

TASMANIA

**SURROGACY (CONSEQUENTIAL
AMENDMENTS) BILL 2011**

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SCHEDULE 1 – LEGISLATION REPEALED

**SURROGACY (CONSEQUENTIAL
AMENDMENTS) BILL 2011**

*(Brought in by the Minister for Justice, the Honourable David
John Bartlett)*

A BILL FOR

**An Act to amend and repeal certain Acts consequential on
the enactment of the *Surrogacy Act 2011***

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

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Surrogacy
(Consequential Amendments) Act 2011*.

2. Commencement

This Act commences on the day on which
section 14 of the *Surrogacy Act 2011*
commences.

Surrogacy (Consequential Amendments) Act 2011
Act No. of

s. 3

Part 2 – Anti-Discrimination Act 1998 Amended

**PART 2 – ANTI-DISCRIMINATION ACT 1998
AMENDED**

3. Principal Act

In this Part, the *Anti-Discrimination Act 1998** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting “surrogate child,” after “natural child,” in the definition of “child”;
- (b) by inserting “surrogate parent,” after “step-parent,” in the definition of “parent”;
- (c) by inserting the following definitions after the definition of “State program”:

“surrogate child”, in relation to another person, means a person –

- (a) who is a child of the other person by virtue of the operation of section 24(1) of the *Surrogacy Act 2011*, or a law, of another State or a Territory or a

*No. 46 of 1998

Surrogacy (Consequential Amendments) Act 2011
Act No. of

Part 2 – Anti-Discrimination Act 1998 Amended

s. 4

foreign country, that
corresponds to that Act;
and

- (b) who has not ceased to be
a child of the other person
under that Act or law;

“surrogate parent”, in relation to
another person, means a person –

- (a) who is a parent of the
other person by virtue of
the operation of section
24(1) of the *Surrogacy
Act 2011*, or a law, of
another State or a
Territory or a foreign
country, that corresponds
to that Act; and
- (b) who has not ceased to be
a parent of the other
person under that Act or
law;

Surrogacy (Consequential Amendments) Act 2011
Act No. of

s. 5

Part 3 – Domicile Act 1980 Amended

PART 3 – DOMICILE ACT 1980 AMENDED

5. Principal Act

In this Part, the *Domicile Act 1980** is referred to as the Principal Act.

6. Section 8 amended (Domicile of certain children)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:

(1) In this section –

“child” means a person who has not attained the age of 18 years and who is not, and has not at any time been, married;

“parents”, in relation to a child, includes parents who are not married to each other;

“surrogate child” means a person –

- (a) who becomes a child of a person

*No. 38 of 1980

Surrogacy (Consequential Amendments) Act 2011
Act No. of

Part 3 – Domicile Act 1980 Amended

s. 6

by virtue of section 24(1) of the *Surrogacy Act 2011* or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and

(b) who has not ceased to be a child of the person under that Act or law.

(b) by inserting the following subsections after subsection (6):

(7) A surrogate child's domicile –

(a) is, if he or she has 2 parents immediately after becoming a surrogate child, the domicile the child would have if he or she were a child born in wedlock to those parents; and

(b) is, if he or she has one parent only immediately after becoming a surrogate child, the domicile of that parent and, after that time, the

Surrogacy (Consequential Amendments) Act 2011
Act No. of

s. 6

Part 3 – Domicile Act 1980 Amended

domicile of that parent from time to time or, if that parent has died, the domicile that that parent had at the time of death.

- (8) If a child has a domicile by virtue of subsection (7) immediately before he or she ceases to be a child, he or she retains that domicile until he or she acquires a domicile of choice.
- (9) If a child ceases to be a surrogate child, the child's domicile is to be determined in accordance with the provisions, if any, of the court order by which the child ceases to be a surrogate child or, if there are no such provisions, as if the child had never been a surrogate child.

Surrogacy (Consequential Amendments) Act 2011
Act No. of

Part 4 – Duties Act 2001 Amended

s. 7

PART 4 – DUTIES ACT 2001 AMENDED

7. Principal Act

In this Part, the *Duties Act 2001** is referred to as the Principal Act.

8. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of “spouse” the following definition:

“**surrogate child**”, in relation to another person, means a person –

- (a) who is a child of the other person by virtue of the operation of section 24(1) of the *Surrogacy Act 2011*, or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and
- (b) who has not ceased to be a child of the other person under that Act or law;

*No. 15 of 2001

Surrogacy (Consequential Amendments) Act 2011
Act No. of

s. 9

Part 4 – Duties Act 2001 Amended

9. Section 4 substituted

Section 4 of the Principal Act is repealed and the following section is substituted:

4. Meaning of child for purpose of definition of “related person”

For the purpose of the definition of “related person” in section 3, a person is the child of another person if the person is –

- (a) a natural child of the other person who has not ceased to be a child of the person by virtue of the operation of section 24(1) of the *Surrogacy Act 2011* or a law, of another State or a Territory or a foreign country, that corresponds to that Act; or
- (b) a step-child of the person; or
- (c) an adopted child of the person; or
- (d) a surrogate child of the person.

10. Section 225 amended (Intergenerational rural transfers)

Section 225(3) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) a surrogate child of the person; or

PART 5 – EVIDENCE ACT 2001 AMENDED

11. Principal Act

In this Part, the *Evidence Act 2001** is referred to as the Principal Act.

12. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of “spouse” in subsection (1):

“**surrogate child**”, in relation to another person, means a person –

- (a) who is a child of the other person by virtue of the operation of section 24(1) of the *Surrogacy Act 2011* or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and
- (b) who has not ceased to be a child of the other person under that Act or law;

*No. 76 of 2001

Surrogacy (Consequential Amendments) Act 2011
Act No. of

s. 12

Part 5 – Evidence Act 2001 Amended

“surrogate parent”, in relation to another person, means a person –

- (a) who is a parent of the other person by virtue of the operation of section 24(1) of the *Surrogacy Act 2011* or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and
- (b) who has not ceased to be a parent of the other person under that Act or law;
- (b) by inserting in subsection (13)(a) “, surrogate child” after “adopted child”;
- (c) by inserting in subsection (14)(a) “, or surrogate parent,” after “parent”.

**PART 6 – LOCAL GOVERNMENT ACT 1993
AMENDED**

13. Principal Act

In this Part, the *Local Government Act 1993** is referred to as the Principal Act.

14. Section 112 amended (Interpretation of Division 8)

Section 112 of the Principal Act is amended as follows:

- (a) by inserting “surrogate child,” after “descendant,” in paragraph (a) of the definition of “member of an owner's family”;
- (b) by inserting the following definition after the definition of “principal means of livelihood”:

“**surrogate child**”, in relation to another person, means a person –

- (a) who is a child of the other person by virtue of the operation of section 24(1) of the *Surrogacy Act 2011*, or a law, of another State or a Territory or a foreign country, that

*No. 95 of 1993

Surrogacy (Consequential Amendments) Act 2011
Act No. of

s. 14

Part 6 – Local Government Act 1993 Amended

corresponds to that Act;
and

- (b) who has not ceased to be a child of that other person under that Act or law;

Surrogacy (Consequential Amendments) Act 2011
Act No. of

Part 7 – Parliamentary (Disclosure of Interests) Act 1996 Amended

s. 15

**PART 7 – PARLIAMENTARY (DISCLOSURE OF
INTERESTS) ACT 1996 AMENDED**

15. Principal Act

In this Part, the *Parliamentary (Disclosure of Interests) Act 1996** is referred to as the Principal Act.

16. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting “, surrogate child” after “descendant” in paragraph (a) of the definition of “relative”;
- (b) by inserting the following definition after the definition of “spouse”:

“surrogate child”, in relation to another person, means a person –

- (a) who is a child of the other person by virtue of the operation of section 24(1) of the *Surrogacy Act 2011*, or a law, of another State or a Territory or a foreign country, that

*No. 22 of 1996

Surrogacy (Consequential Amendments) Act 2011
Act No. of

s. 16

Part 7 – Parliamentary (Disclosure of Interests) Act 1996 Amended

corresponds to that Act;
and

- (b) who has not ceased to be a child of the other person under that Act or law;

PART 8 – RELATIONSHIPS ACT 2003 AMENDED

17. Principal Act

In this Part, the *Relationships Act 2003** is referred to as the Principal Act.

18. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting “and” after “partners;” in paragraph (c) of the definition of “child”;
- (b) by inserting the following paragraph after paragraph (c) in the definition of “child”:
 - (d) a surrogate child of the partners;
- (c) by inserting the following definition after the definition of “order”:

“parent” includes surrogate parent;
- (d) by omitting the definition of “significant relationship” and substituting the following definitions:
 - “significant relationship”** – see section 4;

*No. 44 of 2003

Surrogacy (Consequential Amendments) Act 2011
Act No. of

s. 18

Part 8 – Relationships Act 2003 Amended

“surrogate child”, in relation to partners, means a child –

- (a) who is a child of the partners by virtue of the operation of section 24(1) of the *Surrogacy Act 2011*, or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and
- (b) who has not ceased to be a child of the partners under the Act or law;

“surrogate parent” means a person –

- (a) who is a parent of a child by virtue of the operation of section 24(1) of the *Surrogacy Act 2011*, or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and
- (b) who has not ceased to be a parent of the child under that Act or law;

Surrogacy (Consequential Amendments) Act 2011
Act No. of

Part 8 – Relationships Act 2003 Amended

s. 19

19. Section 7 amended (Family relationships)

Section 7 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) For the purposes of this section –
- (a) a person is taken to be an ancestor or descendant of another person even if the relationship between them is traced through, or to, a person who is or was a surrogate child; and
 - (b) the relationship of parent and child between a surrogate parent and a surrogate child is taken to continue even though the child has ceased to be a surrogate child of the parent; and
 - (c) the relationship between a surrogate child and the surrogate parent, or each of the surrogate parents, is taken to be or to have been the natural relationship of child and parent; and
 - (d) a person who has been a surrogate child of different surrogate parents at different times is taken to be the child of each person in respect of whom he or she is a surrogate child.

Surrogacy (Consequential Amendments) Act 2011
Act No. of

s. 20

Part 9 – Testator’s Family Maintenance Act 1912 Amended

**PART 9 – TESTATOR’S FAMILY MAINTENANCE
ACT 1912 AMENDED**

20. Principal Act

In this Part, the *Testator’s Family Maintenance Act 1912** is referred to as the Principal Act.

21. Section 2 amended (Interpretation)

Section 2(1) of the Principal Act is amended as follows:

- (a) by inserting “and” after “stepchild;” in paragraph (b) of the definition of “child”;
- (b) by inserting the following paragraph after paragraph (b) in the definition of “child”:
 - (c) a surrogate child;
- (c) by inserting the following definition after the definition of “stepchild”:

“surrogate child” means, in relation to another person, a person (whether or not the person has attained the age of 18 years) –

- (a) who is a child of the other person by virtue of the operation of section 24(1) of the *Surrogacy Act*

*No. 7 of 1912

Surrogacy (Consequential Amendments) Act 2011
Act No. of

Part 9 – Testator’s Family Maintenance Act 1912 Amended

s. 21

2011, or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and

- (b) who has not ceased to be a child of the other person under that Act or law;

Surrogacy (Consequential Amendments) Act 2011
Act No. of

s. 22

Part 10 – Legislation repealed

PART 10 – LEGISLATION REPEALED

22. Legislation repealed

The legislation specified in Schedule 1 is repealed.

Surrogacy (Consequential Amendments) Act 2011
Act No. of

Part 11 – Repeal

s. 23

PART 11 – REPEAL

23. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.

Surrogacy (Consequential Amendments) Act 2011
Act No. of

sch. 1

SCHEDULE 1 – LEGISLATION REPEALED

Section 22

Surrogacy Contracts Act 1993 (No. 4 of 1993)