

## Schedule 8 Amendment of Surrogacy Act 2010 No 102<sup>1</sup>

### **[1] Section 18 Making of parentage order by Court**

Omit section 18(2). Insert instead—

(2) However, the Court may make a parentage order, despite not being satisfied a precondition to the making of the order has been met, if—

(a) for a surrogacy arrangement that is not a commercial surrogacy arrangement—

(i) the precondition is not a mandatory precondition to the making of a parentage order, and

(ii) the Court is satisfied exceptional circumstances justify the making of the parentage order, despite the precondition not being met, or

(b) for a commercial surrogacy arrangement entered into outside Australia for a child born on or before 30 June 2025—

(i) the precondition is not a mandatory precondition to the making of a parentage order, and

(ii) the Court is satisfied, having regard to the circumstances of the birth parent or parents, the intended parent or parents and the surrogacy arrangement, that it is in the best interests of the child to make the parentage order, despite the precondition not being met, or

(c) for a commercial surrogacy entered into outside Australia for a child born on or after 1 July 2025—

(i) if the precondition is that the surrogacy arrangement is not a commercial surrogacy arrangement—the Court is satisfied, having regard to the circumstances of the birth parent or parents, the intended parent or parents and the surrogacy arrangement, that it is in the best interests of the child to make the parentage order, despite the precondition not being met, or

(ii) if the precondition is any other precondition that is not a mandatory precondition to the making of a parentage order—the Court is satisfied exceptional circumstances justify the making of the parentage order, despite the precondition not being met.

### **[2] Section 23 Surrogacy arrangement must be altruistic**

Omit section 23(2). Insert instead—

(2) This precondition is only a mandatory precondition to the making of a parentage order in relation to a surrogacy arrangement entered into in Australia.

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<sup>1</sup> <https://www.parliament.nsw.gov.au/bill/files/18460/Passed%20by%20both%20Houses.pdf>

[Hon. Penny Sharpe Explainer:](#)<sup>2</sup>

Schedule 8 amends the Surrogacy Act 2010 to make parentage orders available for children born through international commercial surrogacy, if the order is in the child's best interests. A surrogacy arrangement being an altruistic arrangement will no longer be a mandatory precondition to obtaining a parentage order for children born through commercial surrogacy arrangements entered into outside of Australia. If the international commercial surrogacy arrangement is in relation to a child born on or before 30 June 2025, then all non-mandatory preconditions will be able to be waived on the "best interests" test. If an international commercial surrogacy arrangement relates to a child born after 30 June 2025, then all non-mandatory preconditions can be waived on the "exceptional circumstances" test, except for the now non-mandatory precondition that the surrogacy arrangement be an altruistic one, which will remain subject to the "best interests" test. The Government notes that there is a review into the Surrogacy Act currently being undertaken. Some of the issues that have been removed or that people have raised will be addressed through that review.

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<sup>2</sup> <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-97404/link/2302>