  
the order was made, to birth parents under the *Family* 29  
*(Surrogacy) Act 2009*. 30
- intended parents** means— 31
- (a) for a parentage order under the *Family (Surrogacy) Act* 32



	2009— intended parents under that Act; or	1
(b)	for another parentage order—persons corresponding, under the law of another Australian jurisdiction where the order was made, to intended parents under the <i>Family (Surrogacy) Act 2009</i> .	2 3 4 5
	<b>law enforcement body</b> means—	6
(a)	the Queensland Police Service or a police service of another State; or	7 8
(b)	the Australian Federal Police; or	9
(c)	the Crime and Misconduct Commission; or	10
(d)	the Australian Crime Commission.’.	11
<b>78</b>	<b>Insertion of new s 44A</b>	12
	After section 44—	13
	<i>insert—</i>	14
<b>‘44A</b>	<b>Addendum to birth certificate</b>	15
‘(1)	This section applies if—	16
(a)	a person (the <i>applicant</i> )—	17
(i)	applies to the registrar, in writing, for information about an event that is, or may be, in a register kept by the registrar; and	18 19 20
(ii)	is at least 18 years at the time of making the application; and	21 22
(b)	the applicant’s birth was registered in Queensland; and	23
(c)	a parentage order in relation to the applicant was registered in the parentage order register under section 41D (even if the entry in the parentage order register was later closed under section 41E); and	24 25 26 27
(d)	the registrar issues a certificate certifying particulars contained in an entry about the birth of the applicant.	28 29

[s 79]

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‘(2)	When the registrar issues a certificate mentioned in subsection (1)(d), the registrar must attach an addendum to the certificate stating that further information is available about the entry.	1 2 3
‘(3)	To remove any doubt, it is declared that the registrar must not issue the addendum to any person other than the applicant.’.	4 5
<b>79</b>	<b>Insertion of new pt 9, div 5</b>	6
	Part 9—	7
	<i>insert—</i>	8
<b>‘Division 5</b>	<b>Transitional provision for Family (Surrogacy) Act 2009</b>	9 10
<b>‘63</b>	<b>Amendment of regulation by Family (Surrogacy) Act 2009 does not affect powers of Governor in Council</b>	11 12
	The amendment of the <i>Births, Deaths and Marriages Registration Regulation 2003</i> by the <i>Family (Surrogacy) Act 2009</i> does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.	13 14 15 16
<b>80</b>	<b>Amendment of sch 2 (Dictionary)</b>	17
(1)	Schedule 2—	18
	<i>insert—</i>	19
	<b>‘discharge order</b> means—	20
(a)	a discharge order under the <i>Family (Surrogacy) Act 2009</i> ; or	21 22
(b)	an order of another Australian jurisdiction that corresponds to an order mentioned in paragraph (a).	23 24
	<b>parentage order</b> means—	25
(a)	a parentage order under the <i>Family (Surrogacy) Act 2009</i> ; or	26 27

- 
- (b) an order of another Australian jurisdiction that corresponds to an order mentioned in paragraph (a).
1  
2
  - relevant child register***, for a person, means whichever of the following registers has an open entry for the person—
3  
4
  - (a) the birth register;
5
  - (b) the adopted children register;
6
  - (c) the parentage order register.’.
7
  - (2) Schedule 2, definition *registrable event*, paragraph (c)—  
*renumber* as paragraph (d).
8  
9
  - (3) Schedule 2, definition *registrable event*—  
*insert*—
10  
11
  - ‘(c) a change of parentage under a parentage order; or’.
12

<b>Part 4</b>	<b>Amendment of Births, Deaths and Marriages Registration Regulation 2003</b>	13 14 15
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<b>81</b>	<b>Regulation amended</b>	16
	This part amends the <i>Births, Deaths and Marriages Registration Regulation 2003</i> .	17 18

<b>82</b>	<b>Amendment of s 13 (Information and documents for registering events in register—Act, s 41)</b>	19 20
	(1) Section 13, heading, ‘s 41’—	21
	<i>omit, insert</i> —	22
	‘ss 41, 41D or 41E’.	23
	(2) Section 13—	24

[s 83]

---

<i>insert—</i>	1
‘(5) For sections 41D(1) and 41E(1) of the Act, the information in schedule 1, part 1 is prescribed information for an application to register a parentage order or discharge order.’	2 3 4
<b>Part 5</b>	5
<b>Amendment of the Criminal Code</b>	6
<b>83 Act amended</b>	7
This part amends the Criminal Code.	8
<b>84 Amendment of s 222 (Incest)</b>	9
Section 222—	10
<i>insert—</i>	11
‘(7A) Also, if a parentage order is made under the <i>Family (Surrogacy) Act 2009</i> , a reference in this section to an offspring or other lineal descendant, or a sibling or a parent includes a relationship of that type that—	12 13 14 15
(a) existed before the making of the order; or	16
(b) came into existence as a result of the making of the order regardless of whether the order has been discharged.’	17 18 19
<b>85 Amendment of s 363 (Child-stealing)</b>	20
(1) Section 363(2)—	21
<i>omit.</i>	22
(2) Section 363(3)—	23
<i>renumber</i> as section 363(2).	24

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(3) Section 363—	1
<i>insert—</i>	2
‘(3) In this section—	3
<b><i>corresponding parentage order</i></b> means an order under a law	4
of another State that provides for a parentage order similar to	5
a parentage order under the <i>Family (Surrogacy) Act 2009</i> .	6
<b><i>parent</i></b> includes—	7
(a) for a child who has been legally adopted in Queensland	8
or in another State—a person who has adopted the child;	9
or	10
(b) for a child whose parentage has been transferred by a	
parentage order under the <i>Family (Surrogacy) Act 2009</i>	12
or a corresponding parentage order—a person who is a	13
parent of the child under the order;	14
but does not include a natural parent of the child.’.	15
<b>Part 6</b>	16
<b>Amendment of Domicile Act</b>	
<b>1981</b>	17
<b>86 Act amended</b>	18
This part amends the <i>Domicile Act 1981</i> .	19
<b>87 Amendment of s 8 (Domicile of certain children)</b>	20
(1) Section 8(4) to (6)—	21
<i>renumber</i> as section 8(6) to (8)—	22
(2) Section 8—	23
<i>insert—</i>	24

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[s 87]

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- ‘(4) Subsection (5) applies if a child’s parentage has been transferred by—
1  
2

  - (a) a parentage order under the *Family (Surrogacy) Act 2009*; or
3  
4
  - (b) an order of another Australian jurisdiction (also a ***parentage order***) that corresponds to a parentage order made under the *Family (Surrogacy) Act 2009*.
5  
6  
7
- ‘(5) The child’s domicile—
8

  - (a) if, on the making of the parentage order, the child has 2 parents—is, from the time of the making of the order, the domicile the child would have if the child were a child born in wedlock to those parents; and
9  
10  
11  
12
  - (b) if, on the making of the parentage order, the child has 1 parent only—is, from the time of the making of the order, the domicile of that parent or, if that parent has died, the domicile that parent had at the time of death.’.
13  
14  
15  
16
- (3) Section 8(7), as renumbered, ‘(2) or (3)’—
17

*omit, insert—*
18

‘(2), (3) or (5)’.
19
- (4) Section 8—
20

*insert—*
21
- ‘(9) Subsection (10) applies if a parentage order for a child is discharged by—
22  
23

  - (a) a discharge order under the *Family (Surrogacy) Act 2009*; or
24  
25
  - (b) an order of another Australian jurisdiction (also a ***discharge order***) that corresponds to a discharge order made under the *Family (Surrogacy) Act 2009*.
26  
27  
28
- ‘(10) The child’s domicile is—
29

  - (a) the domicile stated in, or dealt with under, the discharge order; or
30  
31

- |     |   |   |
|-----|---|---|
| (b) | if there is no provision in the discharge order dealing with the child's domicile—the domicile the child would have if the transfer of parentage under the parentage order had not taken place.'. | 1 |
|     |   | 2 |
|     |   | 3 |
|     |   | 4 |

<b>Part 7</b>	<b>Amendment of Evidence Act 1977</b>	5
		6

<b>88</b>	<b>Act amended</b>	7
	This part amends the <i>Evidence Act 1977</i> .	8

- |           |  |    |
|-----------|--|----|
| <b>89</b> | <b>Amendment of s 21AC (Definitions for div 4A)</b>  | 9  |
| (1)       | Section 21AC—  | 10 |
|           | <i>insert—</i>   | 11 |
|           | <b>'parentage order relationship'</b> means a relationship arising because of—                           | 12 |
|           |  | 13 |
| (a)       | a parentage order under the <i>Family (Surrogacy) Act 2009</i> ; or                                      | 14 |
|           |  | 15 |
| (b)       | an order of another Australian jurisdiction that corresponds to a parentage order made under that Act.'. | 16 |
|           |  | 17 |
| (2)       | Section 21AC, definition <i>prescribed relationship</i> , paragraph (a), 'or step relationship'—         | 18 |
|           |  | 19 |
|           | <i>omit, insert—</i>   | 20 |
|           | ', step or parentage order relationship'.  | 21 |

[s 90]

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<b>Part 8</b>	<b>Amendment of Guardianship and Administration Act 2000</b>	1 2
<b>90</b>	<b>Act amended</b>	3
	This part amends the <i>Guardianship and Administration Act 2000</i> .	4 5
<b>91</b>	<b>Amendment of sch 2 (Types of matters)</b>	6
	Schedule 2, part 2, section 3—	7
	<i>insert—</i>	8
	‘(f) entering into, or agreeing to enter into, an eligible surrogacy arrangement under the <i>Family (Surrogacy) Act 2009</i> ;	9 10 11
	(g) consenting to the making or discharge of a parentage order under the <i>Family (Surrogacy) Act 2009</i> .’.	12 13
<b>Part 9</b>	<b>Amendment of Powers of Attorney Act 1998</b>	14 15
<b>92</b>	<b>Act amended</b>	16
	This part amends the <i>Powers of Attorney Act 1998</i> .	17
<b>93</b>	<b>Amendment of sch 2 (Types of matters)</b>	18
	Schedule 2, part 2, section 3—	19
	<i>insert—</i>	20
	‘(f) entering into, or agreeing to enter into, an eligible surrogacy arrangement under the <i>Family (Surrogacy) Act 2009</i> ;	21 22 23



- |     |  |   |
|-----|--|---|
| (g) | consenting to the making or discharge of a parentage order under the <i>Family (Surrogacy) Act 2009</i> .’ | 1 |
|     |  | 2 |

<b>Schedule</b>	<b>Dictionary</b>	1
	section 3	2
<i>appropriately qualified</i> , for chapter 4, see section 19.		3
<i>birth mother</i> see section 8(1).		4
<i>birth mother's spouse</i> see section 8(2).		5
<i>birth mother's surrogacy costs</i> see section 11.		6
<i>birth parent</i> see section 8(3).		7
<i>child</i> , for chapter 4 (other than part 4), see section 19.		8
<i>child</i> , for chapter 4, part 4, see section 45.		9
<i>commencement</i> , for chapter 6, part 2, see section 61.		10
<i>commercial surrogacy arrangement</i> see section 10.		11
<i>consent</i> , for chapter 4, see section 19.		12
<i>court</i> means the Supreme Court.		13
<i>discharge order</i> see section 12(2).		14
<i>eligible couple</i> see section 9.		15
<i>eligible surrogacy arrangement</i> see section 7.		16
<i>eligible woman</i> see section 13(2).		17
<i>independent</i> , for a counsellor, for chapter 4, see section 19.		18
<i>intended parents</i> , other than for section 58, see section 9.		19
<i>interested person</i> for chapter 4, part 4, see section 45.		20
<i>lawyer</i> means an Australian legal practitioner under the <i>Legal Profession Act 2007</i> .		21 22
<i>medical or social need for an eligible surrogacy arrangement</i> see section 13(1).		23 24
<i>parentage order</i> see section 12(1).		25
<i>pre-commencement birth mother</i> , for chapter 6, part 2, see section 61.		26 27

<i>pre-commencement eligible surrogacy arrangement</i> , for chapter 6, part 2, see section 61.	1 2
<i>pre-commencement intended parents</i> , for chapter 6, part 2, see section 61.	3 4
<i>publish</i> means publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.	5 6 7
<i>surrogacy arrangement</i> see section 7.	8 9