



Western Australia

Surrogacy Act 2008

Compare between:

[10 Dec 2008, 00-a0-04] and [01 Mar 2009, 00-b0-08]

Western Australia

Surrogacy Act 2008

No. 47 of 2008

An Act about arrangements for surrogate births and children born under those arrangements and for related purposes, and to make related amendments to —

- **the *Births, Deaths and Marriages Registration Act 1998*; and**
- **the *Children and Community Services Act 2004*; and**
- **the *Family Court Act 1997*; and**
- **the *Guardianship and Administration Act 1990*; and**
- **the *Human Reproductive Technology Act 1991*; and**
- **the *Interpretation Act 1984*.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Surrogacy Act 2008*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

~~[3. — Has not come into operation².]~~

~~[Parts 2-4 have not come into operation².]~~

Notes

¹—This is a compilation of the *Surrogacy Act 2008*. The following table contains information about that Act^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Surrogacy Act 2008</i> s. 1 and 2	47 of 2008	10-Dec-2008	s. 1 and 2: 10-Dec-2008 (see s. 2(a))

^{1a}—On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Surrogacy Act 2008</i> s. 3 and Pt. 2-4 ²	47 of 2008	10-Dec-2008	To be proclaimed (see s. 2(b))

²—On the date as at which this compilation was prepared, the *Surrogacy Act 2008* s. 3 and Pt. 2-4 had not come into operation. They read as follows:

“

3. Terms used in this Act

In this Act, unless the contrary intention appears —

surrogacy arrangement means an arrangement for a woman (the ***birth mother***) to seek to become pregnant and give birth to a child and for a person or persons other than the birth mother (the ***arranged parent*** or ***arranged parents***) to raise the child, but the term does not include an arrangement entered into after the birth mother becomes pregnant unless it is in variation of a surrogacy arrangement involving the same parties.

Part 2 — Surrogacy arrangements

Division 1 — General

4. What this Part is about

This Part deals with the status of surrogacy arrangements and prohibits certain surrogacy arrangements and certain things to do with surrogacy arrangements.

5. Term used in this Part

In this Part, unless the contrary intention appears —

surrogacy arrangement that is for reward has the meaning given in section 6.

6. Meaning of “surrogacy arrangement that is for reward”

- (1) This Part refers to a surrogacy arrangement as being for reward if the arrangement provides for any person to receive any payment or valuable consideration other than for reasonable expenses associated with —
 - (a) the pregnancy or the birth; or
 - (b) any assessment or expert advice in connection with the arrangement.
- (2) Reasonable expenses associated with achieving, or attempting to achieve, the pregnancy are reasonable expenses associated with the pregnancy.
- (3) An expense is a reasonable expense for the purposes of subsection (1)(a) to the extent only that it is —
 - (a) a reasonable medical expense that is not recoverable under any health insurance or other scheme; or
 - (b) the value of earnings foregone because of leave taken —
 - (i) for a period of not more than 2 months during which the birth occurs or was expected to occur; or

(ii) at any other time for medical reasons arising during the pregnancy;

or

(c) a reasonable expense of psychological counselling; or

(d) a premium payable for health, disability or life insurance that —

(i) would not have been taken out if the surrogacy arrangement had not been entered into; and

(ii) provides cover for a period during which an expense referred to in another paragraph of this subsection is incurred or might be, or have been expected to be, incurred.

7. Surrogacy arrangement not binding

- (1) A surrogacy arrangement is not enforceable except to the extent provided for in subsection (3).
- (2) Subsection (1) does not affect the ability of the court to make an order under Part 3.
- (3) An obligation under a surrogacy arrangement to pay or reimburse reasonable expenses referred to in section 6(1) is as enforceable as it would be if subsection (1) had not been enacted and the arrangement was not unenforceable for any other reason.

Division 2 — Offences

8. Making surrogacy arrangement that is for reward

A person who enters into a surrogacy arrangement that is for reward commits an offence.

Penalty: a fine of \$24 000 or imprisonment for 2 years.

9. Reward for introducing parties for surrogacy arrangement

- (1) A person who receives, or seeks to receive, valuable consideration for introducing or agreeing to introduce persons

with the intention that they might enter into a surrogacy arrangement commits an offence.

Penalty: a fine of \$12 000 or imprisonment for one year.

- (2) Subsection (1) applies whether or not it is intended that the surrogacy arrangement be one that is for reward.

10. Publishing willingness to make surrogacy arrangement that is for reward

A person commits an offence if the person publishes or causes to be published —

- (a) anything that is intended to, or likely to, induce a person to enter into a surrogacy arrangement that is for reward; or
- (b) anything to the effect that a person who is willing to enter into a surrogacy arrangement that is for reward is sought; or
- (c) anything to the effect that a person is or might be willing to enter into a surrogacy arrangement that is for reward.

Penalty: a fine of \$6 000.

11. Services connected with surrogacy arrangement that is for reward

- (1) A person who provides a service knowing that the service is to facilitate a surrogacy arrangement that is for reward commits a crime except in the circumstances described in subsection (2).
- (2) It is not an offence against subsection (1) if the service is a health service provided to the birth mother after she has become pregnant.

Penalty: imprisonment for 5 years.

Summary conviction penalty: a fine of \$12 000 or imprisonment for one year.

Part 3 — Order giving parental status to arranged parents

Division 1 — Preliminary

12. What this Part is about

This Part is to enable the court to transfer, from the birth parents to the arranged parents, the parentage of a child born under a surrogacy arrangement in certain circumstances.

13. Child's best interests paramount

- (1) In deciding whether to make a particular decision concerning a parentage order or proposed parentage order about a child, the court must regard the best interests of the child as the paramount consideration.
- (2) For the purposes of this Act it is presumed to be in the best interests of the child for the arranged parents to be the parents of the child, unless there is evidence to the contrary.

14. Terms used in this Part

In this Part, unless the contrary intention appears —

approved plan means the plan that section 21(2)(f) refers to by that term, as varied, if applicable, with the court's approval under section 30;

arranged parents of a child means —

- (a) the persons who, according to the definition of ***surrogacy arrangement*** in section 3, are the arranged parents; or
- (b) the person who, according to that definition, is the arranged parent;

birth parents of a child means —

- (a) the persons who are recognised by the law as being, when the child is born, the parents of the child; or

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- (b) if only one person fits the description in paragraph (a), that person;

chief executive officer means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act;

child refers to the status of a person in a relationship as parent and child, and it includes a person of that status even after the person has reached the age of full legal capacity;

court means the Family Court of Western Australia;

independent legal advice is legal advice provided by a person who —

- (a) is chosen by the person receiving the advice; and
(b) is not providing advice to the arranged parents as well as to any other person required to receive the advice;

parentage order means an order that the court makes under this Part transferring the parentage of a child.

Division 2 — Parentage order excluded for certain arrangements

15. Meaning of “Council”

In this Division —

Council means the Western Australian Reproductive Technology Council established under the *Human Reproductive Technology Act 1991* section 8.

16. Approval of surrogacy arrangement

- (1) A parentage order cannot be made in respect of a child unless the surrogacy arrangement has been approved in writing under section 17 by the Council.
- (2) Subsection (1) does not apply if the child was born as a result of a pregnancy that commenced before the day fixed under section 2(b) as the day section 17 comes into operation.

17. Requirements for surrogacy arrangement to be approved

The Council may approve a surrogacy arrangement only if—

- (a) the birth mother —
 - (i) has reached 25 years of age; and
 - (ii) unless the Council is satisfied that there are exceptional circumstances because of which it should dispense with this requirement, has given birth to a live child;and
- (b) the arrangement is set out in a written agreement signed by —
 - (i) each of the arranged parents; and
 - (ii) the birth mother and her husband or de facto partner, if any; and
 - (iii) any other person (a *donor*) whose egg or sperm is to be used for the conception of the child or who is the spouse or de facto partner of a donor;and
- (c) the Council is satisfied that, at least 3 months before the approval is given, each of the persons required by paragraph (b) to sign the agreement (the *parties*) has —
 - (i) undertaken any counselling about the implications of the surrogacy arrangement that regulations under this Act require; and
 - (ii) been assessed by a clinical psychologist and confirmed, in a written report provided to the Council, to be psychologically suitable to be involved in the surrogacy arrangement; and
 - (iii) received independent legal advice about the effect of the surrogacy arrangement;and

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- (d) the Council is satisfied that, at least 3 months before the approval is given, each of the arranged parents, the birth mother and any donor has been assessed by a medical practitioner and confirmed, in a written report provided to the Council, to be medically suitable to be involved in the surrogacy arrangement; and
- (e) the intended birth mother has not yet become pregnant under the arrangement.

18. Application of *Human Reproductive Technology Act 1991*

- (1) For the purposes of the performance by the Council of a function under this Act, the provisions of the *Human Reproductive Technology Act 1991* referred to in the Table apply as if the function were a function under that Act.

Table

s. 10(1), (3) and (4)	Sch. cl. 4
Sch. cl. 6	Sch. cl. 7
Sch. cl. 8	Sch. cl. 9
Sch. cl. 10	

- (2) The Council may, by resolution, delegate a function it is given by this Act to a committee appointed in accordance with subsection (1).
- (3) For the purpose of the *Human Reproductive Technology Act 1991* Schedule clause 10(1)(d) a delegation made under subsection (2) is taken to be a delegation made under section 11 of that Act.
- (4) To enable it to perform its functions under this Act, the Council may make use of staff, services or facilities available to it under the *Human Reproductive Technology Act 1991*.

Division 3 — Transfer of child's parentage

19. Circumstances for seeking parentage order

- (1) An application can be made under this Part for a parentage order only if —
- (a) the arranged parents reside in Western Australia and at least one arranged parent has reached 25 years of age; and
 - (b) when the surrogacy arrangement was entered into or after that time but before the application is made —
 - (i) the arranged parents are an eligible couple; or
 - (ii) one of the arranged parents, or the arranged parent if there is only one, is an eligible person.

- (2) In subsection (1)(b) —

eligible couple means 2 people of opposite sexes who are married to, or in a de facto relationship with, each other and who, as a couple —

- (a) are unable to conceive a child due to medical reasons not excluded by subsection (3); or
- (b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease;

eligible person means a woman who —

- (a) is unable to conceive a child due to medical reasons not excluded by subsection (3); or
- (b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease; or
- (c) although able to conceive a child, is unable for medical reasons to give birth to a child.

- (3) The medical reasons for being unable to conceive a child that are referred to in the definitions of *eligible couple* and *eligible person* do not include —
- (a) a reason arising from a person's age; or
 - (b) a reason prescribed for the purpose of the *Human Reproductive Technology Act 1991* section 23(1)(d).

20. Applying for a parentage order

- (1) In the circumstances described in section 19, the arranged parents may, if the making of the order would not be prevented by section 16(1), apply in accordance with this section for a parentage order.
- (2) The application can be lodged with the court only after a period of 28 days has elapsed since the day on which the child is born.
- (3) The application cannot be lodged with the court more than 6 months after the day on which the child is born except with the leave of the court, which may be given in exceptional circumstances.
- (4) If the child was born before the day fixed under section 2(b) as the day on which this section comes into operation, the application may, despite subsection (3), be lodged within one year after that day.
- (5) Before the court considers the application, a certified copy of the child's birth certificate must, if it is available, have been lodged with the court.

21. Court may make parentage order

- (1) The court may, on an application made under section 20(1), make a parentage order.
- (2) Before it makes a parentage order the court has to be satisfied that —
 - (a) the circumstances that section 19 requires for applying for a parentage order exist; and

- (b) except to the extent that subsection (3) authorises the court to dispense with the requirement for a birth parent to have received the counselling, the child's birth parents and the arranged parents have received appropriate counselling about the effect of the proposed order; and
 - (c) except to the extent that subsection (3) authorises the court to dispense with the requirement for a birth parent to have received the advice, the child's birth parents and the arranged parents have received independent legal advice about the effect of the proposed order; and
 - (d) except to the extent that subsection (3) authorises the court to dispense with the requirement for a birth parent's consent, the child's birth parents freely consent to the making of the order; and
 - (e) except in circumstances identified in subsection (4), the child was, when the application for the order was lodged with the court, and is, when the court makes the proposed order, in the day to day care of the arranged parents; and
 - (f) except to the extent that subsection (3) authorises the court to dispense with the requirement for a birth parent to have agreed, the child's birth parents and the arranged parents have agreed in writing to an appropriate plan (the *approved plan*) in accordance with section 22; and
 - (g) it is in the best interests of the child for the court to make the proposed order.
- (3) In circumstances identified in subsection (4) or if the court is satisfied that a birth parent is deceased or incapacitated or that the arranged parents have been unable to contact a birth parent despite having made reasonable efforts to do so, the court may dispense with —
- (a) the requirement for the birth parent to have received counselling as described in subsection (2)(b); or

- (b) the requirement for the birth parent to have received independent legal advice as described in subsection (2)(c); or
 - (c) the requirement for the birth parent to consent under subsection (2)(d) to the making of a parentage order; or
 - (d) the requirement for the birth parent to have agreed to an appropriate plan as described in subsection (2)(f).
- (4) The circumstances this subsection identifies are that —
- (a) the birth mother is not the child's genetic parent; and
 - (b) at least one arranged parent is the child's genetic parent.
- (5) In subsection (4) —
- genetic parent*** of a child means a person from whose egg or sperm the child is conceived.

22. Contents of approved plan

- (1) The plan needed to satisfy the court as section 21(2)(f) requires may deal with any matter relating to the child, and has to —
- (a) adequately balance the rights and responsibilities of the parties to the plan; and
 - (b) promote the child's long-term welfare; and
 - (c) be reasonable in the circumstances.
- (2) Without limiting the matters that the plan may deal with, the plan has to set out details of —
- (a) any time that the child is to spend, or communication that the child is to have, with the child's birth parents or any other person; and
 - (b) any information that any of the parties is to provide to the other or to any other person.

23. Ancillary orders

When the court makes a parentage order it may make any consequential or ancillary order it thinks fit in the interests of

justice or for the welfare and in the best interests of the child whose parentage would be affected.

24. Multiple births

- (1) This section applies if an application is made for a parentage order about a child who has a living brother or sister born as a result of the same pregnancy as the child (a *living birth sibling*).
- (2) The court cannot make a parentage order about a child who has a living birth sibling unless it also makes a parentage order about each living birth sibling of the child.

25. Name of child

- (1) If a parentage order is made, the court is to, by the same order, declare the name by which the child whose parentage is transferred is to be known.
- (2) Before making an order changing the child's name, the court is to have regard to —
 - (a) the principle that a child's first name should not be changed by a parentage order except in special circumstances; and
 - (b) anything that is relevant in the approved plan.
- (3) An order under this section does not prevent a subsequent change of name under a law of the State or the Commonwealth.

26. Effect of parentage order

- (1) The effect of a parentage order is that, for the purposes of the law of this State —
 - (a) the relationship between the child whose parentage is transferred and each of the arranged parents is to be treated as being that of child and parent; and
 - (b) the relationship between the child whose parentage is transferred and each of the child's birth parents is to be treated as not being that of child and parent; and

- (c) the relationships of all persons to the child whose parentage is transferred, to each of the arranged parents, and to each of the birth parents of the child are to be determined in accordance with this section.
- (2) If a parentage order is made, an appointment, in a deed or will existing at the time the parentage order is made, of a person as the guardian of the child whose parentage is transferred, ceases to have effect.

27. Discharge of parentage order

- (1) The court may, if satisfied as described in subsection (2), make an order discharging a parentage order on receiving an application for it to do so from —
 - (a) the Attorney General; or
 - (b) the chief executive officer; or
 - (c) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Adoption Act 1994*; or
 - (d) a child whose parentage was transferred by the parentage order who has reached the age of 18 years.
- (2) On an application under subsection (1), the court may make an order discharging a parentage order if it is satisfied that —
 - (a) the parentage order was obtained by fraud, duress or other improper means; or
 - (b) a consent relied on for the making of the parentage order was not an effective consent because it was obtained by fraud, duress or material inducement; or
 - (c) there is an exceptional reason why the parentage order should be discharged.
- (3) If the court makes an order discharging a parentage order, the court is to, by the same order, declare the name by which the child whose parentage would be affected is to be known, having

- regard to the principle that a child's first name should not be changed by the order except in special circumstances.
- (4) An order under subsection (3) does not prevent a subsequent change of name under a law of the State or the Commonwealth.
- (5) The court is not to make an order under subsection (2) unless —
- (a) to do so would be for the welfare and in the best interests of the child whose parentage would be affected; and
 - (b) the court is satisfied that reasonable efforts have been made to give notice of the application to —
 - (i) each of the birth parents of the child whose parentage would be affected; and
 - (ii) each of the arranged parents; and
 - (iii) if the court considers it appropriate having regard to the child's age, the child whose parentage would be affected.
- (6) Any person may apply for leave to intervene in an application under subsection (1) and the court may make an order entitling the person to intervene in the application.
- (7) A person who is permitted under subsection (6) to intervene in an application under subsection (1) is to be treated as a party to the application with all the rights, duties and liabilities of a party, unless the court orders otherwise.
- (8) Where an order is made under subsection (2), the court may make any consequential or ancillary order it thinks fit in the interests of justice or for the welfare and in the best interests of the child whose parentage would be affected, including any 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) the domicile of the child.
- (9) Where a parentage order is discharged under subsection (2), the rights, duties, liabilities and relationships of persons under the law of the State are to be, after the order is discharged, as if the parentage order had not been made.
- (10) Subsection (9) —
 - (a) does not apply to the extent that its application would be inconsistent with any order made under subsection (8) or with section 28; and
 - (b) does not affect —
 - (i) anything lawfully done; or
 - (ii) the consequences of anything lawfully done; or
 - (iii) any proprietary right or interest that became vested in any person,while the parentage order was in force.

28. Relationships for laws relating to sexual offences

For the purposes of the law of this State relating to sexual offences, being law for the purposes of which the relationship between persons is relevant —

- (a) despite section 26(1) and (2), a parentage order does not cause the cessation of any relationship that would have existed if the parentage order had not been made, and any such relationship is to be treated as existing in addition to any relationship that exists by virtue of the application of this section in relation to the parentage order; and
- (b) despite section 27(9), the discharge of a parentage order does not cause the cessation of any relationship that would have existed if the discharging order had not been made, and any such relationship is to be treated as existing in addition to any relationship that exists by virtue of the discharge of the parentage order.

29. Finality of parentage order

A parentage order cannot be appealed against, reviewed, called in question, or affected by any court, on any account, except —

- (a) under section 27; or
- (b) under the *Family Court Act 1997* section 211(3).

30. Varying approved plan

- (1) A person described in subsection (2) may apply to the court for approval to vary an approved plan relating to a child if the child has not reached 18 years of age.
- (2) The only person who can make the application is —
 - (a) a person who is a party to the approved plan; or
 - (b) a birth parent who is not a party to the approved plan.
- (3) The court may approve of the plan being varied in writing as sought by the application under subsection (1) if it is satisfied that —
 - (a) the variation is appropriate because of a change of circumstances since the approved plan was agreed; and
 - (b) the plan as varied would conform to the requirements of section 22.
- (4) The variation may be to add a new party to the plan.

31. Court's powers to do with breach of approved plan

- (1) If, on an application made to it by a party to an approved plan, the court is satisfied that a breach of a provision of the plan has occurred or is likely to occur, the court may —
 - (a) order the parties to the plan to participate in a mediation process; or
 - (b) exercise its powers under the *Family Court Act 1997*, as it thinks fit, to enforce a provision of the plan as if the provision were an order made by the court under that Act.

- (2) Without limiting subsection (1), the court may deal with a breach of a provision of an approved plan as if the person who breached the provision had contravened an order made by the court under the *Family Court Act 1997* or had been in contempt of the court.

32. Court to notify certain officers

- (1) The registrar of the court is to give to the Registrar of Births, Deaths and Marriages written notice of the particulars described in subsection (2) if the court —
- (a) makes a parentage order; or
 - (b) makes an order under section 27(1) discharging a parentage order.
- (2) The particulars of which notice has to be given are —
- (a) the date of the order; and
 - (b) the full name, address and occupation of each of the arranged parents; and
 - (c) the name by which the child whose parentage was transferred is known before, and is to be known after, the order becomes effective; and
 - (d) the terms of any consequential or ancillary order under section 27(8); and
 - (e) details of the date and place of birth of the child whose parentage was transferred and the name and address of each of the child's birth parents; and
 - (f) if available, any other information required by the Registrar of Births, Deaths and Marriages in relation to the registration under the *Births, Deaths and Marriages Registration Act 1998* of the birth of the child whose parentage was transferred.
- (3) If the birth of the child whose parentage was transferred is not registered in this State under the *Births, Deaths and Marriages Registration Act 1998* then in addition to the notice required by

subsection (1), the registrar of the court is to give the Registrar of Births, Deaths and Marriages a copy of the original registration of the child's birth, if it is available.

Division 4 — Access to information

33. Terms used in this Division

In this Division —

descendant means a lineal descendant;

grandparent means a lineal grandparent or a lineal ancestor;

sibling means a brother or sister of the whole or half blood,

whether or not the relationship is traced through, or to, a person whose parents were not married to each other at the time of the person's birth, or subsequently.

34. Application of this Division or order under it

- (1) If an approved plan provides for a party to the plan to have greater or earlier access to information than would be available under this Division, the party is entitled to access in accordance with the plan.
- (2) A right that this Division gives to have access to information or an order that the court makes giving access to information prevails over a provision of any contract or approved plan that purports to restrict or exclude that access.

35. Right under this Division to be treated as adequate reason

A right that this Division gives to a person to have access to the registration of a birth is to be treated as an adequate reason, for the purposes of the *Births, Deaths and Marriages Registration Act 1998* section 54 or 55, for the Registrar of Births, Deaths and Marriages —

- (a) to allow the person access to the Register under that Act; and

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- (b) to provide the person with information extracted from the Register under that Act; and
- (c) to search for information in the Register under that Act.

36. Court order excluding access to information

- (1) On an application for a parentage order or after a parentage order has been made, a party may apply to the court for an order excluding a person from having access under this Division to information.
- (2) On an application under subsection (1), the court may make an order excluding a person from having access under this Division to information if it is satisfied that the person's access to the information would be likely to place at serious risk —
 - (a) the applicant; or
 - (b) the person to whom the applicant is married, or with whom the applicant is in a de facto relationship; or
 - (c) any child of the applicant.
- (3) The order may exclude access to all or specified information in all or specified circumstances, and may exclude access from being given by the court or exclude a right of access from arising under this Division.
- (4) If an order is made under subsection (2), the registrar of the court is to give the Registrar of Births, Deaths and Marriages a certified copy of the order as soon as is practicable.
- (5) On the application of a person affected by an order under subsection (2), the court may revoke, suspend, or vary the order.

37. Access to certain court records

- (1) A person cannot have access to the record of proceedings in a court in relation to a parentage order except with the court's approval given on an application under subsection (2) or section 40(4) or 41(4).

- (2) The court may give access to all or part of the record of proceedings if an application for access is made in writing by —
- (a) the child to whose parentage the order relates; or
 - (b) a birth parent of the child; or
 - (c) an arranged parent of the child; or
 - (d) any other person who was a party to the proceedings.
- (3) Without limiting the other reasons for which the court may refuse to give a person access on an application under subsection (2) or section 40(4) or 41(4), the court may refuse to give access if —
- (a) the person has not produced to the registrar or another appropriate officer of the court proof of the person's identity; or
 - (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; or
 - (c) to give access would be contrary to any court order in relation to exclusion of persons from the hearing of the proceedings.

38. Access to registration of birth

- (1) A person has the right to have access to the registration of the birth of a person whose parentage has been transferred by a parentage order if and only if the person who is to have access is —
- (a) the child to whose parentage the order relates; or
 - (b) a birth parent of the child; or
 - (c) an arranged parent of the child.

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- (2) Even though subsection (1) gives a person the right to have access to the registration of the birth, that access may be refused if —
- (a) the person has not produced to the Registrar of Births, Deaths and Marriages or another appropriate officer proof of the person's identity; or
 - (b) the person has not complied with a requirement of, or under, the *Births, Deaths and Marriages Registration Act 1998* relating to that access.
- (3) Subsection (1) does not prevent a person from exercising a right given by section 40(2) or 41(2) to have access to the registration of the birth.

39. Portion of registration of birth not referring to parentage order

- (1) At the request of —
- (a) an arranged parent of the child, if the child has not reached 16 years of age; or
 - (b) the child, if the child has reached 16 years of age,

the Registrar of Births, Deaths and Marriages is to issue to the person making the request, a certified copy of that portion of the registration of the birth of a child whose parentage was transferred by a parentage order that does not refer to the child's birth parents or the change of parentage.

- (2) A certified copy of a portion of the registration of a child's birth that the Registrar of Births, Deaths and Marriages issues under subsection (1) is admissible in legal proceedings as evidence of the facts recorded on the document.

40. If certain person deceased

- (1) This section applies if —
- (a) a child whose parentage was transferred by a parentage order; or

- (b) a birth parent of the child; or
 - (c) an arranged parent of the child,
- is deceased.
- (2) If this section applies, a person has the right to have access to the registration of the birth of the child if the person who is to have access has reached 16 years of age and is —
 - (a) a grandparent of the deceased; or
 - (b) a descendant of the deceased; or
 - (c) a sibling of the deceased.
 - (3) Even though subsection (2) gives a person the right to have access to the registration of the birth, that access may be refused if —
 - (a) the person has not produced to the Registrar of Births, Deaths and Marriages or another appropriate officer proof of the person's identity and age; or
 - (b) the person has not complied with a requirement of, or under, the *Births, Deaths and Marriages Registration Act 1998* relating to that access.
 - (4) If this section applies, the court may give access to all or part of the record of proceedings in a court in relation to the parentage order if an application for access is made in writing by a person who has reached 16 years of age and is —
 - (a) a grandparent of the deceased; or
 - (b) a descendant of the deceased; or
 - (c) a sibling of the deceased.

41. If adult child cannot be contacted

- (1) This section applies if a child whose parentage was transferred by a parentage order has reached 18 years of age and cannot be found or contacted after making reasonable enquiries.

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- (2) If this section applies, a person has the right to have access to the registration of the birth of the child if the person who is to have access has reached 16 years of age and is —
- (a) a grandparent of the child; or
 - (b) a descendant of the child; or
 - (c) a sibling of the child.
- (3) Even though subsection (2) gives a person the right to have access to the registration of the birth, that access may be refused if —
- (a) the person has not produced to the Registrar of Births, Deaths and Marriages or another appropriate officer proof of the person's identity and age; or
 - (b) the person has not complied with a requirement of, or under, the *Births, Deaths and Marriages Registration Act 1998* relating to that access.
- (4) If this section applies, the court may give access to all or part of the record of proceedings in a court in relation to the parentage order if an application for access is made in writing by a person who has reached 16 years of age and is —
- (a) a grandparent of the child; or
 - (b) a descendant of the child; or
 - (c) a sibling of the child.

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42. Application of *Family Court Act 1997*

- (1) The *Family Court Act 1997* applies as if a reference to proceedings under that Act in a provision of that Act listed in the Table referred also to proceedings in which the court exercises jurisdiction conferred on it by this Act.

Table

s. 60	s. 62(1)
s. 65	s. 73

s. 164	s. 165
s. 166	s. 194
s. 195	s. 201
s. 207	s. 208
s. 213	s. 216
s. 243	s. 245(2)

- (2) The *Family Court Act 1997* applies as if a reference to jurisdiction of the court under that Act in section 244 referred also to jurisdiction conferred on the court by this Act.
- (3) In a context in which the *Family Court Act 1997* applies only because of this section, that Act applies as if a reference in that Act to a family consultant referred only to a person who is appointed in accordance with section 25 of that Act.
- (4) The *Family Court Act 1997* section 212 does not apply to proceedings in which the court exercises jurisdiction conferred on it by this Act.

43. Court proceedings to be private

- (1) This section applies to proceedings in which the court exercises jurisdiction under this Part (*proceedings under this Part*) and also to any proceedings of the Supreme Court arising out of proceedings under this Part.
- (2) Proceedings to which this section applies are not to be heard in open court and all persons other than a party to the proceedings or his or her lawyer are to be excluded during the proceedings, except as otherwise directed by the court.
- (3) A court may order any person to leave the room or other place during the examination of a witness in the proceedings.

44. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are

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necessary or convenient to be prescribed for giving effect to the purposes of this Act.

- (2) Without limiting subsection (1), regulations may be made as to what is appropriate counselling for a child's birth parents and the arranged parents to receive about the effect of a proposed parentage order.

45. Review of Act

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 4 years from its commencement.
- (2) The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as is practicable after that preparation, cause that report to be laid before each House of Parliament.

Part 4 — Other Acts amended

Division 1 — *Births, Deaths and Marriages Registration Act 1998* amended

46. Act amended

This Division amends the *Births, Deaths and Marriages Registration Act 1998*.

47. Long title amended

In the long title delete “**adoptions information**” and insert:

information about certain parentage changes

48. Section 3 amended

In section 3:

(a) in paragraph (a) delete “adoptions” and insert:

parentage change

(b) in paragraph (b) delete “adoptions” and insert:

parentage changes

49. Section 4 amended

In section 4 in the definition of *registrable event* delete “adoption;” and insert:

adoption or the making or discharge of a parentage order as defined in the *Surrogacy Act 2008* section 14;

50. Part 4 heading replaced

Delete the heading to Part 4 and insert:

Part 4 — Registration of information about certain parentage changes

51. Section 24 amended

(1) In section 24 delete “On receipt” and insert:

(1) On receipt

(2) At the end of section 24 insert:

(2) On receipt of a notice under section 32(1) of the *Surrogacy Act 2008* in relation to the making or discharge of a parentage order about a child whose birth is registered in this State, the particulars provided in the notice must be registered by the Registrar in relation to the registration of the child’s birth.

Note: The heading to section-24 is to read:

WA order: birth registered in WA

52. Section 25 amended

(1) After section 25(1) insert:

(2A) On receipt of a notice under section 32(1) of the *Surrogacy Act 2008* in relation to the making or discharge of a parentage order about a child whose birth is registered in another State, the Registrar —

(a) must send a copy of the notice to the relevant registering authority; and

(b) subject to subsection (2), must register the child's birth in accordance with the information provided under section 32 of that Act.

(2) In subsection (2):

(a) after "subsection (1)" insert:

or (2A)

(b) in paragraph (b) delete "order," (both occurrences) and insert:

order or parentage order,

(3) In subsection (3) after "subsection (1)" insert:

or (2A)

Note: The heading to section-25 is to read:

WA order: birth not registered in WA

53. Section 26 amended

(1) In section 26:

(a) delete "If" and insert:

(1) If

(b) in paragraph (a) after "adoption order" insert:

or parentage order

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Part 4 Other Acts amended

Division 1 Births, Deaths and Marriages Registration Act 1998 amended

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(2) At the end of section 26 insert:

(2) In subsection (1) —

parentage order means an order substantially similar in effect to a parentage order under the *Surrogacy Act 2008*.

Note: The heading to section 26 is to read:

Order in other State: birth registered in WA

54. Section 28 replaced

Delete section 28 and insert:

28. Certain certified copies

If the *Adoption Act 1994* section 86 or the *Surrogacy Act 2008* section 39 requires the Registrar to issue a certified copy of that portion of the registration of a person's birth that does not refer to —

- (a) the person's birth parents; or
- (b) as the case requires, the person's adoption or change of parentage under the *Surrogacy Act 2008*,

the certified copy is to be in an approved form.

55. Section 68 amended

Delete section 68(2) and insert:

- (2A) Nothing in this Act prevents a birth parent of a child whose parentage was transferred under the *Surrogacy Act 2008* from applying under section 19 or 52 (other than with a request under section 19(2)(c)) to add additional registrable information about the child's birth registration if, but for the transfer of parentage, the information could have been included in the Register.

- (2) To the extent that —
- (a) a provision of the *Adoption Act 1994* relating to access to adoption information in the Register; or
 - (b) a provision of the *Surrogacy Act 2008* relating to access to information in the Register about the transfer of parentage under that Act,
- is inconsistent with this Act, that Act prevails.

Note: The heading to section 68 is to read:

Some effects of *Adoption Act 1994* and *Surrogacy Act 2008*

**Division 2 — *Children and Community Services Act 2004*
amended**

56. Act amended

This Division amends the *Children and Community Services Act 2004*.

57. Section 104 amended

- (1) In section 104(2):
- (a) before paragraph (f) insert:
 - (fa) caring for the child under a surrogacy arrangement, as defined in the *Surrogacy Act 2008*, and not more than one year has elapsed since the day on which the child was born; or
 - (b) after each of paragraphs (a) to (d) insert:
- or
- (2) In section 104(4) after each of paragraphs (a) to (c) insert:

and

Division 3 — *Family Court Act 1997* amended

58. Act amended

This Division amends the *Family Court Act 1997*.

59. Section 5 amended

In section 5(1) in the definition of *child*:

- (a) in paragraph (a) delete “adopted child” and insert:

adopted child, a child whose parentage has been transferred under the *Surrogacy Act 2008*

- (b) in paragraph (b) delete “adopted child);” and insert:

adopted child or a child whose parentage has been transferred under the *Surrogacy Act 2008*);

60. Section 36 amended

In section 36(2) delete “*Adoption Act 1994*” and insert:

Adoption Act 1994, the *Surrogacy Act 2008*

61. Section 39 amended

In section 39 after “*Adoption Act 1994*” insert:

or the *Surrogacy Act 2008*

62. Section 205T amended

In section 205T:

- (a) in the definition of *child* before paragraph (c) insert:

- (ca) a child whose parentage has, since the commencement of the de facto relationship, been transferred under the *Surrogacy Act 2008* to the de facto partners; or

- (b) in the definition of *child* after paragraph (a) insert:

or

- (c) in the definition of *financial matters* after paragraph (a) insert:

or

**Division 4 — *Guardianship and Administration Act 1990*
amended**

63. Act amended

This Division amends the *Guardianship and Administration Act 1990*.

64. Section 45 amended

After section 45(3)(c) insert:

- (da) consent, under section 21(2)(d) of the *Surrogacy Act 2008*, to the making of a parentage order under that Act;
or

**Division 5 — *Human Reproductive Technology Act 1991*
amended**

65. Act amended

This Division amends the *Human Reproductive Technology Act 1991*.

66. Section 18 amended

After section 18(1)(b) insert:

- (ca) an artificial fertilisation procedure for implementing a surrogacy arrangement as defined in the *Surrogacy Act 2008* section 3;

67. Section 23 amended

(1) In section 23:

- (a) delete “An” and insert:

(1) An

- (b) after paragraph (a)(ii) insert:

- (iii) a woman who is unable to give birth to a child due to medical reasons and is a party to a surrogacy arrangement (as defined in the *Surrogacy Act 2008* section 3) that is lawful;

- (c) in paragraph (c) delete “the persons seeking to be treated” and insert:

any persons seeking to be regarded, in applying paragraph (a),

(d) after each of paragraph (a)(i) and (ii) insert:

or

(e) after each of paragraphs (a) to (c) insert:

and

(2) At the end of section 23 insert:

(2) Subsection (1) does not require that the benefit likely to result from the procedure involve the pregnancy of a member of the couple who are, or the woman who is, likely to benefit.

Division 6 — *Interpretation Act 1984* amended

68. Act amended

This Division amends the *Interpretation Act 1984*.

69. Section 5 amended

In section 5 in the definition of *parent* after paragraph (b) insert:

(c) a person who is a parent in a relationship of parent and child that arises because of a parentage order under the *Surrogacy Act 2008*;

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Notes

¹ [This is a compilation of the *Surrogacy Act 2008*. The following table contains information about that Act.](#)

Compilation table

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
Surrogacy Act 2008	47 of 2008	10 Dec 2008	s. 1 and 2: 10 Dec 2008 (see s. 2(a)); Act other than s. 1 and 2: 1 Mar 2009 (see s. 2(b) and Gazette 27 Feb 2009 p. 512)