

NORTHERN TERRITORY OF AUSTRALIA

SURROGACY ACT 2022

As in force at 21 December 2022

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 21 December 2022

SURROGACY ACT 2022

An Act to regulate surrogacy arrangements and for related purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Surrogacy Act 2022*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 21 March 2024, it commences on that day.

3 Definitions

In this Act:

birth includes still-birth.

birth parent, in relation to a child, means a person recognised by law as a parent of the child when the child is born.

child includes a still-born child.

consent means free and voluntary agreement.

commercial surrogacy arrangement, means a surrogacy arrangement with the elements specified in section 48(c).

counsellor means a person who provides counselling under section 22 or 23 or prepares a report under section 24.

intended parent means a person who is to become a parent of and assume custody of a child born under a surrogacy arrangement.

parentage order means an order made under section 34.

partner, in relation to a person, means the spouse or de facto partner of the person when the surrogacy arrangement is entered into.

party, in relation to a surrogacy arrangement, means a person who enters into the arrangement.

surrogacy arrangement means an agreement, understanding or other arrangement entered into by a woman and one or more other persons under which:

- (a) a child born as a result of the woman's pregnancy is to be treated as a child of the other person or persons instead of the woman; and
- (b) the other person or persons are to become the parents of and assume custody of the child instead of the woman.

*Note for definition **surrogacy arrangement***

The partner, if any, of the surrogate mother may also enter into a surrogacy arrangement but is not required to do so, see section 16.

surrogate mother means the woman who has, or is to have, a child or children under a surrogacy arrangement.

Note for section 3

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

4 Purposes of Act

The purposes of this Act are the following:

- (a) to regulate surrogacy arrangements;
- (b) to create offences for conduct related to surrogacy arrangements in which a payment, reward or other material benefit or advantage is offered or received, other than payment or reimbursement for certain reasonable costs;
- (c) to allow the transfer of parentage for a child born under a surrogacy arrangement that meets minimum standards;
- (d) to recognise the status of a child born under a surrogacy arrangement that meets minimum standards.

5 Best interests of child

The paramount consideration in respect of the administration and operation of this Act is the best interests of any child born under a surrogacy arrangement.

Note for section 5

The best interests of a child include the child's safety and wellbeing and the right to know the child's origins.

6 Guiding principles

Subject to section 5, the following principles apply to the administration and operation of this Act:

- (a) a woman should be able to make a free and informed decision about whether to be a surrogate mother;
- (b) the parties to a surrogacy arrangement should be protected from exploitation;
- (c) a surrogate mother should not be financially disadvantaged as a result of her involvement in a surrogacy arrangement.

7 Administration and operation

Each person or body engaged in the administration or operation of this Act must exercise their powers and perform their functions to give effect to sections 5 and 6.

8 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 8

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

9 Relationship with *Status of Children Act 1978*

The provisions in the *Status of Children Act 1978* relating to the parentage of a child are not affected by a surrogacy arrangement, unless the Local Court makes a parentage order that provides otherwise.

10 Rights of surrogate mother to manage pregnancy and birth

A surrogate mother has the same rights to manage her pregnancy and birth as any other pregnant woman.

Part 2 Regulation of surrogacy arrangements

Division 1 Enforceability and reasonable costs

11 Enforceability

Subject to section 12(3), no surrogacy arrangement is enforceable.

12 Reasonable costs

- (1) A surrogacy arrangement, other than a commercial surrogacy arrangement, may provide for the payment or reimbursement of the reasonable costs associated with the following:
 - (a) the surrogate mother trying to become pregnant, being pregnant and giving birth;
 - (b) the surrogate mother and her partner, if any, entering into or being a party to the surrogacy arrangement;
 - (c) the surrogate mother and her partner, if any, being a party to proceedings under this Act.
- (2) Without limiting subsection (1), reasonable costs include the following:
 - (a) reasonable medical expenses incurred by the surrogate mother associated with the surrogacy arrangement, whether incurred prior to conception, during the pregnancy or because of the birth of the child, that are not recoverable under Medicare, health insurance or any other scheme;
 - (b) reasonable counselling costs incurred by the surrogate mother and her partner, if any, associated with the surrogacy arrangement, including the counselling under sections 22 and 23 and preparation of the report under section 24;
 - (c) reasonable legal costs incurred by the surrogate mother and her partner, if any, associated with the surrogacy arrangement, including the advice under section 20, the certificate under section 21 and the costs associated with being a party to proceedings under this Act;

- (d) reasonable costs for a child born as a result of the surrogacy arrangement, including reasonable medical costs for the child;
- (e) reasonable out of pocket costs incurred by the surrogate mother associated with the surrogacy arrangement or the child;
- (f) income lost by the surrogate mother caused by being unable to work on medical grounds associated with the pregnancy and by taking up to 2 months unpaid leave for the birth;
- (g) insurance premiums for health, life or disability insurance for the surrogate mother, or for increasing the cover of an existing policy for the surrogate mother, for the period from entering into the surrogacy arrangement until the surrogate mother's postnatal recovery.

Examples for subsection (2)(e)

Costs of travel, accommodation, childcare and housekeeping and postnatal expenses.

- (3) A provision in a surrogacy arrangement to provide for the payment or reimbursement of reasonable costs allowed under subsections (1) and (2) is enforceable if:
 - (a) the cost was incurred; and
 - (b) the cost is not recoverable under Medicare, health insurance or any other scheme.

Division 2 Requirements for surrogacy arrangement

13 Purpose of Division

This Division sets out the requirements that must be met before a parentage order may be made in relation to a surrogacy arrangement.

14 Form of surrogacy arrangement

- (1) The surrogacy arrangement must be in writing.
- (2) The certificates required under sections 21 and 22(3) must be attached to the surrogacy arrangement.

15 Timing of surrogacy arrangement

The surrogacy arrangement must be entered into by the parties before the surrogate mother becomes pregnant with the child expected under the surrogacy arrangement.

16 Parties to surrogacy arrangement

The surrogacy arrangement must not include any party other than the following:

- (a) the surrogate mother;
- (b) the partner, if any, of the surrogate mother;
- (c) one or 2 intended parents.

17 Requirements for surrogate mother

The surrogate mother must, when she enters into the surrogacy arrangement:

- (a) be at least 25 years of age, unless the Local Court makes an exception under section 34(2) because exceptional circumstances exist to justify her entering into the surrogacy arrangement; and
- (b) be an Australian citizen or a permanent resident of Australia.

18 Requirements for intended parent

- (1) Each intended parent must, when they enter into the surrogacy arrangement:
 - (a) be at least 25 years of age, unless the Local Court makes an exception under section 34(3) because the intended parent is sufficiently mature to understand the implications of the parentage order; and
 - (b) be an Australian citizen or a permanent resident of Australia.
- (2) If there are 2 intended parents, they must be partners of each other.

19 Reason for surrogacy arrangement

The reason for the intended parent or intended parents entering into the surrogacy must be one of the following:

- (a) the intended parent or intended parents are unlikely for any medical reason to become pregnant, be able to carry a pregnancy or give birth;

- (b) it is unlikely because of other circumstances that the intended parent or intended parents would become pregnant, be able to carry a pregnancy or give birth (whether because of gender identity, sexuality or any other reason).

Examples for paragraph (a)

- 1 *A risk of transmission of a serious genetic defect, serious disease or serious illness to a child born to an intended parent.*
- 2 *A risk that a woman, who is an intended parent, is unlikely to survive childbirth or will suffer significant harm from childbirth.*

20 Legal advice

- (1) Each party to a surrogacy arrangement must receive legal advice from a legal practitioner about the surrogacy arrangement and its implications before entering into the surrogacy arrangement.
- (2) The legal advice must include advice on the following matters:
- (a) the unenforceable nature of the arrangement, other than for reasonable costs under section 12;
 - (b) the party's legal obligations under the arrangement and this Act;
 - (c) the legal implications if the surrogate mother does not relinquish the child, including whether child support would be payable by the child's biological father under the *Child Support (Assessment) Act 1989* (Cth);
 - (d) the legal implications if, after the birth of the child, no birth parent or intended parent wants to be permanently responsible for the child's custody and guardianship;
 - (e) the legal implications of a parentage order;
 - (f) the reasons why the party should be open and honest about the child's birth parentage.
- (3) The legal practitioner providing the advice must be independent of any business providing fertility services.
- (4) The intended parents must receive legal advice from a legal practitioner who is independent of the one providing legal advice to the surrogate mother and her partner, if any.

21 Legal certificate

- (1) A person providing legal advice under section 20 must prepare a certificate on that advice and give it to the person advised.

- (2) The certificate must certify the following matters:
 - (a) the qualifications of the person giving the legal advice;
 - (b) the names of the persons who were given legal advice;
 - (c) the day or days when the advice was given;
 - (d) that advice was given on the matters listed in section 20(2) and whether the recipient of the advice appeared to understand it.

22 Counselling before entering into surrogacy arrangement

- (1) Each party to the surrogacy arrangement must undertake counselling about the surrogacy arrangement and its implications before entering into the surrogacy arrangement.
- (2) The counselling required under subsection (1) may be provided by more than one counsellor.
- (3) A counsellor who provides the counselling must prepare a certificate on the counselling and give it to the person counselled.
- (4) The certificate must certify the following matters:
 - (a) the qualifications of the counsellor;
 - (b) that the counsellor is independent of any business providing fertility services;
 - (c) the names of the persons who were counselled;
 - (d) the dates of the counselling;
 - (e) that counselling on the required matters was provided;
 - (f) in the case of a surrogate mother under 25 years of age – that exceptional circumstances exist to justify her entering into the surrogacy arrangement;
 - (g) in the case of an intended parent under 25 years of age – that the intended parent is sufficiently mature to understand the implications of the surrogacy arrangement.

23 Counselling after birth of child

- (1) The surrogate mother, her partner, if any, and any other birth parent must undertake counselling about the surrogacy arrangement and its social and psychological implications after the birth of the child and before consenting to the parentage order.

- (2) The counselling required under this section may be provided by the same counsellor that provided counselling to any of the parties before they entered into the surrogacy arrangement.

24 Report for Local Court

- (1) Each party and any birth parent of the child who is not a party to the surrogacy arrangement must submit to an interview by a counsellor for the purpose of a report for the Local Court.
- (2) The interviews must take place after the birth of a child under the surrogacy arrangement but before any application is made for a parentage order.
- (3) The counsellor must prepare a report on the interviews that states the following matters:
- (a) the qualifications of the counsellor;
 - (b) that the counsellor is independent of any business providing fertility services;
 - (c) the names of the persons who were counselled;
 - (d) the dates of the counselling;
 - (e) the counsellor's opinion on the best interests of the child born under the surrogacy arrangement and the grounds for that opinion.
- (4) The counsellor's report may include the counsellor's opinion on the following matters:
- (a) each person's understanding of the social and psychological implications of a parentage order on themselves and the child;
 - (b) each person's level of acceptance that openness and honesty about the child's birth parentage is in the best interests of the child;
 - (c) the arrangements that the intended parent or intended parents propose for the care and nurture of the child;
 - (d) any other matter relevant to the wellbeing of the child.
- (5) The counsellor, under this section, must not have provided any previous counselling to the parties.
- (6) A copy of the report must be given to each person interviewed before an application is made for a parentage order.

25 Requirements related to counsellors

- (1) A counsellor must be:
 - (a) a member, or a person eligible for full membership, of the Australian and New Zealand Infertility Counsellors Association; or
 - (b) a person with other qualifications prescribed by regulation.
- (2) A counsellor must be independent of any business providing fertility services.
- (3) The counselling provided by a counsellor must be consistent with any guidelines relevant to surrogacy, in effect as of the time of the counselling, issued by:
 - (a) the Australian and New Zealand Infertility Counsellors Association; and
 - (b) the National Health and Medical Research Council.

Part 3 Parentage orders

Division 1 Application for parentage order

26 Application for parentage order

- (1) The intended parent or intended parents of a child may apply to the Local Court for a parentage order.
- (2) An application for a parentage order must be made:
 - (a) no earlier than 30 days after the birth of the child; and
 - (b) no later than 180 days after the birth of the child, unless the Local Court is satisfied that there are exceptional circumstances to justify a later application.
- (3) If there are 2 intended parents in the surrogacy arrangement, the application must be made by both intended parents jointly unless:
 - (a) they are no longer partners; or
 - (b) one of them has died; or
 - (c) one of them does not have the legal capacity to make decisions in relation to the proceedings; or

- (d) one of them cannot be located after reasonable efforts to do so; or
 - (e) the Local Court is satisfied that there are exceptional circumstances to justify an application by only one intended parent.
- (4) If the intended parents are no longer partners:
- (a) each intended parent may apply separately for a parentage order instead of jointly; and
 - (b) if both intended parents do apply separately – the applications must be heard together.
- (5) Notice of the application must be served on:
- (a) every other party to the surrogacy arrangement; and
 - (b) any birth parent of the child who is not a party to the surrogacy arrangement.

27 Residence of child

Neither an application for a parentage order nor a parentage order may be made unless the child born under the surrogacy arrangement resides with at least one intended parent at the time of both the application and the making of the parentage order.

28 Contents of application

The application must include the following:

- (a) a copy of the surrogacy arrangement, including the certificates required under sections 21 and 22(3);
- (b) the report from the counsellor required under section 24;
- (c) a certified copy of the birth certificate of the child born under the surrogacy arrangement.

29 Separate legal representation of child

- (1) The Local Court may, if it considers it appropriate:
- (a) order that a child who is the subject of a proceeding under this Act have separate legal representation in the proceeding; and
 - (b) make any ancillary order for that purpose.

- (2) A legal practitioner representing a child in proceedings under this Act must act in the best interests of the child, having regard to any evidence reasonably available to the practitioner.

30 Multiple children

- (1) This section applies to proceedings for a parentage order if 2 or more children are born under the surrogacy arrangement.
- (2) The application for the parentage order must include all the children alive at the time of the application.
- (3) If a parentage order is to be made for one child, a separate parentage order must be made for each other child transferring parentage to the same intended parent or intended parents, unless the Local Court considers it not to be in the best interests of the children.

Division 2 Making parentage order

31 Purpose of parentage order

The purpose of a parentage order is to transfer the parentage of a child born under a surrogacy arrangement to the intended parent or intended parents if the requirements of this Act are met.

32 Consent

- (1) Subject to this section, each party and any birth parent of the child who is not a party to the surrogacy arrangement must consent to the making of a parentage order.
- (2) The Local Court may dispense with the consent of an intended parent only if:
- (a) the person has died; or
 - (b) the person does not have legal capacity to consent; or
 - (c) the person cannot be located after reasonable efforts to do so; or
 - (d) the person is no longer a partner of the applicant and dispensing with consent in the circumstances is in the best interests of the child.

- (3) The Local Court may dispense with the consent of a surrogate mother only if:
- (a) the child is living with an intended parent who is an applicant; and
 - (b) one of the following circumstances exist:
 - (i) the person has died;
 - (ii) the person does not have legal capacity to consent;
 - (iii) the person cannot be located after reasonable efforts to do so; and
 - (c) dispensing with consent in the circumstances is in the best interests of the child.
- (4) The Local Court may dispense with the consent of a partner of the surrogate mother or a birth parent of the child who is not a party to the surrogacy arrangement only if:
- (a) the child is living with an intended parent who is an applicant; and
 - (b) the Local Court is satisfied that:
 - (i) the person has died; or
 - (ii) the person does not have legal capacity to consent; or
 - (iii) the person cannot be located after reasonable efforts to do so; or
 - (iv) dispensing with consent in the circumstances is in the best interests of the child.

33 Residence of each applicant

- (1) A parentage order must not be made unless each applicant resides in the Territory at the time of the hearing of the application.
- (2) Despite subsection (1), the Local Court may dispense with the requirement that an applicant reside in the Territory in exceptional circumstances.

34 Making parentage order

- (1) The Local Court may make a parentage order if satisfied of the following:
 - (a) the surrogacy arrangement is not a commercial surrogacy arrangement;
 - (b) the requirements of Part 2, Division 2 are met;
 - (c) the place of residence of the child required under section 27;
 - (d) the consents required under section 32 were given or dispensed with;
 - (e) the place of residence of each applicant required under section 33;
 - (f) the parentage order is in the best interests of the child.
- (2) In the case of a surrogate mother who was under 25 years of age when entering into the surrogacy arrangement, the Local Court may make a parentage order if:
 - (a) the surrogate mother was at least 18 years of age when she entered into surrogacy arrangement; and
 - (b) the counsellor's certificate required under section 22(3) certified that exceptional circumstances existed to justify the surrogate mother entering into the surrogacy arrangement; and
 - (c) the Local Court is satisfied that exceptional circumstances exist to justify making the parentage order.
- (3) In the case of an intended parent who was under 25 years of age when entering into the surrogacy arrangement, the Local Court may make a parentage order if:
 - (a) the intended parent was at least 18 years of age when the intended parent entered into the surrogacy arrangement; and
 - (b) the counsellor's certificate required under section 22(3) certified that the intended parent was sufficiently mature to understand the implications of the surrogacy arrangement; and
 - (c) the Local Court is satisfied that the intended parent is sufficiently mature to understand the implications of the parentage order.

35 Contents of parentage order

A parentage order must provide for the following matters in relation to a child born under the surrogacy arrangement:

- (a) the transfer of the parentage of the child to the intended parent or intended parents;
- (b) the date of the order;
- (c) the full name and address of the surrogate mother and any other birth parent;
- (d) the full name, address and occupation of the intended parent or intended parents;
- (e) the names by which the child was known before, and is to be known after, the order is made;
- (f) the date and place of birth of the child;
- (g) any consequential or ancillary matters.

36 Child's names

- (1) The names by which the child is to be known, are as specified in a parentage order.
- (2) To avoid doubt, the determination of the names of a child in a parentage order does not prevent them being changed later under the *Births, Deaths and Marriages Registration Act 1996* or other applicable law.
- (3) A name by which the child is to be known must not be a prohibited name, as defined in section 4 of the *Births, Deaths and Marriages Registration Act 1996*.

Division 3 Effect of parentage order

37 Effect of parentage order

- (1) This section provides for the effect of a parentage order made in relation to a child.
- (2) On and from the date the parentage order is made:
 - (a) the child becomes the child of the intended parent or intended parents; and

- (b) the intended parent or intended parents become the parent or parents of the child; and
 - (c) the child is no longer the child of the surrogate mother and any other birth parent; and
 - (d) the surrogate mother and any other birth parent are no longer the parent or parents of the child.
- (3) The relationships between the child and all other persons are determined in accordance with subsection (2).
- (4) Any disposition or devolution of property dependent on the relationship between the child and another person is determined in accordance with subsections (2) and (3).
- (5) A person may vary an instrument disposing of property, made before a parentage order, to exclude a child who is the subject of the parentage order.
- (6) Nothing in this Act affects the operation of a provision in a will or other instrument distinguishing between a child who is the subject of a parentage order and other children.

38 Duty of trustee and personal representative

- (1) Subject to this section, a trustee or other personal representative may convey, transfer or distribute real or personal property to the persons appearing to be entitled to the property without ascertaining whether a parentage order is in effect.
- (2) A trustee or personal representative conveying, transferring or distributing real or personal property is not liable to a person claiming directly or indirectly by virtue of a parentage order, unless the trustee or personal representative has notice of the claim before the time of the conveyance, transfer or distribution.
- (3) Nothing in this section prejudices the right of a person to follow property into the hands of a person who received it, other than a purchaser for value without notice of the claim.

39 Sexual offence – familial relationship

- (1) For the purpose of applying a law relating to a sexual offence for which a familial relationship is relevant, a child who is the subject of a parentage order is taken to have the familial relationships that existed before the parentage order as well as the familial relationships that resulted from the parentage order.

(2) Subsection (1) is not affected by any revocation of a parentage order.

(3) In this section:

sexual offence, see section 3 of the *Sexual Offences (Evidence and Procedure) Act 1983*.

Division 4 Revocation of parentage order

40 Application to revoke parentage order

(1) The following persons may apply to the Local Court to revoke a parentage order relating to a child:

- (a) the surrogate mother;
- (b) any other birth parent;
- (c) if 18 years of age or older – the child;
- (d) a parent, who was formerly an intended parent;
- (e) the Attorney-General.

(2) The application may be made on any of the following grounds:

- (a) the parentage order was obtained by fraud, duress or other improper means;
- (b) a consent to the parentage order was:
 - (i) not given freely and voluntarily; or
 - (ii) given in return for a payment, reward or other material benefit or advantage;
- (c) there are exceptional circumstances to justify revoking the parentage order.

(3) Notice of the application must be served on the other persons referred to in subsection (1), unless the court dispenses with service for a person who is dead or cannot be located after making reasonable enquiries.

41 Revocation of parentage order

(1) The Local Court may, by order, revoke a parentage order relating to a child if satisfied that:

- (a) any of the grounds required under section 40(2) exist; and

- (b) the revocation is in the best interest of the child.
- (2) An order of the Local Court revoking a parentage order relating to a child may also provide for:
 - (a) subject to section 36(3), the name of the child; and
 - (b) any consequential or ancillary matters.

42 Effect of revocation of parentage order

- (1) This section provides for the effect of an order revoking a parentage order made in relation to a child.
- (2) On and from the date the order is made, the rights, privileges, duties, liabilities and relationships of the child under the law of the Territory and of all other persons are to be determined as if the parentage order had not been made.
- (3) Subject to the terms of the order, subsection (2) does not affect:
 - (a) anything lawfully done under the parentage order or while the parentage order was in force; or
 - (b) any right, privilege, duty or liability that vested while the parentage order was in effect.
- (4) Nothing in this section prevents the name of the child being subsequently changed under the *Births, Deaths and Marriages Registration Act 1996* or other applicable law.

Division 5 Procedural and other matters

43 Procedure for applications

An application for a parentage order or its revocation must comply with any rules or practice directions of the Local Court applicable to the application.

44 Closed proceedings

- (1) Proceedings under this Act must not be heard in open court.
- (2) Anyone who is not one of the following persons must be excluded from the proceedings, unless the court orders otherwise:
 - (a) a child who is the subject of the application;
 - (b) a party to the proceedings;

- (c) a party to the surrogacy arrangement;
- (d) a legal practitioner representing a person referred to in paragraphs (a) to (c);
- (e) a witness giving evidence.

45 Appeals

- (1) A parentage order may not be appealed.

Note for subsection (1)

While a parentage order is final, it can be revoked under section 41.

- (2) A decision to refuse to make a parentage order may be appealed to the Supreme Court by the following persons:

- (a) the surrogate mother;
- (b) an intended parent.

- (3) A decision to revoke a parentage order or to refuse to revoke a parentage order may be appealed to the Supreme Court by the following persons:

- (a) the surrogate mother;
- (b) any other birth parent;
- (c) if 18 years of age or older – the child;
- (d) an intended parent;
- (e) in the case of an appeal of a decision in relation to an application to revoke a parentage order made by the Attorney-General – the Attorney-General.

- (4) An appeal referred to in subsection (2) or (3) is of right and is to be by way of rehearing.

46 Notice to Registrar of Births, Deaths and Marriages

- (1) A registrar of the Local Court must give the Registrar of Births, Deaths and Marriages, appointed under the *Births, Deaths and Marriages Registration Act 1996*, a copy of the following orders as soon as practicable after it is made:

- (a) a parentage order;
- (b) an order revoking a parentage order.

- (2) When giving a copy of a parentage order, the registrar of the Local Court must attach a written notice with the following information:
 - (a) if known – the identity of any person, other than the surrogate mother or an intended parent, who donated human reproductive material resulting in the birth of the child;
 - (b) any other information prescribed by regulation.
- (3) If the child who is the subject of an order referred to in subsection (1) was born in a State or another Territory, the registrar of the Local Court must also give a copy of the order and the notice referred to in subsection (2) to the person responsible for registering births in the State or other Territory.

47 Access to court records

- (1) Subject to this section, a person must not have access to the record of proceedings under this Act in relation to a child born under a surrogacy arrangement unless the court, on application by the person, approves the access.
- (2) The parties to an application to revoke a parentage order or an appeal may have access to the record of proceedings for the purposes of the application or appeal without the approval of the court.
- (3) The court may approve access to all or part of the record of proceedings to the following persons on application:
 - (a) if the child is 18 years of age or older – the child;
 - (b) if the child is under 18 years of age – the child with the consent of a person with parental responsibility;
 - (c) the surrogate mother;
 - (d) any other birth parent;
 - (e) an intended parent;
 - (f) the Attorney-General.
- (4) This section prevails to the extent of any inconsistency with any other law of the Territory.

- (d) the person is not a legal practitioner representing a person seeking legal assistance in relation to the surrogacy arrangement; and
- (e) the person asks to receive or receives payment, reward or other material benefit or advantage for the conduct specified in paragraph (a).

Maximum penalty: 100 penalty units or imprisonment for 12 months.

Examples for subsection (1)(b)

- 1 *Introducing people who are looking to enter into a surrogacy arrangement.*
- 2 *Arranging a surrogacy arrangement or negotiating a surrogacy arrangement.*

- (2) Strict liability applies to subsection (1)(d) and (e).

50 Advertising commercial surrogacy arrangement

A person commits an offence if:

- (a) the person intentionally publishes information; and
- (b) the information:
 - (i) purports to seek another person to enter into a commercial surrogacy arrangement; or
 - (ii) states or implies that a person is willing to enter into a commercial surrogacy arrangement; and
- (c) the person is reckless in relation to the circumstance specified in paragraph (b).

Maximum penalty: 100 penalty units or imprisonment for 12 months.

51 Fertility services for commercial surrogacy arrangement

A person commits an offence if:

- (a) the person intentionally provides services or intentionally offers services; and
- (b) the services consist of assistance for a woman to become pregnant; and

- (c) the services are provided or offered to another person who:
 - (i) is a party to a commercial surrogacy arrangement; or
 - (ii) is expected to be a party to a commercial surrogacy arrangement; and
- (d) the person has knowledge of the circumstances specified in paragraphs (b) and (c).

Maximum penalty: 100 penalty units or imprisonment for 12 months.

52 Offence to publish identifying information

- (1) A person commits an offence if:
 - (a) the person intentionally publishes information; and
 - (b) the information identifies, or is likely to lead to the identification of, any of the following:
 - (i) a child born under a surrogacy arrangement;
 - (ii) a child who is the subject of an application for a parentage order;
 - (iii) a party to a surrogacy arrangement;
 - (iv) a party to a proceeding under this Act;
 - (v) a person whose consent is required for a surrogacy arrangement or a parentage order; and
 - (c) the person is reckless in relation to the result specified in paragraph (b).

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant has written consent to publish information identifying the person from:
 - (a) the person identified; or

- (b) in the case of a person who is under 18 years of age – the person with parental responsibility for the person identified.

Note for subsection (2)

The defendant has an evidential burden in relation to the matters required under this subsection (see section 43BU of the Criminal Code).

Note for section 52

In addition to the circumstances specified in this section, a person who discloses information specified in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

53 Offence to disclose certain information

- (1) A person commits an offence if:
- (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
 - (b) the information is confidential and the person is reckless in relation to that circumstance; and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (ii) to a person who is otherwise entitled to the information; and
 - (e) the person is reckless in relation to the result and circumstance referred to in paragraph (d).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a).

- (3) If the information referred to in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

Note for subsection (3)

The defendant has an evidential burden in relation to the matters required under this subsection (see section 43BU of the Criminal Code).

Note for section 53

In addition to the circumstances specified in this section, a person who discloses information specified in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

54 Prosecutions

A prosecution for an offence against this Act must not be commenced without the consent of the Director of Public Prosecutions.

Part 5 Miscellaneous

55 Regulations

- (1) The Administrator may make regulations under this Act.

Note for subsection (1)

See section 65 of the Interpretation Act 1978.

- (2) The regulations may apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time.

56 Review of Act

- (1) The Minister must review this Act to determine whether its purposes remain valid and whether its provisions remain appropriate for achieving those purposes.
- (2) The review must be undertaken as soon as possible after 5 years from the commencement of this Act.
- (3) A report on the outcome of the review must be tabled in the Assembly within 6 years from the commencement of this Act.

Part 6 Transitional provisions

57 Prior surrogacy arrangements

- (1) Subject to subsection (2), a parentage order may be made in relation to a surrogacy arrangement entered into before the commencement.
- (2) The provisions of this Act apply in relation to the surrogacy arrangement and any subsequent parentage order, subject to the following:
 - (a) the surrogacy arrangement is not required to comply with section 14;
 - (b) no legal advice or certificate is required to be given in accordance with sections 20 and 21;
 - (c) no counselling is required to be given in accordance with sections 22 and 23;
 - (d) a surrogate mother may be under 25 years of age, contrary to section 17(a), if at least 18 years of age at the time the surrogacy arrangement was entered into;
 - (e) an intended parent may be under 25 years of age, contrary to by section 18(1)(a), if at least 18 years of age at the time the surrogacy arrangement was entered into;
 - (f) the application for the parentage order may be made later than 180 days after the birth of the child, contrary to section 26(2)(b), if made within 2 years from the commencement or such longer period as the Local Court may allow in exceptional circumstances.
- (3) In this section:

commencement means the commencement of section 2.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****Surrogacy Act 2022 (Act No. 8, 2022)***

| | |
|-------------|---|
| Assent date | 26 May 2022 |
| Commenced | 21 December 2022 (<i>Gaz S66</i> , 20 December 2022) |

3**LIST OF AMENDMENTS**

| | |
|------------|-----------------------|
| pt 7 hdg | rep No. 8, 2022, s 77 |
| pt 7 | |
| div 1 hdg | rep No. 8, 2022, s 77 |
| ss 58 – 59 | rep No. 8, 2022, s 77 |
| pt 7 | |
| div 2 hdg | rep No. 8, 2022, s 77 |
| ss 60 – 61 | rep No. 8, 2022, s 77 |
| pt 7 | |
| div 3 hdg | rep No. 8, 2022, s 77 |
| ss 62 – 64 | rep No. 8, 2022, s 77 |
| pt 7 | |
| div 4 hdg | rep No. 8, 2022, s 77 |
| ss 65 – 66 | rep No. 8, 2022, s 77 |
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| div 5 hdg | rep No. 8, 2022, s 77 |
| ss 67 – 68 | rep No. 8, 2022, s 77 |
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| div 6 hdg | rep No. 8, 2022, s 77 |
| ss 69 – 70 | rep No. 8, 2022, s 77 |
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| div 7 hdg | rep No. 8, 2022, s 77 |
| ss 71 – 76 | rep No. 8, 2022, s 77 |
| pt 7 | |
| div 8 hdg | rep No. 8, 2022, s 77 |
| s 77 | rep No. 8, 2022, s 77 |