# TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PART 1—PRELIMINARY</strong></td>
<td>1</td>
</tr>
<tr>
<td>1 Purpose</td>
<td>1</td>
</tr>
<tr>
<td>2 Commencement</td>
<td>2</td>
</tr>
<tr>
<td>3 Definitions</td>
<td>2</td>
</tr>
<tr>
<td>4 Meaning of excess ART embryo</td>
<td>8</td>
</tr>
<tr>
<td>5 Act to bind the Crown</td>
<td>8</td>
</tr>
<tr>
<td><strong>PART 2—OFFENCES</strong></td>
<td>9</td>
</tr>
<tr>
<td>6 Offence—use of excess ART embryo</td>
<td>9</td>
</tr>
<tr>
<td>7 Offence—use of other embryos</td>
<td>10</td>
</tr>
<tr>
<td>8 Offence—certain activities involving use of human eggs</td>
<td>11</td>
</tr>
<tr>
<td>9 Offence—use of embryo that was created by fertilisation and that is not an excess ART embryo</td>
<td>12</td>
</tr>
<tr>
<td>10 Offence—breaching a licence condition</td>
<td>12</td>
</tr>
<tr>
<td>11 Person not liable for conduct purportedly authorised</td>
<td>13</td>
</tr>
<tr>
<td><strong>PART 3—LICENSING OF EMBRYO RESEARCH</strong></td>
<td>14</td>
</tr>
<tr>
<td>Division 1—Embryo Research Licensing Committee of the NHMRC</td>
<td>14</td>
</tr>
<tr>
<td>12 Functions of Committee</td>
<td>14</td>
</tr>
<tr>
<td>13 Powers of Committee</td>
<td>14</td>
</tr>
<tr>
<td>Division 2—Licensing system</td>
<td>14</td>
</tr>
<tr>
<td>14 Person may apply for licence</td>
<td>14</td>
</tr>
<tr>
<td>15 Determination of application by Committee</td>
<td>16</td>
</tr>
<tr>
<td>16 Notification of decision</td>
<td>17</td>
</tr>
<tr>
<td>17 Period of licence</td>
<td>17</td>
</tr>
<tr>
<td>18 Licence is subject to conditions</td>
<td>18</td>
</tr>
<tr>
<td>19 Variation of licence</td>
<td>20</td>
</tr>
<tr>
<td>20 Suspension or revocation of licence</td>
<td>20</td>
</tr>
<tr>
<td>21 Surrender of licence</td>
<td>21</td>
</tr>
<tr>
<td>22 Notification of variation, suspension or revocation of licence</td>
<td>21</td>
</tr>
</tbody>
</table>
# Section Page

**Division 3—Reporting and confidentiality**  
23 NHMRC Licensing Committee to make certain information publicly available  
24 Confidential commercial information may only be disclosed in certain circumstances

**Division 4—Review provisions**  
25 Meaning of terms  
26 Review of decisions

**PART 4—MONITORING POWERS**  
27 Powers available to inspectors for monitoring compliance  
28 Monitoring powers  
29 Power to secure  
30 Monitoring warrants  
31 Details of warrant to be given to occupier etc.  
32 Announcement before entry  
33 Occupier entitled to be present during search  
34 Inspector must produce identity card on request  
35 Consent  
36 Compensation for damage  
37 Extended operation of this Part

**PART 5—GENERAL**  
38 Regulations

**PART 6—TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENT TO OTHER ACTS**  
39 Definitions  
40 Superseded references  
41 Existing applications for licences  
42 Existing licences  
43 Offences  
44 Consent  
45 Donations

**Division 2—Consequential amendment**  
46 Consequential amendment to the *Magistrates' Court Act 1989*

**ENDNOTES**  
**INDEX**
Research Involving Human Embryos
Act 2008†
No. 74 of 2008

[Assented to 25 November 2008]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose
The purpose of this Act is to address concerns, including ethical concerns, about scientific developments in relation to human reproduction and the utilisation of human embryos by regulating activities that involve the use of certain human embryos created by assisted reproductive technology or by other means.
2 Commencement

(1) This Act comes into operation on a day to be proclaimed.

(2) If this Act does not come into operation before 1 January 2010, it comes into operation on that day.

3 Definitions

(1) In this Act—

*accredited ART centre* means a person or body accredited to carry out assisted reproductive technology by—

(a) the Reproductive Technology Accreditation Committee of the Fertility Society of Australia; or

(b) if the regulations prescribe another body or other bodies in addition to, or instead of, the body mentioned in paragraph (a)—that other body or any of those other bodies, as the case requires;

*AHEC* means the Australian Health Ethics Committee established by the National Health and Medical Research Council Act 1992 of the Commonwealth;

*animal* does not include a human;

*assisted reproductive treatment* has the meaning it has in the Assisted Reproductive Treatment Act 2008;

*Authority* means the Victorian Assisted Reproductive Treatment Authority established under Part 9 of the Assisted Reproductive Treatment Act 2008;
Commonwealth Act means the Research Involving Human Embryos Act 2002 of the Commonwealth;

Commonwealth Authority means the following—

(a) a body corporate established for a public purpose by or under a Commonwealth Act;

(b) a company in which a controlling interest is held by any one of the following persons together, or by two or more of the following persons together—

(i) the Commonwealth;

(ii) a body covered by paragraph (a);

(iii) a body covered by either subparagraph (i) or (ii);

confidential commercial information means information that has a commercial or other value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;

disclose, in relation to information, means give or communicate in any way;

excess ART embryo has the meaning given by section 4;

HREC means a Human Research Ethics Committee;

human 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 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;

**human sperm** includes human spermatids;

**hybrid embryo** means—

(a) an embryo created by the fertilisation of a human egg by animal sperm; or

(b) an embryo created by the fertilisation of an animal egg by human sperm; or

(c) a human egg into which the nucleus of an animal cell has been introduced; or

(d) an animal egg into which the nucleus of a human cell has been introduced; or

(e) a thing declared by the regulations to be a hybrid embryo;

**inspector** means a person appointed under section 33(1) of the Commonwealth Act;

**licence** means a licence issued under section 15;

**NHMRC Licensing Committee** means the Committee established by section 13 of the Commonwealth Act;

**oocyte** means an ovum from a woman;

**partner**, in relation to a person, means—

(a) the person's spouse; or

(b) another person who lives with the first person as a couple on a genuine domestic basis, irrespective of gender;
precursor cell means a cell that has the potential to develop into a human egg or human sperm;

proper consent, in relation to the use of an excess ART embryo or a human egg, or the creation or use of any other embryo, means consent obtained in accordance with guidelines issued by the Chief Executive Officer of the NHMRC under the National Health and Medical Research Council Act 1992 of the Commonwealth and prescribed by the regulations under the Commonwealth Act for the purposes of the definition of proper consent in section 8 of that Act;

research includes an experimental procedure or clinical trial;

responsible person means—

(a) in relation to an excess ART embryo—

(i) each person who provided the egg or sperm from which the embryo was created; and

(ii) the woman for whom the embryo was created, for the purpose of achieving her pregnancy; and

(iii) any person who was the partner of a person mentioned in subparagraph (i) at the time the egg or sperm mentioned in that paragraph was provided; and

(iv) any person who was the partner of the woman mentioned in subparagraph (ii) at the time the embryo was created; or
(b) in relation to an embryo other than an excess ART embryo—each person whose reproductive material, genetic material or cell was used, or is proposed to be used, in the creation or use of the embryo; or

(c) in relation to a human egg—the woman who was the biological donor of the egg;

sperm means sperm from a man;

spouse, in relation to a person, means the person's husband or wife;

store means—

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

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

the NHMRC means the National Health and Medical Research Council established by the National Health and Medical Research Council Act 1992 of the Commonwealth;

unsuitable for implantation, in relation to a human embryo, means a human embryo that—

(a) is diagnosed by pre-implantation genetic diagnosis as unsuitable for implantation, in accordance with the Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research (2007), issued by the Chief Executive Officer of the NHMRC; or
(b) is determined to be unsuitable for implantation in the body of a woman, in accordance with objective criteria specified in guidelines issued by the Chief Executive Officer of the NHMRC under the National Health and Medical Research Council Act 1992 of the Commonwealth and prescribed by the regulations under the Commonwealth Act for the purposes of paragraph (b) of the definition of unsuitable for implantation in section 7(1) of that Act;

use includes develop, or development, as the case requires;

woman means a female human.

(2) For the purposes of the definition of human embryo in subsection (1), in working out the length of the period of development of a human embryo, any period when the development of the embryo is suspended is to be disregarded.

(3) In this Act, a reference to an embryo is a reference to a human embryo, unless the contrary intention appears.

(4) A reference in this Act to an embryo (including a human embryo) is a reference to a living embryo.

(5) A reference in this Act to a human egg is a reference to a human oocyte.

(6) A reference in this Act to a human embryo does not include a reference to—

(a) a hybrid embryo; or

(b) a human embryonic stem cell line.
4 Meaning of excess ART embryo

(1) In this Act—

*excess ART embryo* means a human embryo

that—

(a) was created, by assisted reproductive
technology, for use in the assisted
reproductive treatment of a woman; and

(b) is excess to the needs of—

(i) the woman for whom it was
created; and

(ii) her partner (if any) at the time the
embryo was created.

(2) For the purposes of paragraph (b) of the definition
of *excess ART embryo*, a human embryo is excess
to the needs of the persons mentioned in that
paragraph at a particular time if—

(a) each such person has given written authority
for use of the embryo for a purpose other
than a purpose relating to the assisted
reproductive treatment of the woman
concerned, and the authority is in force at
that time; or

(b) each such person has determined in writing
that the embryo is excess to their needs, and
the determination is in force at that time.

5 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—OFFENCES

6 Offence—use of excess ART embryo

(1) A person commits an offence if the person intentionally uses an excess ART embryo, unless—

(a) the use by the person is authorised by a licence; or

(b) the use by the person is an exempt use within the meaning of subsection (3).

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 5 years.

(3) A use of an excess ART embryo by a person is an exempt use for the purposes of subsection (1) if—

(a) the use consists only of—

(i) storage of the excess ART embryo; or

(ii) removal of the excess ART embryo from storage; or

(iii) transport of the excess ART embryo; or

(b) the use consists only of observation of the excess ART embryo; or

(c) the use consists only of allowing the excess ART embryo to succumb; or

(d) the use is carried out by an accredited ART centre, and—

(i) the excess ART embryo is not suitable to be placed in the body of the woman for whom it was created where the suitability of the embryo is determined only on the basis of its biological fitness for implantation; and
(ii) the use forms part of diagnostic investigations conducted in connection with the assisted reproductive treatment of the woman for whom the excess ART embryo was created; or

(e) the use is carried out by an accredited ART centre and is for the purposes of achieving pregnancy in a woman other than the woman for whom the excess ART embryo was created; or

(f) the use is of a kind prescribed by the regulations for the purposes of this paragraph.

(4) Despite section 130(1) of the Magistrates' Court Act 1989, a defendant does not bear a burden of presenting or pointing to evidence in accordance with that section in relation to any matter in subsection (1) or (3) of this section.

(5) In subsection (3)—

 diagnostic investigation, in relation to an excess ART embryo, means any procedure undertaken on embryos for the sole purpose of diagnostic investigations for the direct benefit of the woman for whom it was created;

 observation, in relation to an excess ART embryo, includes taking a photograph of the embryo, or taking a recording of the embryo from which a visual image can be produced.

7 Offence—use of other embryos

(1) A person commits an offence if—

(a) the person intentionally uses an embryo; and
(b) the embryo is—

(i) a human embryo created by a process other than the fertilisation of a human egg by a human sperm; or

(ii) a human embryo created by a process other than the fertilisation of a human egg by a human sperm that contains genetic material provided by more than 2 persons; or

(iii) a human embryo created using precursor cells taken from a human embryo or a human foetus; or

(iv) a hybrid embryo; and

(c) the use by the person is not authorised by a licence.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 5 years.

Note
The creation or development of embryos mentioned in this section is prohibited under the Prohibition of Human Cloning for Reproduction Act 2008, unless authorised by a licence under this Act.

8 Offence—certain activities involving use of human eggs

(1) A person commits an offence if—

(a) the person undertakes research or training involving the fertilisation of a human egg by a human sperm up to, but not including, the first mitotic division, outside the body of a woman for the purposes of research or training in ART; and

(b) the person is not authorised by a licence to undertake the research or training.
9 Offence—use of embryo that was created by fertilisation and that is not an excess ART embryo

(1) A person commits an offence if—

(a) the person intentionally uses, outside the body of a woman, a human embryo—

(i) that was created by fertilisation of a human egg by a human sperm; and

(ii) that is not an excess ART embryo; and

(b) the use is not for a purpose relating to the assisted reproductive treatment of a woman carried out by an accredited ART centre, and the person knows or is reckless as to that fact.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 5 years.

10 Offence—breaching a licence condition

(1) A person commits an offence if the person intentionally engages in conduct, knowing that the conduct contravenes a condition of a licence that applies to the person, or reckless as to whether the conduct contravenes a condition of such a licence.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 5 years.

(3) In this section—

engage in conduct means—

(a) do an act; or

(b) omit to perform an act.
11 Person not liable for conduct purportedly authorised

(1) To avoid doubt, a person is not criminally responsible for an offence against this Act in respect of particular conduct if—

(a) the conduct by the person is purportedly authorised by a provision of a licence; and

(b) the licence or the provision is invalid, whether because of a technical defect or irregularity or for any other reason; and

(c) the person did not know, and could not reasonably be expected to have known, of the invalidity of the licence or the provision.

(2) In this section—

_licence_ includes a purported licence.
PART 3—LICENSING OF EMBRYO RESEARCH

Division 1—Embryo Research Licensing Committee of the NHMRC

12 Functions of Committee

The functions of the NHMRC Licensing Committee under this Act are—

(a) to perform functions in relation to licences under Division 2; and

(b) to perform functions in relation to databases under Division 3; and

(c) to perform such other functions as are conferred on it by this Act or any other law.

13 Powers of Committee

The NHMRC Licensing Committee has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.

Division 2—Licensing system

14 Person may apply for licence

(1) A person may apply to the NHMRC Licensing Committee for a licence authorising one or more of the following—

(a) use of excess ART embryos;

(b) creation of human embryos other than by fertilisation of a human egg by a human sperm, and use of such embryos;
(c) creation of human embryos other than by fertilisation of a human egg by a human sperm that contains genetic material provided by more than 2 persons, and use of such embryos;

(d) creation of human embryos using precursor cells from a human embryo or a human foetus, and use of such embryos;

(e) research and training involving the fertilisation of a human egg by a human sperm up to, but not including, the first mitotic division, outside the body of a woman for the purposes of research or training in ART;

(f) creation of hybrid embryos by the fertilisation of an animal egg by a human sperm, and use of such embryos up to, but not including, the first mitotic division, if—
   (i) the creation or use is for the purposes of testing sperm quality; and
   (ii) the creation or use will occur in an accredited ART centre.

(2) To avoid doubt, subsection (1)(a), (b), (c) and (d) do not permit the NHMRC Licensing Committee to authorise any use of an excess ART embryo or other embryo that would result in the development of the embryo for a period of more than 14 days, excluding any period when development is suspended.

(3) An application under subsection (1)—
   (a) must be made in accordance with the requirements (if any) specified in writing by the NHMRC Licensing Committee; and
   (b) must be accompanied by the fee (if any) prescribed by the regulations.
15 Determination of application by Committee

(1) This section applies if a person has made an application under section 14 for a licence.

(2) The NHMRC Licensing Committee must decide, in accordance with this section, whether or not to issue the licence.

(3) The NHMRC Licensing Committee must not issue the licence unless it is satisfied of the following—

(a) that appropriate protocols are in place—

   (i) to enable proper consent to be obtained before an excess ART embryo or human egg is used, or other embryo is created or used under the licence; and

   (ii) to enable compliance with any restrictions on such consent;

(b) that the activity or project proposed in the application has been assessed and approved by a HREC that is constituted in accordance with, and acting in compliance with, the NHMRC National Statement on Ethical Conduct in Human Research (2007), as in force from time to time.

(4) In deciding whether to issue the licence, the NHMRC Licensing Committee must have regard to the following—

(a) restricting the number of excess ART embryos, other embryos or human eggs to that likely to be necessary to achieve the goals of the activity or project proposed in the application;

(b) the likelihood of significant advance in knowledge or improvement in technologies for treatment as a result of the use of excess ART embryos or human eggs, or the creation
or use of other embryos, proposed in the application, which could not reasonably be achieved by other means;

(c) any relevant guidelines, or relevant parts of guidelines, issued by the NHMRC under the National Health and Medical Research Council Act 1992 of the Commonwealth and prescribed by the regulations under the Commonwealth Act for the purposes of section 21(4)(c) of that Act;

(d) the HREC assessment of the application mentioned in subsection (3)(b);

(e) such additional matters (if any) as are prescribed by the regulations.

16 Notification of decision

(1) The NHMRC Licensing Committee must notify its decision on an application for a licence under section 15 to the following—

(a) the applicant;

(b) the HREC that assessed and approved the activity or project proposed in the application as mentioned in section 15(3)(b);

(c) the Authority.

(2) If the NHMRC Licensing Committee decides to issue the licence, it must, in addition to issuing the licence to the applicant, give a copy of the licence to the bodies mentioned in subsection (1)(b) and (c).

17 Period of licence

(1) A licence—

(a) comes into force on the day specified in the licence, or if no day is specified, on the day on which it is issued; and
18 Licence is subject to conditions

(1) A licence is subject to the condition that before an excess ART embryo or human egg is used, or any other embryo is created or used, as authorised by the licence—

(a) each responsible person in relation to the excess ART embryo, human egg or other embryo must have given proper consent to that creation or use; and

(b) the licence holder must have reported in writing to the NHMRC Licensing Committee that such consent has been obtained, and any restrictions to which the consent is subject.

(2) A licence is subject to the condition that the use of an excess ART embryo or human egg, or the creation or use of any other embryo, must be in accordance with any restrictions to which the proper consent under subsection (1) is subject.

(3) A licence is subject to such other conditions as are specified in the licence.

(4) The conditions specified in the licence may include, but are not limited to, conditions relating to the following—

(a) the persons authorised by the licence to use excess ART embryos or human eggs, or create or use other embryos;
(b) the number of excess ART embryos or human eggs authorised to be used under the licence, or the number of other embryos authorised to be created or used under the licence;

(c) reporting;

(d) monitoring;

(e) information to be given by the licence holder to persons authorised by the licence to use excess ART embryos or human eggs, or to create or use other embryos.

(5) The licence conditions set out in subsections (1), (2) and (3) apply to all persons who are authorised by the licence to use excess ART embryos or human eggs, or to create or use other embryos.

(6) Licence conditions specified in the licence apply to—

(a) the licence holder; and

(b) such other persons authorised by the licence to use excess ART embryos or human eggs, or to create or use other embryos, as are specified in the licence.

(7) For the purposes of applying the condition referred to in subsection (1)(a)—

(a) a licence may provide that the guidelines referred to in the definition of *proper consent* apply in a modified form in relation to the use, under the licence, of excess ART embryos that are unsuitable for implantation; and
(b) if a licence so provides, the guidelines as modified by the licence have effect in relation to the giving of consent for such creation or use.

Example
The guidelines could apply to a particular licence in a modified form, to alter the cooling-off period required in relation to the use of excess ART embryos that are unsuitable for implantation.

19 Variation of licence

(1) The NHMRC Licensing Committee may, by notice in writing given to the licence holder, vary a licence if the Committee believes on reasonable grounds that it is necessary or desirable to do so.

(2) The NHMRC Licensing Committee may vary a licence under subsection (1) on its own initiative or on application by the licence holder.

(3) Without limiting subsection (1), the NHMRC Licensing Committee may vary the licence by specifying additional conditions or varying existing conditions.

(4) The NHMRC Licensing Committee must not vary a licence in such a way that, had a person applied under section 14 for the licence as varied, the Committee would not have been permitted by this Act to issue the licence.

20 Suspension or revocation of licence

(1) The NHMRC Licensing Committee may, by notice in writing given to the licence holder, suspend or revoke a licence if the Committee believes on reasonable grounds that a condition of the licence has been breached.
(2) If a licence holder is convicted of an offence under this Act or the Prohibition of Human Cloning for Reproduction Act 2008 or under the Commonwealth Act or the Prohibition of Human Cloning Act 2002 of the Commonwealth, the NHMRC Licensing Committee must, by notice in writing given to the licence holder, revoke each licence held by the licence holder.

21 Surrender of licence

A licence holder may surrender a licence by written notice given to the NHMRC Licensing Committee.

22 Notification of variation, suspension or revocation of licence

(1) If the NHMRC Licensing Committee varies, suspends or revokes a licence, the Committee must notify—

(a) the licence holder; and
(b) the HREC; and
(c) the Authority.

(2) The NHMRC Licensing Committee must also notify the HREC and the Authority if a licence is surrendered.

Division 3—Reporting and confidentiality

23 NHMRC Licensing Committee to make certain information publicly available

(1) The NHMRC Licensing Committee must maintain a database containing the following information in relation to each licence (including a licence as varied)—

(a) the name of the person to whom the licence was issued;
(b) a short statement about the nature of the uses of excess ART embryos or human eggs, and creations or uses of any other embryos, that are authorised by the licence;

(c) any conditions to which the licence is subject;

(d) the number of excess ART embryos or human eggs authorised to be used under the licence, or the number of other embryos authorised to be created or used under the licence;

(e) the date on which the licence was issued;

(f) the period throughout which the licence is to remain in force.

(2) The database is to be made publicly available.

(3) The database may be kept and made publicly available in electronic form.

(4) Information mentioned in subsection (1) must not be such as to disclose confidential commercial information.

24 Confidential commercial information may only be disclosed in certain circumstances

(1) A person commits an offence if—

(a) the person discloses confidential commercial information that the person has only because of performing duties or functions under this Act or the Commonwealth Act; and

(b) the person knows that the information is confidential commercial information; and

(c) the disclosure is not—

(i) to a State agency, the Commonwealth or a Commonwealth authority in the course of carrying out duties or
functions under this Act or the Commonwealth Act; or
(ii) by order of a court; or
(iii) with the consent of each person to whom the information has a commercial or other value.

(2) A person commits an offence if—

(a) the person discloses confidential commercial information that the person has only because of a disclosure permitted under subsection (1) or this subsection; and

(b) the person knows that the information is confidential commercial information; and

(c) the disclosure is not—

(i) to a State agency, the Commonwealth or a Commonwealth authority in the course of carrying out duties or functions under this Act or the Commonwealth Act; or

(ii) by order of a court; or

(iii) with the consent of each person to whom the information has a commercial or other value.

(3) An offence against subsection (1) or (2) is punishable by imprisonment for a term not exceeding 2 years.

(4) In this section—

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions;
State agency means the following—

(a) the Crown in right of the State;

(b) a Minister of the State;

(c) a State Government department;

(d) the Authority or any other instrumentality of the State, including a body corporate established for a public purpose by or under a law of the State;

(e) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together—

(i) the Crown in right of the State;

(ii) a person or body covered by paragraph (b) or (d);

(iii) a person or body covered by either subparagraph (i) or (ii).

Note
For the definition of confidential commercial information, see section 3.

Division 4—Review provisions

25 Meaning of terms

In this Division—

Administrative Appeals Tribunal means the Administrative Appeals Tribunal established by the Administrative Appeals Tribunal Act 1975 of the Commonwealth;

decision has the same meaning as in the Administrative Appeals Tribunal Act 1975 of the Commonwealth;
eligible person, in relation to a decision of the
NHMRC Licensing Committee, means—

(a) in relation to a decision under
section 15 not to issue a licence—the
applicant for the licence; or

(b) in relation to a decision in respect of the
period throughout which the licence is
to be in force under section 17—the
licence holder; or

(c) in relation to a decision to specify a
licence condition under section 18(4)—
the licence holder; or

(d) in relation to a decision to modify
guidelines under section 18(7) in
respect of a licence—the licence
holder; or

(e) in relation to a decision to vary or
refuse to vary a licence under
section 19—the licence holder; or

(f) in relation to a decision to suspend or
revoke a licence under section 20—the
person who was the licence holder
immediately before the suspension or
revocation.

26 Review of decisions

(1) An eligible person may apply to the
Administrative Appeals Tribunal for review of the
following decisions of the NHMRC Licensing
Committee—

(a) a decision under section 15 not to issue a
licence;

(b) a decision in respect of the period throughout
which the licence is to be in force under
section 17;
Research Involving Human Embryos Act 2008  
No. 74 of 2008  
Part 3—Licensing of Embryo Research

(c) a decision to specify a licence condition under section 18(4);
(d) a decision to modify guidelines under section 18(7) in respect of a licence;
(e) a decision to vary or refuse to vary a licence under section 19;
(f) a decision to suspend or revoke a licence under section 20.

(2) This section has effect subject to the Administrative Appeals Tribunal Act 1975 of the Commonwealth.
PART 4—MONITORING POWERS

27 Powers available to inspectors for monitoring compliance

(1) For the purpose of finding out whether this Act or the regulations made for the purposes of this Act have been complied with, an inspector may—

(a) enter any premises; and

(b) exercise the monitoring powers set out in section 28.

(2) An inspector is not authorised to enter premises under subsection (1) unless—

(a) the occupier of the premises has consented to the entry; or

(b) the premises are premises at which the occupier of the premises is carrying out activities authorised by a licence issued under section 15, and the entry is at a reasonable time; or

(c) the entry is made under a warrant under section 30.

28 Monitoring powers

(1) The monitoring powers that an inspector may exercise under section 27(1)(b) are as follows—

(a) to search the premises and any thing on the premises;

(b) to inspect, examine, take measurements of, conduct tests on, or take samples of, any human embryo, other embryo, human egg or thing on the premises that relates to this Act;

(c) to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
(d) to inspect any book, record or document on the premises;

(e) to take extracts from or make copies of any such book, record or document;

(f) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;

(g) in addition to the powers mentioned in paragraphs (a) to (f), if the inspector was authorised to enter the premises by a warrant under section 30—to require any person in or on the premises to—

(i) answer any questions put by the inspector; and

(ii) produce any book, record or document requested by the inspector.

(2) For the purposes of this Act, monitoring powers include the power to operate equipment at premises to see whether—

(a) the equipment; or

(b) a disk, tape or other storage device that—

(i) is at the premises; and

(ii) can be used with the equipment or is associated with it—

contains information that is relevant to determining whether there has been compliance with this Act or the regulations made for the purposes of this Act.
(3) If the inspector, after operating equipment at the premises, finds that the equipment, or that a tape, disk or other storage device at the premises, contains information mentioned in subsection (2), the inspector may—

(a) operate equipment or facilities at the premises to put the information in documentary form and copy the document so produced; or

(b) if the information can be transferred to a tape, disk or other storage device that—

(i) is brought to the premises; or

(ii) is at the premises and the use of which has been agreed to in writing by the occupier of the premises—

operate the equipment or other facilities to copy the information to the storage device, and remove the storage device from the premises.

29 Power to secure

If an inspector, during a search of premises, believes on reasonable grounds that there is at the premises a human embryo, another embryo, a human egg or a thing that may afford evidence of the commission of an offence against this Part, the monitoring powers include securing the embryo, the egg or thing pending the obtaining of a warrant (whether by the inspector or by another person) to seize it.

30 Monitoring warrants

(1) An inspector may apply to a magistrate for the issue of a warrant under this section in relation to premises.
(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied by evidence on oath, whether oral or by affidavit, that it is reasonably necessary that one or more inspectors should have access to the premises for the purposes of finding out whether this Act or the regulations made for the purposes of this Act have been complied with.

(3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

(4) The warrant must—

(a) authorise one or more inspectors (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable—

(i) to enter the premises; and

(ii) to exercise the powers set out in section 28 in relation to the premises; and

(b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

(c) specify the day (not more than 15 days after the issue of the warrant) on which the warrant ceases to have effect; and

(d) state the purpose for which the warrant is issued.
(5) Except as provided by this Act, the rules to be observed with respect to search warrants under the Magistrates' Court Act 1989 extend and apply to warrants under this section.

31 Details of warrant to be given to occupier etc.

(1) If a warrant under section 30 is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the inspector must make available to that person a copy of the warrant.

(2) The inspector must identify himself or herself to that person.

(3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

32 Announcement before entry

An inspector must, before entering premises under a warrant—

(a) announce that he or she is authorised to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

33 Occupier entitled to be present during search

(1) If a warrant under section 30 is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the person is entitled to observe the search being conducted.

(2) The right to observe the search being conducted ceases if the person impedes the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.
34 Inspector must produce identity card on request

(1) An inspector is not entitled to exercise any powers under this Act in relation to premises if—
   (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
   (b) the inspector fails to comply with the requirement.

(2) In this section identity card means identity card issued under section 34(1) of the Commonwealth Act.

35 Consent

(1) Before obtaining the consent of a person for the purposes of section 27(2)(a), the inspector must inform the person that he or she may refuse consent.

(2) An entry of an inspector by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

36 Compensation for damage

(1) The owner of equipment or other facilities is entitled to compensation for damage to the equipment or other facilities if—
   (a) the damage was caused to the equipment or other facilities as a result of it being operated by an inspector as mentioned in this Act; and
   (b) the damage was caused as a result of insufficient care being exercised by the inspector operating the equipment or other facilities.

(2) Compensation is payable by the NHMRC Licensing Committee.
(3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and the occupier's employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment or other facilities that was appropriate in the circumstances.

37 Extended operation of this Part

A reference in this Part to this Act includes a reference to the Prohibition of Human Cloning for Reproduction Act 2008, and a reference in this Part to the regulations includes a reference to the regulations made under the Prohibition of Human Cloning for Reproduction Act 2008.
PART 5—GENERAL

38 Regulations

The Governor in Council may make regulations prescribing matters—

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
PART 6—TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENT TO OTHER ACTS

Division 1—Transitional provisions

39 Definitions

In this Division—

*commencement* means the commencement of this Act;

*repealed Act* means the *Infertility Treatment Act 1995*.

40 Superseded references

On and from the commencement, a reference in an Act (other than this Act) or a document to Part 2A of the repealed Act is taken, if the context permits, to be a reference to this Act.

41 Existing applications for licences

(1) This section applies if—

(a) before the commencement a person had applied for a licence under section 21H of the repealed Act; and

(b) immediately before the commencement, the NHMRC Licensing Committee had not decided the application.

(2) On and from the commencement, the application is to be decided under this Act as if it had been made after the commencement.

42 Existing licences

(1) This section applies to a licence issued under section 21I of the repealed Act that was in force immediately before the commencement.
(2) On and from the commencement, the licence continues in force, on the terms and conditions that applied to the licence immediately before the commencement, as if it were a licence issued under this Act.

43 Offences

If, immediately before the commencement, proceedings for an offence against Part 2A of the repealed Act had started but had not yet been determined, the proceedings may continue under the repealed Act as if that Act had not been repealed.

44 Consent

(1) This section applies if—

(a) under the repealed Act a person had consented to the use of human sperm, an oocyte or a human embryo for research purposes; and

(b) immediately before the commencement, the consent had not been withdrawn or lapsed.

(2) On and from the commencement, the consent is taken to be a consent given for the purposes of this Act.

45 Donations

(1) This section applies, if immediately before the commencement, human sperm, an oocyte or a human embryo donated for the purposes of research under the repealed Act has not been used for that purpose.

(2) On and from the commencement, the sperm, oocyte or embryo is taken to have been donated for the purposes of research under this Act.
Division 2—Consequential amendment

46 Consequential amendment to the Magistrates’ Court Act 1989

In Schedule 4 to the Magistrates’ Court Act 1989, after item 62 insert—

"62A Research Involving Human Embryos Act 2008

Indictable offences under the Research Involving Human Embryos Act 2008.".
ENDNOTES

†  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 certain activities involving the use of human embryos, and for related purposes."
INDEX

<table>
<thead>
<tr>
<th>Subject</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accredited ART centre (def.)</td>
<td>3</td>
</tr>
<tr>
<td>Act</td>
<td></td>
</tr>
<tr>
<td>amendment to <strong>Magistrates’ Court Act 1989</strong></td>
<td>46</td>
</tr>
<tr>
<td>commencement</td>
<td>2</td>
</tr>
<tr>
<td>Crown bound by</td>
<td>5</td>
</tr>
<tr>
<td>purpose</td>
<td>1</td>
</tr>
<tr>
<td>regulations</td>
<td>38</td>
</tr>
<tr>
<td>transitional provisions</td>
<td>39–45</td>
</tr>
<tr>
<td>AHEC (def.)</td>
<td>3</td>
</tr>
<tr>
<td>Authority See <strong>Victorian Assisted Reproductive</strong></td>
<td></td>
</tr>
<tr>
<td>Treatment Authority</td>
<td></td>
</tr>
<tr>
<td>Commonweahl Authority (def.)</td>
<td>3</td>
</tr>
<tr>
<td>Consent</td>
<td></td>
</tr>
<tr>
<td>proper consent (def.)</td>
<td>3</td>
</tr>
<tr>
<td>required in relation to</td>
<td></td>
</tr>
<tr>
<td>disclosure of confidential commercial information</td>
<td>24</td>
</tr>
<tr>
<td>entry to premises</td>
<td>27, 35</td>
</tr>
<tr>
<td>use of embryos, excess ART embryos, human eggs</td>
<td>15, 18</td>
</tr>
<tr>
<td>transitional provision</td>
<td>44</td>
</tr>
<tr>
<td>Definitions</td>
<td>3, 4, 6, 10, 11, 24, 25, 34, 39</td>
</tr>
<tr>
<td>Embryos, excess ART embryos</td>
<td></td>
</tr>
<tr>
<td>excess ART embryo (def.)</td>
<td>4</td>
</tr>
<tr>
<td>human embryo (def.)</td>
<td>3</td>
</tr>
<tr>
<td>hybrid embryo (def.)</td>
<td>3</td>
</tr>
<tr>
<td>licences</td>
<td></td>
</tr>
<tr>
<td>applications</td>
<td>14</td>
</tr>
<tr>
<td>conditions</td>
<td>18</td>
</tr>
<tr>
<td>database</td>
<td>23</td>
</tr>
<tr>
<td>disclosure of confidential commercial information</td>
<td>23, 24</td>
</tr>
<tr>
<td>duration</td>
<td>17</td>
</tr>
<tr>
<td>issue</td>
<td>15</td>
</tr>
<tr>
<td>matters committee must have regard to, be satisfied of</td>
<td>15</td>
</tr>
<tr>
<td>notification of decision</td>
<td>16</td>
</tr>
<tr>
<td>surrender</td>
<td>21</td>
</tr>
<tr>
<td>suspension, revocation</td>
<td>17, 20, 22</td>
</tr>
<tr>
<td>validity of actions under</td>
<td>11</td>
</tr>
<tr>
<td>variation</td>
<td>19, 22</td>
</tr>
<tr>
<td>responsible person (def.)</td>
<td>3</td>
</tr>
<tr>
<td>review of decisions</td>
<td>25, 26</td>
</tr>
</tbody>
</table>

*See also* **Offences**
<table>
<thead>
<tr>
<th>Subject</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspectors</td>
<td></td>
</tr>
<tr>
<td>compensation for damage caused by</td>
<td>36</td>
</tr>
<tr>
<td>consent to entry of</td>
<td>35</td>
</tr>
<tr>
<td>definition</td>
<td>3</td>
</tr>
<tr>
<td>extended operation of Part 4</td>
<td>37</td>
</tr>
<tr>
<td>identity cards</td>
<td>34</td>
</tr>
<tr>
<td>monitoring powers</td>
<td>28</td>
</tr>
<tr>
<td>monitoring warrants</td>
<td>30–33</td>
</tr>
<tr>
<td>powers – general</td>
<td>27</td>
</tr>
<tr>
<td>securing of evidence</td>
<td>29</td>
</tr>
<tr>
<td>NHMRC Licensing Committee</td>
<td></td>
</tr>
<tr>
<td>compensation for damage caused by inspectors</td>
<td>36</td>
</tr>
<tr>
<td>functions</td>
<td>12</td>
</tr>
<tr>
<td>powers</td>
<td>13</td>
</tr>
<tr>
<td>See also Embryos, excess ART embryos</td>
<td></td>
</tr>
<tr>
<td>Offences</td>
<td></td>
</tr>
<tr>
<td>breach of licence conditions</td>
<td>10</td>
</tr>
<tr>
<td>disclosure of confidential commercial information</td>
<td>24</td>
</tr>
<tr>
<td>liability for</td>
<td>11</td>
</tr>
<tr>
<td>unauthorised use of human eggs</td>
<td>8</td>
</tr>
<tr>
<td>unauthorised use of human, hybrid embryos</td>
<td>7, 9</td>
</tr>
<tr>
<td>use of excess ART embryos</td>
<td>6</td>
</tr>
<tr>
<td>Regulations</td>
<td>38</td>
</tr>
<tr>
<td>Review</td>
<td>25, 26</td>
</tr>
<tr>
<td>Transitional provisions</td>
<td>39–45</td>
</tr>
<tr>
<td>Victorian Assisted Reproductive Treatment Authority (def.)</td>
<td>3</td>
</tr>
</tbody>
</table>