

Authorised Version No. 040
Status of Children Act 1974
No. 8602 of 1974

Authorised Version incorporating amendments as at
1 January 2015

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1 January 2015

An Act to remove the Legal Disabilities of Children born out of
Wedlock.

BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):

PART I—PRELIMINARY

Pt 1 (Heading)
inserted by
No. 10069
s. 4(a).

1 Short title and commencement

- (1) This Act may be cited as the **Status of Children Act 1974**.
- (2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

2 Definitions

- (1) For the purposes of this Act *marriage* includes a void marriage and *married* has a corresponding interpretation.

- (2) In this Act—

embryo has the meaning given by the **Assisted Reproductive Treatment Act 2008**;

S. 2
amended by
No. 76/2008
s. 137 (ILA
s. 39B(1)).

S. 2(2)
inserted by
No. 76/2008
s. 137.

non-birth mother means a woman who is a parent of a child by operation of a presumption in Part III;

ovum in the process of fertilisation means an ovum at any stage of human development from the commencement of penetration of the ovum by human sperm up to but not including the appearance of 2 pro-nuclei;

partner, in relation to a person, means—

- (a) the person's spouse; or
- (b) a person who lives with the first person as a couple on a genuine domestic basis;

spouse means a person to whom another person is married.

3 All children to be of equal status

- (1) For all the purposes of the law of Victoria the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other and all other relationships shall be determined accordingly.
- (2) The rule of construction whereby in any instrument, in the absence of expression of any intention to the contrary, words of relationship signify only legitimate relationship is abolished.
- (3) For the purpose of construing any instrument the use, with reference to relationship of a person, of the words "legitimate" or "lawful" shall not of itself prevent the relationship from being determined in accordance with the provisions of subsection (1).

- (4) This section shall apply in respect of every person, whether born before or after the commencement of this Act, whether born in Victoria or not, and whether or not his father or mother has ever been domiciled in Victoria.

4 Instruments executed before commencement

- (1) All instruments executed before the commencement of this Act shall be governed by the enactments, rules of construction, and law which would have applied to them if this Act had not been passed.
- (2) Where an instrument to which subsection (1) applies creates a special power of appointment nothing in this Act shall extend the class of persons in whose favour the appointment may be made or cause the exercise of the power to be construed so as to include any person who is not a member of that class.
- (3) The estate of a person who dies intestate as to the whole or any part of his estate before the commencement of this Act shall be distributed in accordance with the enactments and rules of law which would have applied to the estate if this Act had not been passed.

5 Presumptions as to parenthood

A child born to a woman during her marriage or within ten months after the marriage has been dissolved by death or otherwise shall, in the absence of evidence to the contrary, be presumed to be the child of its mother and her husband, or former husband, as the case may be.

6 Protection of executors, administrators and trustees

S. 6(1)
amended by
No. 80/2014
s. 44.

- (1) For the purposes of the administration or distribution of any estate or of any property held upon trust, or of any application for a family provision order under Part IV of the **Administration and Probate Act 1958**, or for any other purposes an executor, administrator, or trustee is not under any obligation to inquire as to the existence of any person who could claim an interest in the estate or the property by reason only of the provisions of this Act.
- (2) No action shall lie against an executor of the will or administrator or trustee under an instrument by any person who could claim an interest in the estate or property by reason only of any of the provisions of this Act to enforce any claim arising by reason of the executor or administrator or trustee having made any distribution of the estate or of the property held upon trust or otherwise acted in the administration of the estate or property held on trust disregarding the claims of that person where at the time of making the distribution or otherwise so acting the executor administrator or trustee had no notice of the relationship on which the claim is based.

7 Recognition of paternity

S. 7(1)
amended by
No. 80/2014
s. 45.

- (1) The relationship of father and child and any other relationship traced in any degree through that relationship shall, for any purpose related to succession to property or to the construction of any will or testamentary disposition or of any instrument creating a trust or for the purpose of a claim for a family provision order under Part IV of the **Administration and Probate Act 1958**, be recognized only if—

- (a) the father and the mother of the child were married to each other at the time of its conception or at some subsequent time; or
 - (b) paternity has been admitted (expressly or by implication) by or established against the father in his lifetime and, if the father is a beneficiary of the child, paternity has been so admitted or established while the child was living.
- (2) In any case where by reason of the provisions of subsection (1) the relationship of father and child is not recognized at the time the child is born the occurrence of any act, event, or conduct which enables that relationship and any other relationship traced in any degree through it to be recognized shall not affect any estate right or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the act, event, or conduct occurred.

8 Evidence of parentage

S. 8 (Heading)
inserted by
No. 76/2008
s. 138(1).

- (1) Where the name of a parent of a child is entered in the register of births in the Register maintained under the **Births, Deaths and Marriages Registration Act 1996** in relation to the child a certified copy of the entry purporting to be made or given under section 46 of that Act shall be prima facie evidence that the person named as a parent is a parent of the child.
- (2) An instrument signed by the mother of a child and by any person acknowledging that he is the father of the child shall, if executed as a deed or by each of those persons in the presence of a legal practitioner, be prima facie evidence that the

S. 8(1)
amended by
Nos 10244
s. 10, 43/1996
s. 65(Sch.
item 11.1),
76/2008
s. 138(2).

S. 8(2)
amended by
No. 35/1996
s. 453(Sch. 1
item 79).

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person named as the father is the father of the child.

S. 8(2A)
inserted by
No. 76/2008
s. 138(3).

- (2A) An instrument signed by the mother of a child and any person certifying that she is the non-birth mother of the child is, if executed as a deed or by each of those persons in the presence of a legal practitioner, prima facie evidence that the person named as the non-birth mother is a parent of the child.

S. 8(3)
repealed by
No. 59/1997
s. 9(a).

* * * * *

- (4) Subject to subsection (1) of section 7 a declaration made under section 10 shall for all purposes be conclusive proof of the matters to which it relates.

S. 8(5)
amended by
No. 76/2008
s. 138(2).

- (5) An order made outside Victoria declaring a person to be a parent of a child, being an order described in subsection (6) or subsection (7), shall be prima facie evidence that the person declared a parent is a parent of the child.
- (6) For the purposes of this section an order made outside Victoria in another Australian State or in a Territory of the Commonwealth or in New Zealand has, so long as it has not been rescinded under the law in force in that State or Territory, the same effect as the like order made in Victoria.
- (7) The Governor in Council may from time to time, by Order, declare that subsection (5) applies with respect to orders made by any court or public authority in any specified country outside Australia or by any specified court or public authority in any such country.

**9 Instruments may be filed with Registrar of Births,
Deaths and Marriages**

S. 9 (Heading)
inserted by
No. 76/2008
s. 139(1).

(1) Any instrument of the kind described in subsection (2) or (2A) of section 8 or a copy thereof may be filed in the office of the Registrar of Births, Deaths and Marriages upon payment of the prescribed fee.

S. 9(1)
amended by
Nos 10244
s. 10, 43/1996
s. 65(Sch.
item 11.2),
76/2008
s. 139(2).

(2) The Registrar of Births, Deaths and Marriages shall cause indexes of all instruments and copies filed with him under subsection (1) to be made and kept in his office and shall, upon request made by or on behalf of a party to an instrument so filed or a child referred to in any such instrument or a guardian or relative of that child cause a search of any index to be made and shall permit that person to inspect any such instrument or copy if he is satisfied that the person has a direct and proper interest in the matter.

S. 9(2)
amended by
Nos 10244
s. 10, 43/1996
s. 65(Sch.
item 11.2).

(3) Where the Supreme Court makes a declaration of parentage under section 10 the proper officer of the court shall forward a copy of the declaration or order to the Registrar of Births, Deaths and Marriages for filing in his office under this section and on receipt of any such copy the Registrar of Births, Deaths and Marriages shall file it accordingly as if it were an instrument of the kind referred to in subsection (2) or (2A) of section 8.

S. 9(3)
amended by
Nos 10244
s. 10, 57/1989
s. 3(Sch. item
188), 43/1996
s. 65(Sch.
item 11.2),
59/1997
s. 9(b),
76/2008
s. 139(3).

**10 Application to Supreme Court for declaration of
parentage**

S. 10
(Heading)
inserted by
No. 76/2008
s. 140(1).

(1) Any person (the *first person*) who—
(a) claims that any named person is a parent of the first person's child; or

S. 10(1)
substituted by
No. 76/2008
s. 140(2).

- (b) claims that a relationship of parent and child exists between the first person and any other named person; or
- (c) has a proper interest in the result who wishes to have a determination whether the relationship of parent and child exists between two named persons—

may apply to the Supreme Court for a declaration of parentage and if it is proved to the satisfaction of the Court that the relationship exists the Court may make a declaration of parentage whether or not the parent or the child or both of them are living or dead.

S. 10(2)
amended by
No. 76/2008
s. 140(3).

- (2) Where a declaration is made under subsection (1) after the death of the parent or of the child the Court may at the same or any subsequent time make a declaration determining, for the purposes of paragraph (b) in subsection (1) of section 7, whether any of the requirements of that paragraph have been satisfied.
- (3) Where a declaration has been made under subsection (1) and it appears to the Court that new facts or circumstances have arisen that have not previously been disclosed to a Court and could not by the exercise of reasonable diligence have previously been known the Court may revoke the declaration which shall thereupon cease to have any force or effect.

**PART II—STATUS OF CHILDREN—MEDICAL
PROCEDURES—WOMEN WITH A MALE PARTNER**

Pt 2
(Heading and
ss 10A–10F)
inserted by
No. 10069 s. 5.

Pt 2
(Heading)
substituted by
No. 76/2008
s. 141.

10A Interpretation

S. 10A
inserted by
No. 10069 s. 5.

- (1) A reference in this Part to a married woman includes a reference to a woman who is living with a man as his wife on a bona fide domestic basis although not married to him.
- (2) A reference, however expressed, in this Part to the husband or wife of a person—
 - (a) is, in the case where the person is living with another person of the opposite sex as his or her spouse on a bona fide domestic basis although not married to the other person, a reference to that other person; and
 - (b) does not, in that case, include a reference to the spouse (if any) to whom the person is actually married.

* * * * *

S. 10A(3)
inserted by
No. s 63/1995
s. 170(1),
amended by
No. 11/2003
s. 25(2)(3),
repealed by
No. 76/2008
s. 142.

S. 10B
inserted by
No. 10069 s. 5.

10B Application of Part

S. 10B(1)
amended by
No. 63/1995
s. 170(2).

- (1) Subject to subsection (3), the provisions of this Part apply—
 - (a) in respect of a pregnancy referred to in section 10C, 10D or 10E, whether the pregnancy occurred before or after the commencement of the **Status of Children (Amendment) Act 1984** and whether or not it resulted from a procedure carried out in Victoria; and
 - (b) in respect of any child born as a result of a pregnancy referred to in section 10C, 10D or 10E, whether or not the child was born before or after the commencement of the **Status of Children (Amendment) Act 1984**.

- (2) Nothing in any provision of this Part affects the vesting in possession or in interest of any property that occurred before the commencement of the **Status of Children (Amendment) Act 1984**.

S. 10B(3)
inserted by
No. 63/1995
s. 170(3).

- (3) The amendments made to this Part by the **Infertility Treatment Act 1995** apply—
 - (a) in respect of a pregnancy referred to in section 10D or 10E which resulted from a procedure carried out in or outside Victoria whether before or after the commencement of section 170 of the **Infertility Treatment Act 1995**; and
 - (b) in respect of any child born as a result of a pregnancy referred to in section 10D or 10E resulting from a procedure carried out whether before or after the commencement of section 170 of the **Infertility Treatment Act 1995**.

- (4) Nothing in the amendments made to this Part by the **Infertility Treatment Act 1995** affects the vesting in possession or in interest of any property that occurred before the date on which that Act received the Royal Assent.

S. 10B(4)
inserted by
No. 63/1995
s. 170(3).

10C Artificial insemination: presumption as to status of child

S. 10C
inserted by
No. 10069 s. 5.

- (1) A reference in this section to a procedure is a reference to the artificial insemination of a woman where the semen used for the artificial insemination—
- (a) was produced by a man other than her husband; or
 - (b) was a mixture of semen, part of which was produced by a man other than her husband and part of which was produced by her husband.
- (2) Where a married woman, in accordance with the consent of her husband, has undergone a procedure as a result of which she has become pregnant—
- (a) the husband shall be presumed, for all purposes, to have caused the pregnancy and to be the father of any child born as a result of the pregnancy; and
 - (b) any man, not being her husband, who produced semen used for the procedure shall, for all purposes, be presumed not to have caused the pregnancy and not to be the father of any child born as a result of the pregnancy.
- (3) A presumption of law that arises by virtue of subsection (2)—
- (a) is irrebuttable; and

S. 10C(3)(b)
substituted by
No. 76/2008
s. 143.

- (b) prevails over—
- (i) any conflicting presumption that arises under section 8; or
 - (ii) any conflicting declaration made under section 10.

- (4) In any proceedings in which the operation of subsection (2) is relevant, a husband's consent to the carrying out of a procedure in respect of his wife shall be presumed, but that presumption is rebuttable.

S. 10D
inserted by
No. 10069 s. 5.

10D Implantation procedures: presumption as to status of child where donor semen used

S. 10D(1)
amended by
No. 63/1995
s. 170(4).

- (1) A reference in this section to a procedure is a reference to the procedure of implanting in the womb of a woman, or otherwise transferring to the body of a woman, an embryo derived from an ovum produced by her and fertilized outside her body by semen produced by a man other than her husband.

S. 10D(1A)
inserted by
No. 63/1995
s. 170(5).

- (1A) A reference in this section to a procedure includes a reference to—
- (a) the procedure of transferring to the body of a woman, otherwise than by artificial insemination—
 - (i) semen produced by a man other than her husband; or
 - (ii) semen produced by a man other than her husband and an ovum produced by her; and
 - (b) the procedure of transferring to the body of a woman an ovum in the process of fertilisation, if the ovum was produced by her and the process of fertilisation commenced outside her body from semen produced by a man other than her husband.

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Partner

(2) Where a married woman, in accordance with the consent of her husband, has undergone a procedure as a result of which she has become pregnant—

(a) the husband shall be presumed, for all purposes, to have produced the semen used for the fertilization of the ovum used in the procedure and to be the father of any child born as a result of the pregnancy; and

(b) the man who produced the semen used for the fertilization of the ovum used in the procedure shall, for all purposes, be presumed not to have produced that semen and not to be the father of any child born as the result of the pregnancy; and

S. 10D(2)(b)
amended by
No. 74/2000
s. 3(Sch. 1
item 118.1).

(c) the husband shall be presumed, for all purposes, to have produced the semen—

S. 10D(2)(c)
inserted by
No. 63/1995
s. 170(6).

(i) used in the procedure; or

(ii) used for the fertilisation of the ovum used in the procedure; or

(iii) used for the fertilisation of the ovum from which the embryo used in the procedure was derived—

and to be the father of any child born as a result of the pregnancy; and

(d) the man who produced the semen—

S. 10D(2)(d)
inserted by
No. 63/1995
s. 170(6).

(i) used in the procedure; or

(ii) used for the fertilisation of the ovum used in the procedure; or

(iii) used for the fertilisation of the ovum from which the embryo used in the procedure was derived—

shall, for all purposes, be presumed not to have produced that semen and not to be the father of any child born as the result of the pregnancy.

(3) A presumption of law that arises by virtue of subsection (2)—

(a) is irrebuttable; and

(b) prevails over—

(i) any conflicting presumption that arises under section 8; or

(ii) any conflicting declaration made under section 10.

(4) In any proceedings in which the operation of subsection (2) is relevant, a husband's consent to the carrying out of a procedure in respect of his wife shall be presumed but that presumption is rebuttable.

S. 10D(3)(b)
substituted by
No. 76/2008
s. 144.

S. 10E
inserted by
No. 10069 s. 5.

10E Implantation procedures: presumption as to status of child where donor ovum used

(1) A reference in this section to a procedure is a reference to the procedure of implanting in the womb of a woman, or otherwise transferring to the body of a woman, an embryo derived from an ovum produced by another woman, being an ovum that has been fertilized by—

(a) semen produced by the husband of the first-mentioned woman; or

(b) semen produced by a man other than the husband of the first-mentioned woman.

S. 10E(1)
amended by
No. 63/1995
s. 170(7).

(1A) A reference in this section to a procedure includes a reference to—

S. 10E(1A)
inserted by
No. 63/1995
s. 170(8).

- (a) the procedure of transferring to the body of a woman an ovum produced by another woman, including an ovum in the process of fertilisation, where that process commenced outside the body of the first-mentioned woman; and
- (b) the procedure of transferring to the body of a woman an ovum produced by another woman and semen—

whether any semen transferred, or any semen which is used to fertilise the ovum (if any) is produced by the husband of the first-mentioned woman or by another man.

(2) Where a married woman, in accordance with the consent of her husband, has undergone a procedure as a result of which she has become pregnant—

- (a) the married woman shall be presumed, for all purposes, to have become pregnant as a result of the fertilization of an ovum produced by her and to be the mother of any child born as the result of the pregnancy;
- (b) the woman who produced the ovum used in the procedure or from which the embryo used in the procedure was derived shall be presumed, for all purposes, not to be the mother of any child born as a result of the pregnancy;
- (c) where the semen used for the fertilization of the ovum from which the embryo used in the procedure was derived was produced by the husband of the married woman, the husband shall be presumed, for all purposes, to be the

S. 10E(2)(b)
amended by
No. 63/1995
s. 170(9).

father of any child born as the result of the pregnancy; and

(d) where the semen used for the fertilization of the ovum from which the embryo used in the procedure was derived was produced by a man other than the husband of the married woman—

(i) the husband shall be presumed, for all purposes, to have produced the semen and to be the father of any child born as the result of the pregnancy; and

(ii) the man who produced the semen shall be presumed, for all purposes, not to have produced that semen and not to be the father of any child born as a result of the pregnancy.

S. 10E(2)(e)
inserted by
No. 63/1995
s. 170(10).

(e) where the semen used—

(i) in the procedure; or

(ii) for the fertilisation of the ovum used in the procedure—

was produced by the husband of the married woman, the husband shall be presumed, for all purposes, to be the father of any child born as a result of the pregnancy; and

S. 10E(2)(f)
inserted by
No. 63/1995
s. 170(10).

(f) where the semen used—

(i) in the procedure; or

(ii) for the fertilisation of the ovum used in the procedure—

was produced by a man other than the husband of the married woman—

(iii) the husband shall be presumed, for all purposes, to have produced the semen and to be the father of any child born as a result of the pregnancy; and

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(iv) the man who produced the semen shall be presumed, for all purposes, not to have produced that semen and not to be the father of any child born as a result of the pregnancy.

(3) A presumption of law that arises by virtue of subsection (2)—

(a) is irrebuttable; and

(b) prevails over—

(i) any conflicting presumption that arises under section 8; or

(ii) any conflicting declaration made under section 10.

(4) In any proceedings in which the operation of subsection (2) is relevant, a husband's consent to the carrying out of a procedure in respect of his wife shall be presumed but that presumption is rebuttable.

* * * * *

S. 10E(3)
amended by
No. 74/2000
s. 3(Sch. 1
item 118.2).

S. 10E(3)(b)
substituted by
No. 76/2008
s. 145.

S. 10F
inserted by
No. 10069 s. 5,
repealed by
No. 76/2008
s. 146.

**PART III—STATUS OF CHILDREN—MEDICAL
PROCEDURES—WOMEN WITH A FEMALE PARTNER OR
WITHOUT A PARTNER**

Pt 3 (Heading and ss 11, 12) amended by Nos 9863 s. 2, 10069 s. 4(b), substituted as Pt 3 (Heading and ss 11–16) by No. 76/2008 s. 147.

S. 11 substituted by No. 76/2008 s. 147.

11 Interpretation

In this Part—

procedure means the following procedures within the meaning of the **Assisted Reproductive Treatment Act 2008**—

- (a) assisted reproductive treatment;
- (b) artificial insemination.

New s. 12 inserted by No. 76/2008 s. 147.

12 Application of Part

This Part applies in respect of a woman who undergoes a procedure and who, at the time of the procedure—

- (a) has a female partner; or
- (b) does not have a partner, whether female or male.

S. 13 inserted by No. 76/2008 s. 147.

13 Women with a female partner: presumption as to status of child

- (1) If a woman undergoes a procedure as a result of which she becomes pregnant—
 - (a) the woman is presumed, for all purposes, to be the mother of any child born as a result of the pregnancy; and

- (b) the woman's female partner is presumed, for all purposes, to be a legal parent of any child born as a result of the pregnancy if she—
 - (i) was the woman's female partner when the woman underwent the procedure as a result of which she became pregnant; and
 - (ii) consented to the procedure as a result of which the woman became pregnant; and
 - (c) the man who produced the semen used in the procedure is presumed, for all purposes, not to be the father of any child born as a result of the pregnancy, whether or not the man is known to the woman or her female partner.
- (2) A presumption of law that arises under subsection (1)—
- (a) is irrebuttable; and
 - (b) prevails over—
 - (i) any conflicting presumption that arises under section 8; or
 - (ii) any conflicting declaration made under section 10.
- (3) In any proceedings in which the operation of subsection (1) is relevant, the woman's female partner's consent to the carrying out of the procedure in respect of the woman is presumed but that presumption is rebuttable.

S. 14
inserted by
No. 76/2008
s. 147.

14 Women with a female partner: presumption as to status of child where donor ovum used

- (1) If a woman undergoes a procedure using a donor ovum as a result of which she becomes pregnant—
 - (a) the woman is presumed, for all purposes, to have become pregnant as a result of fertilisation of an ovum produced by her and to be the mother of any child born as a result of the pregnancy; and
 - (b) the woman's female partner is presumed, for all purposes, to be a legal parent of any child born as a result of the pregnancy if she—
 - (i) was the woman's female partner when the woman underwent the procedure as a result of which she became pregnant; and
 - (ii) consented to the procedure as a result of which the woman became pregnant; and
 - (c) the man who produced the semen used in the procedure is presumed, for all purposes, not to be the father of any child born as a result of the pregnancy, whether or not the man is known to the woman or her female partner; and
 - (d) the woman who produced the ovum used in the procedure is presumed, for all purposes, not to be the mother of any child born as a result of the pregnancy.
- (2) A presumption of law that arises under subsection (1)—
 - (a) is irrebuttable; and

- (b) prevails over—
 - (i) any conflicting presumption that arises under section 8; or
 - (ii) any conflicting declaration made under section 10.
- (3) In any proceedings in which the operation of subsection (1) is relevant, the woman's female partner's consent to the carrying out of the procedure in respect of the woman is presumed but that presumption is rebuttable.

15 Women with no partner: presumption as to status of child

S. 15
inserted by
No. 76/2008
s. 147.

- (1) If a woman who does not have a partner undergoes a procedure as a result of which she becomes pregnant—
 - (a) the woman is presumed, for all purposes, to be the mother of any child born as a result of the pregnancy; and
 - (b) the man who produced the semen used in the procedure is presumed, for all purposes, not to be the father of any child born as a result of the pregnancy, whether or not the man is known to the woman.
- (2) A presumption of law that arises under subsection (1)—
 - (a) is irrebuttable; and
 - (b) prevails over—
 - (i) any conflicting presumption that arises under section 8; or
 - (ii) any conflicting declaration made under section 10.

S. 16
inserted by
No. 76/2008
s. 147.

16 Women with no partner: presumption as to status of child where donor ovum used

- (1) If a woman who does not have a partner undergoes a procedure using a donor ovum as a result of which she becomes pregnant—
 - (a) the woman is presumed, for all purposes, to have become pregnant as a result of fertilisation of an ovum produced by her and to be the mother of any child born as a result of the pregnancy; and
 - (b) the man who produced the semen used in the procedure is presumed, for all purposes, not to be the father of any child born as a result of the pregnancy, whether or not the man is known to the woman; and
 - (c) the woman who produced the ovum used in the procedure is presumed, for all purposes, not to be the mother of any child born as a result of the pregnancy.
- (2) A presumption of law that arises under subsection (1)—
 - (a) is irrebuttable; and
 - (b) prevails over—
 - (i) any conflicting presumption that arises under section 8; or
 - (ii) any conflicting declaration made under section 10.

**PART IV—STATUS OF CHILDREN IN SURROGACY
ARRANGEMENTS**

Division 1—Preliminary

17 Interpretation

(1) In this Part—

artificial insemination has the meaning given by the **Assisted Reproductive Treatment Act 2008**;

commissioning parents, in relation to a child born under a surrogacy arrangement, means the person or persons who entered into the surrogacy arrangement for a woman to carry the child on behalf of the person or persons;

corresponding interstate surrogacy law means a prescribed law of another Australian State or a Territory relating to parentage of a child born under a surrogacy arrangement;

corresponding surrogacy parentage order means an order—

- (a) relating to legal parentage of a child born under a surrogacy arrangement; and
- (b) that is made under a prescribed provision of a corresponding interstate surrogacy law;

court means the Supreme Court or the County Court;

registered ART provider has the meaning given by the **Assisted Reproductive Treatment Act 2008**;

Pt 4 (Heading and ss 17–35) inserted by No. 76/2008 s. 147.

S. 17 inserted by No. 76/2008 s. 147.

S. 17(1) def. of *corresponding interstate surrogacy law* inserted by No. 80/2014 s. 32(1).

S. 17(1) def. of *corresponding surrogacy parentage order* inserted by No. 80/2014 s. 32(1).

S. 17(1) def. of
*registration
order*
inserted by
No. 80/2014
s. 32(1).

registration order has the meaning given in
section 29A;

substitute parentage order means an order made
under section 22;

surrogacy arrangement has the meaning given by
the **Assisted Reproductive Treatment
Act 2008**;

surrogate mother means the woman who carries
and gives birth to a child under a surrogacy
arrangement.

S. 17(2)
substituted by
No. 80/2014
s. 32(2).

- (2) In this Part, a reference to the surrogate mother's
partner means—
- (a) in relation to a child conceived in Victoria
under a surrogacy arrangement, the person
who was the surrogate mother's partner at the
time the surrogacy arrangement was entered
into;
 - (b) in relation to a child conceived in another
Australian State or a Territory under a
surrogacy arrangement, the person who,
under the corresponding interstate surrogacy
law of that Australian State or Territory, was
the surrogate mother's partner, however
described under that law.

S. 18
inserted by
No. 76/2008
s. 147.

18 Jurisdiction of courts

- (1) The court that has jurisdiction to make a substitute
parentage order or any other order under this Part
is—
- (a) the Supreme Court; or
 - (b) at the applicant's option, the County Court.

- (2) If an application for a substitute parentage order or other order under this Part is made to the County Court, and the County Court considers that, in all the circumstances of the case, the matter should be dealt with by the Supreme Court, the County Court may direct that the application be transferred to the Supreme Court.

19 Surrogacy arrangements—presumption as to status of child

S. 19
inserted by
No. 76/2008
s. 147,
substituted by
No. 80/2014
s. 33.

Subject to Part VII, the presumptions of law that arise under Part II, III or V apply in respect of a child that is born as a result of a surrogacy arrangement but do not prevail over a substitute parentage order or a corresponding parentage order if a registration order has also been made in respect of the same surrogacy arrangement.

Note

Part VII contains transitional provisions that are relevant to the application of the presumptions of law that arise under Parts III and V in certain cases.

Division 2—Substitute parentage orders

Subdivision 1—Making substitute parentage orders

20 Application for a substitute parentage order

S. 20
inserted by
No. 76/2008
s. 147.

- (1) The commissioning parents of a child born under a surrogacy arrangement may apply to the court for a substitute parentage order if—
- (a) the child was conceived as a result of a procedure carried out in Victoria; and
 - (b) the commissioning parents live in Victoria at the time of making the application.
- (2) An application for a substitute parentage order must be made—
- (a) not less than 28 days, and not more than 6 months after the birth of the child; or

(b) at another time with leave of the court.

- (3) Before the court hears the application, the commissioning parents must file a certified copy of the child's birth certificate (if available) with the court.

S. 21
inserted by
No. 76/2008
s. 147.

21 Commissioning parents presumed to be named as legal parents

- (1) If the court decides to make a substitute parentage order, it is presumed that the commissioning parents will be named on the order as the child's legal parents.
- (2) A presumption under subsection (1) is only rebuttable by evidence that a person named as a commissioning parent did not consent to the surrogacy arrangement.

S. 22
inserted by
No. 76/2008
s. 147.

22 Court may make substitute parentage order

- (1) The court may make a substitute parentage order in favour of the commissioning parents if it is satisfied—
- (a) that making the order is in the best interests of the child; and
 - (b) if the surrogacy arrangement was commissioned with the assistance of a registered ART provider, that the Patient Review Panel approved the surrogacy arrangement before the arrangement was entered into; and
 - (c) that the child was living with the commissioning parents at the time the application was made; and
 - (d) that the surrogate mother and, if her partner is a party to the arrangement, her partner have not received any material benefit or advantage from the surrogacy arrangement; and

- (e) that the surrogate mother freely consents to the making of the order.
- (2) In deciding whether to make a substitute parentage order, the court may take into account any other considerations it thinks relevant.
- (3) If the surrogate mother's partner is a party to the surrogacy arrangement, before making a substitute parentage order the court must also consider whether her partner consents to the making of the order.
- (4) To avoid doubt, the reimbursement of costs as permitted by section 44 of the **Assisted Reproductive Treatment Act 2008** is not a material benefit or advantage for the purposes of subsection (1)(d).

22A Registrar of Births, Deaths and Marriages must notify Australian State or Territory registering authority of orders

S. 22A
inserted by
No. 80/2014
s. 34.

- (1) The Registrar of Births, Deaths and Marriages must notify the registering authority of another Australian State or a Territory if the Registrar of Births, Deaths and Marriages is notified—
 - (a) that the birth of a child born under a surrogacy arrangement is registered in that Australian State or Territory; and
 - (b) that a substitute parentage order has been made or discharged by the court under this Act in relation to that child.
- (2) In this section *registering authority* has the same meaning as it has in section 4 of the **Births, Deaths and Marriages Registration Act 1996**.

S. 23
inserted by
No. 76/2008
s. 147.

23 Additional requirements for surrogacy arrangements without assistance of registered ART provider

- (1) This section applies if—
 - (a) a surrogacy arrangement was commissioned without the assistance of a registered ART provider; and
 - (b) the surrogate mother became pregnant as a result of artificial insemination; and
 - (c) the commissioning parents apply under section 20 for a substitute parentage order.
- (2) In addition to the matters set out in section 22, the court must also be satisfied—
 - (a) that the surrogate mother was at least 25 years of age before entering the arrangement; and
 - (b) that the commissioning parents, the surrogate mother and, if her partner is a party to the surrogacy arrangement, her partner have—
 - (i) received counselling about the social and psychological implications of making the substitute parentage order, including counselling, if relevant, about any of the matters prescribed for the purposes of section 43(a) of the **Assisted Reproductive Treatment Act 2008**; and
 - (ii) received counselling about the implications of the relinquishment of the child and the relationship between the surrogate mother and the child once the substitute parentage order is made; and

(iii) obtained information about the legal consequences of making the substitute parentage order.

(3) For the purposes of subsection (2)(b), the person must receive counselling from a counsellor within the meaning of section 61(3) of the **Assisted Reproductive Treatment Act 2008**.

24 Circumstances in which consent not required

S. 24
inserted by
No. 76/2008
s. 147.

- (1) Despite section 22(1)(e), the court may dispense with consent of the surrogate mother if satisfied—
- (a) that the commissioning parents cannot, after reasonable inquiries, find the surrogate mother; or
 - (b) that the surrogate mother is deceased; or
 - (c) on evidence given in accordance with subsection (4), that the surrogate mother is, and is likely to continue to be, in such a physical or mental condition as to be incapable of properly considering whether to give consent.
- (2) Despite section 22(3), the court may dispense with consent of the surrogate mother's partner if satisfied—
- (a) that the commissioning parents cannot, after reasonable inquiries, find the surrogate mother's partner; or
 - (b) that the surrogate mother's partner is deceased; or
 - (c) on evidence given in accordance with subsection (4), that the surrogate mother's partner is, and is likely to continue to be, in such a physical or mental condition as to be incapable of properly considering whether to give consent.

- (3) For the purposes of subsections (1)(a) and (2)(a), the commissioning parents have made reasonable inquiries if they have—
- (a) sent the person a letter, by registered post, to the person's last known place of residence and seeking the person's consent; and
 - (b) sent a letter referred to in paragraph (a) to the address of any other person that the commissioning parents believe may know where the person may be found; and
 - (c) searched the roll of electors under the Commonwealth Electoral Act 1918 and confirmed that the address of the person could not be found; and
 - (d) made enquiries of such persons, bodies, agencies and government departments as might reasonably be expected to have known where the person may be found; and
 - (e) made any other enquiries the court determines.
- (4) For the purposes of subsections (1)(c) and (2)(c), the evidence required is a certificate signed by at least two persons registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student) certifying as to the matters referred to in that paragraph.

S. 24(4)
amended by
No. 13/2010
s. 51(Sch.
item 53).

S. 25
inserted by
No. 76/2008
s. 147.

25 Ancillary orders

On making a substitute parentage order, the court may make any consequential or ancillary order it thinks fit—

- (a) in the interests of justice; or
- (b) for the welfare and in the best interests of the child in respect of whom the order is made.

26 Effect of substitute parentage order

S. 26
inserted by
No. 76/2008
s. 147.

- (1) If the court makes a substitute parentage order in respect of a child, the provisions of the **Adoption Act 1984** set out in subsection (2) (the *applied provisions*) apply in relation to the substitute parentage order as if that order were an adoption order made under that Act and as if the child were an adopted child.
- (2) The applied provisions are sections 53 to 58 of the **Adoption Act 1984**, except sections 53(1)(d) and (e).
- (3) An applied provision applies to a substitute parentage order as if—
 - (a) a reference to an adopted child were a reference to a child who is the subject of a substitute parentage order; and
 - (b) a reference to an adoptive parent were a reference to the commissioning parents in whose favour the substitute parentage order was made; and
 - (c) a reference to the commencement of the **Adoption of Children Act 1964** were a reference to the commencement of the **Assisted Reproductive Treatment Act 2008**; and
 - (d) a reference to an adoption order were a reference to a substitute parentage order made under this Act; and
 - (e) any other necessary changes have been made to the applied provision.

Note

The applied provisions clarify the effect of a substitute parentage order by reference to the **Adoption Act 1984** rather than inserting new provisions in this Act. However, a substitute parentage order is not an adoption order and a child who is the subject of a substitute parentage order is not an adopted child.

The applied provisions provide for the following—

- the general effect of a substitute parentage order, including that the child is to be treated in law as a child of the commissioning parents as if the child had been born to the commissioning parents (section 53);
- the disposition of property, whether by will or otherwise, in circumstances in which a substitute parentage order has been made (section 54);
- bequests by will to an unascertained person who is the subject of a substitute parentage order (section 55);
- the names of a child who is the subject of a substitute parentage order (section 56);
- the domicile of a child who is the subject of a substitute parentage order (section 57);
- that a substitute parentage order does not affect the distribution of property by trustees or personal representatives except in certain circumstances (section 58).

Subdivision 2—Discharge of substitute parentage orders

27 Who may apply for discharge of substitute parentage order

- (1) The following persons may apply for an order discharging a substitute parentage order—
 - (a) the Attorney-General;
 - (b) the Secretary of the Department of Justice;
 - (c) a child whose parentage was transferred by the substitute parentage order and who has reached the age of 18 years.
- (2) 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.
- (3) A person who is permitted under subsection (2) to intervene in an application under subsection (1) is to be treated as a party to the application with all

S. 27
inserted by
No. 76/2008
s. 147.

the rights, duties and liabilities of a party, unless
the court orders otherwise.

28 Court may order discharge of substitute parentage order

**S. 28
inserted by
No. 76/2008
s. 147.**

- (1) On an application under section 27, the court may make an order discharging a substitute parentage order if it is satisfied that—
 - (a) the substitute parentage order was obtained by fraud, duress or other improper means; or
 - (b) a consent relied on for the making of the substitute parentage order was not an effective consent because it was obtained by fraud, duress or material inducement; or
 - (c) there is an exceptional reason the substitute parentage order should be discharged.
- (2) The court must not make an order under subsection (1) discharging a substitute parentage order unless—
 - (a) the order is 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) the surrogate mother of the child whose parentage would be affected; and
 - (ii) if the surrogate mother had a partner who was also a party to the surrogacy arrangement, that partner; and
 - (iii) each of the commissioning parents; and
 - (iv) if the court considers it appropriate having regard to the child's age, the child whose parentage would be affected.

- (3) If the court makes an order discharging the substitute parentage order, the court must declare the name by which the child is to be known, having regard to the principle that a child's first name should not be changed except in special circumstances.
- (4) A declaration under subsection (3) does not prevent a subsequent change of name under a law of the State.
- (5) On making an order discharging a substitute parentage order, the court may make any consequential or ancillary order it thinks fit in the interests of justice or in the best interests of the child whose parentage is 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.
- (6) For the purposes of subsection (1), *material inducement* does not include the reimbursement of costs as permitted by section 44 of the **Assisted Reproductive Treatment Act 2008**.

29 Effect of discharge of a substitute parentage order

- (1) On the discharge of a substitute parentage order, the rights, duties, liabilities and relationships of persons are as if the substitute parentage order had not been made.
- (2) Subsection (1)—
 - (a) does not apply to the extent that its application would be inconsistent with any order made under section 28; and

S. 29
inserted by
No. 76/2008
s. 147.

- (b) does not affect—
- (i) anything lawfully done while the substitute parentage order was in force; or
 - (ii) the consequences of anything lawfully done while the substitute parentage order was in force; or
 - (iii) any proprietary right or interest that became vested in any person, while the substitute parentage order was in force.

Division 2A—Registration orders

Pt 4 Div. 2A
(Heading and
ss 29A–29I)
inserted by
No. 80/2014
s. 35.

29A What is a registration order?

A registration order directs the Registrar of Births, Deaths and Marriages to register the birth of a child born under a surrogacy arrangement in accordance with section 19B of the **Births, Deaths and Marriages Registration Act 1996**.

S. 29A
inserted by
No. 80/2014
s. 35.

29B Application for a registration order

- (1) The commissioning parents of a child born under a surrogacy arrangement may apply for a registration order if—
- (a) the child was conceived under the surrogacy arrangement in another Australian State or a Territory; and
 - (b) the child was born in Victoria; and
 - (c) a corresponding surrogacy parentage order has been made in favour of the commissioning parents.

S. 29B
inserted by
No. 80/2014
s. 35.

- (2) Before the court hears the application, the commissioning parents must file with the court—
 - (a) a certified copy of the child's birth certificate; and
 - (b) a copy of the sealed corresponding surrogacy parentage order.

S. 29C
inserted by
No. 80/2014
s. 35.

29C Applicant must give notice of hearing

An applicant for a registration order must notify the Secretary of the Department of Justice in writing of an application for a registration order at least 14 days before the hearing of the application.

S. 29D
inserted by
No. 80/2014
s. 35.

29D Secretary of the Department of Justice has standing to appear at hearing

- (1) Subject to subsection (2), the Secretary of the Department of Justice is entitled to appear or be represented at the hearing of an application for a registration order.
- (2) The absence of the Secretary of the Department of Justice or the Secretary's representative does not prevent the court from making any order.
- (3) Nothing in this section requires the Secretary of the Department of Justice to appear or be represented at the hearing of an application for a registration order.

S. 29E
inserted by
No. 80/2014
s. 35.

29E Court may make registration order

- (1) The court may make a registration order if satisfied that—
 - (a) making the order is in the best interests of the child; and
 - (b) the commissioning parents did not enter into the surrogacy arrangement for the purpose of avoiding requirements under this Part or the **Assisted Reproductive Treatment Act 2008** that would have applied to the

- arrangement if the child had been conceived in Victoria; and
- (c) at the time the surrogacy arrangement was entered into, the commissioning parents had a genuine connection to the Australian State or Territory in which the child was conceived; and
 - (d) the child was living with at least one of the commissioning parents at the time the application for the registration order was made; and
 - (e) the surrogate mother and, if her partner is a party to the arrangement, her partner have not received any material benefit or advantage from the surrogacy arrangement; and
 - (f) the surrogate mother freely consents to the making of the order; and
 - (g) the surrogate mother was at least 25 years of age before entering into the surrogacy arrangement.
- (2) If the surrogate mother's partner is a party to the surrogacy arrangement, before making a registration order the court must also consider whether her partner consents to the making of the order.
- (3) For the purposes of subsection (1)(e), material benefit or advantage does not include any reimbursement of costs permitted by—
- (a) the relevant corresponding interstate surrogacy law; or
 - (b) any prescribed law of the other Australian State or Territory in which the corresponding surrogacy parentage order was made.

- (4) On making a registration order, the court may make any consequential or ancillary order it thinks fit in the interests of justice or in the best interests of the child whose birth registration is affected having regard to—
- (a) the registration order; and
 - (b) any order made in respect of the child in another Australian State or a Territory, including an order made under the corresponding interstate surrogacy law of that Australian State or Territory.

S. 29F
inserted by
No. 80/2014
s. 35.

29F Circumstances in which consent to registration order not required

- (1) Despite section 29E(1)(f), the court may dispense with consent of the surrogate mother if satisfied—
- (a) that the commissioning parents cannot, after reasonable inquiries, find the surrogate mother; or
 - (b) that the surrogate mother is deceased; or
 - (c) on evidence given in accordance with subsection (4), that the surrogate mother is, and is likely to continue to be, in such a physical or mental condition as to be incapable of properly considering whether to give consent.
- (2) Despite section 29E(2), the court may dispense with consent of the surrogate mother's partner if satisfied—
- (a) that the commissioning parents cannot, after reasonable inquiries, find the surrogate mother's partner; or
 - (b) that the surrogate mother's partner is deceased; or

- (c) on evidence given in accordance with subsection (4), that the surrogate mother's partner is, and is likely to continue to be, in such a physical or mental condition as to be incapable of properly considering whether to give consent.
- (3) For the purposes of subsections (1)(a) and (2)(a), the commissioning parents have made reasonable inquiries if they have—
 - (a) sent the person a letter, by registered post, to the person's last known place of residence and seeking the person's consent; and
 - (b) sent a letter referred to in paragraph (a) to the address of any other person that the commissioning parents believe may know where the person may be found; and
 - (c) made any other enquiries the court determines.
- (4) For the purposes of subsections (1)(c) and (2)(c), the evidence required is a certificate signed by at least two persons registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student) certifying as to the matters referred to in that paragraph.

29G Application to revoke registration order

- (1) The following persons may apply for an order revoking a registration order—
 - (a) the Attorney-General;
 - (b) the Secretary of the Department of Justice;
 - (c) a child whose birth registration was affected by the registration order and who has reached the age of 18 years.

S. 29G
inserted by
No. 80/2014
s. 35.

- (2) 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.
- (3) A person who is permitted under subsection (2) 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.

S. 29H
inserted by
No. 80/2014
s. 35.

29H Court may revoke registration order

- (1) The court may revoke a registration order on an application under section 29G if satisfied—
 - (a) as to any of the following grounds—
 - (i) the registration order was obtained by fraud, duress, misleading the court or other improper means;
 - (ii) if a consent was required for the making of the registration order, the consent was not an effective consent because it was obtained by fraud, duress or material inducement;
 - (iii) there is an exceptional reason that the registration order should be revoked;
and
 - (b) that the revocation of the registration order is in the best interests of the child whose birth registration would be affected.
- (2) If the corresponding surrogacy parentage order is discharged by the court that made it, the court must revoke a registration order on an application under section 29G without being satisfied as to any matter in subsection (1).

- (3) The court must not make an order under subsection (1) or (2) revoking a registration order unless the court is satisfied that reasonable efforts have been made to give notice of the application to—
- (a) the surrogate mother of the child whose birth registration would be affected; and
 - (b) if the surrogate mother had a partner who was also a party to the surrogacy arrangement, that partner; and
 - (c) each of the commissioning parents; and
 - (d) if the court considers it appropriate having regard to the child's age, the child whose birth registration would be affected.
- (4) On making an order revoking a registration order, the court may make any consequential or ancillary order it thinks fit in the interests of justice or in the best interests of the child whose birth registration is affected having regard to any order made in respect of the child in another Australian State or a Territory, including an order made under the corresponding interstate surrogacy law of that Australian State or Territory.
- (5) For the purposes of subsection (1)(a)(ii), material inducement does not include any reimbursement of costs permitted by—
- (a) the relevant corresponding interstate surrogacy law; or
 - (b) any prescribed law of the other Australian State or Territory in which the corresponding surrogacy parentage order was made.

S. 29I
inserted by
No. 80/2014
s. 35.

29I Notification of discharged corresponding surrogacy parentage order

- (1) If the Registrar of Births, Deaths and Marriages is notified that a corresponding surrogacy parentage order has been discharged, the Registrar, as soon as practicable, must notify the Attorney-General and the Secretary of the Department of Justice in writing of that fact.
- (2) A failure of the Registrar of Births, Deaths and Marriages to notify a person under subsection (1) does not prevent an application being made under section 29G.

Pt 4 Div. 2
Subdiv. 3
(Heading)
substituted as
Div. 2B
(Heading) by
No. 80/2014
s. 36.

Division 2B—Appeals

S. 30
inserted by
No. 76/2008
s. 147.

30 Appeals

S. 30(1)
amended by
No. 62/2014
s. 20.

- (1) A party to a proceeding under this Part may appeal to the Court of Appeal with leave of the Court of Appeal against an order of the court in the proceeding or a refusal of the court to make an order.

S. 30(2)
amended by
No. 80/2014
s. 37.

- (2) In this section *party* includes an intervener in an application under section 27 or 29G.

Division 3—Proceedings under this Part

31 Registrar of Births, Deaths and Marriages to receive copy of orders

S. 31
inserted by
No. 76/2008
s. 147,
substituted by
No. 80/2014
s. 38.

- (1) The court must give a sealed copy of the order to the Registrar of Births, Deaths and Marriages if the court makes—
 - (a) a substitute parentage order; or
 - (b) an order discharging a substitute parentage order; or
 - (c) a registration order; or
 - (d) an order revoking a registration order.
- (2) If the court makes a registration order, the court must also give to the Registrar of Births, Deaths and Marriages a copy of the sealed copy of the corresponding surrogacy parentage order.

32 Proceedings to be heard in closed court

S. 32
inserted by
No. 76/2008
s. 147.

- (1) Any proceeding to which this Part applies must be heard in closed court, and all persons other than the parties to the proceedings and their legal representatives (if any) are to be excluded during the proceedings, except as otherwise directed by the court.
- (2) The court may order any person to leave the courtroom or other place during the examination of a witness in the proceedings.

33 Restrictions on publication of proceedings

S. 33
inserted by
No. 76/2008
s. 147.

- (1) This section applies to—
 - (a) a proceeding under this Part; or
 - (b) an order made under this Part.
- (2) A person must not publish, or cause to be published, a report of the proceeding or about the order that contains any particulars likely to lead to

the identification of a party to a surrogacy arrangement or a child who is the subject of a surrogacy arrangement.

Penalty: 1000 penalty units, in the case of a body corporate;
100 penalty units or imprisonment for 2 years, in the case of an individual.

(3) In this section—

publish means—

- (a) publish in any newspaper; or
- (b) publish by means of television, radio or the Internet; or
- (c) otherwise disseminate to the public.

34 Access to court records

- (1) A person must not access the court record for a proceeding under this Part without leave of the court.
- (2) The court may grant leave for access to the court record on application in writing by—
 - (a) a child to whom the proceeding relates; or
 - (b) a surrogate mother of the child; or
 - (c) if the surrogate mother had a partner who was also a party to the surrogacy arrangement, the partner; or
 - (d) a commissioning parent of the child; or
 - (e) an intervener in a proceeding under section 27 or 29G; or
 - (f) any other person who was a party to the proceeding.

S. 34
inserted by
No. 76/2008
s. 147.

S. 34(2)(e)
amended by
No. 80/2014
s. 39.

- (3) The court may refuse the application—
- (a) if the applicant has not produced to the registrar of the court proof of the applicant's identity; or
 - (b) if granting access would be contrary to any court order in relation to exclusion of persons from the hearing of the proceedings; or
 - (c) for any other reason the court considers appropriate in the circumstances.

35 Access to court records if person deceased or cannot be found

**S. 35
inserted by
No. 76/2008
s. 147.**

- (1) If a person referred to in section 34(2) is deceased, an application under that section may be made by an adult who is—
- (a) a parent or grandparent of the deceased; or
 - (b) a child or grandchild of the deceased; or
 - (c) a sibling of the deceased.
- (2) If the child to whom the proceeding related is now an adult and cannot be found or contacted after making reasonable inquiries, an application under section 34(2) may be made by an adult who is—
- (a) a parent or grandparent of the child; or
 - (b) a child or grandchild of the child; or
 - (c) a sibling of the child.

Pt 5 (Heading
and ss 36–40)
inserted by
No. 76/2008
s. 147.

PART V—POSTHUMOUS USE OF GAMETES—STATUS OF CHILDREN

S. 36
inserted by
No. 76/2008
s. 147.

36 Definitions

In this Part—

treatment procedure has the meaning given in the **Assisted Reproductive Treatment Act 2008**.

S. 37
inserted by
No. 76/2008
s. 147.

37 Presumption as to status of child if male partner is deceased

- (1) This section applies if—
 - (a) a woman undergoes a treatment procedure in accordance with Part 5 of the **Assisted Reproductive Treatment Act 2008** as a result of which she becomes pregnant; and
 - (b) either of the following applies—
 - (i) the semen used in the procedure—
 - (A) was produced by the woman's partner before his death; or
 - (B) was collected from the woman's partner after his death; or
 - (ii) the embryo used in the procedure was created before the woman's partner died using sperm produced by him.
- (2) If a woman becomes pregnant—
 - (a) the woman who gave birth is the mother of any child born as a result of the pregnancy; and

- (b) her partner is taken to be the father of any child born as a result of the pregnancy for the sole purpose of enabling the particulars of the deceased to be entered as the particulars of the child's parent in the Register of births kept under the **Births, Deaths and Marriages Registration Act 1996**; and
- (c) if a donor ovum, or an embryo created from a donor ovum, was used in the procedure, the woman who produced the ovum is presumed, for all purposes, not to be a parent of any child born as a result of the pregnancy.

38 Presumption as to status of child if female partner is deceased

S. 38
inserted by
No. 76/2008
s. 147.

- (1) This section applies if—
 - (a) a woman undergoes a treatment procedure in accordance with Part 5 of the **Assisted Reproductive Treatment Act 2008** as a result of which she becomes pregnant; and
 - (b) either of the following applies—
 - (i) the ovum used in the procedure—
 - (A) was produced by the woman's partner before her death; or
 - (B) was collected from the woman's partner after her death; or
 - (ii) the embryo used in the procedure was created before the woman's partner died using an ovum produced by her.
- (2) If a woman becomes pregnant—
 - (a) the woman who gave birth is the mother of any child born as a result of the pregnancy; and

- (b) the deceased is taken to be a parent of any child born as a result of the pregnancy for the sole purpose of enabling the particulars of the deceased to be entered as the particulars of the child's parent in the Register of births kept under the **Births, Deaths and Marriages Registration Act 1996**; and
- (c) the man who produced the semen used in the procedure, or used to create the embryo used in the procedure, is presumed, for all purposes, not to be the father of any child born as a result of the pregnancy, whether or not the man is or was known to the woman or the deceased.

S. 39
inserted by
No. 76/2008
s. 147.

39 Presumption as to status of child if female partner is deceased—surrogacy arrangements

- (1) This section applies if—
 - (a) a man commissions a surrogacy arrangement in accordance with the **Assisted Reproductive Treatment Act 2008**; and
 - (b) the surrogate mother undergoes a procedure as a result of which she becomes pregnant; and
 - (c) either of the following applies—
 - (i) the ovum used in the procedure—
 - (A) was produced by the man's partner before her death; or
 - (B) was collected from the man's partner after her death; or
 - (ii) the embryo used in the procedure was created before the man's partner died using an ovum produced by her.

- (2) If the surrogate mother becomes pregnant, the man may apply to the court under section 20 for a substitute parentage order to be made in respect of the child and in favour of the man and the deceased.
- (3) In addition to the matters set out in section 22, the court must also be satisfied as to the matters set out in Part 5 of the **Assisted Reproductive Treatment Act 2008**.
- (4) If a substitute parentage order is made, the deceased is taken to be a parent of any child born as a result of the pregnancy for the sole purpose of enabling the particulars of the deceased to be entered as the particulars of the child's parent in the Register of births kept under the **Births, Deaths and Marriages Registration Act 1996**.

40 Legal status of deceased parent

- (1) A deceased person referred to in section 37, 38 or 39—
 - (a) is to be treated in law as a parent of the child for the purpose referred to in that section; but
 - (b) is not to be treated in law as a parent of the child for any other purpose.
- (2) To avoid doubt, this section does not apply in relation to a will executed by the deceased that expressly refers to a child born as a result of a procedure referred to in section 37, 38 or 39.

S. 40
inserted by
No. 76/2008
s. 147.

Pt 6 (Heading
and s. 41)
inserted by
No. 76/2008
s. 147.

PART VI—GENERAL

S. 41
inserted by
No. 76/2008
s. 147.

41 Regulations

The Governor in Council may make regulations for or with respect to—

- (a) forms for the purposes of this Act;
- (b) fees to be charged under this Act;
- (c) generally, any matter or thing which is authorised or required to be prescribed for carrying this Act into effect.

**PART VII—TRANSITIONAL PROVISIONS—ASSISTED
REPRODUCTIVE TREATMENT ACT 2008**

Pt 7 (Heading
and ss 42–47)
inserted by
No. 76/2008
s. 147.

42 Definition

In this Part, *2008 Act* means the **Assisted
Reproductive Treatment Act 2008**.

S. 42
inserted by
No. 76/2008
s. 147.

43 Transitional—Definitions

For the purposes of Part II, on and from the
commencement of Part 14 of the 2008 Act—

S. 43
inserted by
No. 76/2008
s. 147.

- (a) *embryo* includes an embryo as defined in section 10A(3) as in force immediately before its repeal;
- (b) *ovum in the process of fertilisation* includes an ovum in the process of fertilisation as defined in section 10A(3) as in force immediately before its repeal;
- (c) *syngamy* includes syngamy as defined in section 10A(3) as in force immediately before its repeal.

44 Transitional—Repeal of section 10F

S. 44
inserted by
No. 76/2008
s. 147.

- (1) This section applies if, before the commencement of section 146 of the 2008 Act—
 - (a) a man produced semen that was used in a procedure of artificial insemination of a woman who was not a married woman or of a married woman otherwise than in accordance with the consent of her husband; and
 - (b) as a result of that procedure the woman became pregnant.
- (2) Despite its repeal, section 10F continues to apply in respect of a child born as a result of a pregnancy referred to in subsection (1).

S. 45
inserted by
No. 76/2008
s. 147.

45 Transitional—Application of Part III

- (1) On and from the commencement of Part 14 of the 2008 Act, the provisions of Part III apply—
 - (a) in respect of a pregnancy referred to in Part III, whether the pregnancy occurred before or after the commencement of Part 14 of the 2008 Act and whether or not it resulted from a procedure carried out in Victoria; and
 - (b) in respect of any child born in Victoria as a result of a pregnancy referred to in Part III, whether the child was born before or after the commencement of Part 14 of the 2008 Act.
- (2) Nothing in this Part affects the vesting in possession or in interest of any property that occurred before the commencement of Part 14 of the 2008 Act.

S. 46
inserted by
No. 76/2008
s. 147.

46 Transitional—Application of Part IV

- (1) Part IV applies in respect of a child born to a surrogate mother under a surrogacy arrangement if—
 - (a) the child was born—
 - (i) before the commencement of Part 14 of the 2008 Act; or
 - (ii) within 10 months of that commencement; and
 - (b) the commissioning parents were ordinarily resident in Victoria at the time the child was conceived.
- (2) Subsection (1) applies whether or not the child was conceived in Victoria.

(3) Nothing in Part IV affects the vesting in possession or in interest of any property that occurred before the commencement of Part 14 of the 2008 Act.

(4) On and from the commencement of Part 6 of the **Justice Legislation Amendment (Succession and Surrogacy) Act 2014**, this section applies subject to section 48.

S. 46(4)
inserted by
No. 80/2014
s. 40.

47 Transitional—Application of Part V

(1) Part V applies in respect of a pregnancy which resulted from a procedure carried out in Victoria after the commencement of Part 14 of the 2008 Act.

S. 47
inserted by
No. 76/2008
s. 147.

(2) Nothing in Part V affects the vesting in possession or in interest of any property that occurred before the commencement of Part 14 of the 2008 Act.

Pt 8 (Heading
and s. 48)
inserted by
No. 80/2014
s. 41.

**PART VIII—TRANSITIONAL PROVISIONS—JUSTICE
LEGISLATION AMENDMENT (SUCCESSION AND
SURROGACY) ACT 2014**

S. 48
inserted by
No. 80/2014
s. 41.

**48 Registration orders—application to surrogacy
arrangements before commencement of Part**

- (1) Subject to this section, Part IV, as amended by the **Justice Legislation Amendment (Succession and Surrogacy) Act 2014**, applies to an application for a registration order in respect of a surrogacy arrangement entered into before the commencement of Part 6 of that Act.
- (2) If the surrogacy arrangement was entered into before 1 January 2010—
 - (a) the court may make a registration order under section 29E if satisfied that the making of the order is in the best interests of the child; and
 - (b) the requirements of sections 29C, 29D and 29E do not otherwise apply to the making of the order.
- (3) If the surrogacy arrangement was entered into on or after 1 January 2010 but before the commencement of Part 6 of the **Justice Legislation Amendment (Succession and Surrogacy) Act 2014**—
 - (a) the court may make an order under section 29E if satisfied as to the matters in section 29E(1)(a) to (c); and
 - (b) the requirements of section 29E do not otherwise apply to the making of the order.

Status of Children Act 1974
No. 8602 of 1974

* * * * *

Sch.
repealed by
No. 9863 s. 2.

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Endnotes

1. General Information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The **Status of Children Act 1974** was assented to on 26 November 1974 and came into operation 1 March 1975: Government Gazette 5 February 1975 page 228.

2. Table of Amendments

This publication incorporates amendments made to the **Status of Children Act 1974** by Acts and subordinate instruments.

Statute Law Revision (Repeals) Act 1982, No. 9863/1982

Assent Date: 5.1.83
Commencement Date: 5.1.83
Current State: All of Act in operation

Status of Children (Amendment) Act 1984, No. 10069/1984

Assent Date: 15.5.84
Commencement Date: 1.8.84: Government Gazette 1.8.84 p. 2713
Current State: All of Act in operation

Registration of Births Deaths and Marriages (Amendment) Act 1985, No. 10244/1985

Assent Date: 10.12.85
Commencement Date: 31.10.86: Government Gazette 29.10.86 p. 4114
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 3(Sch. item 188) on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

Infertility Treatment Act 1995, No. 63/1995

Assent Date: 27.6.95
Commencement Date: S. 170 on 1.7.88: s. 2(2)
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 79) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

Births, Deaths and Marriages Registration Act 1996, No. 43/1996

Assent Date: 26.11.96
Commencement Date: S. 65(Sch. items 11.1, 11.2) on 1.11.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

Commonwealth Powers (Family Law-Children) (Amendment) Act 1997, No. 59/1997

Assent Date: 5.11.97
Commencement Date: S. 9 on 1.11.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

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Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 118) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

Health Legislation (Research Involving Human Embryos and Prohibition of Human Cloning) Act 2003, No. 11/2003

Assent Date: 6.5.03
Commencement Date: S. 25(2)(3) on 16.10.03: Government Gazette 16.10.03 p. 2624
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

Assisted Reproductive Treatment Act 2008, No. 76/2008

Assent Date: 11.12.08
Commencement Date: Ss 137–147 on 1.1.10: s. 2(3)
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 53) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

Courts Legislation Miscellaneous Amendments Act 2014, No. 62/2014

Assent Date: 9.9.14
Commencement Date: S. 20 on 10.11.14: Special Gazette (No. 364) 14.10.14 p. 1
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

Justice Legislation Amendment (Succession and Surrogacy) Act 2014, No. 80/2014

Assent Date: 21.10.14
Commencement Date: Ss 32–41 on 30.10.14: Special Gazette (No. 400) 29.10.14 p. 2; ss 44, 45 on 1.1.15: Special Gazette (No. 400) 29.10.14 p. 2
Current State: This information relates only to the provision/s amending the **Status of Children Act 1974**

3. Amendments not in operation

There are no amendments which were not in operation at the date of this publication.

4. Explanatory Details

No entries at date of publication.