Version No. 030

Assisted Reproductive Treatment Act 2008

No. 76 of 2008

Version incorporating amendments as at
1 January 2025

TABLE OF PROVISIONS

Version No. 030

Assisted Reproductive Treatment Act 2008

No. 76 of 2008

Version incorporating amendments as at
1 January 2025

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

(a) to regulate the use of assisted reproductive treatment and artificial insemination procedures (other than self-insemination); and

(b) to regulate access to information about treatment procedures carried out under this Act; and

(c) to promote research into the incidence, causes and prevention of infertility; and

(d) to make provision with respect to surrogacy arrangements; and

* * * * *

S. 1(e) repealed by No. 39/2024 s. 3(a).

(f) to provide for the keeping of the Central Register and the Voluntary Register by the Donor Conception Registrar; and

S. 1(f) amended by No. 39/2024 s. 3(b).

(g) to repeal the **Infertility Treatment Act 1995**; and

(h) to amend the **Status of Children Act 1974** and the **Births, Deaths and Marriages Registration Act 1996** and other Acts consequent on the enactment of this Act.

2 Commencement

(1) Sections 1 and 135 and this section come into operation on the day after the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

(3) If a provision referred to in subsection (2) does not come into operation before 1 January 2010, it comes into operation on that day.

3 Definitions

In this Act—

artificial insemination means a procedure of transferring sperm without also transferring an oocyte into the vagina, cervical canal or uterus of a woman;

assisted reproductive treatment means medical treatment or a procedure that procures, or attempts to procure, pregnancy in a woman by means other than sexual intercourse or artificial insemination, and includes—

(a) in-vitro fertilisation; and

(b) gamete intrafallopian transfer; and

(c) any related treatment or procedure prescribed by the regulations;

S. 3 def. of *Authority* repealed by No. 39/2024 s. 4(2)(a).

* * * * *

Central Register means the register kept by the Donor Conception Registrar under section 53;

S. 3 def. of *Central Register* amended by Nos 6/2016 s. 4(1)(a), 39/2024 s. 4(2)(b).

child means a person who is less than 18 years of age;

* * * * *

S. 3 def. of *child protection order* amended by No. 61/2014 s. 162, repealed by No. 15/2020 s. 4.

* * * * *

S. 3 def. of *child protection order check* repealed by No. 15/2020 s. 4.

* * * * *

S. 3 def. of *commis-sioning parent* repealed by No. 39/2021 s. 4(4).

contact preference means a written statement lodged under section 63C or 63I;

S. 3 def. of *contact preference* inserted by No. 6/2016 s. 4(2).

* * * * *

S. 3 def. of *criminal records check* amended by No. 37/2014 s. 10(Sch. item 5.1(b)), repealed by No. 15/2020 s. 4.

designated officer, in relation to a registered ART provider, means a person appointed, employed or engaged by that provider under Division 3 of Part 8;

S. 3 def. of *doctor* substituted by No. 13/2010 s. 51(Sch. item 6).

doctor means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

donor means a person who has given a consent under section 16;

S. 3 def. of *Donor Conception Registrar* inserted by No. 39/2024 s. 4(1).

Donor Conception Registrar means a person who is employed as the Donor Conception Registrar under section 99;

donor embryo means an embryo in respect of which consent has been given under section 16;

donor gametes means a donor oocyte or donor sperm;

donor oocyte means an oocyte in respect of which consent has been given under section 16;

S. 3 def. of *donor sibling* inserted by No. 58/2014 s. 4.

donor sibling, in relation to a person born as a result of a donor treatment procedure, means a sibling of that person who was born as a result of a donor treatment procedure using gametes donated by the same donor;

donor sperm means sperm in respect of which consent has been given under section 16;

donor treatment procedure means a treatment procedure in which donor gametes or a donor embryo is used;

embryo means a discrete entity that has arisen from either—

(a) the first mitotic division when fertilisation of a human oocyte by a human sperm is complete; or

(b) any other process that initiates organised development of a biological entity with a human nuclear genome or altered human nuclear genome that has the potential to develop up to, or beyond, the stage at which the primitive streak appears—

and has not yet reached 8 weeks of development since the first mitotic division;

enforceable undertaking means an undertaking given by a regulated person under section 116C;

S. 3 def. of *enforceable undertaking* inserted by No. 39/2024 s. 4(1).

enforceable undertaking order means an order made by the Magistrates' Court under section 116H(2);

S. 3 def. of *enforceable undertaking order* inserted by No. 39/2024 s. 4(1).

excess ART embryo has the meaning given by the **Research Involving Human Embryos Act 2008**;

exemption means an exemption under section 37;

gametes means sperm or an oocyte;

general condition means a condition imposed under section 75;

S. 3 def. of *general condition* inserted by No. 39/2024 s. 4(1).

S. 3 def. of *Health Services Commissioner* inserted by No. 6/2016 s. 4(2)[1], substituted as *Health Complaints Commissioner* by No. 24/2019 s. 5(1)(a).

Health Complaints Commissioner means the Commissioner within the meaning of the **Health Complaints Act 2016**;

identifying information means information that will or may disclose the identity of a person;

S. 3 def. of *improvement notice* inserted by No. 39/2024 s. 4(1).

improvement notice means a notice given under section 107;

S. 3 def. of *information or document production notice* inserted by No. 39/2024 s. 4(1).

information or document production notice means a notice given under section 116J;

S. 3 def. of *intended parent* inserted by No. 39/2021 s. 4(1).

intended parent, for a surrogacy arrangement, means the person or persons who enter into the surrogacy arrangement for a woman to carry a child on behalf of the person or persons;

non-identifying information means information other than identifying information;

S. 3 def. of *notice of separation* inserted by No. 39/2021 s. 4(1).

notice of separation means a notice given under section 20A(3);

oocyte means an ovum from a woman;

Part 6 counsellor has the meaning given in section 67A;

S. 3 def. of *Part 6 counsellor* inserted by No. 39/2024 s. 4(1).

partner, in relation to a person, means—

(a) the person's spouse (other than a spouse from whom the person has separated); or

(b) a person who lives with the first person as a couple on a genuine domestic basis, irrespective of gender;

S. 3 def. of *partner* amended by No. 24/2019 s. 4.

* * * * *

S. 3 def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 5.1(a)), repealed by No. 15/2020 s. 4.

pre-1988 donor treatment procedure means a treatment procedure carried out using gametes donated before 1 July 1988;

S. 3 def. of *pre-1988 donor treatment procedure* inserted by No. 58/2014 s. 4.

pre-1998 donor means a person who donated gametes before 1 January 1998;

S. 3 def. of *pre-1998 donor* inserted by No. 6/2016 s. 4(2).

pre-1998 donor treatment procedure means a donor treatment procedure carried out using gametes donated before 1 January 1998;

S. 3 def. of *pre-1998 donor treatment procedure* inserted by No. 6/2016 s. 4(2).

S. 3 def. of *production order* inserted by No. 6/2016 s. 4(2).

production order means an order referred to in section 56D(1);

S. 3 def. of *prohibition notice* inserted by No. 39/2024 s. 4(1).

prohibition notice means a notice given under section 113;

registered ART provider means a person who is registered under Part 8 as a registered ART provider;

Registrar means the Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**;

S. 3 def. of *regulated person* inserted by No. 39/2024 s. 4(1).

regulated person means a person who is—

(a) a registered ART provider; or

(b) a designated officer of a registered ART provider; or

(c) a doctor carrying out artificial insemination or assisted reproductive treatment (whether or not on behalf of a registered ART provider); or

(d) carrying out artificial insemination or assisted reproductive treatment under the supervision and direction of a doctor referred to in paragraph (c);

S. 3 def. of *RTAC accreditation* amended by No. 39/2021 s. 4(2).

RTAC accreditation means accreditation granted by the Reproductive Technology Accreditation Committee of the Fertility Society of Australia and New Zealand;

Secretary means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Health;

S. 3 def. of *Secretary* substituted by No. 29/2010 s. 46, amended by Nos 24/2019 s. 5(1)(b), 39/2024 s. 4(2)(c).

self-insemination means artificial insemination not carried out by a doctor or a person carrying out artificial insemination under the supervision and direction of a doctor who is carrying out the treatment on behalf of a registered ART provider;

S. 3 def. of *self-insemination* amended by No. 39/2021 s. 4(3).

specific condition means a condition imposed under section 75A;

S. 3 def. of *specific condition* inserted by No. 39/2024 s. 4(1).

sperm includes spermatids;

store means—

(a) to freeze an oocyte, embryo or sperm; or

(b) to otherwise preserve an oocyte, embryo or sperm by a prescribed method;

surrogacy arrangement means an arrangement, agreement or understanding, whether formal or informal, under which a woman agrees with another person to become or try to become pregnant, with the intention—

(a) that a child born as a result of the pregnancy is to be treated as the child, not of her, but of another person or persons (whether by adoption, agreement or otherwise); or

(b) of transferring custody or guardianship in a child born as a result of the pregnancy to another person or persons; or

(c) that the right to care for a child born as result of the pregnancy be permanently surrendered to another person or persons;

treatment procedure means—

(a) artificial insemination, other than self-insemination; or

(b) assisted reproductive treatment;

S. 3 def. of *Voluntary Register* amended by Nos 6/2016 s. 4(1)(b), 39/2024 s. 4(2)(d).

Voluntary Register means the register kept by the Donor Conception Registrar under section 70.

4 Interpretation of references to procedures and treatment

(1) This section applies to a reference in this Act to—

(a) a kind of procedure; or

(b) a kind of assisted reproductive treatment; or

(c) a kind of treatment procedure; or

(d) a procedure, assisted reproductive treatment or treatment procedure of a particular kind.

(2) Unless a contrary intention appears, a reference to the procedure or treatment includes—

(a) the nature or type of procedure or treatment; and

(b) whether the procedure or treatment involves the use of a donor oocyte or donor sperm, or an embryo formed from a donor oocyte or donor sperm (or both); and

(c) in relation to a consent or withdrawal of consent of a donor, whether—

(i) gametes or an embryo may be used in a procedure or treatment to be carried out on a woman who is not the donor; and

(ii) gametes or embryo may be used in such a procedure or treatment to be carried out on any woman, or only on a named woman.

5 Guiding principles

It is Parliament's intention that the following principles be given effect in administering this Act, carrying out functions under this Act, and in the carrying out of activities regulated by this Act—

(a) the welfare and interests of persons born or to be born as a result of treatment procedures are paramount;

(b) at no time should the use of treatment procedures be for the purpose of exploiting, in trade or otherwise—

(i) the reproductive capabilities of individuals; or

S. 5(b)(i) amended by No. 39/2021 s. 5(a).

(ii) children born as a result of treatment procedures;

(c) children born as the result of the use of donated gametes have a right to information about their donors;

S. 5(c) amended by No. 39/2021 s. 5(b).

(d) the health and wellbeing of persons undergoing treatment procedures must be protected at all times;

S. 5(e) amended by No. 39/2021 s. 5(c).

(e) persons seeking to undergo treatment procedures must not be discriminated against on the basis of their sexual orientation, marital or relationship status, gender identity, sex characteristics, race or religion.

6 Act to bind the Crown

(1) This Act binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Part 2—Treatment procedures

Division 1—General

7 Assisted reproductive treatment

A person may only carry out assisted reproductive treatment if—

(a) the person—

(i) is a doctor who is carrying out the treatment on behalf of a registered ART provider; or

(ii) is carrying out the treatment under the supervision and direction of a doctor who is carrying out the treatment on behalf of a registered ART provider; and

(b) the person is satisfied that the requirements of Divisions 2, 3 and 4 have been met.

Penalty: 480 penalty units or 4 years imprisonment or both.

8 Artificial insemination

S. 8 substituted by No. 39/2021 s. 6.

A person may carry out artificial insemination of a woman only if—

(a) the person—

(i) is a doctor; or

(ii) carries out the artificial insemination under the supervision and direction of a doctor who is carrying out the treatment on behalf of a registered ART provider; and

(b) the person is satisfied that the requirements of Divisions 2, 3 and 4 have been met.

Penalty: 480 penalty units or 4 years imprisonment or both.

S. 9 (Heading) amended by No. 29/2011 s. 3(Sch. 1 item 4.1).

9 Section 8 not applicable to self-insemination

Section 8 does not apply to—

(a) a woman carrying out self-insemination; or

(b) the woman's partner or a relative or friend of the woman, assisting the woman to carry out self-insemination.

Division 2—General requirements for treatment procedures

10 Persons who may undergo treatment procedures

(1) A woman may undergo a treatment procedure only if—

(a) the woman and her partner, if any, have consented, in the prescribed form, to the carrying out of a procedure of that kind; and

(b) either—

(i) the criteria in subsection (2) apply to the woman; or

(ii) the Patient Review Panel has decided there is no barrier to the woman undergoing a treatment procedure of that kind.

S. 10(2) substituted by No. 15/2020 s. 5(1).

(2) For subsection (1)(b)(i), the criteria applicable to the woman is that a doctor is satisfied, on reasonable grounds, that—

(a) in the woman's circumstances, the woman is unlikely to become pregnant other than by a treatment procedure; or

(b) the woman is unlikely to be able to carry a pregnancy or give birth to a child without a treatment procedure; or

(c) the woman is at risk of transmitting a genetic abnormality or genetic disease to a child born as a result of a pregnancy conceived other than by a treatment procedure, including a genetic abnormality or genetic disease for which the woman's partner is the carrier.

(3) A doctor may be satisfied under subsection (2)(c) that the woman is at risk of transmitting a genetic abnormality or genetic disease only if—

S. 10(3) amended by No. 15/2020 s. 5(2).

(a) the doctor has obtained advice to that effect from another doctor or a geneticist; and

(b) if the advice is from another doctor, the other doctor has specialist qualifications in human genetics.

11 Requirements as to consent

(1) A consent under section 10(1)—

(a) must specify that the woman and her partner, if any, have consented to undergo the kind of treatment procedure specified in the consent; and

(b) must not have been withdrawn or have lapsed when the treatment procedure takes place.

S. 11(1)(b) amended by No. 15/2020 s. 6(a).

* * * * *

S. 11(1)(c)(d) repealed by No. 15/2020 s. 6(b).

(1A) To avoid doubt, the woman's partner is not required to give consent under section 16(1) for use of the partner's gametes in the treatment procedure.

S. 11(1A) inserted by No. 39/2021 s. 7.

(2) The person giving the consent must give the consent or cause the consent to be given to—

(a) a designated officer of the registered ART provider that is to carry out the treatment procedure; or

(b) if the procedure is to be carried out by a person other than a registered ART provider, the doctor in charge of the woman's treatment.

S. 12 repealed by No. 15/2020 s. 7.

* * * * *

S. 13 amended by No. 39/2021 s. 8(1)(2) (ILA s. 39B(1)).

13 Counselling

(1) Before a woman consents to undergo assisted reproductive treatment, the woman and her partner, if any, must have received counselling (including counselling in relation to the prescribed matters) from a counsellor who provides services on behalf of a registered ART provider.

S. 13(2) inserted by No. 39/2021 s. 8(2).

(2) Before a woman consents to undergo artificial insemination, the woman and her partner, if any, must have received counselling (including counselling in relation to the prescribed matters) from—

(a) a counsellor who provides counselling on behalf of a registered ART provider; or

(b) a person who meets the prescribed requirements for counselling.

* * * * *

S. 14 repealed by No. 15/2020 s. 8.

15 Application for review

(1) A person may apply to the Patient Review Panel for a review if—

* * * * *

S. 15(1)(a) repealed by No. 15/2020 s. 9(a).

(b) under section 10(2) the person is ineligible for treatment; or

S. 15(1)(b) amended by No. 15/2020 s. 9(b).

(c) a registered ART provider or a doctor has refused to carry out a treatment procedure on a woman because the provider or doctor reasonably believes that a child that may be born as a result of a treatment procedure carried out on the woman would be at risk of abuse or neglect.

(2) After considering an application for review made under this section, the Patient Review Panel may decide that there is no barrier to the person undergoing treatment procedures generally or a treatment procedure of a specified kind.

(3) In deciding the application for review, the Patient Review Panel must have regard to—

(a) the guiding principles referred to in section 5; and

(b) whether carrying out a treatment procedure, whether generally or of a specified kind, on the person—

(i) is for a therapeutic goal; and

(ii) is consistent with the best interests of a child who would be born as a result of the treatment procedure.

Division 3—Requirements for donors

16 Donation of gametes or an embryo

(1) Gametes donated by a person may be used in a treatment procedure only if the person who donated the gametes has consented to the use of the gametes in a treatment procedure of that kind.

(2) An embryo may be used in a treatment procedure only if each of the persons who donated gametes used to create the embryo has consented to the use of the person's gametes for a treatment procedure of that kind.

S. 16(3) inserted by No. 39/2021 s. 9.

(3) To avoid doubt, a reference in subsection (2) to a person who donated gametes used to create the embryo includes a reference to a person who produced gametes used to create the embryo, unless the treatment procedure is to be carried out on—

(a) the person who produced the gametes or that person's partner; or

(b) a surrogate mother under a surrogacy arrangement, in relation to which the person who produced the gametes is an intended parent.

17 Requirements as to consent

(1) A donor's consent under section 16—

(a) must be in the prescribed form; and

(b) must specify the number of women on whom treatment procedures using the donor's oocyte, sperm or embryo may be carried out; and

(c) must specify the kinds of treatment procedures for which the oocyte, sperm or embryo may be used; and

(d) must not have been withdrawn or have lapsed—

S. 17(1)(d) substituted by No. 39/2021 s. 10.

(i) in the case of donor gametes—

(A) when the gametes are used in a treatment procedure; or

(B) if the gametes are earlier used to form an embryo, when the gametes are used to form the embryo; or

(ii) in the case of consent given by a person who produced gametes used to create the embryo, when the embryo is used in a treatment procedure.

(2) A person giving consent under section 16 must give the consent or cause the consent to be given to—

(a) if the donation is made—

(i) to a registered ART provider, a designated officer of the registered ART provider; or

(ii) to a person other than a registered ART provider, a doctor; or

(b) in accordance with the regulations.

18 Counselling requirements

S. 18 amended by No. 39/2021 s. 11(1)(2) (ILA s. 39B(1)).

(1) Before a person gives consent under section 16 for use of the person's gametes in assisted reproductive treatment, the person must have received counselling (including counselling in relation to the prescribed matters) from a counsellor who provides services for a registered ART provider.

S. 18(2) inserted by No. 39/2021 s. 11(2).

(2) Before a person gives consent under section 16 for use of the person's gametes in artificial insemination, the person must have received

counselling (including counselling in relation to the prescribed matters) from—

(a) a counsellor who provides counselling on behalf of a registered ART provider; or

(b) a person who meets the prescribed requirements for counselling.

19 Requirements as to the giving and receiving of information

At the time at which a donor gives consent under section 16, the donor—

(a) must give the prescribed information required to be recorded in the register under section 49 or 50 in relation to donors; and

S. 19(b) amended by No. 39/2021 s. 12.

(b) must be given written advice by the registered ART provider or doctor who carries out artificial insemination other than on behalf of a registered ART provider to whom the donation is being made about—

(i) the rights of any person born as a result of a donor treatment procedure, the parents of that person and any other persons to the disclosure of information under Division 3 of Part 6; and

(ii) the nature of the information about the donor that is recorded in the Central Register; and

(iii) the donor's rights to obtain information under Divisions 2 and 3 of Part 6; and

(iv) the existence and function of the Voluntary Register.

Division 4—Provisions about consent

20 Withdrawal of consent

S. 20(1) substituted by No. 39/2021 s. 13.

(1) A person who gives a consent under section 10(1) may withdraw it at any time before the procedure or action consented to is carried out.

S. 20(1A) inserted by No. 39/2021 s. 13.

(1A) A person who gives a consent under section 16 may withdraw it—

(a) in the case of donor gametes, at any time before the earliest of the following occurs—

(i) when the gametes are used in a treatment procedure; or

(ii) if the gametes are earlier used to form an embryo, when the gametes are used to form the embryo; or

(b) in the case of consent given by a person who produced gametes used to create the embryo, at any time before the embryo is used in a treatment procedure.

(2) A withdrawal of consent under this section must be in writing.

(3) A person withdrawing a consent must give the withdrawal or cause the withdrawal to be given as soon as practicable—

(a) to the registered ART provider or doctor to whom the consent was given; or

(b) to the registered ART provider or doctor with whom the sperm, oocyte or embryo to which the consent relates is kept or stored; or

(c) in accordance with the regulations.

S. 20A inserted by No. 39/2021 s. 14.

20A Consent to treatment procedure taken to be withdrawn on separation

(1) This section applies if—

(a) a woman and her partner have each given a consent under section 10(1) to a treatment procedure; and

(b) gametes produced by the woman's partner are to be used in the treatment procedure to be carried out on the woman; and

(c) before the treatment procedure is carried out, the woman and her partner separate.

(2) The consent given under section 10(1) by each of the woman and her partner is taken to be withdrawn on their separation.

(3) As soon as practicable after the separation, the woman and her former partner must each give written notice of the separation or cause the written notice to be given—

(a) to the registered ART provider or doctor to whom the consent under section 10(1) was given; or

(b) to the registered ART provider or doctor with whom the sperm, oocyte or embryo to which the consent relates is kept or stored; or

(c) in accordance with the regulations.

21 Lapsing of consent

(1) In the case of donor gametes, the consent of the donor given under section 16(1) lapses—

(a) 10 years after it has been given; or

(b) if any lesser period has been specified in the consent by the donor, at the end of that period.

(2) In the case of a donor embryo, the consent of each donor given under section 16 lapses—

S. 21(2) amended by No. 39/2021 s. 15.

(a) 10 years after it has been given; or

(b) if any lesser period has been specified in the consent by the donor, at the end of that period.

22 Record of consent, withdrawal of consent and notice of separation

S. 22 (Heading) substituted by No. 39/2021 s. 16(1).

S. 22 amended by No. 39/2021 s. 16(3) (ILA s. 39B(1)).

(1) A designated officer of a registered ART provider must—

(a) obtain and keep the original of each consent, withdrawal of consent or notice of separation given to the provider under this Part; and

S. 22(1)(a) amended by No. 39/2021 s. 16(2)(a).

(b) ensure that a certified copy of each consent, withdrawal of consent or notice of separation is given to—

S. 22(1)(b) substituted by No. 39/2021 s. 16(2)(b).

(i) the person who gave the consent, withdrawal of consent or notice of separation; and

(ii) in the case of a notice of separation, to the former partner of the person who gave the notice of separation.

(2) A doctor carrying out artificial insemination other than on behalf of a registered ART provider must—

S. 22(2) inserted by No. 39/2021 s. 16(3).

(a) obtain and keep the original of each consent, withdrawal of consent or notice of separation given to the doctor under this Part; and

(b) ensure that a certified copy of each consent, withdrawal of consent or notice of separation is given to—

(i) the person who gave the consent, withdrawal of consent or notice of separation; and

(ii) in the case of a notice of separation, to the former partner of the person who gave the notice of separation.

S. 23 amended by No. 39/2021 s. 17.

23 Transfer of documents

If gametes or an embryo is transferred from a registered ART provider (the ***first provider***) to another registered ART provider (the ***second provider***), a designated officer of the first provider must ensure that any consent, withdrawal of a consent or notice of separation relevant to the gametes or embryo is also transferred to the second provider.

24 Information about transfer of donated gametes or an embryo

(1) This section applies if a registered ART provider (the ***transferring registered ART provider***) transfers a donor's gametes, or an embryo formed from the gametes, to another registered ART provider.

(2) A designated officer of the transferring registered ART provider must make all reasonable efforts to give the donor written notice of the name of the registered ART provider to whom the gametes or embryo has been transferred.

Division 5—Requirements for donor treatment procedures

25 Information and advice

S. 25 amended by No. 39/2021 s. 18 (ILA s. 39B(1)).

(1) Before a woman undergoes a donor treatment procedure, the registered ART provider carrying out the treatment procedure must give the woman and her partner, if any, written advice about—

(a) the rights of any person born as a result of that procedure, the donor and any other persons to information under Divisions 2 and 3 of Part 6; and

(b) the nature of the information about the woman and her partner, if any, that is recorded in the Central Register; and

(c) the rights of the woman and her partner, if any, to obtain information under Division 3 of Part 6; and

(d) the existence and function of the Voluntary Register.

S. 25(2) inserted by No. 39/2021 s. 18.

(2) Before a woman undergoes artificial insemination using donor sperm carried out by a doctor who carries out artificial insemination other than on behalf of a registered ART provider, the doctor must give the woman and her partner, if any, written advice about—

(a) the rights of any person born as a result of that procedure, the donor and any other persons to information under Divisions 2 and 3 of Part 6; and

(b) the nature of the information about the woman and her partner, if any, that is recorded in the Central Register; and

(c) the rights of the woman and her partner, if any, to obtain information under Division 3 of Part 6; and

(d) the existence and function of the Voluntary Register.

Part 3—Offences relating to use and storage of gametes and embryos and other matters

Division 1—Prohibited procedures

26 Procedures involving gametes produced by children

(1) A person must not use, for a treatment procedure—

(a) gametes produced by a child; or

(b) an embryo formed from gametes produced by a child.

Penalty: 240 penalty units or 2 years imprisonment or both.

(2) Subsection (1) does not apply if—

(a) a doctor has certified there is a reasonable risk of the child becoming infertile before becoming an adult; and

(b) the person obtains gametes from the child for the purpose of storing the gametes for the child's future benefit.

(3) A person must not use gametes obtained under subsection (2)—

(a) in the treatment of another person, including a relative of the child; or

(b) for research purposes; or

(c) after the death of the person who produced the gametes.

Penalty: 240 penalty units or 2 years imprisonment or both.

27 Ban on certain procedures

(1) A person must not carry out a treatment procedure—

(a) using sperm produced by more than one person or oocytes produced by more than one person; or

(b) in which more than one embryo is used if the gametes from which each embryo is formed are not produced by the same two people.

Penalty: 240 penalty units or 2 years imprisonment or both.

28 Ban on sex selection

(1) A person carrying out a treatment procedure must not use gametes or an embryo, or perform the procedure in a particular way, with the purpose or a purpose of producing or attempting to produce a child of a particular sex.

Penalty: 240 penalty units or 2 years imprisonment or both.

(2) Subsection (1) does not apply if—

(a) it is necessary for the child to be of a particular sex so as to avoid the risk of transmission of a genetic abnormality or a genetic disease to the child; or

(b) the Patient Review Panel has otherwise approved the use of the gametes or embryo for the purpose or a purpose of producing or attempting to produce a child of a particular sex.

29 Ban on using donated gametes to produce more than 10 families

(1) A person must not carry out a treatment procedure using gametes, or an embryo formed from gametes, produced by a donor if the person knows the treatment procedure may result in more than 10 women having children who are genetic siblings, including the donor and any current or former partner of the donor.

Penalty: 240 penalty units or 2 years imprisonment or both.

(2) If more than 10 women have children who are genetic siblings, subsection (1) does not prevent a person carrying out a treatment procedure on any of the women using gametes, or an embryo formed from gametes, produced by the donor to produce a child that will be a genetic sibling of the women's children.

S. 29(3) inserted by No. 39/2021 s. 19.

(3) A person does not commit an offence against subsection (1) if—

(a) the person carries out a treatment procedure using gametes, or an embryo formed from gametes, produced by a donor; and

(b) the person knows the treatment procedure may result in more than 10 women having children who are genetic siblings; and

(c) the treatment procedure is carried out—

(i) on a woman who has a female partner or whose female partner is deceased to produce a child who will be a genetic sibling of the children of that woman and her partner or that woman and the deceased (as the case requires); or

(ii) on a woman under a surrogacy arrangement to produce a child who will be a genetic sibling of the children of—

S. 29(3)(c)(ii)(A) amended by No. 39/2021 s. 40.

(A) both intended parents; or

S. 29(3)(c)(ii)(B) amended by No. 39/2021 s. 40.

(B) the intended parent, if the other children of the intended parent were born as a result of a surrogacy arrangement commissioned only by that intended parent; or

S. 29(3)(c)(ii)(C) amended by No. 39/2021 s. 40.

(C) in the case of posthumous use, the intended parent and the deceased.

30 Ban on destructive research on embryos created for treatment purposes

A person must not carry out research, outside the body of a woman, involving the use of an embryo—

(a) if the embryo is unfit for transfer to a woman; or

(b) in the case of an embryo which is fit for transfer to a woman, if the research would—

(i) harm the embryo; or

(ii) make the embryo unfit for transfer to a woman; or

(iii) reduce the likelihood of a pregnancy resulting from the transfer of the embryo.

Penalty: 480 penalty units or 4 years imprisonment or both.

Division 2—Storage

30A Meaning of *responsible person*

S. 30A inserted by No. 39/2021 s. 20.

(1) In this Division—

gamete donor means a person who gave consent under section 16(1) for use of the person's oocyte or sperm in a treatment procedure;

responsible person, in relation to an embryo, means—

(a) each person who produced the gametes from which the embryo has been formed but not including any person who is a gamete donor; or

(b) in the case of an embryo formed only from donor gametes—

(i) the woman and her partner (if any) for whose use in a treatment procedure the embryo was formed; or

(ii) the intended parent who commissioned or who intends to commission a surrogacy arrangement, and for whose use in a treatment procedure under that surrogacy arrangement the embryo was formed; or

(c) in the case of an embryo referred to in paragraph (b) that is later allocated—

(i) the woman and her partner (if any) to whom the embryo is allocated for use in a treatment procedure; or

(ii) the intended parent who commissioned or who intends to commission a surrogacy

arrangement, and for whose use in a treatment procedure under that surrogacy arrangement the embryo is allocated.

(2) For the purposes of paragraphs (b)(i) and (c)(i) of the definition of ***responsible person***, a reference to the woman's partner is a reference to the woman's partner at the time the embryo was formed or allocated, whether or not the woman and her partner have since separated.

S. 31 substituted by No. 18/2013 s. 4.

31 Storing gametes

(1) A person must not cause or permit gametes to remain in storage except as permitted by section 31B—

(a) if the person knows that the person who produced the gametes has asked for those gametes to be removed; or

(b) in any other case, after the end of the latest of the following periods—

(i) 10 years; or

(ii) if the gametes have been obtained under section 26(2) from a child, 20 years; or

(iii) if the gametes have been produced by a person in respect of whom a certification has been made under subsection (2), 20 years; or

(iv) if the Patient Review Panel has given written approval under section 31A for a longer or further storage period, the approved period.

Penalty: 240 penalty units or 2 years imprisonment or both.

(2) A doctor may certify that a person is, at the time of producing the gametes, at reasonable risk of becoming prematurely infertile because of a medical procedure or condition.

31A Panel may approve longer or further storage period

S. 31A inserted by No. 18/2013 s. 4.

(1) If the person who produced the gametes has given written approval for a specified longer storage period, the Patient Review Panel may approve the longer storage period if it considers there are reasonable grounds to do so in the particular case.

(2) If the person who produced the gametes is unable to give written approval, or the person's written approval cannot be obtained, the Patient Review Panel may approve the longer storage period if it considers there are exceptional circumstances for doing so in the particular case.

(3) If an application is made for approval under subsection (1) or (2) after the period for storage of gametes referred to in section 31(1)(b) has expired, the Patient Review Panel may approve a further storage period if it considers there are exceptional circumstances in the particular case for failing to seek approval before the expiry of the period.

(4) An approval under this section may be subject to conditions.

Note

In deciding to approve a longer or further storage period, the Patient Review Panel must have regard to the guiding principles in section 5—see section 91(2).

S. 31B inserted by No. 18/2013 s. 4.

31B Time for removal of gametes from storage

(1) A person may cause or permit gametes to remain in storage for up to 3 months after—

(a) the person becomes aware that the person who produced the gametes has asked for those gametes to be removed; or

(b) the expiry of the relevant period referred to in section 31(1)(b); or

(c) in case of a pending application, the relevant day unless the Tribunal approves the longer storage period on the relevant day; or

(d) if the Patient Review Panel refuses to approve a further storage period under section 31A(3), the relevant day unless the Tribunal approves the further storage period on the relevant day.

(2) In case of a pending application, a person may cause or permit gametes to remain in storage until the earlier of the following—

(a) the Patient Review Panel approves the longer storage period; or

(b) if the Patient Review Panel refuses or has refused to approve a longer storage period, the relevant day.

(3) A person must not use gametes kept in storage under subsection (1) or (2), unless the use by the person consists only of—

(a) storage of the gametes; or

(b) removal of the gametes from storage.

Penalty: 240 penalty units or 2 years imprisonment or both.

(4) For the purposes of this section—

pending application means either of the following that, on the expiry of the relevant period referred to in section 31(1)(b), had been made but not yet decided—

(a) an application to the Patient Review Panel for approval of a longer storage period; or

(b) an application to the Tribunal for review of the Patient Review Panel's decision not to approve a longer storage period;

relevant day means the day—

(a) that is 28 days after the Patient Review Panel refuses to approve the longer or further storage period; or

(b) if an application is made to the Tribunal for review of the Patient Review Panel's decision, the Tribunal decides the application.

32 Prohibition on storing embryos except in particular circumstances

(1) A person must not cause or permit an embryo to be placed or remain in storage except as permitted by section 34A.

S. 32(1) amended by No. 18/2013 s. 5.

Penalty: 240 penalty units or 2 years imprisonment or both.

(2) Subsection (1) does not apply if—

(a) the person is a registered ART provider; and

(b) it is intended to transfer the embryo to the body of a woman in a treatment procedure in accordance with this Act; and

(c) the persons who have produced the gametes from which the embryo has been formed have consented to its storage for the purpose of later transfer.

(3) A consent under subsection (2)(c)—

(a) must be in writing; and

(b) must be given as soon as practicable after the consent has been given, to the registered ART provider storing the embryo.

33 Storing embryos for later transfer

(1) This section applies to an embryo stored as referred to in section 32(2).

S. 33(2) amended by No. 18/2013 s. 6(1).

(2) A registered ART provider must not cause or permit the embryo to remain in storage except as permitted by section 34A—

(a) if one of the persons who produced the gametes used to form the embryo has specified a storage period of less than 5 years, after that period; or

(b) in any other case, after the latest of the following days—

(i) the day that is 5 years after the day the embryo was placed in storage;

S. 33(2)(b)(ii) substituted by No. 39/2021 s. 21.

(ii) if each responsible person in relation to the embryo consents to storage for a period of not more than 5 years in addition to the period referred to in subparagraph (i), the day that is the end of that additional period;

(iii) if the Patient Review Panel gives approval under section 33A for a longer or further period of storage, the day that is the end of the period approved by the Panel.

S. 33(2)(b)(iii) substituted by No. 18/2013 s. 6(2).

Penalty: 240 penalty units or 2 years imprisonment or both.

* * * * *

S. 33(3)(4) repealed by No. 18/2013 s. 6(3).

33A Patient Review Panel may approve longer or further storage of embryos

S. 33A inserted by No. 18/2013 s. 7.

(1) If the responsible persons in relation to the embryo have given written approval for a specified longer storage period, the Patient Review Panel may approve the longer storage period if it considers there are reasonable grounds to do so in the particular case.

S. 33A(1) substituted by No. 39/2021 s. 22.

(2) If a responsible person is unable to give written approval, or the person's written approval is unable to be obtained, the Patient Review Panel may approve a longer storage period if it considers there are exceptional circumstances for doing so in the particular case.

S. 33A(2) substituted by No. 39/2021 s. 22.

(3) If an application is made for approval under subsection (1) or (2) after the period for storage of the embryo referred to in section 33(2)(b) has expired, the Patient Review Panel may approve a further storage period if it considers there are exceptional circumstances in the particular case for failing to seek approval before the expiry of the period.

(4) An approval under this section may be subject to conditions.

Note

In deciding to approve a longer or further storage period, the Patient Review Panel must have regard to the guiding principles in section 5—see section 91(2).

34 Removal of embryos from storage

(1) A registered ART provider must not remove an embryo from storage, or cause or permit an embryo to be removed from storage, unless—

(a) it is to be used, in accordance with this Act, in a treatment procedure; or

S. 34(1)(b) substituted by No. 39/2021 s. 23.

(b) written consent to its removal has been given to a designated officer of the registered ART provider by the responsible persons in relation to the embryo; or

S. 34(1)(c) substituted by No. 39/2021 s. 23.

(c) the responsible persons in relation to the embryo are unable to agree on the period for which the embryo is to be stored and the Patient Review Panel has directed that the embryo be removed; or

(d) it is required to be removed by reason of the operation of section 33(2).

Penalty: 480 penalty units or 4 years imprisonment or both.

(2) A person who removes from storage an embryo that is not to be used for a treatment procedure must ensure that—

(a) it is not removed from its container, other than for the sole purpose of observing the embryo; and

(b) it is disposed of in accordance with the regulations.

Penalty: 240 penalty units or 2 years imprisonment or both.

34A Time for removal of embryos from storage

S. 34A inserted by No. 18/2013 s. 8.

(1) A registered ART provider may cause or permit an embryo to remain in storage for up to 3 months after—

S. 34A(1)(a) substituted by No. 39/2021 s. 24.

(a) the responsible persons in relation to the embryo give written consent to its removal; or

(b) the expiry of the relevant period referred to in section 33(2); or

(c) in case of a pending application, the relevant day unless the Tribunal approves the longer storage period on the relevant day; or

(d) if the Patient Review Panel refuses to approve a further storage period under section 33A(3), the relevant day unless the Tribunal approves the further storage period on the relevant day; or

(e) in case of a direction under section 34(1)(c), the relevant day unless the Tribunal decides on the relevant day that the embryo should not be removed.

(2) In case of a pending application or a direction under section 34(1)(c), a registered ART provider may cause or permit an embryo to remain in storage until the earlier of the following—

(a) in case of a pending application, the Patient Review Panel approves the longer storage period; or

(b) if the Patient Review Panel refuses or has refused to approve a longer storage period, or has directed that an embryo be removed from storage, the relevant day.

(3) A person must not use an embryo kept in storage under subsection (1) or (2) unless the use by the person consists only of—

(a) storage of the embryo; or

(b) removal of the embryo from storage.

Penalty: 240 penalty units or 2 years imprisonment or both.

(4) For the purposes of this section—

pending application means either of the following that, on the expiry of the relevant period referred to in section 33(2), had been made but not yet decided—

(a) an application to the Patient Review Panel for approval of a longer storage period; or

(b) an application to the Tribunal for review of the Patient Review Panel's decision not to approve a longer storage period;

relevant day means the day—

(a) that is 28 days after the Patient Review Panel refuses to approve the longer or further storage period, or directs that an embryo be removed from storage; or

(b) if an application is made to the Tribunal for review of the Patient Review Panel's decision, the Tribunal decides the application.

Division 3—General offences in relation to gametes and embryos

35 Formation of embryos

A person must not knowingly or recklessly form or attempt to form an embryo outside the body of a woman unless the person—

(a) is a doctor or scientist who provides services on behalf of a registered ART provider; and

(b) forms the embryo in the course of providing services for the registered ART provider.

Penalty: 480 penalty units or 4 years imprisonment or both.

36 Moving donated gametes and embryos into and out of Victoria

(1) A person must not—

(a) bring donor gametes, or an embryo produced from donor gametes, into Victoria; or

(b) take donor gametes, or an embryo produced from donor gametes, from Victoria.

Penalty: 240 penalty units or 2 years imprisonment or both.

S. 36(2) substituted by No. 39/2024 s. 5.

(2) Subsection (1) does not apply to a person if the person—

(a) brings donor gametes or an embryo produced from donor gametes into Victoria, or takes donor gametes or an embryo produced from donor gametes from Victoria, in accordance with this Act and the regulations; and

(b) complies with subsection (3) or (4) (as the case requires).

S. 36(3) substituted by No. 39/2024 s. 5.

(3) Before a person brings donor gametes or an embryo produced from donor gametes into Victoria, the person must certify that—

(a) any payment made, any valuable consideration that is given or agreed to be given in connection with the donation or any agreement entered into for payment to be made or valuable consideration to be given in connection with the donation does not contravene—

(i) the **Human Tissue Act 1982**; or

(ii) the **Prohibition of Human Cloning for Reproduction Act 2008**; or

(iii) the Prohibition of Human Cloning for Reproduction Act 2002 of the Commonwealth; and

(b) the donor of the gametes, or each person who donated the gametes used to produce the embryo, has consented in writing to—

(i) the donor's gametes being brought into Victoria; and

(ii) the use of the donor's gametes or the embryo produced from the donor's gametes in accordance with subsection (5); and

(iii) the storage of the embryo produced from the donor's gametes for the purpose of later transfer, or if an exemption has been granted in relation to section 32(2)(c) or (3), any conditions to which the exemption is subject have been complied with; and

(c) the person has been given a copy of—

(i) the donor's consent, referred to in paragraph (b); or

(ii) the consent of each person who donated the gametes used to produce the embryo, referred to in paragraph (b); and

(d) the donor or each person who donated the gametes used to produce the embryo has received counselling in relation to prescribed matters from a counsellor who meets the prescribed requirements for counselling or, if an exemption has been granted in relation to section 18, any conditions to which the exemption is subject have been complied with; and

(e) the donor or each person who donated the gametes used to produce the embryo has given information about the matters prescribed for the purposes of this section or, if an exemption has been granted in relation to section 19(a), any conditions to which the exemption is subject have been complied with; and

(f) the donor or each person who donated the gametes used to produce the embryo has been given written advice on the matters set out in section 19(b)(i) to (iv) or, if an exemption has been granted in relation to section 19(b), any conditions to which the exemption is subject have been complied with; and

(g) the person has taken all reasonable steps to ensure that any future use of the donor gametes or embryo produced from donor gametes in Victoria will comply with section 29; and

(h) the person has satisfied any prescribed matter.

S. 36(4) substituted by No. 39/2024 s. 5.

(4) Before a person takes donor gametes or an embryo produced from donor gametes from Victoria, the person must certify that—

(a) the purpose for which the gametes or embryo will be used outside Victoria is consistent with a purpose for which it could be used in Victoria; and

(b) the way in which the gametes or embryo will be used outside Victoria is consistent with the way in which it could be used in Victoria; and

(c) the person has satisfied any prescribed matter.

S. 36(5) substituted by No. 39/2024 s. 5.

(5) For the purposes of subsection (3)(b)(ii), a donor's consent or the consent of each person who donated the gametes used to produce the embryo—

(a) must meet the requirements of section 17(1)(a) to (c); and

(b) must not have been withdrawn or have lapsed at the time the certification is made.

S. 36(6) inserted by No. 39/2024 s. 5.

(6) Certification under this section must be—

(a) in the prescribed form; and

(b) given to the Secretary before the gametes or embryo produced from donor gametes is brought into or taken from Victoria.

S. 37 substituted by No. 39/2024 s. 6.

37 Exemption from compliance—bringing or taking gametes or embryo into or out of Victoria

(1) A person to whom section 36(3) or (4) applies in relation to particular donor gametes or a particular embryo produced from donor gametes may apply to the Secretary in the prescribed form for an exemption under this section in relation to the gametes or embryo.

(2) In the case of an application by a person to whom section 36(3) applies, the Secretary, by written notice given to the person, may exempt the person from compliance with a provision specified in subsection (3) in relation to the gametes or embryo if the Secretary is satisfied that—

(a) similar procedures have taken place outside of Victoria; and

(b) there are special circumstances that warrant the exemption.

(3) For the purposes of subsection (2), the following provisions are specified—

(a) sections 17(2), 18, 19, 20(3) and 32(2)(c) and (3);

(b) Division 1 of Part 6;

(c) any other prescribed provision of this Act or the regulations.

(4) In the case of an application by a person to whom section 36(4) applies, the Secretary, by written notice given to the person, may exempt the person from compliance with a provision specified in subsection (5) in relation to the gametes or embryo if the Secretary is satisfied that—

(a) the gametes or embryo will be used in a way that is consistent with this Act; and

(b) there are special circumstances that warrant the exemption.

(5) For the purposes of subsection (4), the following provisions are specified—

(a) sections 32(2) and 33;

(b) any other prescribed provision of this Act or the regulations.

(6) An exemption under this section may—

(a) relate to the whole or a part of a provision of this Act; and

(b) be subject to conditions specified by the Secretary.

(7) A person in relation to whom an exemption is granted must comply with any condition to which the exemption is subject.

Penalty: 240 penalty units or 2 years imprisonment or both.

S. 37A inserted by No. 39/2024 s. 6.

37A Offence to certify a false or misleading matter

A person must not certify a matter specified in section 36(3) or (4) that the person believes to be false or misleading.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

S. 37B inserted by No. 39/2024 s. 6.

37B Record keeping

(1) A person must keep a written record of the matters certified by the person under section 36(3) or (4).

(2) A person must keep a written record of the prescribed matters relating to a certification made by the person under section 36(3) or (4) for a prescribed period after the date on which the certification is made.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

37C Guidelines

S. 37C inserted by No. 39/2024 s. 6.

(1) The Secretary may issue written guidelines in relation to—

(a) taking all reasonable steps for the purposes of section 36(3)(g); and

(b) the keeping of records relating to compliance with section 37B.

(2) Guidelines issued under this section must be published on the Department's Internet site.

37D Regulations

S. 37D inserted by No. 39/2024 s. 6.

For the purposes of section 37E, the regulations may—

(a) prohibit persons from—

(i) bringing donor gametes, an embryo produced from donor gametes, a class of donor gametes or a class of embryo produced from donor gametes into Victoria in prescribed circumstances; or

(ii) taking donor gametes, an embryo produced from donor gametes, a class of donor gametes or a class of embryo produced from donor gametes from Victoria in prescribed circumstances; and

(b) prescribe requirements for—

(i) bringing donor gametes, an embryo produced from donor gametes, a class of donor gametes or a class of embryo produced from donor gametes into Victoria; or

(ii) taking donor gametes, an embryo produced from donor gametes, a class of donor gametes or a class of embryo

produced from donor gametes from Victoria.

S. 37E inserted by No. 39/2024 s. 6.

37E Offence to contravene prescribed prohibition or requirements

A person who brings donor gametes or an embryo produced from donor gametes into Victoria, or takes donor gametes or an embryo produced from donor gametes from Victoria, must not contravene any prohibition or requirement prescribed for the purposes of this section.

Penalty: 240 penalty units or 2 years imprisonment or both.

Division 4—Offence in relation to giving information

38 False or misleading information

A person must not knowingly or recklessly give false or misleading information or omit to give material information—

(a) in an application, consent or request under this Act; or

(b) with respect to the giving of information that is required—

(i) to be given under this Act; or

(ii) to be included in a register, record or notice under this Act.

Penalty: 50 penalty units.

Part 4—Surrogacy

39 Certain surrogacy arrangements to require approval of Patient Review Panel

A registered ART provider may carry out a treatment procedure on a woman under a surrogacy arrangement only if the surrogacy arrangement has been approved by the Patient Review Panel.

40 Matters to be considered by Patient Review Panel in deciding application for approval of surrogacy arrangement

(1) The Patient Review Panel may approve a surrogacy arrangement if the Panel is satisfied of the following—

(a) that a doctor has formed an opinion that—

(i) in the circumstances, the intended parent is unlikely to become pregnant, be able to carry a pregnancy or give birth; or

S. 40(1)(a)(i) amended by No. 39/2021 s. 27(a).

(ii) if the intended parent is a woman, the woman is likely to place her life or health, or that of the baby, at risk if she becomes pregnant, carries a pregnancy or gives birth;

S. 40(1)(a)(ii) amended by No. 39/2024 s. 112(1).

(ab) that the surrogate mother's oocyte will not be used in the conception of the child;

(ac) that the surrogate mother has previously carried a pregnancy and given birth to a live child;

(b) that the surrogate mother is at least 25 years of age;

S. 40(1)(c) amended by No. 39/2021 s. 27(a).

(c) that the intended parent, the surrogate mother and the surrogate mother's partner, if any, have received counselling and legal advice as required under section 43;

(d) that the parties to the surrogacy arrangement are aware of and understand the personal and legal consequences of the arrangement;

(e) that the parties to the surrogacy arrangement are prepared for the consequences if the arrangement does not proceed in accordance with the parties' intentions, including—

S. 40(1)(e)(i) amended by No. 39/2021 s. 27(a).

(i) the consequences if the intended parent decides not to accept the child once born; and

S. 40(1)(e)(ii) amended by No. 39/2021 s. 27(b).

(ii) the consequences if the surrogate mother refuses to relinquish the child to the intended parent;

(f) that the parties to the surrogacy arrangement are able to make informed decisions about proceeding with the arrangement.

(2) In making its decision under subsection (1), the Patient Review Panel must have regard to the following—

(a) a report from a counsellor who provided counselling under section 43 to the parties;

(b) an acknowledgment by the parties that the parties have undergone counselling and obtained legal advice as required by section 43.

(3) This section is subject to section 41.

41 Patient Review Panel may approve non-complying surrogacy arrangement in exceptional circumstances

The Patient Review Panel may approve a surrogacy arrangement, despite failing to be satisfied of the matters referred to in section 40(1) in relation to the arrangement, if the Panel believes—

(a) the circumstances of the proposed surrogacy arrangement are exceptional; and

(b) it is reasonable to approve the arrangement in the circumstances.

42 Application of general requirements for treatment to surrogacy arrangement

S. 42 substituted by No. 15/2020 s. 10.

For the purposes of applying Division 2 of Part 2 to a treatment procedure carried out under a surrogacy arrangement, the requirement to comply with the criteria in section 10(2) does not apply to the surrogate mother.

42A Intended parents not required to give donor's consent

S. 42A (Heading) amended by Nos 39/2021 s. 41(1), 39/2024 s. 112(2).

S. 42A inserted by No. 39/2021 s. 25, amended by No. 39/2021 s. 41(2).

To avoid doubt, gametes produced by an intended parent or an embryo formed from gametes produced by an intended parent may be used in a treatment procedure carried out under a surrogacy arrangement without a consent given by the intended parent under section 16.

43 Counselling and legal information

S. 43 amended by No. 39/2021 s. 28.

Before a surrogacy arrangement is entered into the intended parent, the surrogate mother and the surrogate mother's partner, if any, must—

(a) undergo counselling, by a counsellor providing services on behalf of a registered ART provider, about the social and psychological implications of entering into the arrangement, including counselling about the prescribed matters; and

(b) undergo counselling about the implications of the relinquishment of the child and the relationship between the surrogate mother and the child once it is born; and

(c) obtain information about the legal consequences of entering into the arrangement.

44 Surrogacy costs

(1) A surrogate mother must not receive any material benefit or advantage as a result of a surrogacy arrangement.

Penalty: 240 penalty units or 2 years imprisonment or both.

(2) Subsection (1) does not prevent a surrogate mother being reimbursed for the prescribed costs actually incurred by the surrogate mother as a direct consequence of entering into the surrogacy arrangement.

S. 44(2A) inserted by No. 39/2021 s. 26(1).

(2A) If the surrogate mother's partner is a party to the surrogacy arrangement, subsection (1) does not prevent the partner being reimbursed for the prescribed costs actually incurred by the partner as a direct consequence of the partner or the surrogate mother entering into the surrogacy arrangement.

S. 44(3) amended by No. 39/2021 s. 26(2).

(3) To the extent that a surrogacy arrangement provides for a matter other than the reimbursement for costs actually incurred by the surrogate mother or the surrogate mother's partner

(if any) the arrangement is void and unenforceable.

44A Rights of surrogate mother in relation to pregnancy and birth

S. 44A inserted by No. 39/2021 s. 29.

(1) This section applies in relation to a surrogacy arrangement despite anything that the parties to the arrangement may have agreed, whether orally or in writing.

(2) The surrogate mother has the same rights as any other pregnant woman has to make decisions or take actions in relation to the management of the pregnancy and the birth of the child.

45 Prohibition on certain publications

(1) A person must not publish, or cause to be published, a statement, advertisement, notice or document—

(a) to the effect that a person is or may be willing to enter into a surrogacy arrangement; or

(b) to the effect that a person is seeking another person who is or may be willing to enter into a surrogacy arrangement or to act as a surrogate mother or to arrange a surrogacy arrangement; or

(c) to the effect that the person is or may be willing to arrange a surrogacy arrangement; or

(d) to the effect that a person is or may be willing to accept any benefit under a surrogacy arrangement, whether for himself or herself or for another person; or

(e) that is intended or likely to counsel or procure a person to agree to act as a surrogate mother; or

(f) to the effect that a person is or may be willing to act as a surrogate mother.

Penalty: 240 penalty units or 2 years imprisonment or both.

(2) 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.

Part 5—Posthumous use of gametes

46 Requirements for posthumous use of gametes or an embryo in treatment provided by a registered ART provider

A registered ART provider may use a person's gametes, or an embryo created from the person's gametes, in a treatment procedure after the person's death only if—

(a) the treatment procedure is carried out—

(i) on the deceased person's partner; or

(ii) by the deceased person's partner commissioning a surrogacy arrangement in accordance with Part 4; and

S. 46(a)(ii) substituted by No. 39/2021 s. 30.

(b) the deceased person provided written consent for the deceased person's gametes or an embryo created from the deceased person's gametes to be used in a treatment procedure of that kind; and

(c) the Patient Review Panel has approved the use of the gametes or embryo; and

(d) the person who is to undergo the treatment procedure has received counselling under section 48.

47 Approval by Patient Review Panel

(1) In deciding whether or not to grant approval for the posthumous use of gametes or an embryo, the Patient Review Panel must have regard to the possible impact on the child to be born as a result of the treatment procedure.

(2) Without limiting subsection (1), the Patient Review Panel must have particular regard to any research on outcomes for children conceived after the death of one of the child's parents.

S. 48 substituted by No. 39/2021 s. 31.

48 Counselling

Before a woman may undergo a treatment procedure referred to in section 46, the woman must undergo counselling in relation to the prescribed matters from—

(a) in the case of assisted reproductive treatment, a counsellor who provides counselling on behalf of a registered ART provider; or

(b) in the case of artificial insemination, either—

(i) a counsellor who provides counselling on behalf of a registered ART provider; or

(ii) a person who meets the prescribed requirements for counselling.

Part 6—Registers and access to information

Division 1—Registers kept by registered ART providers and doctors

49 Register to be kept by registered ART providers

(1) A registered ART provider must keep a register that includes the prescribed information in relation to the following—

(a) the donors of gametes and embryos kept or stored by the registered ART provider;

(b) the destruction or disposal by the registered ART provider of any gametes or an embryo formed outside the body of a woman;

(c) any human embryo kept or stored by the registered ART provider that becomes an excess ART embryo;

(d) each woman on whom the registered ART provider carries out a treatment procedure and the woman's partner, if any;

(e) any treatment procedure carried out on a woman by the registered ART provider;

(f) the use of gametes or an embryo in a treatment procedure carried out by the registered ART provider;

(g) any gametes or an embryo transferred between—

(i) the registered ART provider and another registered ART provider; or

(ii) the registered ART provider and a doctor;

(h) the collection and storage of gametes or an embryo by the registered ART provider;

S. 49(1)(i) amended by No. 39/2021 s. 32.

(i) the consents to the storage and removal from storage of gametes or an embryo by the registered ART provider;

(j) the bringing into or taking out of Victoria of any gametes or an embryo that have been or are stored or kept by the registered ART provider;

(k) each consent or withdrawal or lapsing of consent given under this Act for a treatment procedure by the registered ART provider;

(l) if the registered ART provider reimburses a donor for costs actually incurred by the donor in respect of a donation made to the registered ART provider, details of the reimbursement;

(m) the outcome of a treatment procedure including particulars of—

(i) a confirmed pregnancy resulting from a treatment procedure; and

(ii) the miscarriage of a pregnancy resulting from a treatment procedure;

(n) a person born as a result of a treatment procedure, including particulars of the birth of the person.

Penalty: 50 penalty units.

S. 49(2) amended by No. 39/2024 s. 7.

(2) A designated officer of a registered ART provider must ensure that any information required, by a condition of registration that applies to the provider's registration, to be recorded in the register kept by the provider under subsection (1) is recorded in the register.

Penalty: 50 penalty units.

49A Register of pre-1988 donor treatment procedures to be kept by registered ART provider

S. 49A inserted by No. 58/2014 s. 5.

A registered ART provider who is in possession of or has control of records relating to pre-1988 donor treatment procedures must keep a register that includes the prescribed information contained in the records in relation to the following—

(a) the donors of gametes used in pre-1988 donor treatment procedures;

(b) each woman on whom a pre-1988 donor treatment procedure was carried out and the woman's partner;

(c) the outcomes of pre-1988 donor treatment procedures including particulars of—

(i) a confirmed pregnancy resulting from the treatment procedure; and

(ii) the miscarriage of a pregnancy resulting from the treatment procedure;

(d) any pre-1988 donor treatment procedure carried out on a woman;

(e) the use of donor gametes in a pre-1988 donor treatment procedure;

(f) a person born as a result of a pre-1988 donor treatment procedure, including particulars of the birth of the person.

50 Register to be kept by doctor carrying out artificial insemination

(1) This section applies to a doctor carrying out artificial insemination other than on behalf of a registered ART provider.

(2) The doctor must keep a register that includes the prescribed information in relation to the following—

(a) each artificial insemination carried out by the doctor;

(b) if donor sperm is used for the artificial insemination, the donor;

(c) the woman who is inseminated and her partner, if any;

(d) a person born as a result of the artificial insemination, including particulars of the birth, if known to the doctor;

(e) each consent given in relation to the artificial insemination or withdrawal or lapsing of the consent.

S. 51 (Heading) amended by Nos 6/2016 s. 5(1), 39/2024 s. 8(1).

51 Information to be given to the Donor Conception Registrar by registered ART providers

S. 51(1) amended by Nos 6/2016 s. 5(2), 39/2024 s. 8(2).

(1) Each registered ART provider must, not later than 1 July in each year, give to the Donor Conception Registrar the information specified in subsection (2) about the following—

(a) the birth of each person born as a result of a donor treatment procedure carried out by the registered ART provider, and that is known to the registered ART provider, within the preceding financial year;

(b) each pregnancy that has occurred as a result of a donor treatment procedure carried out by the ART provider, and that is known to the registered ART provider, within the preceding financial year;

(c) in the circumstances specified in writing by the Donor Conception Registrar, each donor treatment procedure carried out by the registered ART provider in the preceding financial year, if the outcome of that procedure is not known by the provider.

S. 51(1)(c) amended by Nos 6/2016 s. 5(2), 39/2024 s. 8(2).

Penalty: 10 penalty units.

(2) The information provided under subsection (1) must include the following details—

(a) in the case of a birth, the name of the person born as a result of the donor treatment procedure;

(b) in all cases, the name of the donor;

(c) in all cases, the name of the woman on whom the procedure was carried out and the name of her partner, if any;

(d) in all cases, the kind of procedure carried out.

52 Information to be given to Donor Conception Registrar by doctors

S. 52 (Heading) amended by Nos 6/2016 s. 6(1), 39/2024 s. 9(1).

(1) A doctor who has carried out artificial insemination other than on behalf of a registered ART provider must, by 1 August in each year, give to the Donor Conception Registrar the information specified in subsection (2) in relation to—

S. 52(1) amended by Nos 6/2016 s. 6(2), 39/2024 s. 9(2).

(a) the birth of each person born as a result of artificial insemination carried out by the doctor, and that is known to the doctor, within the preceding financial year;

(b) each pregnancy that has occurred as a result of artificial insemination carried out by the doctor, and that is known to the doctor, within the preceding financial year;

(c) each artificial insemination procedure carried out by the doctor in the preceding financial year.

(2) The information provided under subsection (1) must include the following details—

(a) in the case of a birth, the name of the person born as a result of artificial insemination;

(b) if donor sperm was used in the artificial insemination, the name of the donor;

(c) in all cases, the name of the woman on whom the procedure was carried out and the name of her partner, if any;

(d) in all cases, the kind of procedure carried out.

S. 52AA (Heading) amended by No. 39/2024 s. 10(1).

S. 52AA inserted by No. 6/2016 s. 7, amended by No. 39/2024 s. 10(2).

52AA Information to be given to the Registrar by the Donor Conception Registrar

If the Donor Conception Registrar receives information under section 51(1) or 52(1) in relation to the birth of a person born as a result of a donor treatment procedure, the Donor Conception Registrar must give the following information to the Registrar to enable the Registrar to perform functions under section 17B(1A) of the **Births, Deaths and Marriages Registration Act 1996**—

(a) the name and date of birth of the person born as a result of the donor treatment procedure; and

(b) the name of the woman on whom the procedure was carried out and the name of her partner, if any.

52A Information to be given to Donor Conception Registrar by registered ART provider—register of pre-1988 donor treatment procedures

S. 52A (Heading) amended by Nos 6/2016 s. 8(1), 39/2024 s. 11(1).

S. 52A inserted by No. 58/2014 s. 6, amended by Nos 6/2016 s. 8(2), 39/2024 s. 11(2).

Each registered ART provider required to keep a register of pre-1988 donor treatment procedures under section 49A must, not later than 1 July in each year, give to the Donor Conception Registrar any additional information that has been included in the register in the preceding 12 months.

52B Information may be given to Donor Conception Registrar by persons other than registered ART providers—pre-1988 donor treatment procedures

S. 52B (Heading) substituted by No. 6/2016 s. 9(1), amended by No. 39/2024 s. 12(1).

S. 52B inserted by No. 58/2014 s. 6.

(1) A person other than a registered ART provider who is in possession of or has control of records relating to pre-1988 donor treatment procedures may—

S. 52B(1) amended by No. 6/2016 s. 9(2)(a).

(a) give the records to the Donor Conception Registrar; or

S. 52B(1)(a) amended by Nos 6/2016 s. 9(2)(b), 39/2024 s. 12(2).

(b) give copies of the records to the Donor Conception Registrar.

S. 52B(1)(b) amended by Nos 6/2016 s. 9(2)(b), 39/2024 s. 12(2).

S. 52B(2) amended by Nos 6/2016 s. 9(3). 39/2024 s. 12(2).

(2) A person is not liable for prosecution for an offence, or to a civil action, only for giving records to the Donor Conception Registrar under subsection (1).

S. 53 (Heading) amended by Nos 6/2016 s. 10(1), 39/2024 s. 13(1).

53 Donor Conception Registrar to keep a Central Register

S. 53 amended by Nos 6/2016 s. 10(2), 39/2024 s. 13(2).

The Donor Conception Registrar must keep, in the way decided by the Donor Conception Registrar, a Central Register containing—

S. 53(a) amended by Nos 6/2016 s. 10(2), 39/2024 s. 13(2).

(a) the information given to the Donor Conception Registrar under this Division; and

(ab) for each donor, the number of persons born as a result of a treatment procedure or artificial insemination using that donor's gametes; and

S. 53(ac) inserted by No. 6/2016 s. 10(3), amended by No. 39/2024 s. 13(2).

(ac) results described in section 56L(2)(c) that are given to the Donor Conception Registrar in response to a request made under section 56L(2); and

S. 53(ad) inserted by No. 6/2016 s. 10(3), amended by No. 39/2024 s. 13(2).

(ad) results described in section 56M(2)(c) that are given to the Donor Conception Registrar in response to a request made under section 56M(2); and

(ae) the information contained in the Central Register kept by the Registrar immediately before the commencement of section 10 of the **Assisted Reproductive Treatment Amendment Act 2016**; and

S. 53(ae) inserted by No. 6/2016 s. 10(3).

(b) the prescribed information.

54 Donor Conception Registrar to correct Central Register on request

S. 54 (Heading) substituted by No. 58/2014 s. 7, amended by Nos 6/2016 s. 11(1), 39/2024 s. 14(1).

(1) A person in relation to whom information is recorded in the Central Register may, at any time, ask the Donor Conception Registrar to correct or amend information in the Register that is inaccurate, incomplete, out of date or misleading.

S. 54(1) amended by Nos 6/2016 s. 11(2), 39/2024 s. 14(2).

(2) A request under subsection (1)—

(a) must be in writing; and

(b) must specify the amendment or correction the person wishes to have made and the reasons the person wishes to have the amendment or correction made.

(3) If, in the Donor Conception Registrar's opinion, the amendment or correction requested will make the Central Register more accurate or complete, the Donor Conception Registrar must make the amendment or correction to the Register that is necessary in the Donor Conception Registrar's opinion.

S. 54(3) amended by Nos 6/2016 s. 11(3), 39/2024 s. 14(3).

(4) The Donor Conception Registrar must notify a person who makes a request under this Part of the Donor Conception Registrar's decision about that request within 30 days of making that decision.

S. 54(4) amended by Nos 6/2016 s. 11(4), 39/2024 s. 14(4).

S. 54A (Heading) amended by Nos 6/2016 s. 12(1), 39/2024 s. 15(1).

S. 54A inserted by No. 58/2014 s. 8.

54A Donor Conception Registrar to correct or include information on Central Register without request

S. 54A(1) amended by Nos 6/2016 s. 12(2), 39/2024 s. 15(2).

(1) The Donor Conception Registrar may use information provided under section 52A, 63A or 140 to amend or correct information, or create a new entry, in the Central Register if, in the Donor Conception Registrar's opinion, the amendment, correction or new entry will make the Central Register more accurate or complete.

S. 54A(2) amended by Nos 6/2016 s. 12(3), 39/2024 s. 15(2).

(2) The Donor Conception Registrar may use information or records obtained under section 52B, 56A(2), 56B or 56J or under a production order to amend or correct information, or create a new entry, in the Central Register, if, in the Donor Conception Registrar's opinion, the amendment, correction or new entry will make the Central Register more accurate or complete.

S. 54A(3) amended by Nos 6/2016 s. 12(4), 39/2024 s. 15(3).

(3) For the purposes of subsection (2), in considering whether a new entry will make the Central Register more accurate or complete, the Donor Conception Registrar must have regard to the desirability of including in the Central Register as much as possible of the information required under section 53.

Division 2—Information to be given by registered ART providers and doctors

Pt 6 Div. 2 (Heading) amended by No. 39/2021 s. 33.

55 Information recorded by registered ART providers that is to be given to donors

(1) This section applies if a registered ART provider proposes to carry out a donor treatment procedure using a donor's gametes or an embryo formed from the donor's gametes.

(2) The donor may ask a designated officer of the registered ART provider for any information required to be recorded in the registered ART provider's register about—

(a) the woman on whom the procedure is proposed to be carried out; and

(b) the woman's partner, if any.

(3) On receiving a request for information under subsection (2), the designated officer must disclose to the donor, in accordance with subsection (4)—

(a) the information in the registered ART provider's register about the woman and her partner, if any, other than identifying information about the woman or her partner; and

(b) any identifying information in the registered ART provider's register about the woman or her partner, if any, if the woman and her partner have consented to the disclosure.

Penalty: 50 penalty units.

(4) Information disclosed under subsection (3) must be given—

(a) in writing; and

(b) in accordance with any conditions or limitations imposed by the woman or her partner, if any.

(5) In this section—

register, in relation to a registered ART provider, means the register required to be kept by the provider under Division 1.

S. 55A inserted by No. 39/2021 s. 34.

55A Information recorded by doctors that is to be given to donors

(1) This section applies if a doctor who carries out artificial insemination other than on behalf of a registered ART provider proposes to carry out artificial insemination using donor sperm.

(2) The donor may ask the doctor for any information required to be recorded in the doctor's register about—

(a) the woman on whom the procedure is proposed to be carried out; and

(b) the woman's partner, if any.

(3) On receiving a request for information under subsection (2), the doctor must disclose to the donor, in accordance with subsection (4)—

(a) the information in the doctor's register about the woman and her partner, if any, other than identifying information about the woman or her partner; and

(b) any identifying information in the doctor's register about the woman or her partner, if any, if the woman and her partner have consented to the disclosure.

Penalty: 50 penalty units.

(4) Information disclosed under subsection (3) must be given—

(a) in writing; and

(b) in accordance with any conditions or limitations imposed by the woman or her partner, if any.

(5) In this section—

register, in relation to a doctor, means the register required to be kept by the doctor under Division 1.

Division 3—Disclosure of information on Central Register

56 Application for information on Central Register

S. 56(1) amended by Nos 6/2016 s. 13(1), 39/2024 s. 16(1).

(1) The following persons may apply to the Donor Conception Registrar for the disclosure of information recorded on the Central Register—

(a) a person born as a result of a donor treatment procedure;

(b) a parent of a person born as a result of a donor treatment procedure;

(c) a person who is descended from a person born as a result of a donor treatment procedure;

(d) a donor.

(2) An application under subsection (1) may request only the disclosure of information relating to—

(a) if the application is made by a person referred to in subsection (1)(a), the applicant; or

(b) if the application is made by a person referred to in subsection (1)(b) or (d), the applicant's child; or

(c) if the application is made by a person referred to in subsection (1)(c), the person from whom the applicant is descended; or

(d) if the application is made by a person referred to in subsection (1)(d), a person born as a result of a donor treatment procedure carried out using the donor's gametes.

S. 56(3) amended by No. 6/2016 s. 13(2), substituted by No. 39/2024 s. 16(2).

(3) An application under subsection (1) must—

(a) be in the form and way approved by the Donor Conception Registrar; and

(b) include a statement in the prescribed form of the applicant's reasons for the application; and

(c) be accompanied by the prescribed fee.

S. 56(4) inserted by No. 39/2024 s. 16(2).

(4) Before accepting an application under this section, the Donor Conception Registrar must give the applicant any prescribed explanatory material.

S. 56A inserted by No. 58/2014 s. 9.

56A Application relating to person born as a result of pre-1988 donor treatment procedure—access to public records

(1) This section applies if an application under section 56(1) requests information relating to a person born as a result of a pre-1988 donor treatment procedure.

S. 56A(2) amended by Nos 6/2016 s. 14, 39/2024 s. 17.

(2) For the purposes of obtaining information requested in the application, the Donor Conception Registrar may access records transferred to the Public Record Office from Prince Henry's Institute of Medical Research that relate to donor treatment procedures.

(3) The Donor Conception Registrar, in accordance with this Part, may disclose to the applicant information obtained from the Public Record Office if the information is of a kind that could be included in the Register under section 54A(2).

S. 56A(3) amended by Nos 6/2016 s. 14, 39/2024 s. 17.

56B Donor Conception Registrar may request records—pre-1988 donor treatment procedures

S. 56B (Heading) amended by No. 39/2024 s. 18(1).

(1) This section applies if—

S. 56B inserted by No. 6/2016 s. 15.

(a) an applicant under section 56(1) requests information relating to a person born as a result of a pre-1988 donor treatment procedure; and

(b) records relating to the donor treatment procedure are not among records from Prince Henry's Institute of Medical Research in the custody of the Public Record Office.

(2) If the Donor Conception Registrar believes on reasonable grounds that a person (other than a registered ART provider) is in possession of or has control of records relating to the donor treatment procedure, the Donor Conception Registrar may, subject to subsection (3), request the person to locate and give the records to the Donor Conception Registrar.

S. 56B(2) amended by No. 39/2024 s. 18(2).

(3) The Donor Conception Registrar must not request records under this section from a child of a donor unless—

S. 56B(3) amended by No. 39/2024 s. 18(2).

(a) the donor consents to the Donor Conception Registrar making the request; or

S. 56B(3)(a) amended by No. 39/2024 s. 18(2).

(b) the child has previously initiated contact with the Donor Conception Registrar.

S. 56B(3)(b) amended by No. 39/2024 s. 18(2).

(4) A request under subsection (2) must be in writing and must set out the requirements of this section.

(5) A person who receives a request under subsection (2) must, within 60 days of receiving the request—

(a) make all reasonable efforts to locate the requested records; and

S. 56B(5)(b) amended by No. 39/2024 s. 18(2).

(b) provide a written declaration to the Donor Conception Registrar stating—

(i) that the person has made all reasonable efforts to locate the requested records; and

(ii) whether the person is in possession of or has control of the requested records.

(6) If the declaration states that the person is in possession of or has control of the requested records, the person must, within 21 days after providing the declaration—

S. 56B(6)(a) amended by No. 39/2024 s. 18(2).

(a) give the records to the Donor Conception Registrar; or

S. 56B(6)(b) amended by No. 39/2024 s. 18(2).

(b) give copies of the records to the Donor Conception Registrar.

S. 56B(7) amended by No. 39/2024 s. 18(2).

(7) A person is not liable for prosecution for an offence, or to a civil action, only for giving records, or copies of records, to the Donor Conception Registrar under subsection (6).

56C Offence to disclose that Donor Conception Registrar has requested records—pre-1988 donor treatment procedures

S. 56C (Heading) amended by No. 39/2024 s. 19(1).

S. 56C inserted by No. 6/2016 s. 15.

(1) A person who receives a request to which this offence applies must not disclose, whether directly or indirectly, to any other person that the request has been made unless—

S. 56C(1) amended by No. 39/2024 s. 19(2).

(a) the disclosure is reasonably necessary for the purposes of locating the records that are the subject of the request; or

(b) the disclosure is made to the person to whom the requested records relate.

Penalty: 50 penalty units.

(2) Subsection (1) does not apply to a disclosure of information if the Authority or the Donor Conception Registrar (as the case may be) has not advised the person that it is a criminal offence to disclose to any other person that the Authority or the Donor Conception Registrar (as the case may be) has made the request.

S. 56C(2) amended by No. 39/2024 s. 19(3).

(3) In this section—

S. 56C(3) inserted by No. 39/2024 s. 19(4).

request to which this offence applies means—

(a) a request under section 56B(2) from the Authority that is made before the commencement of section 19 of the **Health Legislation Amendment (Regulatory Reform) Act 2024**; or

(b) a request made by the Donor Conception Registrar under section 56B(2).

S. 56D (Heading) amended by No. 39/2024 s. 20(1).

S. 56D inserted by No. 6/2016 s. 15.

56D Donor Conception Registrar may apply to Magistrates' Court for production order

S. 56D(1) amended by No. 39/2024 s. 20(2).

(1) The Donor Conception Registrar may apply to the Magistrates' Court for an order requiring a person to produce records relating to a particular pre-1988 donor treatment procedure if—

S. 56D(1)(a) amended by No. 39/2024 s. 20(2).

(a) the Donor Conception Registrar requested the person under section 56B to provide records relating to that donor treatment procedure; and

S. 56D(1)(b) amended by No. 39/2024 s. 20(2).

(b) the person, within 90 days of the Donor Conception Registrar giving the request—

(i) did not provide the requested records; or

(ii) did not provide all the requested records; and

S. 56D(1)(c) amended by No. 39/2024 s. 20(2).

(c) the Donor Conception Registrar believes on reasonable grounds that the person is in possession of or has control of the requested records.

S. 56D(2) amended by No. 39/2024 s. 20(2).

(2) The Donor Conception Registrar may make an application under subsection (1) whether or not the person has made a declaration under section 56B(5) stating that the person is not in possession of or does not have control of the records.

(3) An application under subsection (1) must be—

(a) supported by an affidavit made on behalf of the Donor Conception Registrar stating—

S. 56D(3)(a) amended by No. 39/2024 s. 20(2).

(i) the particulars of the request that the Donor Conception Registrar has made under section 56B; and

S. 56D(3)(a)(i) amended by No. 39/2024 s. 20(2).

(ii) whether the person complied with any part of the request under section 56B; and

(iii) the grounds on which the Donor Conception Registrar considers that the person against whom the order is sought is in possession of or has control of the records that are the subject of the request; and

S. 56D(3)(a)(iii) amended by No. 39/2024 s. 20(2).

(b) accompanied by any declaration made by the person under section 56B(5).

(4) As soon as practicable after the Donor Conception Registrar makes an application under subsection (1), the Donor Conception Registrar must serve a copy of the application and the supporting affidavit on the person against whom the production order is sought.

S. 56D(4) amended by No. 39/2024 s. 20(2).

56E Hearing of application for production order

S. 56E inserted by No. 6/2016 s. 15.

(1) The Magistrates' Court hearing an application under section 56D(1) may require the Donor Conception Registrar to give the Court any additional information that the Court requires concerning the grounds on which the order is sought.

S. 56E(1) amended by No. 39/2024 s. 21.

(2) The respondent is entitled to be present at any hearing of an application under section 56D(1).

(3) Despite anything to the contrary in the **Open Courts Act 2013**, an application under section 56D(1) must be heard in closed court.

S. 56F inserted by No. 6/2016 s. 15.

56F Magistrates' Court may make production order

S. 56F(1) amended by No. 39/2024 s. 22.

(1) If the Magistrates' Court is satisfied that there are reasonable grounds for believing that the person is in possession of or has control of records relating to the pre-1988 donor treatment procedure to which the application relates, the Court may make a production order requiring the person to produce to the Donor Conception Registrar before a day specified in the order—

(a) the records specified in the order; or

(b) copies of the records specified in the order.

S. 56F(2) amended by No. 39/2024 s. 22.

(2) The Donor Conception Registrar must serve a copy of an order made under this section on the person against whom it is made.

S. 56G inserted by No. 6/2016 s. 15.

56G Expiry of production order

If a production order has not been served on the person against whom it was made before the day that is 2 months after the making of the order, the order expires on that day.

S. 56H inserted by No. 6/2016 s. 15.

56H Failure to comply with production order

(1) A person against whom a production order has been made and who has been served with the order must not, without reasonable excuse, fail to comply with the order.

Penalty: 50 penalty units.

(2) A person is not liable for prosecution for an offence, or to a civil action, only for producing records when required to do so by a production order.

56I Medical professional privilege, contravention of ethics not a reasonable excuse

S. 56I inserted by No. 6/2016 s. 15.

(1) It is not a reasonable excuse for a person to refuse to or fail to comply with a production order on the ground of medical professional privilege or on the ground that complying with the order would constitute unprofessional conduct or a breach of professional ethics.

(2) Sections 28(2), 28(3) and 32C of the **Evidence (Miscellaneous Provisions) Act 1958** do not apply to prevent the production of records as required by a production order.

56J Donor Conception Registrar may request additional information in order to identify pre-1998 donor

S. 56J (Heading) amended by No. 39/2024 s. 23(1).

S. 56J inserted by No. 6/2016 s. 15.

(1) This section applies if—

(a) an application has been made under section 56(1) by a person born as a result of a pre-1998 donor treatment procedure; and

(b) there is insufficient information on the Central Register to identify the donor of gametes used in the procedure; and

(c) the Donor Conception Registrar is satisfied that records identifying the donor are not among records from Prince Henry's Institute of Medical Research in the custody of the Public Record Office; and

S. 56J(1)(c) amended by No. 39/2024 s. 23(2).

(d) the applicant consents to the Donor Conception Registrar requesting information under this section.

S. 56J(1)(d) amended by No. 39/2024 s. 23(2).

S. 56J(2) amended by No. 39/2024 s. 23(2).

(2) Subject to subsections (4) and (5), the Donor Conception Registrar may for the purposes of identifying the donor—

(a) request information relating to the donor or to the donor treatment procedure from any person (including a registered ART provider); and

(b) for the purposes of making a request under paragraph (a), disclose to any person information contained on the Central Register.

S. 56J(3) repealed by No. 39/2024 s. 23(3).

* * * * *

S. 56J(4) amended by No. 39/2024 s. 23(4).

(4) The Donor Conception Registrar must not request information under subsection (2)(a) from a child of a person whose name is entered on the Central Register as a donor unless—

S. 56J(4)(a) amended by No. 39/2024 s. 23(4).

(a) the person whose name is entered on the Central Register consents to the Donor Conception Registrar making the request; or

S. 56J(4)(b) amended by No. 39/2024 s. 23(4).

(b) the child has previously initiated contact with the Donor Conception Registrar.

S. 56J(5) amended by No. 39/2024 s. 23(4).

(5) The Donor Conception Registrar must not request under subsection (2)(a) records relating to pre-1988 donor treatment procedures.

56K Offence to disclose that Donor Conception Registrar has requested additional information relating to donor or donor treatment procedures

S. 56K (Heading) amended by No. 39/2024 s. 24(1).

S. 56K inserted by No. 6/2016 s. 15.

(1) A person who receives a request to which this offence applies must not disclose, whether directly or indirectly, to any other person that the request has been made unless—

S. 56K(1) amended by No. 39/2024 s. 24(2).

(a) the disclosure is reasonably necessary for the purposes of locating the information that is the subject of the request; or

(b) in the case of records, the disclosure is made to the person to whom the requested records relate.

Penalty: 50 penalty units.

(2) Subsection (1) does not apply to a disclosure of information if the Authority or the Donor Conception Registrar (as the case may be) has not advised the person or the registered ART provider that it is a criminal offence to disclose to any other person that the Authority or the Donor Conception Registrar (as the case may be) has made the request.

S. 56K(2) amended by No. 39/2024 s. 24(3).

(3) In this section—

S. 56K(3) inserted by No. 39/2024 s. 24(4).

request to which this offence applies means—

(a) a request under section 56J(2) from the Authority that is made before the commencement of section 24 of the **Health Legislation Amendment (Regulatory Reform) Act 2024**; or

(b) a request made by the Donor Conception Registrar under section 56J(2).

S. 56L (Heading) amended by No. 39/2024 s. 25(1).

56L Donor Conception Registrar may request genetic test results of suspected donor

S. 56L inserted by No. 6/2016 s. 15.

(1) This section applies if—

(a) an application has been made under section 56(1) by a person born as a result of a pre-1998 donor treatment procedure; and

(b) there is insufficient information on the Central Register to determine whether a person whose name is entered on the Central Register as a donor is the donor of gametes used in the procedure.

S. 56L(2) amended by No. 39/2024 s. 25(2).

(2) The Donor Conception Registrar may, for the purposes of establishing a genetic link between the person whose name is entered on the Central Register and the applicant, request that the person whose name is entered on the Central Register—

S. 56L(2)(a) amended by No. 39/2024 s. 25(2).

(a) undergo genetic testing at a place specified by the Donor Conception Registrar; and

(b) consent to the comparison of the results of the genetic testing described in paragraph (a) with a DNA profile or genetic test results relating to the applicant; and

S. 56L(2)(c) amended by No. 39/2024 s. 25(2).

(c) consent to the results of the comparison described in paragraph (b) being given to the Donor Conception Registrar.

56M Donor Conception Registrar may request genetic test results of relative of suspected donor

S. 56M (Heading) amended by No. 39/2024 s. 26(1).

S. 56M inserted by No. 6/2016 s. 15.

(1) This section applies if—

(a) an application has been made under section 56(1) by a person born as a result of a pre-1998 donor treatment procedure; and

S. 56M(1)(b) amended by No. 39/2024 s. 26(2).

(b) the Donor Conception Registrar reasonably believes that a person whose name is entered on the Central Register as a donor may be the donor of gametes used in the procedure; and

S. 56M(1)(c) amended by No. 39/2024 s. 26(2).

(c) the Donor Conception Registrar has—

(i) made a request under section 56L(2) of the person whose name is entered on the Central Register; or

(ii) made all reasonable efforts to locate the person whose name is entered on the Central Register for the purposes of making a request under section 56L(2).

S. 56M(2) amended by No. 39/2024 s. 26(2).

(2) Subject to subsection (3), the Donor Conception Registrar may, for the purposes of establishing a genetic link between the person whose name is entered on the Central Register and the applicant, request that an adult blood relative of the person whose name is entered on the Central Register—

S. 56M(2)(a) amended by No. 39/2024 s. 26(2).

(a) undergo genetic testing at a place specified by the Donor Conception Registrar; and

(b) consent to the comparison of the results of the genetic testing described in paragraph (a) with a DNA profile or genetic test results relating to the applicant; and

S. 56M(2)(c) amended by No. 39/2024 s. 26(2).

(c) consent to the results of the comparison described in paragraph (b) being given to the Donor Conception Registrar.

S. 56M(3) amended by No. 39/2024 s. 26(2).

(3) The Donor Conception Registrar may make a request under subsection (2) only if—

(a) the person whose name is entered on the Central Register is deceased; or

(b) the person whose name is entered on the Central Register is considered to be a missing person by Victoria Police, the police force of any other State or a territory or the Australian Federal Police; or

S. 56M(3)(c) amended by No. 39/2024 s. 26(2).

(c) the Donor Conception Registrar considers that there are exceptional circumstances that justify making a request under subsection (2) in the particular case.

S. 56M(4) amended by No. 39/2024 s. 26(2).

(4) If the Donor Conception Registrar intends to make a request under subsection (2) on the basis that there are exceptional circumstances that justify making the request, the Donor Conception Registrar must make all reasonable efforts to give notice of the intended request to the person whose name is entered on the Central Register.

S. 56M(5) amended by No. 39/2024 s. 26(2).

(5) If a person is given notice under subsection (4) of an intended request, that person may apply to VCAT for a review of the decision of the Donor Conception Registrar to make the intended request.

(6) An application to VCAT must be made—

(a) if the person does not request reasons for the decision under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, within 28 days of receiving the notice under subsection (4); or

(b) if the person does request reasons for the decision under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, within 28 days of receiving the written reasons under that Act.

(7) If notice of an intended request is given under subsection (4), the Donor Conception Registrar may make that request only if—

S. 56M(7) amended by No. 39/2024 s. 26(3)(a).

(a) the person does not apply for a review of the decision of the Donor Conception Registrar to make the intended request within the period set out in subsection (6)(a) or (b); or

S. 56M(7)(a) amended by No. 39/2024 s. 26(3)(b).

(b) VCAT has reviewed the Donor Conception Registrar's decision to make the intended request and has confirmed the Donor Conception Registrar's decision.

S. 56M(7)(b) amended by No. 39/2024 s. 26(3)(c).

56N Donor Conception Registrar to be satisfied of relationship before disclosing information

S. 56N (Heading) amended by No. 39/2024 s. 27(1).

S. 56N inserted by No. 6/2016 s. 15.

(1) The Donor Conception Registrar must not disclose information (whether identifying or non-identifying) under this Part about a person whose name is entered on the Central Register as a donor to a person born as a result of a donor treatment procedure or a parent or descendant of a person born as a result of a donor treatment procedure unless satisfied under subsection (4) that the person whose name is entered on the Central Register and the person born as a result of a donor treatment procedure are related.

S. 56N(1) amended by No. 39/2024 s. 27(2)(a).

S. 56N(2) amended by No. 39/2024 s. 27(2)(a).

(2) The Donor Conception Registrar must not disclose information (whether identifying or non-identifying) under this Part about a person born as a result of a donor treatment procedure to a person whose name is entered on the Central Register as a donor unless satisfied under subsection (4) that the person whose name is entered on the Central Register and the person born as a result of a donor treatment procedure are related.

S. 56N(3) amended by No. 39/2024 s. 27(2)(a).

(3) The Donor Conception Registrar must not disclose information about a donor sibling under section 60A to a person born as a result of a donor treatment procedure or a parent of that person unless satisfied under subsection (4) that—

(a) the person whose name is entered on the Central Register as a donor and the person born as a result of donor treatment are related; and

(b) the donor sibling—

(i) is a person born as a result of a donor treatment procedure; and

(ii) is related to the person whose name is entered on the Central Register referred to in paragraph (a).

S. 56N(4) amended by No. 39/2024 s. 27(2)(a).

(4) The Donor Conception Registrar may be satisfied that a person whose name is entered on the Central Register as a donor and a person born as a result of a donor treatment procedure are related if—

(a) a unique donor identifier recorded in the Central Register links the person whose name is entered on the Central Register and the person born as a result of a donor treatment procedure; or

(b) a comparison of genetic testing results provided to the Donor Conception Registrar establishes that the person whose name is entered on the Central Register and the person born as a result of a donor treatment procedure are genetically related; or

S. 56N(4)(b) amended by No. 39/2024 s. 27(2)(a).

(c) the Donor Conception Registrar, having regard to all available information, reasonably believes that—

S. 56N(4)(c) amended by No. 39/2024 s. 27(2).

(i) the person whose name is entered on the Central Register and the person born as a result of a donor treatment procedure are genetically related; and

(ii) there is no reasonable likelihood that any other person may be the donor of the person born as a result of a donor treatment procedure.

(5) In this section—

unique donor identifier means a unique identifier used by a registered ART provider or a doctor carrying out artificial insemination other than on behalf of a registered ART provider for the purposes of identifying an individual donor.

57 Disclosure of information that does not identify a person

(1) On receipt of an application under section 56, the Donor Conception Registrar must disclose to the applicant the information applied for, other than identifying information about another person.

S. 57(1) amended by Nos 6/2016 s. 16, 39/2024 s. 28.

(2) A disclosure of information about a person under subsection (1) does not require the person's consent.

58 Disclosure of information to parent of person born as a result of donor treatment or donor

S. 58(1) amended by Nos 6/2016 s. 17(1), 39/2024 s. 29.

(1) On receipt of an application under section 56 from a parent of a person born as a result of a donor treatment procedure or a donor, the Donor Conception Registrar must disclose to the parent or donor identifying information if—

(a) the person to whom the information relates consents to the disclosure of the information and the disclosure is in accordance with that consent; or

(b) if the person is a child—

(i) the child's parent or guardian has consented to the disclosure of the information; and

(ii) the disclosure is in accordance with the consent; and

S. 58(1)(b)(iii) amended by Nos 6/2016 s. 17(1), 39/2024 s. 29.

(iii) the child has not indicated to the Donor Conception Registrar that the child does not want the information disclosed.

(2) If a child born as a result of a donor treatment procedure has indicated to the Registrar that the child does not want identifying information about the child disclosed to a person, the Registrar may disclose the information only if the Registrar considers it reasonable in the circumstances.

S. 58(3) inserted by No. 6/2016 s. 17(2).

(3) Disclosure of identifying information under this section is subject to—

(a) if the application was made by a parent of a person born as a result of a donor treatment procedure, Division 3A;

(b) if the application was made by a donor, Division 3B.

59 Disclosure of information to persons born as a result of a donor treatment procedure

S. 59 amended by No. 58/2014 s. 10, substituted by No. 6/2016 s. 18, amended by No. 39/2024 s. 30(a).

Subject to Division 3A, on receipt of an application under section 56 from a person born as a result of a donor treatment procedure, the Donor Conception Registrar must disclose to the applicant identifying information about another person—

(a) if the applicant is an adult; or

(b) if the applicant is a child and—

(i) the applicant's parent or guardian has consented to the making of the application; or

(ii) a Part 6 counsellor has provided counselling to the applicant; and

S. 59(b)(ii) substituted by No. 39/2024 s. 30(b).

(iii) the Donor Conception Registrar has received a statement from the Part 6 counsellor that the applicant is sufficiently mature to understand the consequences of the disclosure from the Central Register.

S. 59(b)(iii) inserted by No. 39/2024 s. 30(b).

60 Disclosure of information to persons descended from persons born as a result of donor treatment procedure

S. 60 amended by No. 58/2014 s. 11, substituted by No. 6/2016 s. 19, amended by No. 39/2024 s. 31.

Subject to Division 3A, on receipt of an application under section 56 from a person who is descended from a person born as a result of a donor treatment procedure, the Donor Conception Registrar may disclose to the person identifying information about the donor from whom the person is descended.

S. 60A inserted by No. 58/2014 s. 12.

60A Application for information on Central Register about donor siblings

(1) A person born as a result of a donor treatment procedure or a parent of a person born as a result of a donor treatment procedure may apply for the disclosure of information recorded on the Central Register relating to—

(a) donor siblings of the person; or

(b) donor siblings of the applicant's child.

(2) An application under subsection (1) must—

S. 60A(2)(a) amended by Nos 6/2016 s. 20, 39/2024 s. 32.

(a) be made in the form and way approved by the Donor Conception Registrar; and

(b) be accompanied by the prescribed fee.

S. 60A(3) amended by Nos 6/2016 s. 20, 39/2024 s. 32.

(3) On receipt of an application under subsection (1) the Donor Conception Registrar may disclose to the applicant the following information—

(a) the total number of the applicant's or the child's donor siblings and the number of those donor siblings born to each woman;

(b) the sex of each of the applicant's or the child's donor siblings;

(c) the month and year of birth of each of the applicant's or the child's donor siblings.

S. 61 amended by Nos 58/2014 s. 13, 6/2016 s. 21, repealed by No. 39/2024 s. 33.

* * * * *

62 Notice to be given of intended disclosure

S. 62 substituted by No. 6/2016 s. 22.

(1) If the Donor Conception Registrar intends to disclose under this Division identifying information relating to a person (other than a pre-1998 donor or a person born as a result of a donor treatment procedure), the Donor Conception Registrar must make all reasonable efforts to give notice of the intended disclosure together with any prescribed explanatory material to that person.

S. 62(1) amended by No. 39/2024 s. 34(1).

(2) If the Donor Conception Registrar intends to disclose identifying information under this Division relating to a pre-1998 donor, the Donor Conception Registrar must make all reasonable efforts to inform the donor that—

S. 62(2) amended by No. 39/2024 s. 34(2)(a).

(a) an application for the disclosure of the donor's identifying information has been made by—

(i) a person born as a result of a donor treatment procedure; or

(ii) the parent of a person born as a result of a donor treatment procedure; or

(iii) a person who is descended from a person born as a result of a donor treatment procedure; and

(b) the donor may lodge with the Donor Conception Registrar a contact preference under section 63C.

S. 62(2)(b) amended by No. 39/2024 s. 34(2)(a)(b).

* * * * *

S. 62(2)(c) repealed by No. 39/2024 s. 34(2)(c).

S. 62(3) amended by No. 39/2024 s. 34(3)(a).

(3) If the Donor Conception Registrar intends to disclose identifying information under this Division relating to a person born as a result of a donor treatment procedure, the Donor Conception Registrar must make all reasonable efforts to inform that person or, if the person is a child, the person's parent or guardian—

(a) that an application for the disclosure of the person's identifying information has been made by the donor whose gametes were used in the donor treatment procedure; and

S. 62(3)(b) amended by No. 39/2024 s. 34(3)(a)(b).

(b) that the person born as a result of a donor treatment procedure or, if the person is a child, the person's parent or guardian, may lodge with the Donor Conception Registrar a contact preference under section 63I.

S. 62(3)(c) repealed by No. 39/2024 s. 34(3)(c).

* * * * *

S. 62(4) inserted by No. 39/2024 s. 34(4).

(4) In addition, if the Donor Conception Registrar intends to disclose identifying information under this Division relating to a person born as a result of a donor treatment procedure or a pre-1998 donor, the Donor Conception Registrar must make all reasonable efforts to give that person, or if the person is a child, the person's parent or guardian, any prescribed explanatory material.

Division 3A—Disclosure and contact preferences for pre-1998 donors

Pt 6 Div. 3A (Heading) inserted by No. 6/2016 s. 23.

63 Disclosure of information if pre-1998 donor deceased or not located

S. 63 amended by No. 58/2014 s. 14, substituted by No. 6/2016 s. 23.

(1) If a person applies under section 56(1) for the disclosure of identifying information about a pre-1998 donor, the Donor Conception Registrar may disclose identifying information under Division 3 about the donor without giving notice under section 62(2) if—

S. 63(1) amended by No. 39/2024 s. 35.

(a) despite making all reasonable efforts to locate the donor, the Donor Conception Registrar has not located the pre-1998 donor within 4 months of the application being made; or

S. 63(1)(a) amended by No. 39/2024 s. 35.

(b) the donor is deceased.

(2) The Donor Conception Registrar must not disclose identifying information under Division 3 about a pre-1998 donor unless the applicant gives the Secretary—

S. 63(2) amended by No. 39/2024 s. 35.

(a) an undertaking not to contact the donor; and

(b) an undertaking to provide the Donor Conception Registrar with any information the applicant subsequently receives from a source other than the Donor Conception Registrar from which the pre-1998 donor may be directly or indirectly located.

S. 63(2)(b) amended by No. 39/2024 s. 35.

(3) An applicant who gives an undertaking under subsection (2)(a) must not knowingly contact the pre-1998 donor unless the contact is a continuation of, or a similar kind to, contact that the applicant had with the donor before the applicant made the application.

Penalty: 50 penalty units.

S. 63A inserted by No. 6/2016 s. 23.

63A Information leading to location of donor

S. 63A(1) amended by No. 39/2024 s. 36(1).

(1) If, after receiving identifying information from the Donor Conception Registrar about a pre-1998 donor who could not be located, an applicant receives, from a source other than the Donor Conception Registrar, information from which the pre-1998 donor may be directly or indirectly located, the applicant must, as soon as reasonably practicable, provide the Donor Conception Registrar with that information.

S. 63A(2) substituted by No. 39/2024 s. 36(2).

(2) If the Donor Conception Registrar receives information relating to a pre-1998 donor under subsection (1), the Donor Conception Registrar must make all reasonable efforts—

(a) to inform the donor—

(i) that the donor's identifying information has been released to a person under Division 3; and

(ii) that the donor may lodge with the Donor Conception Registrar a contact preference under section 63C relating to that person; and

(b) to give the donor any prescribed explanatory material.

63B Time limit for disclosure of identifying information about pre-1998 donors

S. 63B inserted by No. 6/2016 s. 23.

(1) If the Donor Conception Registrar has given a pre-1998 donor a notice under section 62(2), the Donor Conception Registrar must disclose under Division 3 the identifying information about the pre-1998 donor as soon as reasonably practicable after the earlier of the following—

S. 63B(1) amended by No. 39/2024 s. 37.

(a) if the donor consents to the disclosure, the day of that consent;

(b) 4 months after the notice was given.

(2) If, under section 63, the Donor Conception Registrar is not required to give a notice before disclosing identifying information about a pre-1998 donor under Division 3, the Donor Conception Registrar must disclose the information as soon as reasonably practicable after 4 months after the application under section 56 was made.

S. 63B(2) amended by No. 39/2024 s. 37.

(3) Despite subsections (1)(b) and (2), the Donor Conception Registrar may delay disclosure of the identifying information by a further 4 months if the Donor Conception Registrar considers there are exceptional circumstances that justify delaying the disclosure of the information.

S. 63B(3) amended by No. 39/2024 s. 37.

63C Contact preference for pre-1998 donors

S. 63C inserted by No. 6/2016 s. 23.

(1) If an application is made for the disclosure of identifying information about a pre-1998 donor, the donor may lodge with the Donor Conception Registrar either or both of the following—

S. 63C(1) amended by No. 39/2024 s. 38(1).

(a) a written statement setting out the donor's wishes about being contacted by the applicant for the disclosure of the information;

(b) a written statement setting out the donor's wishes about the donor's child being contacted by the applicant for the disclosure of the donor's information.

(2) A contact preference lodged under subsection (1) must be in the form approved by the Secretary.

S. 63C(3) amended by No. 39/2024 s. 38(1).

(3) A contact preference lodged under subsection (1) must be lodged with the Donor Conception Registrar before the first day on which there is contact between the donor and the applicant to whom the contact preference relates.

(4) A contact preference lodged under subsection (1)(a) may state either that—

(a) the pre-1998 donor does not wish to be contacted by the applicant; or

(b) the donor wishes any contact with the applicant to occur only in a specified way.

(5) A contact preference lodged under subsection (1)(b) may state either that—

(a) the pre-1998 donor does not wish the child to be contacted by the applicant; or

(b) the donor wishes any contact between the child and the applicant to occur only in a specified way.

S. 63C(6) amended by No. 39/2024 s. 38(1).

(6) If a pre-1998 donor lodges a contact preference under subsection (1)(b), the Donor Conception Registrar may—

(a) have regard to the child's wishes in relation to the lodgement of the contact preference; and

(b) if the child's wishes in relation to the lodgement are different from the pre-1998 donor's, comply with the donor's wishes only if the Donor Conception Registrar considers it reasonable in the circumstances.

S. 63C(6)(b) amended by No. 39/2024 s. 38(1).

(7) As soon as practicable after a contact preference is lodged under subsection (1), the Donor Conception Registrar must give the applicant a copy of the contact preference lodged.

S. 63C(7) substituted by No. 39/2024 s. 38(2).

(8) The Donor Conception Registrar must maintain records of contact preferences lodged under subsection (1).

S. 63C(8) amended by No. 39/2024 s. 38(3).

63D Duration of contact preferences lodged by pre-1998 donors

S. 63D inserted by No. 6/2016 s. 23.

(1) Subject to subsection (2), a contact preference lodged under section 63C continues in force for 5 years after—

(a) the contact preference is lodged with the Donor Conception Registrar; or

S. 63D(1)(a) amended by No. 39/2024 s. 39.

(b) the contact preference is extended under subsection (3).

(2) A contact preference lodged under section 63C(1)(b) expires on the day on which the child who is the subject of the contact preference turns 18 years of age.

(3) A pre-1998 donor who lodges a contact preference under section 63C may extend that contact preference by written notice to the Donor Conception Registrar.

S. 63D(3) amended by No. 39/2024 s. 39.

(4) Before a contact preference expires under subsection (1), the Donor Conception Registrar must make all reasonable efforts to give the pre-1998 donor who lodged the contact preference written notice—

S. 63D(4) amended by No. 39/2024 s. 39.

(a) as to when the contact preference will expire under subsection (1); and

(b) that the donor may extend the contact preference under subsection (3).

S. 63D(5) amended by No. 39/2024 s. 39.

(5) The Donor Conception Registrar must, as soon as practicable after a contact preference expires under subsection (1) or (2) or is extended under subsection (3), notify the applicant to whom the contact preference relates.

S. 63E inserted by No. 6/2016 s. 23.

63E Amendment of contact preferences lodged by pre-1998 donors

S. 63E(1) amended by No. 39/2024 s. 40(1).

(1) Subject to subsection (2), a pre-1998 donor who lodges a contact preference under section 63C may amend the contact preference by written notice to the Donor Conception Registrar.

(2) A pre-1998 donor must not amend a contact preference unless there has been no contact between the donor and the applicant to whom the contact preference relates.

S. 63E(3) amended by No. 39/2024 s. 40(2)(a).

(3) If a pre-1998 donor amends a contact preference, the Donor Conception Registrar must, as soon as practicable after the contact preference is amended—

(a) notify the applicant to whom the amended contact preference relates—

(i) that the contact preference has been amended; and

(ii) of the particulars of the amendment; and

S. 63E(3)(a)(iii) repealed by No. 39/2024 s. 40(2)(b).

* * * * *

(ab) give the applicant any prescribed explanatory material; and

S. 63E(3)(ab) inserted by No. 39/2024 s. 40(2)(c).

(b) give the applicant a copy of the amended contact preference.

63F Withdrawal of contact preferences lodged by pre-1998 donors

S. 63F inserted by No. 6/2016 s. 23.

(1) A pre-1998 donor may, by written notice to the Donor Conception Registrar, withdraw a contact preference lodged under section 63C by that donor.

S. 63F(1) amended by No. 39/2024 s. 41.

(2) If a pre-1998 donor withdraws a contact preference, the donor cannot lodge a subsequent contact preference in relation to the applicant to whom the withdrawn contact preference relates if there has been contact between the applicant and the donor.

(3) If a pre-1998 donor withdraws a contact preference, the Donor Conception Registrar must, as soon as practicable after the contact preference is withdrawn, notify the applicant to whom the withdrawn contact preference relates.

S. 63F(3) amended by No. 39/2024 s. 41.

63G Undertaking required from applicant for identifying information relating to pre-1998 donors

S. 63G inserted by No. 6/2016 s. 23.

(1) The Donor Conception Registrar must not disclose identifying information relating to a pre-1998 donor in response to an application under section 56(1) unless the applicant gives an undertaking to the Secretary to comply with the donor's contact preferences as set out in—

S. 63G(1) amended by No. 39/2024 s. 42.

(a) any contact preference lodged by the donor under section 63C (whether or not the contact preference is lodged at the time the undertaking is given); and

(b) if the contact preference is amended by the donor under section 63E, that preference as amended (whether or not the amended contact preference is lodged at the time the undertaking is given).

(2) An applicant who gives an undertaking under subsection (1) must not knowingly contact the pre-1998 donor in contravention of the contact preference or the amended contact preference unless the contact is a continuation of, or of a similar kind to, contact that the applicant had with the donor before the applicant knew of the contact preference or the amended contact preference (as the case requires).

Penalty: 50 penalty units.

(3) Subsection (2) does not apply if the applicant has not been given—

(a) in case of a contravention of a contact preference, a copy of the contact preference under section 63C(7); or

(b) in case of a contravention of an amended contact preference, a copy of the amended contact preference under section 63E(3)(b).

S. 63H inserted by No. 6/2016 s. 23.

63H Applications from children for information relating to pre-1998 donors

(1) This section applies in relation to an application made under section 56(1) if the applicant is a person born as a result of a pre-1998 donor treatment procedure who is a child at the time the application is made.

(2) The Donor Conception Registrar must not release identifying information relating to the pre-1998 donor in response to the application unless—

S. 63H(2) substituted by No. 39/2024 s. 43.

(a) a Part 6 counsellor has provided counselling to the applicant; and

(b) the Donor Conception Registrar has received a statement from the Part 6 counsellor that the applicant is sufficiently mature to understand the consequences of giving an undertaking under section 63G(1).

Division 3B—Contact preferences for persons born as a result of a donor treatment procedure

Pt 6 Div. 3B (Heading and ss 63I–63O) inserted by No. 6/2016 s. 23.

63I Contact preferences for persons born as a result of a donor treatment procedure—application for disclosure

S. 63I inserted by No. 6/2016 s. 23.

(1) If an application is made under section 56(1) for the disclosure of identifying information about a person born as a result of a donor treatment procedure, the person or, if the person is a child, a parent or guardian of the person, may lodge with the Donor Conception Registrar a written statement setting out the person's wishes about being contacted by the applicant for the disclosure of the information.

S. 63I(1) amended by No. 39/2024 s. 44(1).

(2) If the person born as a result of the donor treatment procedure is a child, the Donor Conception Registrar may—

S. 63I(2) amended by No. 39/2024 s. 44(2).

(a) have regard to the child's wishes in relation to the lodgement of the contact preference; and

S. 63I(2)(b) amended by No. 39/2024 s. 44(2).

(b) if the child's wishes in relation to the lodgement are different from the wishes of the child's parent or guardian, comply with the wishes of the parent or guardian only if the Donor Conception Registrar considers it reasonable in the circumstances.

S. 63I(3) amended by No. 39/2024 s. 44(3).

(3) Subject to subsection (4), a contact preference lodged under subsection (1) must be lodged with the Donor Conception Registrar before the first day on which there is contact between the person born as a result of a donor treatment procedure and the applicant to whom the contact preference relates.

(4) A person born as a result of a donor treatment procedure who was a child at the time the application under section 56 was made may lodge a contact preference under subsection (1) in relation to the applicant if any contact between the person and the applicant occurred—

(a) before the day on which the person turned 18 years of age; or

(b) within 6 months after the day on which the person turned 18 years of age, and the contact was in accordance with the wishes set out in a contact preference lodged by the person's parent or guardian under subsection (1).

S. 63I(5) amended by No. 39/2024 s. 44(3).

(5) The Donor Conception Registrar must notify a person born as a result of a donor treatment procedure that the person may lodge a contact preference as soon as practicable after the person turns 18 years of age.

S. 63I(6) substituted by No. 39/2024 s. 44(4).

(6) As soon as practicable after a contact preference is lodged under this section, the Donor Conception Registrar must give the applicant—

(a) a copy of the contact preference lodged; and

(b) any prescribed explanatory material.

(7) The Donor Conception Registrar must maintain records of contact preferences lodged under this section.

S. 63I(7) amended by No. 39/2024 s. 44(5).

63J Form of contact preference

S. 63J inserted by No. 6/2016 s. 23.

(1) A contact preference lodged under section 63I must be in the form approved by the Secretary.

(2) A contact preference may state that—

(a) the person does not wish to be contacted by the applicant; or

(b) the person wishes any contact with the applicant to occur only in a specified way.

(3) Before a contact preference is lodged under section 63I, the Donor Conception Registrar must give any prescribed explanatory material to—

S. 63J(3) substituted by No. 39/2024 s. 45.

(a) if the contact preference is to be lodged by a person born as a result of a donor treatment procedure, that person; or

(b) if the contact preference is to be lodged by the parent or guardian of a child born as a result of a donor treatment procedure—

(i) the parent or guardian; and

(ii) if the Donor Conception Registrar is informed that the child wishes to receive the explanatory material, the child.

63K Duration of contact preferences for person born as a result of donor treatment procedure

S. 63K inserted by No. 6/2016 s. 23.

(1) Subject to section 63L, a contact preference lodged under section 63I continues in force for 5 years after—

S. 63K(1)(a) amended by No. 39/2024 s. 46.

(a) the contact preference is lodged with the Donor Conception Registrar; or

(b) the contact preference is extended under subsection (2).

S. 63K(2) amended by No. 39/2024 s. 46.

(2) A person who lodges a contact preference under section 63I may extend that contact preference by written notice to the Donor Conception Registrar.

S. 63K(3) amended by No. 39/2024 s. 46.

(3) Before a contact preference expires under subsection (1), the Donor Conception Registrar must make all reasonable efforts to give the person who lodged the contact preference written notice—

(a) as to when the contact preference will expire under subsection (1); and

(b) that the person may extend the contact preference under subsection (2).

S. 63K(4) amended by No. 39/2024 s. 46.

(4) The Donor Conception Registrar must, as soon as practicable after a contact preference expires under subsection (1) or is extended under subsection (2), notify the applicant to whom the contact preference relates.

S. 63L inserted by No. 6/2016 s. 23.

63L Duration of contact preferences lodged by parent or guardian of person born as a result of donor treatment procedure

(1) This section applies if a contact preference lodged under section 63I—

(a) is lodged by the parent or guardian of a person born as a result of a donor treatment procedure; and

(b) is in force on the day on which the person born as a result of a donor treatment procedure turns 18 years of age.

(2) A contact preference to which this section applies expires 6 months after the day on which the person born as a result of a donor treatment procedure turns 18 years of age.

S. 63L(3) amended by No. 39/2024 s. 47.

(3) Before a contact preference expires under subsection (2), the Donor Conception Registrar must make all reasonable efforts to give the person born as a result of a donor treatment procedure written notice—

(a) as to when the contact preference will expire under subsection (2); and

(b) that the person may—

(i) withdraw the contact preference; or

(ii) withdraw the contact preference and lodge a contact preference in relation to the applicant to whom the withdrawn contact preference related; or

(iii) if the contact preference expires, lodge a contact preference in relation to the applicant to whom the expired contact preference related.

(4) The person born as a result of a donor treatment procedure may, within 6 months after the day on which that person turns 18 years of age, withdraw the contact preference.

(5) If the person born as a result of a donor treatment procedure withdraws the contact preference under subsection (4), the person may lodge a contact preference under section 63I in relation to the applicant to whom the withdrawn contact preference related.

S. 63L(6) amended by No. 39/2024 s. 47.

(6) The Donor Conception Registrar must, as soon as practicable after a contact preference expires under subsection (2) or is withdrawn under subsection (4), notify any applicant to whom the contact preference relates.

S. 63M inserted by No. 6/2016 s. 23.

63M Amendment of contact preferences lodged in relation to persons born as a result of a donor treatment procedure

S. 63M(1) amended by No. 39/2024 s. 48(1).

(1) Subject to subsection (2), a person who lodges a contact preference under section 63I may amend the contact preference by written notice to the Donor Conception Registrar.

(2) A person must not amend a contact preference unless there has been no contact between the applicant to whom the contact preference relates and the person born as a result of a donor treatment procedure.

S. 63M(3) amended by No. 39/2024 s. 48(2)(a).

(3) If a person amends a contact preference, the Donor Conception Registrar must—

(a) notify the applicant to whom the amended contact preference relates—

(i) that the contact preference has been amended; and

(ii) of the particulars of the amendment; and

S. 63M (3)(a)(iii) repealed by No. 39/2024 s. 48(2)(b).

* * * * *

S. 63M(3)(ab) inserted by No. 39/2024 s. 48(2)(c).

(ab) give the applicant any prescribed explanatory material; and

(b) give the applicant a copy of the amended contact preference.

63N Withdrawal of contact preferences lodged in relation to persons born as a result of a donor treatment procedure

S. 63N inserted by No. 6/2016 s. 23.

(1) A person who lodges a contact preference under section 63I may, by written notice to the Donor Conception Registrar, withdraw the contact preference.

S. 63N(1) amended by No. 39/2024 s. 49.

(2) If a person withdraws a contact preference, the person cannot lodge a subsequent contact preference in relation to the applicant to whom the withdrawn contact preference relates if there has been contact between the applicant and the person born as a result of a donor treatment procedure.

(3) If a person withdraws a contact preference, the Donor Conception Registrar must, as soon as practicable after the contact preference is withdrawn, notify the applicant to whom the withdrawn contact preference relates.

S. 63N(3) amended by No. 39/2024 s. 49.

63O Undertaking required from applicant for identifying information relating to person born as a result of a donor treatment procedure

S. 63O inserted by No. 6/2016 s. 23.

(1) The Donor Conception Registrar must not disclose identifying information relating to the person born as a result of a donor treatment procedure in response to an application under section 56(1) unless the applicant gives an undertaking to the Secretary to comply with the person's contact preferences as set out in—

S. 63O(1) amended by No. 39/2024 s. 50.

(a) any contact preference (whether or not the contact preference is lodged at the time the undertaking is given) lodged under section 63I by—

(i) the person born as a result of the donor treatment procedure; and

(ii) a parent or guardian of a person born as a result of a donor treatment procedure; and

(b) if the contact preference is amended under section 63M by the person who lodged it, that preference as amended (whether or not the amended contact preference is lodged at the time the undertaking is given).

(2) An applicant who gives an undertaking under subsection (1) must not knowingly contact the person born as a result of the donor treatment procedure in contravention of the contact preference or the amended contact preference unless the contact is a continuation of, or of a similar kind to, contact that the applicant had with the person before the applicant knew of the contact preference or the amended contact preference (as the case requires).

Penalty: 50 penalty units.

(3) Subsection (2) does not apply if the applicant has not been given—

(a) in case of a contravention of a contact preference, a copy of the contact preference under section 63I(6); or

(b) in case of a contravention of an amended contact preference, a copy of the amended contact preference under section 63M(3)(b).

Division 4—General provisions

64 Information

Any reference in this Act or the regulations to the disclosure of identifying information means the disclosure of information from which a person will or may be identified, directly or indirectly.

65 Disclosure of information to doctor

(1) This section applies if—

(a) a person has applied for information under this Part or the regulations; and

(b) the information to be disclosed is or includes information that is of a medical or psychiatric nature; and

(c) the person to whom the application has been made considers the disclosure of the information may be prejudicial to the physical or mental health or well-being of the applicant.

(2) The person to whom the application has been made may decide not to disclose that information to the applicant but to disclose it instead to a doctor nominated by the applicant.

66 Records of information disclosed

A person who discloses information under this Part or the regulations must keep a record of—

(a) the person to whom the information is disclosed; and

(b) the information disclosed.

66A Confidentiality of information on the Central Register

S. 66A inserted by No. 6/2016 s. 24.

(1) The Donor Conception Registrar, a person referred to in section 102 or a person engaged under section 103 or an organisation authorised under section 67B must not disclose to any person, whether directly or indirectly, any information recorded in the Central Register.

S. 66A(1) amended by No. 39/2024 s. 51(1).

Penalty: 50 penalty units.

S. 66A(2) amended by No. 39/2024 s. 51(2)(a).

(2) Despite subsection (1), the Donor Conception Registrar, a person referred to in section 102 or a person engaged under section 103 or an organisation authorised under section 67B may disclose information recorded in the Central Register—

S. 66A(2)(a) amended by No. 39/2024 s. 51(2)(b).

(a) in the exercise in good faith of a power or a function of the Donor Conception Registrar under this Act; or

(b) to a court or a tribunal; or

(c) as required in the course of disciplinary proceedings against a doctor; or

S. 66A(2)(ca) inserted by No. 39/2024 s. 51(3).

(ca) to the Secretary, at the Secretary's request, for the purpose of assisting the Secretary to perform the Secretary's functions under this Act; or

(d) as required under any other Act; or

(e) for the purposes of law enforcement.

S. 66A(3) inserted by No. 39/2021 s. 35, amended by No. 39/2024 s. 51(4).

(3) Subsection (1) does not apply to a disclosure by an organisation authorised under section 67B of information that is recorded in the Central Register but was not disclosed to the organisation by the Donor Conception Registrar.

S. 66B (Heading) amended by No. 39/2024 s. 52(1).

S. 66B inserted by No. 6/2016 s. 24.

66B Confidentiality of other information provided to the Donor Conception Registrar under this Part

S. 66B(1) amended by No. 39/2024 s. 52(2).

(1) The Donor Conception Registrar, a person referred to in section 102 or a person engaged under section 103 or an organisation authorised under section 67B must not disclose to any

person, whether directly or indirectly, any information obtained under section 52B, 56A(2), 56B or 56J or under a production order that cannot be included on the Central Register under section 54A.

Penalty: 50 penalty units.

S. 66B(2) amended by No. 39/2024 s. 52(3)(a).

(2) Despite subsection (1), the Donor Conception Registrar, a person referred to in section 102 or a person engaged under section 103 or an organisation authorised under section 67B may disclose the information—

S. 66B(2)(a) amended by No. 39/2024 s. 52(3)(b).

(a) in the exercise in good faith of a power or a function of the Donor Conception Registrar under this Act; or

(b) to a court or a tribunal; or

(c) as required in the course of disciplinary proceedings against a doctor; or

S. 66B(2)(ca) inserted by No. 39/2024 s. 52(4).

(ca) to the Secretary, at the Secretary's request, for the purpose of assisting the Secretary to perform the Secretary's functions under this Act; or

(d) as required under any other Act; or

(e) for the purposes of law enforcement.

66C Confidentiality of information on the Central Register disclosed by the Donor Conception Registrar

S. 66C (Heading) amended by No. 39/2024 s. 53(1).

S. 66C inserted by No. 6/2016 s. 24.

S. 66C(1) amended by Nos 39/2021 s. 36, 39/2024 s. 53(2).

(1) If the Donor Conception Registrar has disclosed information recorded on the Central Register to a person, that person must not disclose the information that was disclosed to the person by

the Donor Conception Registrar to any other person, whether directly or indirectly.

Penalty: 50 penalty units.

S. 66C(2) amended by No. 39/2024 s. 53(2).

(2) Despite subsection (1), the person may disclose information disclosed by the Donor Conception Registrar—

(a) to a court or a tribunal; or

(b) in the course of disciplinary proceedings against a doctor; or

(c) as required under any other Act; or

(d) for the purposes of law enforcement.

(3) Subsection (1) does not apply if—

S. 66C(3)(a) amended by No. 39/2024 s. 53(2).

(a) the Donor Conception Registrar disclosed the information to a person who made an application under section 56(1) or 60A or to a doctor nominated by that person; or

S. 66C(3)(b) amended by No. 39/2024 s. 53(2).

(b) the Donor Conception Registrar disclosed the information to a person in a notice given to that person under section 62; or

S. 66C(3)(c) amended by No. 39/2024 s. 53(2).

(c) the Donor Conception Registrar did not advise the person, at the time of disclosure, that it is a criminal offence to disclose that information to any other person; or

(d) the information is disclosed to another person by a registered ART provider in accordance with Part 6A.

67 Consent

(1) This section applies if, under this Part or the regulations, consent is required to be given before information may be disclosed.

(2) If the person required to give consent is dead, the consent may be given by the senior available next of kin of that person, within the meaning of the **Human Tissue Act 1982**.

(3) If the person required to give consent is a child, the consent may be given by a parent of the child or by the child's guardian.

(4) If the consent required is given but is withdrawn in writing before the information is disclosed, the information must not be disclosed.

67AA Requirement to give statement of the applicant's reasons for the application

S. 67AA inserted by No. 39/2024 s. 54.

If a person is required to give consent under this Part or the regulations before information on the Central Register may be disclosed, the Donor Conception Registrar must give the person whose consent is required a copy of the statement of the applicant's reasons for the application before the information is disclosed.

Note

See section 56(3)(b).

67A Part 6 counsellor

S. 67A inserted by No. 58/2014 s. 15, amended by No. 6/2016 s. 25, substituted by No. 39/2024 s. 55.

In this Part, a ***Part 6 counsellor*** means a person who—

(a) provides counselling to a child under section 59(b)(ii) or 63H(2)(a) for the purposes of determining the maturity of the child; and

(b) meets the prescribed requirements for counselling.

S. 67B inserted by No. 6/2016 s. 26.

67B Authorisation of organisations

S. 67B(1) amended by No. 39/2024 s. 56.

(1) The Secretary may, by written notice, authorise an organisation to assist the Donor Conception Registrar in obtaining—

S. 67B(1)(a) amended by No. 39/2024 s. 56.

(a) information relating to the identity of persons from whom the Donor Conception Registrar may request information under section 56J; or

(b) if the disclosure of identifying information relating to a person has been applied for under section 56(1), information from which that person may be located.

(2) A notice of an authorisation under this section, and notice of any revocation or suspension of an authorisation under this section, must be published in the Government Gazette.

S. 67B(3) amended by No. 39/2024 s. 56.

(3) The Donor Conception Registrar may disclose information recorded in the Central Register to an organisation authorised under this section to enable that organisation to exercise a function under this section.

68 Exemption from Freedom of Information Act 1982

(1) For the purposes of the **Freedom of Information Act 1982**, a document is an exempt document if—

(a) it contains information (whether or not that information is kept in a register under this Part) about or provided by a person as—

(i) a donor; or

(ii) a woman on whom a treatment procedure is being or has been carried out or on whom a treatment procedure may be carried out; or

(iii) a person who is or has been the partner of a woman referred to in paragraph (ii); or

(iv) a person who was born as a result of a treatment procedure; or

(b) it is the Central Register or part of the Central Register.

(2) Despite subsection (1), a document is not an exempt document under subsection (1)(a)—

(a) to the extent that it only contains information—

(i) about or provided by the applicant and no other person; or

(ii) about or provided by one person only and the applicant is that person's guardian; or

(b) in the prescribed circumstances and to the extent the document does not contain identifying information.

Pt 6A (Heading and ss 68A–68E) inserted by No. 58/2014 s. 16.

Part 6A—Access to certain kinds of medical information

S. 68A inserted by No. 58/2014 s. 16.

68A Application of Part

This Part applies in relation to medical information about an individual that is or could be predictive of the health (at any time) of the individual or any descendants of the individual.

S. 68B inserted by No. 58/2014 s. 16.

68B Registered ART provider may disclose medical information

(1) A registered ART provider may disclose medical information about a donor to the following persons in accordance with section 68C—

(a) a person born as a result of a donor treatment procedure;

(b) the parent of a person born as a result of a donor treatment procedure;

(c) the woman and her partner, if any, who is to undergo a treatment procedure using the donor's gametes.

(2) A registered ART provider may disclose medical information about a person born as a result of a donor treatment procedure to the following persons in accordance with section 68C—

(a) the donor;

(b) an adult donor sibling of the person;

(c) the parent of a donor sibling of the person.

S. 68C inserted by No. 58/2014 s. 16.

68C Disclosure of medical information

(1) A registered ART provider may disclose medical information that is not identifying information about a donor or a person born as a result of a

donor treatment procedure if a doctor has certified in writing that the disclosure is necessary—

(a) to save a person's life; or

(b) to warn the person to whom the information is to be disclosed about the existence of a genetic or hereditary condition that may be harmful to that person or that person's descendants.

(2) A disclosure of medical information to a person under this section must be made by a doctor on behalf of the registered ART provider.

(3) If medical information is disclosed to a person under this section, the registered ART provider may also disclose the information to a doctor who is treating the person.

(4) Medical information may be disclosed under this section without the consent of the person to whom the information relates.

68D Disclosure of information from Central Register to registered ART provider

S. 68D inserted by No. 58/2014 s. 16, amended by No. 6/2016 s. 27 (ILA s. 39B(1)).

(1) On request of a registered ART provider, the Donor Conception Registrar may disclose information (including identifying information) on the Central Register about the following persons for the purposes of disclosing medical information under this Part—

S. 68D(1) amended by No. 39/2024 s. 57.

(a) a donor;

(b) a person born as a result of a donor treatment procedure;

(c) a parent of a person born as a result of a donor treatment procedure.

S. 68D(2) inserted by No. 6/2016 s. 27(2), amended by No. 39/2024 s. 57.

(2) Before disclosing that a person is a donor of a person born as a result of a donor treatment procedure, the Donor Conception Registrar must be satisfied that a donor and a person born as a result of a donor treatment procedure are related within the meaning of section 56N(4).

S. 68E inserted by No. 58/2014 s. 16.

68E Registered ART provider not required to disclose medical information under this Part

Nothing in this Part requires a registered ART provider to disclose medical information to a person.

Part 7—Voluntary Register

Pt 7 (Heading) substituted by No. 58/2014 s. 17, amended by No. 39/2024 s. 58.

* * * * *

Pt 7 Div. 1 (Heading) inserted by No. 58/2014 s. 18, repealed by No. 39/2024 s. 59.

69 Application of Part

S. 69 amended by No. 58/2014 s. 19.

This Part applies despite Parts 6 and 6A.

70 Donor Conception Registrar to keep Voluntary Register

S. 70 (Heading) amended by Nos 6/2016 s. 28(1), 39/2024 s. 60(1).

(1) The Donor Conception Registrar must keep a Voluntary Register that contains information about donor treatment procedures.

S. 70(1) amended by Nos 6/2016 s. 28(2), 39/2024 s. 60(2).

(2) The Voluntary Register must be kept separately to the Central Register and is not part of the Central Register.

71 Information and matter to be entered in Voluntary Register

S. 71 (Heading) amended by No. 6/2016 s. 29(1).

(1) The following may be entered in the Voluntary Register—

(a) the names and addresses of persons who have asked the Registrar or the Donor Conception Registrar, in writing, to enter

S. 71(1)(a) amended by Nos 6/2016 s. 29(2)(a)(i), 39/2024 s. 61.

their names and addresses in the Register, including—

(i) persons born as a result of donor treatment procedures; and

(ii) the descendants of persons born as a result of donor treatment procedures; and

(iii) donors; and

(iv) women who have undergone donor treatment procedures and their partners, if any; and

S. 71(1)(a)(v) amended by No. 6/2016 s. 29(2)(a)(ii).

(v) the relatives of persons referred to in subparagraph (i), (ii), (iii) or (iv);

(b) in relation to each person whose name is entered in the Register, the wishes of the person in relation to—

(i) obtaining information about another person whose name is, or may in the future be, entered in the Register; or

(ii) another person whose name is, or may in the future be, entered in the Register obtaining information about the person; and

S. 71(1)(ba) inserted by No. 6/2016 s. 29(2)(b), amended by No. 39/2024 s. 61.

(ba) in relation to each person whose name is entered in the Register, any photograph, toy, jewellery or other item approved by the Donor Conception Registrar that the person has asked to have entered in the Register;

S. 71(1)(c) amended by No. 6/2016 s. 29(2)(c).

(c) in relation to each person whose name is entered in the Register, any other information the person has asked to have recorded in the Register.

(2) The Donor Conception Registrar may from time to time publicise the establishment and purpose of the Voluntary Register.

S. 71(2) amended by Nos 6/2016 s. 29(3), 39/2024 s. 61.

(3) The Donor Conception Registrar must, if asked by a person whose name is entered in the Voluntary Register, amend or cancel the entry relating to that person, or give the person a copy of the entry.

S. 71(3) amended by Nos 6/2016 s. 29(3), 39/2024 s. 61.

(4) The Voluntary Register must be kept in accordance with the regulations.

72 Disclosure of information

S. 72 amended by Nos 6/2016 s. 30, 39/2024 s. 62(1)(2) (ILA s. 39B(1)).

(1) The Donor Conception Registrar may disclose information about a person from the Voluntary Register only in accordance with the wishes of that person.

S. 72(2) inserted by No. 39/2024 s. 62(2).

(2) Before disclosing information about a person under subsection (1), the Donor Conception Registrar must—

(a) give the person any prescribed explanatory material; and

(b) if the person's consent is required, give the person a copy of the applicant's statement of reasons for requesting the information (if any).

* * * * *

S. 73 amended by Nos 58/2014 s. 20, 6/2016 s. 31, repealed by No. 39/2024 s. 63.

S. 73A inserted by No. 58/2014 s. 21, amended by No. 6/2016 s. 32, repealed by No. 39/2024 s. 63.	*	*	*	*	*
Pt 7 Div. 2 (Heading and ss 73B, 73C) inserted by No. 58/2014 s. 21, repealed by No. 39/2024 s. 64.	*	*	*	*	*

Part 8—Registration and designated officers

Division 1—Registration as an ART provider

74 Registration as an ART provider

S. 74(1) amended by No. 39/2024 s. 65.

(1) A person who holds RTAC accreditation, other than a person who is no longer a registered ART provider because the person's registration is suspended under section 76 or 77, may apply to the Secretary for registration as a registered ART provider under this Act.

(2) An application must—

(a) be in writing; and

(b) be accompanied by evidence that the person holds RTAC accreditation; and

(c) include any other information or be accompanied by any other document required by the regulations.

S. 74(3) amended by No. 39/2024 s. 65(2).

(3) If the Secretary receives an application from a person in accordance with subsection (2), the Secretary must grant the person's application.

(4) A person ceases to be a registered ART provider if the person no longer holds RTAC accreditation.

75 General conditions on registration

S. 75 substituted by No. 39/2024 s. 66.

A registered ART provider's registration is subject to any prescribed general conditions on registration.

75A Specific conditions on registration

S. 75A inserted by No. 39/2024 s. 66.

(1) The Secretary may impose a specific condition on the registration of a registered ART provider relating to any matter relevant to the provision of services by the registered ART provider.

(2) If the Secretary proposes to impose a specific condition on a registered ART provider's registration, the Secretary, by written notice given to the registered ART provider, must—

(a) advise the registered ART provider of the Secretary's intention to impose a specific condition; and

(b) give the registered ART provider an opportunity to make written submissions to the Secretary within a period of time specified in the notice.

(3) In determining whether to impose a specific condition, the Secretary must have regard to any submissions made under subsection (2)(b).

(4) If the Secretary decides to impose a specific condition under this section, the Secretary, by written notice, must advise the registered ART provider of—

(a) the Secretary's decision; and

(b) the date on and after which the specific condition takes effect.

S. 75B inserted by No. 39/2024 s. 66.

75B Amendment or revocation of specific condition

(1) The Secretary may amend or revoke a specific condition at any time.

(2) Section 75A(2), (3) and (4) apply to the amendment of a specific condition in the same way as it does to the imposition of a specific condition.

S. 75C inserted by No. 39/2024 s. 66.

75C General condition or specific condition imposed must not be inconsistent with RTAC accreditation

A general condition or a specific condition imposed on a registered ART provider's registration that is inconsistent with a condition

imposed on the provider's RTAC accreditation is invalid to the extent of the inconsistency.

75D Offence to contravene general condition or specific condition

S. 75D inserted by No. 39/2024 s. 66.

(1) This section applies from the day that is the 2 year anniversary of the commencement of section 66 of the **Health Legislation Amendment (Regulatory Reform) Act 2024**.

(2) A registered ART provider must not contravene a condition of the provider's registration without reasonable excuse.

Penalty: In the case of a natural person, 240 penalty units;

In the case of a body corporate, 1200 penalty units.

Division 2—General provisions about registrations

76 Suspension of registration

S. 76(1) amended by No. 39/2024 s. 67(1)(a).

(1) The Secretary may, by written notice given to a registered ART provider, suspend the provider's registration, either in whole or part, if—

S. 76(1)(a) amended by No. 39/2024 s. 67(1)(a)(b).

(a) the Secretary reasonably believes the provider has contravened a general condition or specific condition of the provider's registration; or

S. 76(1)(ab) inserted by No. 39/2024 s. 67(1)(c).

(ab) the Secretary reasonably believes that the provider has contravened a provision of this Act or the regulations; or

S. 76(1)(b) amended by No. 39/2024 s. 67(1)(a).

(b) the Secretary is otherwise satisfied there are reasonable grounds for the suspension.

(2) A written notice suspending a registered ART provider's registration must specify the grounds for the suspension, including any action the

provider must take to rectify the matter that formed the grounds.

S. 76(3) amended by No. 39/2024 s. 67(2).

(3) Before suspending the registration, the Secretary must allow the registered ART provider the opportunity to make written submissions to the Secretary about the proposed suspension.

S. 76(4) amended by No. 39/2024 s. 67(2).

(4) The Secretary must have regard to any written submissions made under subsection (3).

(5) A suspension under this section has effect—

(a) from the time at which notice of the suspension is given to the registered ART provider under subsection (1); and

S. 76(5)(b) amended by No. 39/2024 s. 67(2).

(b) for the period decided by the Secretary and specified in the notice.

(6) The period of suspension specified in the notice must be no longer than is reasonably necessary to enable the registered ART provider to rectify the matter that formed the grounds for the suspension.

77 Immediate suspension of registration

S. 77(1) substituted by No. 39/2024 s. 68(1).

(1) The Secretary may suspend a registered ART provider's registration without allowing the provider an opportunity to make written submissions about the proposed suspension under section 76(3) if the Secretary reasonably believes there is an overriding public interest to suspend the registration immediately.

(2) A suspension under subsection (1)—

(a) has effect from the time at which written notice of the suspension is given to the registered ART provider; and

(b) remains in force for the period decided by the Secretary and specified in the notice.

S. 77(2)(b) amended by No. 39/2024 s. 68(2).

(3) The period under subsection (2)(b) must be no longer than is reasonably necessary to safeguard the public interest for which the suspension was imposed.

(4) At any time during the period of suspension, the Secretary must allow the ART provider to make written submissions about the suspension.

S. 77(4) amended by No. 39/2024 s. 68(2).

(5) The Secretary may revoke the suspension at any time, and must have regard to any submissions made under subsection (4) in deciding whether or not to do so.

S. 77(5) amended by No. 39/2024 s. 68(2).

77A Effect of suspension

S. 77A inserted by No. 39/2024 s. 69.

(1) If a registered ART provider's registration is suspended in full under section 76 or 77, the provider ceases to be registered as a registered ART provider during the period of the suspension.

(2) If a registered ART provider's registration is suspended in part under section 76 or 77, the provider ceases to be registered to perform the services that are the subject of the suspension during the period of the suspension.

78 Offence of failing to notify Secretary if RTAC accreditation no longer held

S. 78 (Heading) amended by No. 39/2024 s. 70(1).

(1) This section applies if a person who is a registered ART provider no longer holds RTAC accreditation.

(2) The person must immediately give the Secretary written notice that the person no longer holds the accreditation.

S. 78(2) amended by No. 39/2024 s. 70(2).

Penalty: 240 penalty units or 2 years imprisonment or both.

Note

If a registered ART provider no longer holds RTAC accreditation the provider's registration under this Act also ceases and the provider may no longer carry out treatment procedures.

S. 79 repealed by No. 39/2024 s. 71.

* * * * *

Division 3—Designated officers

80 Designated officers for registered ART providers

(1) A registered ART provider must ensure that at all times a designated officer is appointed, employed or engaged by the provider.

Penalty: 50 penalty units.

(2) The appointment, employment or engagement must be in writing.

Pt 8 Div. 4 (Heading and s. 81) substituted by No. 39/2024 s. 72.

Division 4—Register of registered ART providers

S. 81 substituted by No. 39/2024 s. 72.

81 Register of registered ART providers

(1) The Secretary must keep a register of registered ART providers.

(2) The register must include the following information in respect of each registered ART provider—

(a) the registered ART provider's name;

(b) the address of each premises at which the registered ART provider carries out treatment procedures;

(c) the period for which the registered ART provider holds RTAC accreditation;

(d) details of the registered ART provider's Internet site (if any).

(3) The Secretary must ensure that the register is published on the Department's Internet site.

Part 9—Patient Review Panel

Division 1—Constitution and procedures of Patient Review Panel

82 Establishment of Panel

The Patient Review Panel is established.

S. 83 substituted by No. 18/2013 s. 9.

83 Constitution of Panel

The Patient Review Panel consists of—

(a) a chairperson appointed by the Governor in Council; and

(b) up to 3 deputy chairpersons appointed by the Governor in Council; and

(c) as many other members, appointed by the Governor in Council, as to enable the proper functioning of the Panel.

S. 84 repealed by No. 18/2013 s. 10.

* * * * *

S. 85 amended by No. 18/2013 s. 11 (ILA s. 39B(1)).

85 Functions of Panel

(1) The functions of the Patient Review Panel are—

(a) to consider applications for surrogacy arrangements; and

S. 85(1)(b) repealed by No. 15/2020 s. 11.

* * * * *

(c) to consider applications for posthumous use of gametes and embryos; and

(d) to consider applications for treatment in circumstances in which a registered ART provider or doctor is concerned about the

risk of abuse or neglect of a child that may be born as a result of the treatment; and

(e) to consider applications for treatment in circumstances in which the applicant does not meet the criteria for treatment; and

(f) to consider applications for extended storage periods of gametes or embryos or removal of embryos from storage; and

(g) any other functions given to the Panel by this Act or by the Minister.

S. 85(2) inserted by No. 18/2013 s. 11.

(2) The Patient Review Panel may exercise its functions under subsection (1)(a) to (f) as constituted by—

(a) a Division of the Patient Review Panel; or

(b) if exercising a function under subsection (1)(f), the chairperson or a single member determined by the chairperson.

S. 85(3) inserted by No. 18/2013 s. 11.

(3) A Division of the Patient Review Panel is constituted by the chairperson and the following, determined by the chairperson—

(a) a deputy chairperson; and

(b) 3 other members, at least one of whom must have expertise in child protection matters.

86 Chairperson and deputy chairpersons

S. 86 (Heading) amended by No. 18/2013 s. 12(1).

S. 86(1) amended by No. 18/2013 s. 12(2).

(1) The chairperson and deputy chairpersons of the Patient Review Panel hold office for the period, not more than 3 years, specified in the person's instrument of appointment.

(2) A person appointed as chairperson or deputy chairperson may resign that office by written notice given to the Minister.

S. 86(3) amended by No. 18/2013 s. 12(3).

(3) The Governor in Council may, at any time, remove the chairperson or a deputy chairperson from office.

S. 87 substituted by No. 18/2013 s. 13.

87 Acting chairperson

(1) The Minister may appoint a deputy chairperson to act as chairperson if the chairperson is absent or otherwise unable to perform the duties and functions of the office.

(2) An acting chairperson holds office for the period that the chairperson is absent or otherwise unable to perform the duties and functions of the office.

(3) The Minister may at any time terminate the appointment of an acting chairperson.

(4) While the appointment of an acting chairperson remains in force, the acting chairperson has and may exercise all the powers and perform all the duties and functions of the chairperson.

S. 87A inserted by No. 18/2013 s. 13.

87A Other members

(1) A member of the Patient Review Panel holds office for the period, not more than 3 years, specified in the person's instrument of appointment.

(2) A person appointed as a member of the Patient Review Panel may resign that office by written notice given to the Minister.

(3) The Governor in Council may, at any time, remove a member from office.

88 Payment of members

A member of the Patient Review Panel, other than a member who is an employee of the public service within the meaning of the **Public Administration Act 2004**, is entitled to receive the fees that are fixed from time to time by the Minister for that member.

89 Notice of hearing

(1) On receiving an application, the chairperson of the Patient Review Panel must—

(a) fix a time and place for the hearing of the application to be conducted; and

(b) serve a notice of the hearing on the applicant that states—

(i) the nature of the hearing; and

(ii) the time and place of the hearing; and

(iii) that the applicant is entitled to be present at the hearing, to make submissions and to be accompanied by another person; and

(iv) that the hearing is not open to the public; and

(v) that there is no right to legal representation at the hearing without leave from the Panel; and

(vi) the possible findings or orders that the Panel may make.

(2) The chairperson of the Patient Review Panel must ensure the hearing of an application is arranged and conducted as expeditiously as practicable.

90 Conduct of hearing

(1) At a hearing, the Patient Review Panel must hear and determine the application before it.

(2) Subject to subsection (3), the procedure of the Patient Review Panel is in the Panel's discretion.

(3) At a hearing of an application by the Patient Review Panel—

(a) the proceedings must be conducted with as little formality and technicality as proper consideration of the application permits; and

(b) there is no right to legal representation unless the Panel grants leave to the applicant to have legal representation; and

(c) the applicant is entitled to—

(i) be present; and

(ii) to make submissions; and

(iii) to be accompanied by another person; and

(d) the proceedings must not be open to the public; and

(e) subject to paragraph (f), the Panel is bound by the rules of natural justice; and

(f) the Panel is not bound by the rules of evidence and may inform itself in any way it thinks fit.

91 Decision by Patient Review Panel

(1) Within 14 days after hearing the application, the Patient Review Panel must decide—

(a) for an application for approval of a surrogacy arrangement, to approve or not to approve the arrangement; or

S. 91(1)(b) repealed by No. 15/2020 s. 12.

* * * * *

(c) for an application for posthumous use of gametes or an embryo, whether or not the gametes or embryo may be used; or

(d) for an application for treatment in circumstances in which the registered ART provider is concerned about the risk of abuse or neglect of a child that may be born as a result of the treatment, whether or not there is a barrier to treatment; or

(e) for an application for treatment in circumstances in which the applicant does not meet the criteria for treatment, whether or not there is a barrier to treatment; or

(f) for an application for an extended storage period of gametes or an embryo, whether or not an extended storage period is approved; or

(g) for an application for removal of an embryo from storage, whether or not the removal is approved.

(2) In making the decision, the Patient Review Panel must have regard to the guiding principles set out in section 5 and any other relevant criteria specified by this Act in determining the application.

(3) The Patient Review Panel may impose the conditions it considers necessary and reasonable in the circumstances on the decision.

92 Written reasons for decisions

(1) The Patient Review Panel must give written reasons for a decision made by the Panel under section 91 to the applicant.

(2) Also, if a decision made by the Patient Review Panel under section 91 may reasonably be expected to have a significant impact on the way in which treatment procedures are carried out in Victoria, the Panel must give a copy of the reasons for the decision to the Secretary.

S. 92(2) amended by No. 39/2024 s. 73.

93 Effect of vacancy or defect

An act or decision of the Patient Review Panel is not invalid only because—

(a) of a vacancy in its membership; or

(b) of a defect or irregularity in the appointment of any of its members.

94 Immunity

(1) A member of the Patient Review Panel is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the discharge of a duty under this Act; or

(b) in the reasonable belief that this Act or omission was in the exercise of a power or the discharge of a duty under this Act.

(2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a member of the Patient Review Panel attaches instead to the Crown.

95 Evidence

In any proceedings under this Act, a copy of a decision made or given under this Act by the Patient Review Panel and sealed and certified by the chairperson of the Panel to be a true copy and to have been so made or given is evidence of the making or giving of the decision.

Division 2—Review of Patient Review Panel's decisions

96 Reviewable decisions

An application may be made to the Victorian Civil and Administrative Tribunal for review of a decision of the Patient Review Panel—

(a) that there is a barrier to treatment of a person under this Act; or

(b) not to approve a surrogacy arrangement; or

(c) not to allow the posthumous use of a person's gametes or embryo; or

(d) not to approve the period during which gametes or an embryo may be stored; or

(e) to remove or not to remove an embryo from storage.

97 Who may apply for review

An application under section 96 may only be made by a person whose interests are affected by—

(a) the decision of the Patient Review Panel; or

(b) the failure of the Patient Review Panel to act.

98 When application must be made

An application for review must be made within 28 days after the day on which the decision is made.

Part 10—Donor Conception Registrar

Pt 10 (Headings and ss 99–116) amended by Nos 58/2014 s. 22, 6/2016 ss 33, 34 (as amended by No. 22/2016 s. 162), 39/2021 s. 37, substituted as Pt 10 (Heading and ss 99–104) by No. 39/2024 s. 74.

S. 99 substituted by No. 39/2024 s. 74.

99 Employment of Donor Conception Registrar

A person must be employed under Part 3 of the **Public Administration Act 2004** as the Donor Conception Registrar for the purposes of this Act.

S. 100 substituted by No. 39/2024 s. 74.

100 Functions of the Donor Conception Registrar

The Donor Conception Registrar has the following functions—

(a) to keep the Central Register;

(b) to keep the Voluntary Register;

(c) to perform any other function that is conferred on the Donor Conception Registrar by or under this Act or any other Act.

S. 101 substituted by No. 39/2024 s. 74.

101 Powers of the Donor Conception Registrar

The Donor Conception Registrar has the power to do all things that are necessary or convenient to be done for, or in connection with, or incidental to, the performance of the Donor Conception Registrar's functions.

102 Staff of the Donor Conception Registrar

S. 102 substituted by No. 39/2024 s. 74.

There may be employed under Part 3 of the **Public Administration Act 2004** any staff that the Donor Conception Registrar considers necessary for the performance of the Donor Conception Registrar's functions.

103 Secretary may engage persons to assist Donor Conception Registrar to perform functions

S. 103 substituted by No. 39/2024 s. 74.

The Secretary may engage persons for the provision of services to assist the Donor Conception Registrar to perform the Donor Conception Registrar's functions.

104 Delegation

S. 104 substituted by No. 39/2024 s. 74.

The Donor Conception Registrar, by instrument, may delegate to a person referred to in section 102 or a person engaged under section 103 any of the Donor Conception Registrar's functions or powers under this Act.

Note

See section 42A of the **Interpretation of Legislation Act 1984**.

Pt 10A (Heading and new ss 105, 106) inserted by No. 39/2024 s. 74.

Part 10A—Functions and powers of the Secretary

New s. 105 inserted by No. 39/2024 s. 74.

105 Functions of the Secretary

The Secretary has the following functions—

(a) to administer the registration system under this Act;

(b) to regulate the bringing into or taking out of Victoria of donor gametes or embryos produced from donor gametes;

(c) to grant exemptions in relation to donor gametes or embryos produced from donor gametes being brought into and out of Victoria;

(d) to monitor and enforce compliance with this Act and the regulations;

(e) to monitor programs and activities carried out under this Act and the regulations;

(f) to perform any other function that is conferred on the Secretary by or under this Act or any other Act.

New s. 106 inserted by No. 39/2024 s. 74.

106 Powers of the Secretary

The Secretary has the power to do all things that are necessary or convenient to be done for, or in connection with, or incidental to, the performance of the Secretary's functions.

Part 10B—Compliance

Pt 10B (Headings and ss 107–116Q) inserted by No. 39/2024 s. 74.

Division 1—Improvement notices

107 Power to give improvement notice

New s. 107 inserted by No. 39/2024 s. 74.

(1) The Secretary may give a written notice to a regulated person requiring the regulated person to take specified action if the Secretary reasonably believes that—

(a) the regulated person has contravened, is contravening or is likely to contravene—

(i) a provision of the Act or the regulations; or

(ii) a condition imposed on the person's registration as a registered ART provider; and

(b) taking the action is necessary—

(i) to rectify a contravention; or

(ii) to cease a contravention; or

(iii) to prevent a likely contravention from occurring; or

(iv) to address the matters or activities that caused a contravention.

(2) The Secretary may require a regulated person to whom an improvement notice is given—

(a) to give a copy of the notice to a person or class of person; or

(b) to display a copy of the notice in a manner specified in the notice.

New s. 108 inserted by No. 39/2024 s. 74.

108 Content of improvement notice

An improvement notice must—

(a) specify the name, and if known, the address, of the regulated person to whom the notice is given; and

(b) specify—

(i) the provision of the Act or the regulations that the Secretary reasonably believes the regulated person has contravened, is contravening or is likely to contravene; or

(ii) the condition imposed on the regulated person's registration as a registered ART provider that the Secretary reasonably believes the regulated person has contravened, is contravening or is likely to contravene; and

(c) describe the conduct or circumstances the Secretary reasonably believes constitutes the contravention or likely contravention; and

(d) specify the action that the regulated person must take; and

(e) specify the period within which the regulated person must take the action; and

(f) include information about the regulated person's right to seek review of the Secretary's decision to—

(i) give the improvement notice to the person; or

(ii) give a notice to the person—

(A) amending or revoking an action specified in the improvement notice that the regulated person must take; or

(B) amending the period specified in the improvement notice within which the regulated person must take the action; and

(g) state that the notice does not affect any criminal proceeding for an offence against a provision of this Act or the regulations constituted by conduct or circumstances in respect of which the notice is given; and

(h) state that it is an offence to contravene the notice without reasonable excuse and that the maximum penalty for the offence is 120 penalty units in the case of a natural person or 600 penalty units in the case of a body corporate; and

(i) include any prescribed information.

109 Amendment of improvement notice

New s. 109 inserted by No. 39/2024 s. 74.

The Secretary may give a written notice to a regulated person to whom an improvement notice is given—

(a) amending or revoking an action specified in the improvement notice that the regulated person must take; or

(b) amending the period specified in the improvement notice within which the regulated person must take the action.

110 Withdrawal of improvement notice

New s. 110 inserted by No. 39/2024 s. 74.

The Secretary—

(a) may withdraw an improvement notice at any time in writing; and

(b) must withdraw an improvement notice in writing if the Secretary is satisfied that the regulated person to whom the notice is given has taken the specified action.

New s. 111 inserted by No. 39/2024 s. 74.

111 Criminal proceeding not affected by improvement notice

An improvement notice does not affect any criminal proceeding for an offence against a provision of this Act or the regulations constituted by conduct or circumstances in respect of which the notice is given.

New s. 112 inserted by No. 39/2024 s. 74.

112 Offence to contravene improvement notice

A regulated person to whom an improvement notice is given must not contravene the notice without reasonable excuse.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

Division 2—Prohibition notices

New s. 113 inserted by No. 39/2024 s. 74.

113 Power to give prohibition notice

(1) The Secretary may give a written notice to a regulated person prohibiting the regulated person from engaging in a specified activity if the Secretary reasonably believes—

(a) the regulated person has contravened, is contravening or is likely to contravene—

(i) a provision of the Act or the regulations; or

(ii) a condition imposed on the person's registration as a registered ART provider; and

(b) that, having regard to the immediacy of the risk of harm and the degree of harm to health or safety that may be caused by the contravention or likely contravention, prohibiting the person from engaging in the

specified activity is necessary to prevent or minimise that risk.

(2) In addition, the Secretary may require a regulated person to whom a prohibition notice is given to take any specified action the Secretary reasonably believes is necessary—

(a) to prevent or minimise the risk to health or safety; or

(b) to rectify the contravention; or

(c) to cease the contravention; or

(d) to prevent a likely contravention from occurring; or

(e) to address the matters or activities that caused a contravention.

(3) The Secretary may require a regulated person to whom a prohibition notice is given to—

(a) give a copy of the notice to a person or class of person; or

(b) display a copy of the notice in a manner specified in the notice.

114 Content of prohibition notice

New s. 114 inserted by No. 39/2024 s. 74.

A prohibition notice must—

(a) specify the grounds on which the notice is given; and

(b) state the name of the regulated person to whom the notice is given and, if known, the person's address; and

(c) specify—

(i) the activity that the regulated person is prohibited from engaging in; or

(ii) the action that the regulated person must take; and

(d) specify the period within which—

(i) the activity is prohibited; or

(ii) the action must be taken; and

(e) include information about the regulated person's right to seek review of the Secretary's decision to—

(i) give the prohibition notice to the person; or

(ii) give a notice to the person—

(A) amending or revoking an activity specified in the prohibition notice that the regulated person is prohibited from engaging in; or

(B) amending or revoking an action specified in the prohibition notice that the regulated person must take; or

(C) amending the period specified in the prohibition notice within which the regulated person is prohibited from engaging in the activity or must take the action specified in the notice; and

(f) state that the notice does not affect any criminal proceeding for an offence against a provision of this Act or the regulations constituted by conduct or circumstances in respect of which the notice is given; and

(g) state that it is an offence to contravene the notice without reasonable excuse and that the maximum penalty for the offence is 120 penalty units in the case of a natural

person or 600 penalty units in the case of a body corporate; and

(h) include any prescribed information.

115 Amendment of prohibition notice

New s. 115 inserted by No. 39/2024 s. 74.

The Secretary may give a written notice to a regulated person to whom a prohibition notice is given—

(a) amending or revoking an activity specified in the prohibition notice that the regulated person is prohibited from engaging in; or

(b) amending or revoking an action specified in the prohibition notice that the regulated person must take; or

(c) amending the period specified in the prohibition notice within which the regulated person is prohibited from engaging in the activity or must take the action specified in the notice.

116 Withdrawal of prohibition notice

New s. 116 inserted by No. 39/2024 s. 74.

The Secretary—

(a) may withdraw a prohibition notice at any time in writing; and

(b) must withdraw a prohibition notice in writing if the Secretary reasonably believes that the prohibition is no longer necessary to prevent or minimise the risk of harm to health or safety.

116A Criminal proceeding not affected by prohibition notice

S. 116A inserted by No. 39/2024 s. 74.

A prohibition notice does not affect any criminal proceeding for an offence against a provision of this Act or the regulations constituted by conduct or circumstances in respect of which the notice is given.

S. 116B inserted by No. 39/2024 s. 74.

116B Offence to contravene prohibition notice

A regulated person to whom a prohibition notice is given must not contravene the notice without reasonable excuse.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

Division 3—Enforceable undertakings

S. 116C inserted by No. 39/2024 s. 74.

116C Power to accept an enforceable undertaking

(1) The Secretary may accept an undertaking given by a regulated person relating to a contravention or alleged contravention of a provision of this Act or the regulations by the regulated person, under which the regulated person undertakes to take certain action, or not take certain action, to comply with this Act.

(2) An enforceable undertaking must—

(a) be in writing; and

(b) state the name of the regulated person; and

(c) be signed by the Secretary and the regulated person; and

(d) specify the date on which the undertaking is given; and

(e) specify the action to be taken or not taken by the regulated person; and

(f) specify the period within which the action is to be taken or not taken by the regulated person; and

(g) include any other prescribed details.

(3) The Secretary may publish details of an enforceable undertaking on the Department's Internet site.

116D Amendment or withdrawal of enforceable undertaking

S. 116D inserted by No. 39/2024 s. 74.

A regulated person, with the Secretary's consent, may by written notice given to the Secretary—

(a) amend an enforceable undertaking given by the person; or

(b) withdraw an enforceable undertaking given by the person.

116E No criminal proceeding if enforceable undertaking is complied with

S. 116E inserted by No. 39/2024 s. 74.

If a regulated person complies with an enforceable undertaking, a criminal proceeding must not be commenced against the person for an offence constituted by the person's contravention or alleged contravention of a provision of this Act or the regulations in relation to which the undertaking is given.

116F No criminal proceeding while enforceable undertaking is in force

S. 116F inserted by No. 39/2024 s. 74.

While an enforceable undertaking is in force, a criminal proceeding must not be commenced against a regulated person for an offence constituted by the person's contravention or alleged contravention of a provision of this Act or the regulations in relation to which the undertaking is given.

116G Criminal proceeding if enforceable undertaking is withdrawn

S. 116G inserted by No. 39/2024 s. 74.

A criminal proceeding may be commenced against a regulated person for an offence constituted by the person's contravention or alleged contravention of a provision of this Act or

the regulations in relation to which the undertaking is given if the person withdraws the undertaking.

S. 116H inserted by No. 39/2024 s. 74.

116H Enforcement of enforceable undertaking by Magistrates' Court

(1) If the Secretary reasonably believes that a regulated person has contravened an enforceable undertaking given by the person, the Secretary may apply to the Magistrates' Court for an enforceable undertaking order to enforce the undertaking.

(2) If the Magistrates' Court is satisfied that the regulated person has contravened the enforceable undertaking, the Magistrates' Court may make any of the following orders—

(a) an order that the regulated person must comply with the undertaking;

(b) an order that the regulated person take specified action to comply with the undertaking;

(c) any other order that the Court considers appropriate in the circumstances.

S. 116I inserted by No. 39/2024 s. 74.

116I Enforcement of enforceable undertaking order by Secretary

(1) If the Secretary reasonably believes that a regulated person has contravened an enforceable undertaking order, the Secretary, by written notice given to the regulated person, may—

(a) advise the person of the Secretary's intention to carry out the action required to comply with the order; and

(b) give the person 10 business days after the notice is given to satisfy the Secretary that the person—

(i) has carried out the action required to comply with the order; or

(ii) will carry out the action required to comply with the order within a specified period acceptable to the Secretary.

(2) The Secretary may do any thing that is necessary or expedient to carry out the action required to comply with the order that is still practicable to carry out if a regulated person to whom notice under subsection (1) is given—

(a) does not agree to carry out the action; or

(b) fails to carry out the action within the specified period.

(3) Nothing in this section—

(a) prevents a proceeding from being commenced or continued against a regulated person for the person's contravention of an enforceable undertaking order; or

(b) affects any power of a court in relation to contempt.

(4) If a person is found in contempt of court for contravening an enforceable undertaking order, the Secretary may—

(a) do any thing that is necessary or expedient to carry out the action required to comply with the order that is still practicable to carry out; and

(b) publicise on the Department's Internet site that the regulated person contravened the order.

(5) The Secretary may recover any reasonable costs incurred by the Secretary in taking action under subsection (2) or (4) as a debt due to the Crown and payable by the regulated person.

Division 4—Information or document production notices

S. 116J inserted by No. 39/2024 s. 74.

116J Power to give information or document production notice

(1) The Secretary may give a written notice to a person requiring the person to provide to the Secretary specified information or information belonging to a specified class of information, or a specified document or a document belonging to a specified class of document, if the Secretary reasonably believes that—

(a) the information or document is in the person's knowledge, possession, custody or control; and

(b) the information is, or the document contains information that is, necessary—

(i) for monitoring a regulated person's compliance with this Act or the regulations; or

(ii) for determining whether the person or another person has committed an offence against a provision of this Act or the regulations.

(2) An information or document production notice must—

(a) state the name of the person to whom the notice is given; and

(b) specify the grounds on which the notice is given; and

(c) specify the information or document required to be provided or produced under the notice; and

(d) specify the time period, being not less than 10 business days after the notice is given, within which the person must comply with the notice; and

(e) state that it is an offence to contravene the notice without reasonable excuse and that the maximum penalty for the offence is 60 penalty units in the case of a natural person or 300 penalty units in the case of a body corporate; and

(f) include information about the person's right to seek review of the Secretary's decision—

(i) to give the information or document production notice to the person; or

(ii) to give a notice to the person—

(A) amending the period within which the person must comply with the information or document production notice; or

(B) amending or revoking the requirement to provide or produce particular information or a particular document; and

(g) state that a natural person to whom an information or document production notice is given—

(i) may refuse or fail to provide any information specified in the notice if doing so would tend to incriminate the person; and

(ii) may not refuse or fail to produce a document specified in the notice if doing so would tend to incriminate the person; and

(h) include any other prescribed details.

(3) The Secretary may give a written notice to a person to whom an information or document production notice is given—

(a) amending the period within which the person must comply with the notice; or

(b) amending or revoking the requirement to provide or produce particular information or a particular document; or

(c) withdrawing the notice.

S. 116K inserted by No. 39/2024 s. 74.

116K Offence to contravene information or document production notice

A person to whom an information or document production notice is given must not contravene the notice without reasonable excuse.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

S. 116L inserted by No. 39/2024 s. 74.

116L Protection against self-incrimination

(1) A natural person to whom an information or document production notice is given may refuse or fail to provide any information specified in the notice if doing so would tend to incriminate the person.

(2) A natural person to whom an information or document production notice is given may not refuse or fail to produce a document specified in the notice if doing so would tend to incriminate the person.

116M Admissibility of document produced under information or document production notice

S. 116M inserted by No. 39/2024 s. 74.

A document produced by a natural person, under an information or document production notice, that would tend to incriminate the person is not admissible in evidence against the person in a criminal proceeding unless—

(a) the person is required by law to keep the document; or

(b) the proceeding is in respect of false or misleading information included in the document.

116N Offence to provide false or misleading information

S. 116N inserted by No. 39/2024 s. 74.

(1) A person must not—

(a) provide information to the Secretary, as required by or under a provision of this Act or the regulations, that is false or misleading in a material way; or

(b) produce a document to the Secretary, as required by or under a provision of this Act or the regulations, that is false or misleading in a material way—

without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) Subsection (1) does not apply to a person if, at the time at which the information is provided or the document is produced, the person believes on reasonable grounds that the information or document is true or is not misleading.

Division 5—Review by VCAT

S. 116O inserted by No. 39/2024 s. 74.

116O Application for review by VCAT

(1) A regulated person may apply to VCAT for review of the Secretary's decision—

(a) to give an improvement notice to the regulated person; or

(b) to give a notice to the regulated person—

(i) amending or revoking an action specified in an improvement notice that the regulated person must take; or

(ii) amending the period specified in an improvement notice within which the regulated person must take the action; or

(c) to give a prohibition notice to the regulated person; or

(d) to give a notice to the regulated person—

(i) amending or revoking an activity specified in a prohibition notice that the regulated person is prohibited from engaging in; or

(ii) amending or revoking an action specified in a prohibition notice that the regulated person must take; or

(iii) amending the period specified in a prohibition notice within which the regulated person is prohibited from engaging in the activity or must take the action specified in the notice.

(2) A person to whom an information or document production notice is given may apply to VCAT for review of the Secretary's decision—

(a) to give the information or document production notice to the person; or

(b) to give a notice to the person—

(i) amending the period within which the person must comply with the information or document production notice; or

(ii) amending or revoking the requirement to provide or produce particular information or a particular document.

(3) An application for review under this section must be made within 28 days after the later of—

(a) the day on which the decision is made; or

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant requests a statement of reasons for the decision, the day on which—

(i) the statement of reasons is given to the applicant; or

(ii) the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 6—Infringement notices

116P Infringement notice

S. 116P inserted by No. 39/2024 s. 74.

(1) The Secretary may serve an infringement notice on a person whom the Secretary reasonably believes has committed a prescribed offence.

(2) An offence referred to in subsection (1) is an infringement offence within the meaning of the **Infringements Act 2006**.

(3) The infringement penalty for an infringement offence is the prescribed infringement penalty for that infringement offence.

Division 7—Service of documents

S. 116Q inserted by No. 39/2024 s. 74.

116Q Service

For the purposes of this Act, a notice or other document, other than an infringement notice, may be served on or given to a person—

(a) by delivering it personally to the person; or

(b) by sending it by post to the person at the person's usual or last known residential or business address; or

(c) by sending it by electronic communication to the person's usual or last known electronic address; or

(d) by leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there.

Part 11—General

117 No action if gametes used without knowing consent withdrawn or lapsed

(1) This section applies if—

(a) a person has carried out a treatment procedure for which consent was required; and

(b) before the treatment procedure was carried out, the consent was withdrawn under this Act.

(2) No civil or criminal proceeding lies against the person because of the withdrawal of the consent if, at the time the treatment procedure was carried out, the person did not know and could not reasonably be expected to have known that the consent had been withdrawn.

(3) A reference in this section to a consent being withdrawn includes a reference to a consent that is taken to have been withdrawn under section 20A(2).

S. 117(3) inserted by No. 39/2021 s. 38.

* * * * *

S. 118 repealed by No. 39/2024 s. 75.

119 Powers and duties of Secretary to inspect documents

S. 119 (Heading) amended by No. 39/2024 s. 76(1).

(1) The Secretary may exercise powers under this section only to the extent that it is reasonably necessary to do so for the purpose of determining compliance with a registration under this Act.

S. 119(1) amended by No. 39/2024 s. 76(2).

(2) The Secretary may enter the premises of a registered ART provider at any time during ordinary business hours.

S. 119(2) amended by No. 39/2024 s. 76(3).

S. 119(2A) inserted by No. 39/2024 s. 76(4).

(2A) If the Secretary delegates the Secretary's power under this section to a person employed in the Department under Part 3 of the **Public Administration Act 2004**, the Secretary must issue an identity card to that person.

Note

See section 19(1) of the **Public Health and Wellbeing Act 2008**.

S. 119(2B) inserted by No. 39/2024 s. 76(4).

(2B) On entering a premises under this section—

(a) the Secretary must advise the occupier of the premises of the purpose of the Secretary's visit; and

(b) if subsection (2A) applies, the Secretary's delegate must produce, on the occupier's request, the delegate's identity card for inspection.

S. 119(3) amended by No. 39/2024 s. 76(5).

(3) After entering premises under subsection (2) the Secretary may—

(a) require a person to produce for inspection a record or other document, including a document containing information required to be kept as a condition of a registration under this Act; and

(b) inspect a document produced under paragraph (a); and

(c) take possession of a document produced under paragraph (a) for so long as is necessary to make copies of or take extracts from the document.

S. 119(4) repealed by No. 39/2024 s. 76(6).

* * * * *

(5) If the Secretary takes possession of a document produced by a person under subsection (3)(a), the Secretary must issue a receipt to the person for the document.

S. 119(5) substituted by No. 39/2024 s. 76(7).

120 Offence to obstruct or hinder

S. 120 amended by No. 39/2024 s. 77.

A person must not obstruct or hinder the Secretary in the exercise of the Secretary's powers under section 119.

Penalty: 50 penalty units.

121 Prohibition on destruction of or tampering with documents

S. 121 (Heading) amended by No. 6/2016 s. 35(1).

A person must not destroy, remove, cancel or tamper with a document required to be kept by or under this Act or the regulations unless authorised by this Act or the regulations to do so.

S. 121 amended by No. 6/2016 s. 35(2).

Penalty: 50 penalty units.

121A Records identifying donor treatment procedure participants to be kept

S. 121A inserted by No. 58/2014 s. 23.

(1) In this section—

identifying record means a record relating to a donor treatment procedure that identifies the donor and the woman on whom the treatment procedure was carried out, and her partner (if any).

(2) Subject to subsection (3A), a person must ensure that an identifying record is kept for at least 99 years after the creation of the record.

S. 121A(2) amended by No. 6/2016 s. 36(1).

(3) A registered ART provider must ensure that an identifying record is kept for at least 99 years after the creation of the record.

S. 121A(3A) inserted by No. 6/2016 s. 36(2), amended by No. 39/2024 s. 78.

(3A) Subsection (2) does not apply to a person who has given original records to the Authority or the Donor Conception Registrar under section 52B(1)(a) or 56B(6)(a) or in compliance with a production order.

(4) The requirement in this section applies to records created before or after the commencement of section 23 of the **Assisted Reproductive Treatment Further Amendment Act 2014**.

122 Requirements if registered ART provider ceases to operate

(1) This section applies if a registered ART provider intends to cease operating.

(2) Before the registered ART provider ceases to operate the registered ART provider must make all reasonable efforts to—

(a) transfer to another registered ART provider or a hospital any gametes or embryos stored by the registered ART provider; and

(b) transfer to another registered ART provider, a hospital or the Registrar any record required, by or under this Act or the regulations, to be kept by the registered ART provider; and

(c) notify patients that the registered ART provider intends to cease to operate.

Example

By placing an advertisement in a newspaper published in the area in which the registered ART provider operates.

(3) In this section—

hospital means any of the following hospitals—

(a) a denominational hospital within the meaning of the **Health Services Act 1988**;

(b) a metropolitan hospital within the meaning of the **Health Services Act 1988**;

(c) a privately-operated hospital within the meaning of the **Health Services Act 1988**;

(d) a public hospital within the meaning of the **Health Services Act 1988**.

123 Indictable offences

An offence under section 7, 8, 34(1) or 35 is an indictable offence.

123A Review of operation of this Act as amended by the Health Legislation Amendment (Regulatory Reform) Act 2024

S. 123A inserted by No. 39/2024 s. 78A.

(1) The Minister must cause a review of the operation of this Act, as amended by Part 2 of the **Health Legislation Amendment (Regulatory Reform) Act 2024**, to be commenced after the third anniversary of the day on which Part 2 of the **Health Legislation Amendment (Regulatory Reform) Act 2024** comes into operation.

(2) The Minister must cause a copy of a report of the review to be laid before each House of the Parliament no later than the fourth anniversary of the day on which Part 2 of the **Health Legislation Amendment (Regulatory Reform) Act 2024** comes into operation.

Part 12—Regulations

124 Regulations

The Governor in Council may make regulations for or with respect to any of the following—

(a) forms for notices or other documents required under this Act;

(b) fees for the purposes of this Act;

S. 124(c) amended by No. 39/2024 s. 79(1)(a).

(c) the general conditions to which registrations are subject;

(d) counselling required by this Act, including the matters it must address and the form it must take;

(e) surrogacy arrangements, including matters to be considered in deciding the emotional maturity and health of proposed surrogate mothers and other parties to the arrangements, the tests that parties to surrogacy arrangements may be required to undertake before an arrangement may be approved and the payments that may be made to surrogate mothers;

S. 124(f) amended by No. 24/2019 s. 5(2).

(f) the keeping of records and registers for the purposes of this Act, including the Central Register and the Voluntary Register;

S. 124(g) amended by No. 39/2024 s. 79(1)(b).

(g) the giving of information by registered ART providers and doctors to the Registrar, the Patient Review Panel and the Secretary and the Donor Conception Registrar;

(h) the disclosure of information from the Central Registrar, Voluntary Register and other registers and records kept under this Act;

(i) matters relating to consents under this Act, including the persons with whom or places at which consents or withdrawals of consents under this Act are to be given;

(j) the disposal of embryos removed from storage;

(ja) the bringing into or taking out of Victoria of donor gametes or embryos produced from donor gametes;

S. 124(ja) inserted by No. 39/2024 s. 79(2).

(k) requirements regarding the transfer of information relating to gametes or embryos that has been or is to be transferred from one place to another place;

(ka) prescribing offences against a provision of this Act or the regulations for the purposes of section 116P(1);

S. 124(ka) inserted by No. 39/2024 s. 79(3).

(kb) in relation to each offence prescribed for the purposes of section 116P(1), prescribing the penalty for the offence;

S. 124(kb) inserted by No. 39/2024 s. 79(3).

(l) penalties, not exceeding 20 penalty units, for contraventions of the regulations;

(m) generally prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

125 Application etc of regulations

Regulations made under this Act may—

(a) be of general or limited application; and

(b) differ according to differences in time, place and circumstance; and

(c) confer a discretionary authority or impose a duty on, or leave any matter or thing to be determined or approved by, a specified person or class of persons; and

S. 125(d) amended by No. 29/2011 s. 3(Sch. 1 item 4.2).

(d) apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method, formulated, issued, prescribed or published by any person whether—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time.

Part 13—Repeal, savings and transitional provisions

Division 1—Repeal

126 Repeal

The **Infertility Treatment Act 1995** is **repealed**.

Division 2—Transitional provisions

127 Definitions

In this Division—

commencement means the commencement of this section;

repealed Act means the **Infertility Treatment Act 1995**.

128 References to repealed Act etc

From the commencement, a reference in an Act (other than this Act) or a document—

(a) to the repealed Act is taken, if the context permits, to be a reference to this Act; and

(b) to a licensed centre under the repealed Act is taken to be a reference to a registered ART provider under this Act; and

(c) to the Central Register under the repealed Act is taken to be a reference to the Central Register kept under this Act; and

(d) to a register kept by a licensed centre under the repealed Act is taken to be a reference to a register kept under this Act by a registered ART provider.

129 Consents

(1) This section applies to a consent given under the repealed Act and not withdrawn or lapsed immediately before the commencement.

(2) From the commencement, the consent is taken to be a consent given under this Act.

130 Registers

A register kept by a licensed provider of ART services under the repealed Act is taken to be a register kept by a registered ART provider under this Act.

131 Licence holders

A person who was, immediately before the commencement, a licence holder under the repealed Act is taken, from the commencement, to be registered under this Act.

132 Authority

(1) The Infertility Treatment Authority established under the repealed Act is taken, on the commencement, to be the Victorian Assisted Reproductive Treatment Authority.

(2) A person who was, immediately before the commencement, a member of the Infertility Treatment Authority continues from the commencement as a member of the Victorian Assisted Reproductive Treatment Authority.

(3) The Infertility Treatment Authority Fund kept by the Infertility Treatment Authority under the repealed Act is taken on the commencement to be the Victorian Assisted Reproductive Treatment Authority Fund under this Act.

133 Applications

(1) This section applies if—

(a) before the commencement a person had applied to the Infertility Treatment Authority for access to information on a register kept under the repealed Act; and

(b) immediately before the commencement the application had not been dealt with.

(2) From the commencement, the application is taken to be an application made to the Registrar under this Act.

* * * * *

S. 134 expired by force of No. 76/2008 s. 134(4).

Division 3—Savings provision

135 Continued operation of Infertility Treatment Regulations

Despite the **Subordinate Legislation Act 1994**, the Infertility Treatment Regulations 1997, as in force immediately before the commencement of this section, continue until the commencement of section 124.

Division 4—Transitional provisions—Assisted Reproductive Treatment Amendment Act 2013

Pt 13 Div. 4 (Heading and ss 136–138) inserted by No. 18/2013 s. 14.

136 Definitions

New s. 136 inserted by No. 18/2013 s. 14.

In this Division—

2013 Act means the **Assisted Reproductive Treatment Amendment Act 2013**;

commencement day means the day on which section 14 of the 2013 Act comes into operation.

New s. 137 inserted by No. 18/2013 s. 14.

137 Validation of storage of certain gametes past expiry

(1) This section applies if immediately before the commencement day—

(a) a person had caused or permitted gametes to remain in storage; and

(b) the gametes had been in storage for more than 10 years without approval under this Act or a corresponding previous enactment for a longer storage period.

(2) Section 31 as substituted by the 2013 Act does not apply to prohibit the continued storage of the gametes for the period ending 18 months after the commencement day.

(3) The person is not liable for an offence against section 31(1), as in force immediately before the commencement day, only for the reason that the person caused or permitted the gametes to remain in storage for more than 10 years without the approval of the Patient Review Panel.

New s. 138 inserted by No. 18/2013 s. 14.

138 Validation of storage of certain embryos past expiry

(1) This section applies if immediately before the commencement day—

(a) a registered ART provider caused or permitted an embryo to remain in storage; and

(b) the embryo had been in storage for more than—

(i) 5 years; or

(ii) if the persons who produced the gametes from which the embryo was formed had consented to the embryo remaining in storage for an additional period not exceeding 5 years, that period—

without approval under this Act or a corresponding previous enactment for a longer storage period.

(2) Section 33 as amended by the 2013 Act does not apply to prohibit the continued storage of the embryo for the period ending 18 months after the commencement day.

(3) The registered ART provider is not liable for an offence against section 33(2), as in force immediately before the commencement day, only for the reason that the registered ART provider permitted or caused the embryo to remain in storage for more than a period referred to in subsection (1)(b)(i) or (ii) without the approval of the Patient Review Panel.

139 Continuation of the Patient Review Panel

New s. 139 inserted by No. 18/2013 s. 15.

The Patient Review Panel continues to be the same body despite its change in constitution.

Division 5—Transitional provisions—Assisted Reproductive Treatment Further Amendment Act 2014

Pt 13 Div. 5 (Heading and s. 140) inserted by No. 58/2014 s. 24.

140 Initial provision of information on register of pre-1988 donor treatment procedures

New s. 140 inserted by No. 58/2014 s. 24.

(1) This section applies to a registered ART provider who, on the relevant day, is in possession of or has control of records relating to pre-1988 donor treatment procedures.

(2) The registered ART provider must, within 6 months of the relevant day, give to the Registrar a copy of the register required to be kept under section 49A.

Penalty: 10 penalty units.

(3) In this section—

relevant day means the day on which section 5 of the **Assisted Reproductive Treatment Further Amendment Act 2014** comes into operation.

Pt 13 Div. 6 (Heading and ss 141–147) inserted by No. 6/2016 s. 37.

Division 6—Transitional provisions—Assisted Reproductive Treatment Amendment Act 2016

New s. 141 inserted by No. 6/2016 s. 37.

141 Registrar must provide Authority with copy of Central Register

(1) The Registrar must, as soon as reasonably practicable after the commencement of section 37 of the **Assisted Reproductive Treatment Amendment Act 2016**, provide the Authority with—

(a) a copy of the information contained on the Central Register as at the date the information is provided; and

(b) a copy of the information contained on the Voluntary Register as at the date the information is provided.

(2) A member of the Authority or a person employed or engaged by the Authority must not, before the commencement of section 10 of the **Assisted Reproductive Treatment Amendment Act 2016**, disclose to any person, whether directly or indirectly, any information provided to the Authority under subsection (1).

Penalty: 50 penalty units.

142 Applications

New s. 142 inserted by No. 6/2016 s. 37.

This Act as amended by Part 2 (other than section 37) of the **Assisted Reproductive Treatment Amendment Act 2016** applies to an application under section 56(1) made before that amendment if, immediately before that amendment, the Registrar had not disclosed the requested information to the applicant.

143 Lodgement of contact preferences

New s. 143 inserted by No. 6/2016 s. 37.

(1) Division 3A of Part 6, as inserted by section 23 of the **Assisted Reproductive Treatment Amendment Act 2016**, does not apply to permit a pre-1998 donor to lodge a contact preference in relation to an applicant to whom identifying information was disclosed before the commencement of that section 23.

(2) Division 3B of Part 6, as inserted by section 23 of the **Assisted Reproductive Treatment Amendment Act 2016**, does not apply to permit a person born as a result of a donor treatment procedure to lodge a contact preference in relation to an applicant to whom identifying information was disclosed before the commencement of that section 23.

New s. 144 inserted by No. 6/2016 s. 37.

144 Continuation of Central Register

The commencement of section 10 of the **Assisted Reproductive Treatment Amendment Act 2016** does not affect the operation of the Central Register and the Central Register is taken to be the same document on and after that commencement as it was before that commencement.

New s. 145 inserted by No. 6/2016 s. 37.

145 Continuation of Voluntary Register

The commencement of section 28 of the **Assisted Reproductive Treatment Amendment Act 2016** does not affect the operation of the Voluntary Register and the Voluntary Register is taken to be the same document on and after that commencement as it was before that commencement.

Pt 13 Div. 7 (Heading and ss 146–149) inserted by No. 39/2021 s. 39.

Division 7—Transitional provisions—Assisted Reproductive Treatment Amendment Act 2021

New s. 146 inserted by No. 39/2021 s. 39.

146 Definition

In this Division—

amending Act means the **Assisted Reproductive Treatment Amendment Act 2021**.

New s. 147 inserted by No. 39/2021 s. 39.

147 Application of amendments to gametes or embryos donated before commencement

(1) Despite the commencement of sections 10 and 13 of the amending Act, this Act as in force immediately before the commencement of those sections continues to apply in respect of a consent given under section 16 before the commencement of those sections.

(2) Despite the commencement of sections 20, 21, 22, 23 and 24 of the amending Act, this Act as in force immediately before the commencement of those sections continues to apply in respect of—

(a) an embryo that was formed before the commencement of those sections; and

(b) an embryo that is formed on or after the commencement of those sections from donor sperm or a donor oocyte, if the sperm or oocyte was donated before the commencement of those sections.

148 Posthumous use of gametes or embryo

New s. 148 inserted by No. 39/2021 s. 39.

Despite the commencement of section 30 of the amending Act, section 46 as in force immediately before the commencement of that section 30 continues to apply in respect of posthumous use of a deceased person's gametes or an embryo created from a deceased person's gametes if the deceased person had provided written consent under section 46(b) before the commencement of that section 30.

149 Information to be given to donors by doctors

New s. 149 inserted by No. 39/2021 s. 39.

(1) Section 55A, inserted by section 34 of the amending Act, does not apply in respect of information held by a doctor in a register if the information was included in that register before the commencement of section 34 of the amending Act.

(2) Section 55A, inserted by section 34 of the amending Act, does not apply in respect of information held by a doctor in a register that is included in that register after the commencement of section 34 of the amending Act, unless the woman and her partner (if any) to whom the information relates have been given the written advice required by section 25(2).

Pt 13 Div. 8 (Heading and ss 150–167) inserted by No. 39/2024 s. 80.

Division 8—Abolition of Authority and transitional provisions—Health Legislation Amendment (Regulatory Reform) Act 2024

New s. 150 inserted by No. 39/2024 s. 80.

150 Definitions

In this Division—

Authority means the Victorian Assisted Reproductive Treatment Authority established by section 99;

commencement day means the day on which Part 2 of the **Health Legislation Amendment (Regulatory Reform) Act 2024** comes into operation;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective.

New s. 151 inserted by No. 39/2024 s. 80.

151 Abolition of the Authority

On the commencement day—

(a) the Authority is abolished and its members go out of office; and

(b) all property and rights that, immediately before that day, were vested in the Authority, vest in the Secretary; and

(c) all liabilities of the Authority existing immediately before that day become liabilities of the Secretary; and

(d) the Secretary is substituted as a party to any proceeding pending in any court or tribunal to which the Authority was a party immediately before that day; and

(e) the Secretary is substituted as a party to any arrangement or contract entered into by or on behalf of the Authority as a party and in force immediately before that day.

152 Transfer of Authority staff

New s. 152 inserted by No. 39/2024 s. 80.

A person who immediately before the commencement day was employed by the Authority under section 111, is taken on and after that day to be a person who—

(a) is employed by the Secretary under Part 3 of the **Public Administration Act 2004** on terms and conditions that are no less favourable than those that applied to the person as an employee of the Authority immediately before that day; and

(b) has accrued an entitlement to benefits in connection with employment under Part 3 of the **Public Administration Act 2004** that is equivalent to the entitlement the person had accrued as an employee of the Authority.

153 Victorian Assisted Reproductive Treatment Authority Fund

New s. 153 inserted by No. 39/2024 s. 80.

On the commencement day—

(a) the Victorian Assisted Reproductive Treatment Authority Fund established under section 115 is abolished; and

(b) any money standing to the credit of the Fund must be paid into the Consolidated Fund.

New s. 154 inserted by No. 39/2024 s. 80.

154 Applications for registration on foot

An application under section 74 that is made but not determined before the commencement day is to be determined on and after that day by the Secretary in accordance with Part 8.

New s. 155 inserted by No. 39/2024 s. 80.

155 Application of this Act to registration of registered ART providers in force immediately before the commencement day

A registered ART provider's registration under Part 8 that is in force immediately before the commencement day continues in force on and after that day according to its terms as if it had been granted by the Secretary.

New s. 156 inserted by No. 39/2024 s. 80.

156 Condition imposed on registration of registered ART providers in force immediately before the commencement day

A condition imposed on a registered ART provider's registration by the Authority under section 75 that is in force immediately before the commencement day is taken on and after that day to be a specific condition imposed by the Secretary under section 75A.

New s. 157 inserted by No. 39/2024 s. 80.

157 Suspension of registration in force immediately before the commencement day

A suspension of a registered ART provider's registration under section 76 or 77 that is in force immediately before the commencement day continues in force on and after that day for the period specified in the written notice of suspension given to the registered ART provider or until the suspension is revoked (whichever is the earliest).

158 List of registered ART providers

New s. 158 inserted by No. 39/2024 s. 80.

On and after the commencement day, the list of registered ART providers kept by the Authority under section 81 immediately before that day is taken to be the register of registered ART providers kept by the Secretary.

159 Exemptions

New s. 159 inserted by No. 39/2024 s. 80.

An exemption granted by the Authority under section 37 that is in force immediately before the commencement day is taken on and after that day to be an exemption granted by the Secretary.

160 Central Register

S. 160 inserted by No. 39/2024 s. 80.

On and after the commencement day, the Central Register kept by the Authority under section 53 immediately before that day is taken to be kept by the Donor Conception Registrar.

161 Application for information from Central Register

S. 161 inserted by No. 39/2024 s. 80.

An application under section 56 that is made but not determined before the commencement day is to be determined on and after that day by the Donor Conception Registrar in accordance with Part 6.

162 Previous contact

S. 162 inserted by No. 39/2024 s. 80.

For the purposes of sections 56B(3)(b) and 56J(4)(b), contact with the Authority before the commencement day is on and after that day taken to be contact with the Donor Conception Registrar.

163 Disclosure of information to parent of a person born as a result of a donor treatment procedure or donor

S. 163 inserted by No. 39/2024 s. 80.

For the purposes of section 58(1)(b)(iii), indication before the commencement day by a child to the Authority that the child does not want the information disclosed is on and after that day

taken to be indicated by the child to the Donor Conception Registrar.

S. 164 inserted by No. 39/2024 s. 80.

164 Duration of contact preferences

A contact preference lodged with the Authority before the commencement day continues in force on and after that day and for the period provided by section 63D or 63K (as the case may be) as if it had been lodged with the Donor Conception Registrar.

S. 165 inserted by No. 39/2024 s. 80.

165 Voluntary Register

On and after the commencement day, the Voluntary Register kept by the Authority under section 70 immediately before that day is taken to be kept by the Donor Conception Registrar.

S. 166 inserted by No. 39/2024 s. 80.

166 Request made to Authority to enter name and address in Voluntary Register

A request that is made to the Authority under section 71(1)(a) but not determined before the commencement day is to be determined on and after that day by the Donor Conception Registrar in accordance with Part 7.

S. 167 inserted by No. 39/2024 s. 80.

167 Custody of information or records held by Authority

On and after the day on which Part 1 of the **Health Legislation Amendment (Regulatory Reform) Act 2024** comes into operation, the Secretary is entitled to, and may request, custody of any information or records held by the Authority immediately before that day other than information or records forming part of—

(a) the Central Register kept by the Authority under section 53 immediately before that day; or

(b) the Voluntary Register kept by the Authority under section 70 immediately before that day.

*	*	*	*	*	**New ss 146, 147 inserted by No. 6/2016 s. 37, repealed by No. 76/2008 s. 147.**
*	*	*	*	*	**Pt 14 (Heading and ss 136–148) repealed by No. 76/2008 s. 148.**
*	*	*	*	*	**Pt 15 (Heading and ss 149–154) repealed by No. 21/2015 s. 3(Sch. 1 item 6).**
*	*	*	*	*	**Pt 16 (Heading and ss 155–159) repealed by No. 70/2013 s. 3(Sch. 1 item 1).**

ÍÍÍÍÍÍÍÍÍÍÍÍÍÍÍ

Endnotes

1 General information

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

Minister's second reading speech—

Legislative Assembly: 10 September 2008

Legislative Council: 10 October 2008

The long title for the Bill for this Act was "A Bill for an Act to regulate assisted reproductive treatment and artificial insemination, to make provision with respect to surrogacy arrangements, to repeal the **Infertility Treatment Act 1995**, to amend the **Status of Children Act 1974** and the **Births, Deaths and Marriages Registration Act 1996** and other Acts and for other purposes."

The **Assisted Reproductive Treatment Act 2008** was assented to on 11 December 2008 and came into operation as follows:

Sections 1, 2 and 135 on 12 December 2008: section 2(1); rest of Act on 1 January 2010: section 2(3).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Assisted Reproductive Treatment Act 2008** by Acts and subordinate instruments.

Assisted Reproductive Treatment Act 2008, No. 76/2008

Assent Date:	11.12.08
Commencement Date:	Ss 134(4), 148 on 1.1.10: s. 2(3); new s. 147 inserted on 18.5.16 by No. 6/2016 s. 37: Special Gazette (No. 153) 17.5.16 p. 1
Notes:	S. 134(4) provided that s. 134 expired on 1.1.11; s. 148 repealed Pt 14 (ss 136–148) on 1.1.11; s. 147 repealed ss 146, 147 on 1.3.18
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

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

Assent Date:	30.3.10
Commencement Date:	S. 51(Sch. item 6) on 1.7.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date:	8.6.10
Commencement Date:	S. 46 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Statute Law Revision Act 2011, No. 29/2011

Assent Date:	21.6.11
Commencement Date:	S. 3(Sch. 1 item 4) on 22.6.11: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Assisted Reproductive Treatment Amendment Act 2013, No. 18/2013

Assent Date:	23.4.13
Commencement Date:	Ss 4-8, 14 on 23.4.13: s. 2(1); ss 9–13, 15 on 28.5.13: Special Gazette (No. 180) 21.5.13 p. 1
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Statute Law Revision Act 2013, No. 70/2013

Assent Date:	19.11.13
Commencement Date:	S. 3(Sch. 1 item 1) on 1.12.13 s. 2(1)
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date:	3.6.14
Commencement Date:	S. 10(Sch. item 5) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Assisted Reproductive Treatment Further Amendment Act 2014, No. 58/2014

Assent Date:	2.9.14
Commencement Date:	Ss 4-9, 16, 19, 23, 24 on 30.10.14: Special Gazette (No. 400) 29.10.14 p. 1; ss 10–15, 17, 18, 20–22 on 29.6.15: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014, No. 61/2014

Assent Date:	9.9.14
Commencement Date:	S. 162 on 1.3.16: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Statute Law Revision Act 2015, No. 21/2015

Assent Date:	16.6.15
Commencement Date:	S. 3(Sch. 1 item 6) on 1.8.15: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Assisted Reproductive Treatment Amendment Act 2016, No. 6/2016 (as amended by No. 22/2016)

Assent Date:	1.3.16
Commencement Date:	Ss 4(2), 37 on 18.5.16: Special Gazette (No. 153) 17.5.16 p. 1; ss 4(1), 5–36 on 1.3.17: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Assisted Reproductive Treatment Amendment (Consent) Act 2019, No. 24/2019

Assent Date:	27.8.19
Commencement Date:	S. 5 on 28.8.19: s. 2(1); s. 4 on 24.9.19: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Assisted Reproductive Treatment Amendment Act 2020, No. 15/2020

Assent Date:	10.6.20
Commencement Date:	Ss 4–12 on 8.7.20: Special Gazette (No. 323) 30.6.20 p. 1
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Assisted Reproductive Treatment Amendment Act 2021, No. 39/2021

Assent Date:	19.10.21
Commencement Date:	Ss 25, 29, 35–37 on 20.10.21: s. 2(2); s. 19 on 21.12.21: Special Gazette (No. 693) 7.12.21 p. 1; ss 4(3), 5, 6, 30, 39 on 24.6.22: Special Gazette (No. 267) 31.5.22 p. 1; ss 4(1)(2)(4), 7–18, 20–24, 26–28, 31–34, 38, 40, 41 on 15.8.22: Special Gazette (No. 384) 2.8.22 p. 1
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

Health Legislation Amendment (Regulatory Reform) Act 2024, No. 39/2024

Assent Date:	29.10.24
Commencement Date:	S. 112 on 30.10.24: s. 2(1); ss 3–80 on 1.1.25: Special Gazette (No. 700) 17.12.24 p. 1
Current State:	This information relates only to the provision/s amending the **Assisted Reproductive Treatment Act 2008**

3 Explanatory details

[1] S. 3 def. of ***Health Services Commissioner***: The amendment proposed by section 161 of the **Health Complaints Act 2016**, No. 22/2016 is not included in this publication due to the earlier commencement of section 4(2) of the **Assisted Reproductive Treatment Amendment Act 2016**, No. 6/2016.

Section 161 reads as follows:

161 Definitions

In section 4(2) of the **Assisted Reproductive Treatment Amendment Act 2016**, for the proposed definition of ***Health Services Commissioner*** **substitute**—

"***Health Complaints Commissioner*** means the Commissioner as defined in the **Health Complaints Act 2016**;".