

Assisted Reproductive Treatment Act 2008

No. 76 of 2008

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Victoria

Assisted Reproductive Treatment Act 2008[†]

No. 76 of 2008

[Assented to 11 December 2008]

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

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- (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
 - (e) to establish the Victorian Assisted Reproductive Treatment Authority; and
 - (f) to provide for the keeping of the Central Register and the Voluntary Register by the Registrar of Births, Deaths and Marriages; and
 - (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;

Authority means the Victorian Assisted Reproductive Treatment Authority established under Part 10;

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

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

child protection order means any of the following orders made under the **Children, Youth and Families Act 2005**—

- (a) a custody to Secretary order;
- (b) a custody to third party order;
- (c) a guardianship to Secretary order;

child protection order check means a check carried out and statement prepared under section 12;

commissioning 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;

criminal records check, in relation to a person, means a statement prepared by a member of the police force that specifies—

- (a) the member has checked records kept by the police force to determine whether the person has a criminal record; and
- (b) details of the following—
 - (i) any convictions recorded against the person;
 - (ii) any findings of guilt against the person, with or without conviction;
 - (iii) any charges outstanding against the person;
 - (iv) any other matters the member considers relevant;

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;

doctor means a registered medical practitioner under the **Health Professions Registration Act 2005**;

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

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;

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;

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;

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

non-identifying information means information other than identifying information;

oocyte means an ovum from a woman;

partner, in relation to a person, means—

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

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**;

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

Secretary means the Secretary to the Department of Human Services;

self-insemination means artificial insemination not carried out by a doctor;

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—

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- (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;

Voluntary Register means the register kept by the 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

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- (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 men and women; or
 - (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 genetic parents;

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- (d) the health and wellbeing of persons undergoing treatment procedures must be protected at all times;
 - (e) persons seeking to undergo treatment procedures must not be discriminated against on the basis of their sexual orientation, marital status, 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.
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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

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

- (a) is a doctor; and
- (b) is satisfied the requirements of Divisions 2, 3 and 4 have been met.

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

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.
- (2) For subsection (1)(b)(i), the criteria applicable to a woman are—
 - (a) a doctor is satisfied, on reasonable grounds, that—
 - (i) in the woman's circumstances, the woman is unlikely to become pregnant other than by a treatment procedure; or
 - (ii) the woman is unlikely to be able to carry a pregnancy or give birth to a child without a treatment procedure; or

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- (iii) 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; and
 - (b) a presumption against treatment does not apply to the woman.
- (3) A doctor may be satisfied under subsection (2)(a)(iii) that the woman is at risk of transmitting a genetic abnormality or genetic disease only if—
- (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; and
 - (c) must include a statement by the counsellor who provided counselling to the woman and her partner, if any, under section 13 that the counsellor has sighted a criminal records check in relation to the woman and her partner; and
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- (d) must be accompanied by permission from the woman and her partner, if any, for a child protection order check to be conducted in relation to the woman and her partner.
 - (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.

12 Child protection order check

- (1) This section applies if a registered ART provider is given permission under section 11(1)(d) to conduct a child protection order check in relation to a person.
 - (2) The registered ART provider must ask the Secretary to the Department responsible for providing child protection services to prepare a statement that includes—
 - (a) details of whether a child protection order has been made removing a child from the person's custody or guardianship; and
 - (b) if a child protection order has been made removing a child from the person's custody or guardianship, details of that order, including when and the period for which the order was made.
 - (3) If a registered ART provider asks the Secretary to the Department responsible for providing child protection services to prepare a statement under subsection (2), the Secretary must give to the provider the statement requested.
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13 Counselling

Before a woman consents to undergo a treatment procedure, 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.

14 Presumption against treatment

- (1) This section applies if—
 - (a) a criminal record check specifies that—
 - (i) charges have been proven against a woman or her partner for a sexual offence referred to in clause 1 of Schedule 1 to the **Sentencing Act 1991**; or
 - (ii) the woman or her partner has been convicted of a violent offence referred to in clause 2 of Schedule 1 to the **Sentencing Act 1991**; or
 - (b) a child protection order check specifies that a child protection order has been made removing a child from the custody or guardianship of the woman or her partner.
- (2) A presumption against providing a treatment procedure applies to the woman.
- (3) If, under subsection (2), a presumption against providing a treatment procedure applies to a woman a registered ART provider must not provide a treatment procedure to the woman.

15 Application for review

- (1) A person may apply to the Patient Review Panel for a review if—
 - (a) under section 14, a presumption against providing a treatment procedure to a woman applies to the person; or
 - (b) under section 10(2)(a) the person is ineligible for treatment; or
 - (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.

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 when the treatment procedure takes place.
- (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

Before a person gives consent under section 16, 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.

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

(b) must be given written advice by the 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

- (1) A person who gives a consent under section 10(1) or 16 may withdraw it at any time before the procedure or action consented to is carried out.
- (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.

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(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.

22 Record of consent and withdrawal of consent

A designated officer of a registered ART provider must—

- (a) obtain and keep the original of each consent or withdrawal of consent given to the provider under this Part; and
- (b) ensure that a certified copy of each consent or withdrawal of consent is given to the person who gave the consent or withdrawal of consent.

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 or withdrawal of a consent 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

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.
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**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.

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

31 Storing gametes

- (1) A person must not cause or permit gametes to remain in storage—
 - (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—
 - (i) for more than 10 years; or
 - (ii) if the person who produced the gametes has given written approval for a specified longer storage period and the Patient Review Panel has approved the period, for more than the approved period.
- Penalty: 240 penalty units or 2 years imprisonment or both.
- (2) The Patient Review Panel may give written approval for a longer storage period if it considers that there are reasonable grounds to do so in the particular case.
 - (3) An approval under subsection (2) may be subject to conditions.

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.

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).
- (2) A registered ART provider must not cause or permit the embryo to remain in storage—
- (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;
 - (ii) if the persons who produced the gametes from which the embryo has been formed consent 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 subsection (3) for a longer period of storage, the day that is the end of the period approved by the Panel.

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

- (3) The Patient Review Panel may give written approval for a longer period for storage of an embryo if it considers there are reasonable grounds for doing so in the particular case.
- (4) An approval under subsection (3) may be subject to conditions.

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
 - (b) written consent to its removal has been given to a designated officer of the registered ART provider by both of the persons who produced the gametes from which the embryo is formed; or
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- (c) the persons who produced the gametes from which the embryo is formed 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.

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.

- (2) Subsection (1) does not apply if the gametes or embryo is brought into or taken from Victoria in accordance with the written approval of the Authority.
- (3) In deciding whether or not to grant approval under subsection (2) for a person to take gametes or an embryo from Victoria, the Authority must have regard to the following—
- (a) whether 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;
 - (b) whether 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.
- (4) An approval granted under subsection (2)—
- (a) may apply to a particular case or class of cases; and
 - (b) may be subject to conditions imposed by the Authority.

- (5) A person given an approval under this section must comply with any condition imposed by the Authority on the approval.

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

37 Exemption

- (1) If a person has approval under section 36(2) to bring gametes or an embryo into Victoria the Authority may exempt a person from compliance with the following provisions in relation to the gametes or embryo, or a donor of the gametes or embryo—
- (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.
- (2) The Authority may exempt a person under subsection (1) only if the Authority is satisfied that—
- (a) similar procedures have taken place outside Victoria; and
 - (b) there are special circumstances that warrant the exemption.
- (3) If a person has approval under section 36(2) to take gametes or an embryo from Victoria the Authority may exempt the person from compliance with the following provisions in relation to the gametes or embryo—
- (a) sections 32(2) and 35;
 - (b) any other prescribed provision of this Act or the regulations.

- (4) The Authority may exempt a person under subsection (3) only if the Authority 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) An exemption granted under this section—
- (a) must be made in writing; and
 - (b) may relate to the whole or a part of a provision; and
 - (c) may be subject to conditions imposed by the Authority.
- (6) A person granted an exemption under this section must comply with any condition imposed by the Authority on the exemption.
- 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

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(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 commissioning parent is unlikely to become pregnant, be able to carry a pregnancy or give birth; or
- (ii) if the commissioning 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;

(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;

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- (c) that the commissioning 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—
 - (i) the consequences if the commissioning parent decides not to accept the child once born; and
 - (ii) the consequences if the surrogate mother refuses to relinquish the child to the commissioning 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

For the purposes of applying Division 2 of Part 2 to a treatment procedure carried out under a surrogacy arrangement—

- (a) the requirement that a criminal records check be sighted by the counsellor applies to a criminal records check for each party to the surrogacy arrangement; and
- (b) the requirement to give permission for a child protection order check to be conducted applies to all parties to the surrogacy arrangement; and
- (c) the requirement to comply with the criteria in section 10(2)(a) does not apply to the surrogate mother.

43 Counselling and legal information

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

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- (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.
- (3) To the extent that a surrogacy arrangement provides for a matter other than the reimbursement for costs actually incurred by the surrogate mother the arrangement is void and unenforceable.

45 Prohibition on certain publications

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

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- (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.
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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) in the case of a deceased woman, by the woman's male partner commissioning a surrogacy arrangement in accordance with Part 4; and
- (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.

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- (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.

48 Counselling

Before a woman may undergo a treatment procedure referred to in section 46, the woman must undergo counselling, by a counsellor providing services on behalf of a registered ART provider, in relation to the prescribed matters.

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;
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- (i) the consents and withdrawals of consent 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.

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

Penalty: 50 penalty units.

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.

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

- (1) Each registered ART provider must, not later than 1 July in each year, give to the 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 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.

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 Registrar by doctors

- (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 Registrar the information specified in subsection (2) in relation to—
 - (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;

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- (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.

53 Registrar to keep a Central Register

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

- (a) the information given to the 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
- (b) the prescribed information.

54 Registrar to correct Central Register

- (1) A person in relation to whom information is recorded in the Central Register may, at any time, ask the Registrar to correct or amend information in the Register that is inaccurate, incomplete, out of date or misleading.
- (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 Registrar's opinion, the amendment or correction requested will make the Central Register more accurate or complete, the Registrar must make the amendment or correction to the Register that is necessary in the Registrar's opinion.
- (4) The Registrar must notify a person who makes a request under this Part of the Registrar's decision about that request within 30 days of making that decision.

Division 2—Information to be given by registered ART providers

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—
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- (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.

Division 3—Disclosure of information on Central Register

56 Application for information on Central Register

- (1) The following persons may apply 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.
- (3) An application under subsection (1) must be—
- (a) in the form and way approved by the Registrar; and
 - (b) accompanied by the prescribed fee.

57 Disclosure of information that does not identify a person

- (1) On receipt of an application under section 56, the Registrar must disclose to the applicant the information applied for, other than identifying information about another person.
- (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

- (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 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
 - (iii) the child has not indicated to the 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.
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59 Disclosure of information to persons born as a result of donor treatment procedure

On receipt of an application under section 56 from a person born as a result of a donor treatment procedure, the Registrar must disclose to the person identifying information about another person if—

- (a) the applicant—
 - (i) is an adult; or
 - (ii) if the person is a child—
 - (A) the person's parent or guardian has consented to the making of the application; or
 - (B) a counsellor has provided counselling to the person and advised the Registrar, in writing, that the person is sufficiently mature to understand the consequences of the disclosure; and
- (b) the applicant was conceived—
 - (i) using gametes donated after 31 December 1997; or
 - (ii) the person was conceived using gametes donated between 1 July 1988 and 31 December 1997 and the donor has given consent to the disclosure.

60 Disclosure of information to persons descended from persons born as a result of donor treatment procedure

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 Registrar may disclose to the person identifying

information about the donor from whom the person is descended.

61 Requirement for counselling

- (1) The Registrar may disclose information to a person who makes an application under section 56 only if—
 - (a) in the case of the disclosure of non-identifying information—the Registrar has offered the person counselling by a counsellor; or
 - (b) in the case of identifying information—the Registrar is satisfied the person has received counselling, from a counsellor, about the potential consequences of disclosure of information from the Central Register.
- (2) This section applies despite any other provision of this Division.
- (3) In this section—

counsellor means a counsellor—

- (a) who provides counselling on behalf of a registered ART provider; or
- (b) who is an approved counsellor within the meaning of the **Adoption Act 1984**.

62 Notice to be given of intended disclosure

If the Registrar intends to disclose identifying information under this Division, the Registrar must make all reasonable efforts to give notice of the intended disclosure to the person to whom the information relates.

63 Disclosure of information to Authority

The Registrar may disclose information on the Central Register to the Authority only for purposes relating to the Authority's functions.

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.

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.

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.
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PART 7—VOLUNTARY REGISTER

69 Application of Part

This Part applies despite Part 6.

70 Registrar to keep Voluntary Register

- (1) The Registrar must keep a Voluntary Register that contains information about donor treatment procedures.
- (2) The Voluntary Register must be kept separately to the Central Register and is not part of the Central Register.

71 Information to be recorded in Voluntary Register

- (1) The following may be entered in the Voluntary Register—
 - (a) the names and addresses of persons who have asked the Registrar, in writing, to enter 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
 - (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—

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- (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
 - (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 Registrar may from time to time publicise the establishment and purpose of the Voluntary Register.
 - (3) The 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.
 - (4) The Voluntary Register must be kept in accordance with the regulations.

72 Disclosure of information

The Registrar may disclose information about a person from the Voluntary Register only in accordance with the wishes of that person.

73 Requirement for counselling

- (1) The Registrar may disclose information in the Voluntary Register to a person only if—
 - (a) in the case of the disclosure of non-identifying information—the Registrar has offered the person counselling by a counsellor; or

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- (b) in the case of identifying information—the Registrar is satisfied the person has received counselling, from a counsellor, about the potential consequences of disclosure of information from the Voluntary Register.
- (2) This section applies despite any other provision of this Part.
- (3) In this section—
- counsellor*** means a counsellor—
- (a) who provides counselling on behalf of a registered ART provider; or
 - (b) who is an approved counsellor within the meaning of the **Adoption Act 1984**.
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PART 8—REGISTRATION AND DESIGNATED OFFICERS

Division 1—Registration as an ART provider

74 Registration as an ART provider

- (1) A person who holds RTAC accreditation may apply to the Authority 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.
- (3) If the Authority receives an application from a person in accordance with subsection (2), the Authority 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 Authority may impose conditions on registration

- (1) The Authority may impose conditions on the registration of a person as a registered ART provider under this Act only if the Authority considers it necessary in the public interest.
- (2) A condition imposed under this section on a person's registration must not be inconsistent with a condition imposed on the person's RTAC accreditation and, to the extent of any inconsistency, is invalid.

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- (3) As soon as practicable after imposing a condition on a person's registration under this section, the Authority must give the Minister written notice about—
- (a) the imposition of the condition; and
 - (b) the reason for the imposition of the condition.

Division 2—General provisions about registrations

76 Suspension of registration

- (1) The Authority may, by written notice given to a registered ART provider, suspend the provider's registration, either in whole or part, if—
- (a) the Authority reasonably believes the provider has contravened a condition of the provider's registration; or
 - (b) the Authority 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.
- (3) Before suspending the registration, the Authority must allow the registered ART provider the opportunity to make written submissions to the Authority about the proposed suspension.
- (4) The Authority 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

- (b) for the period decided by the Authority 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

- (1) The Authority may suspend a registered ART provider's registration without allowing the provider an opportunity to make submissions about the proposed suspension if—
 - (a) the Authority reasonably believes there is an overriding public interest that requires the registration to be suspended immediately; and
 - (b) the Minister has consented to the immediate suspension of the provider's registration.
- (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 Authority and specified in the notice.
- (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 Authority must allow the ART provider to make written submissions about the suspension.
- (5) The Authority 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.

78 Offence of failing to notify authority if RTAC accreditation no longer held

- (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 Authority written notice that the person no longer holds the accreditation.

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.

79 Notification to Minister

The Authority must notify the Minister immediately if a registered ART provider no longer holds RTAC accreditation.

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.

Division 4—List of registered ART providers

81 Authority to keep list

- (1) The Authority must keep a list of registered ART providers.

- (2) The list must record the following information for 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 Authority must make the list available for inspection by members of the public, free of charge—
 - (a) at the Authority's offices during business hours; and
 - (b) on the Authority's Internet site.
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PART 9—PATIENT REVIEW PANEL

Division 1—Constitution and procedures of Patient Review Panel

82 Establishment of Panel

The Patient Review Panel is established.

83 Constitution of Panel

- (1) The Patient Review Panel consists of 5 members.
- (2) The members of the Patient Review Panel are to include—
 - (a) a chairperson appointed by the Governor in Council; and
 - (b) a deputy chairperson appointed by the Governor in Council; and
 - (c) 3 other members appointed by the chairperson and chosen from the list of approved names under section 84.
- (3) Of the members appointed under subsection (2)(c), at least one member must have expertise in child protection matters.

84 List of approved names

The Governor in Council, on the recommendation of the Minister, is to approve a list of names of persons suitable for appointment to the Patient Review Panel.

85 Functions of Panel

The functions of the Patient Review Panel are—

- (a) to consider applications for surrogacy arrangements; and

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- (b) to consider whether there is a barrier to treatment if a presumption against treatment applies; and
 - (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.

86 Chairperson and deputy chairperson

- (1) The chairperson and deputy chairperson 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.
- (3) The Governor in Council may, at any time, remove the chairperson or deputy chairperson from office.

87 Removal of name from approved list

- (1) A person whose name is on the approved list may, by written notice given to the Minister, ask that the person's name be removed from the approved list.

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- (2) The Governor in Council may, at any time, remove a person's name from the approved list.

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

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- (b) for an application by a person to whom a presumption against treatment applies, whether or not a barrier to treatment applies; or
 - (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.
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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 Authority.

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—VICTORIAN ASSISTED REPRODUCTIVE
TREATMENT AUTHORITY**

Division 1—Constitution of the Authority

99 Establishment of Authority

- (1) The Victorian Assisted Reproductive Treatment Authority is established.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) may acquire, hold and dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may, by law, do and suffer.
- (3) The common seal must be kept as directed by the Authority and must not be used except as authorised by the Authority.
- (4) All courts must take judicial notice of the seal of the Authority on a document and, until the contrary is proved, must presume that the document was properly sealed.

100 Powers, functions, duties and consultation requirements

- (1) The Authority has the following functions—
 - (a) to administer the registration system under this Act;

- (b) to undertake public education about treatment procedures and the best interests of children born as a result of treatment procedures;
 - (c) to undertake community consultation about matters relevant to this Act;
 - (d) to monitor—
 - (i) programs and activities carried out under this Act; and
 - (ii) programs and activities carried out relating to the causes and prevention of infertility; and
 - (iii) programs and procedures relating to treatment procedures carried out outside Victoria;
 - (e) to keep under regular review and, if it thinks fit, to make recommendations to the Minister about its functions, operation or composition;
 - (f) to promote research into the causes and prevention of infertility;
 - (g) to approve the bringing of donor gametes or an embryo formed from donor gametes into or the taking of them from Victoria, and to provide for the exemption from particular provisions of this Act in accordance with section 37;
 - (h) any other functions conferred on the Authority by or under this or any other Act.
- (2) The Authority must, without delay, advise the Minister of any of the following matters that come to its notice—
- (a) a contravention of this Act or the regulations;
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- (b) a contravention of a registered ART provider's registration;
 - (c) a development in relation to the following, whether in Victoria or elsewhere, that the Authority considers of major importance or views with concern—
 - (i) research relating to infertility;
 - (ii) treatment for infertility.
 - (3) The Authority has all the powers necessary to enable it to perform its functions.
 - (4) The Authority must have regard to the Minister's advice in carrying out its functions and exercising its powers.

101 Membership

- (1) The Authority is to consist of not more than 7 members nominated by the Minister and appointed by the Governor in Council.
- (2) In making nominations for appointments to the Authority, the Minister must have regard to the need for diversity of expertise and experience and to the need to appoint persons who have the expertise to carry out the functions of the Authority or to ensure that those functions are carried out.

102 Terms of office

- (1) A member of the Authority holds office—
 - (a) for the period specified in the member's instrument of appointment; and
 - (b) on the terms and conditions specified in that instrument.
- (2) A member of the Authority is eligible for reappointment.

- (3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

103 Resignation and removal

- (1) A member of the Authority may resign the member's office by writing signed by the member and addressed to the Governor in Council.
- (2) The Governor in Council may at any time remove a member of the Authority from office.
- (3) If a member of the Authority dies, resigns or is removed from office, the Governor in Council may, in accordance with this Act, on the nomination of the Minister, fill the vacant office.
- (4) A member appointed under subsection (3) holds office for the rest of the term of appointment of the member whose place the new member fills.

104 Chairperson and deputy chairperson

- (1) The Governor in Council may appoint members of the Authority to be chairperson and deputy chairperson.
- (2) A person appointed to an office under subsection (1) holds office for the term specified in the person's instrument of appointment and is eligible for reappointment.
- (3) A person appointed to an office under subsection (1) may resign office by writing signed by the person and addressed to the Governor in Council.
- (4) The Governor in Council may at any time remove a person appointed under subsection (1) from office.
- (5) A person appointed to an office under subsection (1) ceases to hold office on ceasing to be a member of the Authority.

105 Acting member

- (1) If a member of the Authority is unable to perform the duties or functions of the office, the Governor in Council may appoint a person qualified to be appointed as a member to act as the member during the period of inability.
- (2) The Governor in Council may—
 - (a) subject to this Act, determine the terms and conditions of appointment of an acting member; and
 - (b) at any time terminate the appointment.
- (3) An acting member has and may exercise all the powers and perform all the duties and functions of the member.

106 Payment of members

- (1) A member or acting member of the Authority, other than a member who is an employee in 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 Governor in Council for that member.
- (2) Each member or acting member of the Authority is entitled to receive the allowances that are fixed from time to time by the Governor in Council for that member.

107 Procedure of Authority

- (1) The chairperson or, in the absence of the chairperson, the deputy chairperson, must preside at a meeting of the Authority at which she or he is present.
- (2) If neither the chairperson nor deputy chairperson are present at a meeting the members present may elect a member to preside at the meeting.

- (3) The person presiding at a meeting has a deliberative vote and a second or casting vote.
- (4) A majority of the members of the Authority currently holding office constitutes a quorum.
- (5) Except as otherwise provided for in this Act or the regulations, the Authority may regulate its own proceedings.

108 Effect of vacancy or defect

An act or decision of the Authority 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; or
- (c) in the case of an acting member, the occasion for that member so acting had not arisen or had ceased.

109 Member's interests

- (1) This section applies if a member has—
 - (a) a pecuniary interest in any matter in which the Authority is concerned; or
 - (b) any other substantial interest in any matter in which the Authority is concerned which the member considers might appear to raise a material conflict between the member's private interest and the member's functions as a member of the Authority.
 - (2) The member must—
 - (a) if the member is present at a meeting of the Authority at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
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- (b) if the member is aware that the matter is to be considered at a meeting of the Authority at which the member does not intend to be present, disclose the nature of the interest to the chairperson or deputy chairperson of the Authority before the meeting is held.
 - (3) The member—
 - (a) may take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.

110 Immunity

- (1) A member of the Authority 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 the 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 Authority attaches instead to the Authority.

111 Engagement or employment of persons

The Authority may employ or engage a chief executive officer and any other persons that are necessary for the purposes of the administration of the Authority and the carrying out of its powers and functions.

112 Delegation

- (1) The Authority may, in writing, delegate to a committee established under section 113 any of its powers and functions under this Act or the regulations.
- (2) A delegation may be—
 - (a) made only with the approval of the Minister; and
 - (b) subject to any conditions or limitations imposed by the Minister.

113 Committees

The Authority may appoint one or more committees of members of the Authority to discharge the Authority's powers, functions and duties delegated to it under section 112.

Division 2—Reporting and financial provisions

114 Report to Minister

- (1) The Authority must, by 30 September in each year, report to the Minister on the following matters—
 - (a) the programs under which, in the preceding financial year, treatment procedures were conducted and embryos and gametes were stored by each registered ART provider;
 - (b) particulars of each program including—
 - (i) the number of treatment procedures carried out under this Act during the preceding financial year and the nature and outcome of those procedures; and

- (ii) the number of participants in treatment procedures carried out by each registered ART provider during the preceding financial year; and
 - (iii) the number of embryos formed by each registered ART provider during the preceding financial year;
 - (c) any other matter on which the Minister asks the Authority to report.
- (2) The Minister must cause each report made by the Authority under subsection (1) to be laid before each House of the Parliament before the expiration of the 14th sitting day of that House after the Minister receives the report.

115 Victorian Assisted Reproductive Treatment Authority Fund

- (1) The Authority must establish and keep a Victorian Assisted Reproductive Treatment Authority Fund.
- (2) The Authority must pay into the Fund—
- (a) any money received by it by way of fees paid to or recovered by it; and
 - (b) any income from the investments of the Fund; and
 - (c) any other money received by the Authority.
- (3) The Authority may pay out of the Fund—
- (a) any expenses incurred in its administration or in the carrying out of its functions, powers and duties under this Act; and
 - (b) any payments to be made to members of the Authority under this Act and any payments to be made to other persons by the Authority in the course of the exercise of its powers and functions under this Act; and

- (c) any other payments recommended by the Authority and approved by the Minister; and
- (d) any other payments authorised under any other Act.

116 Investment powers

The Authority may invest money credited to the Fund that it does not immediately require—

- (a) in any way authorised by section 5 of the **Trustee Act 1958**; or
 - (b) in any other way that the Minister approves.
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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.

118 Identity cards

The Authority may issue an identity card to each member of the Authority.

119 Powers and duties of members of Authority to inspect documents

- (1) A member of the Authority 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.
- (2) A member of the Authority with any necessary assistants may enter the premises of a registered ART provider at any time during ordinary business hours.

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- (3) After entering premises under subsection (2) the member 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.
- (4) A member of the Authority who enters premises under this section—
- (a) must advise the occupier of the premises of the purpose of the member's visit; and
 - (b) may not exercise any powers under this section if the member fails to produce, on request, the member's identity card for inspection by the occupier of the premises.
- (5) A member of the Authority may not take possession of a document apparently in the custody of a person unless the member makes out and tenders to the person a receipt for the document taken.

120 Offence to obstruct or hinder

A person must not obstruct or hinder a member of the Authority in exercising the member's powers or duties under section 119.

Penalty: 50 penalty units.

121 Prohibition on destruction of documents

A person must not destroy, remove or cancel 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.

Penalty: 50 penalty units.

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**;

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- (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.

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;
- (c) the conditions to be included in registrations;
- (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;
- (f) the keeping of records and registers for the purposes of this Act, including the Central Register and the Voluntary Register.
- (g) the giving of information by registered ART providers and doctors to the Registrar, the Patient Review Panel and the Authority;
- (h) the disclosure of information from the Central Registrar, Voluntary Register and other registers and records kept under this Act;

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- (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;
 - (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;
 - (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
- (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

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Part 12—Regulations

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- (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.
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**PART 13—REPEAL, SAVINGS AND TRANSITIONAL
PROVISIONS**

Division 1—Repeal

126 Repeal

The **Infertility Treatment Act 1995** is repealed.

Division 2—Transitional provisions

See:
Act No.
63/1995.
Reprint No. 3
as at
12 June 2007
and
amending
Act Nos
97/2005,
24/2006 and
46/2008.
LawToday:
www.
legislation.
vic.gov.au

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

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- (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.

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- (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.

134 Transitional regulations

- (1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision mentioned in subsection (1) may be retrospective in operation to the commencement of section 126.
- (3) Regulations made under this section have effect despite anything to the contrary in any Act (other than this Act and the Charter of Human Rights and Responsibilities) or in any subordinate instrument.
- (4) This section expires on 1 January 2011.

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.

**PART 14—AMENDMENTS TO THE STATUS OF CHILDREN
ACT 1974**

136 Principal Act

See:
Act No.
8602.
Reprint No. 2
as at
1 November
1998
and
amending
Act Nos
74/2000 and
11/2003.
LawToday:
www.
legislation.
vic.gov.au

In this Part, the **Status of Children Act 1974** is
called the Principal Act.

137 Definitions

At the end of section 2 of the Principal Act
insert—

"(2) In this Act—

embryo has the meaning given by the
**Assisted Reproductive Treatment
Act 2008;**

non-birth mother means a woman who is a
parent of a child by operation of a
presumption in Part III;

ovum in the process of fertilisation means
an ovum at any stage of human
development from the commencement
of penetration of the ovum by human
sperm up to but not including the
appearance of 2 pro-nuclei;

partner, in relation to a person, means—

- (a) the person's spouse; or
- (b) a person who lives with the first person as a couple on a genuine domestic basis;

spouse means a person to whom another person is married."

138 Evidence of parentage

- (1) **Insert** the following heading to section 8 of the Principal Act—

"Evidence of parentage".

- (2) In sections 8(1) and 8(5) of the Principal Act, for "the father" (wherever occurring) **substitute** "a parent".

- (3) After section 8(2) of the Principal Act **insert**—

"(2A) An instrument signed by the mother of a child and any person certifying that she is the non-birth mother of the child is, if executed as a deed or by each of those persons in the presence of a legal practitioner, prima facie evidence that the person named as the non-birth mother is a parent of the child."

139 Instruments may be filed with Registrar of Births, Deaths and Marriages

- (1) **Insert** the following heading to section 9 of the Principal Act—

"Instruments may be filed with Registrar of Births, Deaths and Marriages".

- (2) In section 9(1) of the Principal Act, for "subsection (2)" **substitute** "subsection (2) or (2A)".

- (3) In section 9(3) of the Principal Act—
- (a) for "paternity" **substitute** "parentage"; and
 - (b) for "subsection (2)" **substitute** "subsection (2) or (2A)".

140 Application to Supreme Court for declaration of parentage

- (1) **Insert** the following heading to section 10 of the Principal Act—

"Application to Supreme Court for declaration of parentage".

- (2) For section 10(1) of the Principal Act **substitute**—

"(1) Any person (the *first person*) who—

- (a) claims that any named person is a parent of the first person's child; or
- (b) claims that a relationship of parent and child exists between the first person and any other named person; or
- (c) has a proper interest in the result who wishes to have a determination whether the relationship of parent and child exists between two named persons—

may apply to the Supreme Court for a declaration of parentage and if it is proved to the satisfaction of the Court that the relationship exists the Court may make a declaration of parentage whether or not the parent or the child or both of them are living or dead."

- (3) In section 10(2) of the Principal Act, for "father" **substitute** "parent".

141 Substitute heading to Part II

For the heading to Part II of the Principal Act
substitute—

**"PART II—STATUS OF CHILDREN—MEDICAL
PROCEDURES—WOMEN WITH A MALE
PARTNER".**

142 Interpretation

Section 10A(3) of the Principal Act and the note
at the foot of that section are **repealed**.

**143 Artificial insemination: presumption as to status of
child**

For section 10C(3)(b) of the Principal Act
substitute—

"(b) prevails over—

- (i) any conflicting presumption that arises
under section 8; or
- (ii) any conflicting declaration made under
section 10."

**144 Implantation procedures: presumption as to status
of child where donor semen used**

For section 10D(3)(b) of the Principal Act
substitute—

"(b) prevails over—

- (i) any conflicting presumption that arises
under section 8; or
- (ii) any conflicting declaration made under
section 10."

145 Implantation procedures: presumption as to status of child where donor ovum used

For section 10E(3)(b) of the Principal Act **substitute—**

"(b) prevails over—

- (i) any conflicting presumption that arises under section 8; or
- (ii) any conflicting declaration made under section 10."

146 Donor semen used in artificial insemination of certain women

Section 10F of the Principal Act is **repealed**.

147 Substitute Part III

For Part III of the Principal Act **substitute—**

**"PART III—STATUS OF CHILDREN—
MEDICAL PROCEDURES—WOMEN WITH A
FEMALE PARTNER OR WITHOUT A
PARTNER**

11 Interpretation

In this Part—

procedure means the following procedures within the meaning of the **Assisted Reproductive Treatment Act 2008—**

- (a) assisted reproductive treatment;
- (b) artificial insemination.

12 Application of Part

This Part applies in respect of a woman who undergoes a procedure and who, at the time of the procedure—

- (a) has a female partner; or
- (b) does not have a partner, whether female or male.

**13 Women with a female partner:
presumption as to status of child**

- (1) If a woman undergoes a procedure as a result of which she becomes pregnant—
 - (a) the woman is presumed, for all purposes, to be the mother of any child born as a result of the pregnancy; and
 - (b) the woman's female partner is presumed, for all purposes, to be a legal parent of any child born as a result of the pregnancy if she—
 - (i) was the woman's female partner when the woman underwent the procedure as a result of which she became pregnant; and
 - (ii) consented to the procedure as a result of which the woman became pregnant; and
 - (c) the man who produced the semen used in the procedure is presumed, for all purposes, not to be the father of any child born as a result of the pregnancy, whether or not the man is known to the woman or her female partner.
- (2) A presumption of law that arises under subsection (1)—
 - (a) is irrebuttable; and
 - (b) prevails over—
 - (i) any conflicting presumption that arises under section 8; or

- (ii) any conflicting declaration made under section 10.
- (3) In any proceedings in which the operation of subsection (1) is relevant, the woman's female partner's consent to the carrying out of the procedure in respect of the woman is presumed but that presumption is rebuttable.

**14 Women with a female partner:
presumption as to status of child where
donor ovum used**

- (1) If a woman undergoes a procedure using a donor ovum as a result of which she becomes pregnant—
 - (a) the woman is presumed, for all purposes, to have become pregnant as a result of fertilisation of an ovum produced by her and to be the mother of any child born as a result of the pregnancy; and
 - (b) the woman's female partner is presumed, for all purposes, to be a legal parent of any child born as a result of the pregnancy if she—
 - (i) was the woman's female partner when the woman underwent the procedure as a result of which she became pregnant; and
 - (ii) consented to the procedure as a result of which the woman became pregnant; and
 - (c) the man who produced the semen used in the procedure is presumed, for all purposes, not to be the father of any child born as a result of the pregnancy, whether or not the man is known to the woman or her female partner; and
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- (d) the woman who produced the ovum used in the procedure is presumed, for all purposes, not to be the mother of any child born as a result of the pregnancy.
- (2) A presumption of law that arises under subsection (1)—
- (a) is irrebuttable; and
 - (b) prevails over—
 - (i) any conflicting presumption that arises under section 8; or
 - (ii) any conflicting declaration made under section 10.
- (3) In any proceedings in which the operation of subsection (1) is relevant, the woman's female partner's consent to the carrying out of the procedure in respect of the woman is presumed but that presumption is rebuttable.

15 Women with no partner: presumption as to status of child

- (1) If a woman who does not have a partner undergoes a procedure as a result of which she becomes pregnant—
- (a) the woman is presumed, for all purposes, to be the mother of any child born as a result of the pregnancy; and
 - (b) the man who produced the semen used in the procedure is presumed, for all purposes, not to be the father of any child born as a result of the pregnancy, whether or not the man is known to the woman.
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- (2) A presumption of law that arises under subsection (1)—
- (a) is irrebuttable; and
 - (b) prevails over—
 - (i) any conflicting presumption that arises under section 8; or
 - (ii) any conflicting declaration made under section 10.

16 Women with no partner: presumption as to status of child where donor ovum used

- (1) If a woman who does not have a partner undergoes a procedure using a donor ovum as a result of which she becomes pregnant—
- (a) the woman is presumed, for all purposes, to have become pregnant as a result of fertilisation of an ovum produced by her and to be the mother of any child born as a result of the pregnancy; and
 - (b) the man who produced the semen used in the procedure is presumed, for all purposes, not to be the father of any child born as a result of the pregnancy, whether or not the man is known to the woman; and
 - (c) the woman who produced the ovum used in the procedure is presumed, for all purposes, not to be the mother of any child born as a result of the pregnancy.

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- (2) A presumption of law that arises under subsection (1)—
- (a) is irrebuttable; and
 - (b) prevails over—
 - (i) any conflicting presumption that arises under section 8; or
 - (ii) any conflicting declaration made under section 10.

**PART IV—STATUS OF CHILDREN IN
SURROGACY ARRANGEMENTS**

Division 1—Preliminary

17 Interpretation

- (1) In this Part—

artificial insemination has the meaning given by the **Assisted Reproductive Treatment Act 2008**;

commissioning parents, in relation to a child born under a surrogacy arrangement, means the person or persons who entered into the surrogacy arrangement for a woman to carry the child on behalf of the person or persons;

court means the Supreme Court or the County Court;

registered ART provider has the meaning given by the **Assisted Reproductive Treatment Act 2008**;

substitute parentage order means an order made under section 22;

surrogacy arrangement has the meaning given by the **Assisted Reproductive Treatment Act 2008**;

surrogate mother means the woman who carries and gives birth to a child under a surrogacy arrangement.

- (2) In this Part, a reference to the surrogate mother's partner means the person who was the surrogate mother's partner at the time the surrogacy arrangement was entered into.

18 Jurisdiction of courts

- (1) The court that has jurisdiction to make a substitute parentage order or any other order under this Part is—
- (a) the Supreme Court; or
 - (b) at the applicant's option, the County Court.
- (2) If an application for a substitute parentage order or other order under this Part is made to the County Court, and the County Court considers that, in all the circumstances of the case, the matter should be dealt with by the Supreme Court, the County Court may direct that the application be transferred to the Supreme Court.

19 Surrogacy arrangements—presumption as to status of child

The presumptions of law that arise under Part II, III or V of this Act—

- (a) apply in respect of a child that is born as a result of a surrogacy arrangement; but
- (b) do not prevail over a substitute parentage order.

Division 2—Substitute parentage orders

Subdivision 1—Making substitute parentage orders

20 Application for a substitute parentage order

- (1) The commissioning parents of a child born under a surrogacy arrangement may apply to the court for a substitute parentage order if—
 - (a) the child was conceived as a result of a procedure carried out in Victoria; and
 - (b) the commissioning parents live in Victoria at the time of making the application.
- (2) An application for a substitute parentage order must be made—
 - (a) not less than 28 days, and not more than 6 months after the birth of the child; or
 - (b) at another time with leave of the court.
- (3) Before the court hears the application, the commissioning parents must file a certified copy of the child's birth certificate (if available) with the court.

21 Commissioning parents presumed to be named as legal parents

- (1) If the court decides to make a substitute parentage order, it is presumed that the commissioning parents will be named on the order as the child's legal parents.

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- (2) A presumption under subsection (1) is only rebuttable by evidence that a person named as a commissioning parent did not consent to the surrogacy arrangement.

22 Court may make substitute parentage order

- (1) The court may make a substitute parentage order in favour of the commissioning parents if it is satisfied—
- (a) that making the order is in the best interests of the child; and
 - (b) if the surrogacy arrangement was commissioned with the assistance of a registered ART provider, that the Patient Review Panel approved the surrogacy arrangement before the arrangement was entered into; and
 - (c) that the child was living with the commissioning parents at the time the application was made; and
 - (d) that the surrogate mother and, if her partner is a party to the arrangement, her partner have not received any material benefit or advantage from the surrogacy arrangement; and
 - (e) that the surrogate mother freely consents to the making of the order.
- (2) In deciding whether to make a substitute parentage order, the court may take into account any other considerations it thinks relevant.
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- (3) If the surrogate mother's partner is a party to the surrogacy arrangement, before making a substitute parentage order the court must also consider whether her partner consents to the making of the order.
- (4) To avoid doubt, the reimbursement of costs as permitted by section 44 of the **Assisted Reproductive Treatment Act 2008** is not a material benefit or advantage for the purposes of subsection (1)(d).

23 Additional requirements for surrogacy arrangements without assistance of registered ART provider

- (1) This section applies if—
- (a) a surrogacy arrangement was commissioned without the assistance of a registered ART provider; and
 - (b) the surrogate mother became pregnant as a result of artificial insemination; and
 - (c) the commissioning parents apply under section 20 for a substitute parentage order.
- (2) In addition to the matters set out in section 22, the court must also be satisfied—
- (a) that the surrogate mother was at least 25 years of age before entering the arrangement; and
 - (b) that the commissioning parents, the surrogate mother and, if her partner is a party to the surrogacy arrangement, her partner have—

- (i) received counselling about the social and psychological implications of making the substitute parentage order, including counselling, if relevant, about any of the matters prescribed for the purposes of section 43(a) of the **Assisted Reproductive Treatment Act 2008**; and
 - (ii) received counselling about the implications of the relinquishment of the child and the relationship between the surrogate mother and the child once the substitute parentage order is made; and
 - (iii) obtained information about the legal consequences of making the substitute parentage order.
- (3) For the purposes of subsection (2)(b), the person must receive counselling from a counsellor within the meaning of section 61(3) of the **Assisted Reproductive Treatment Act 2008**.

24 Circumstances in which consent not required

- (1) Despite section 22(1)(e), the court may dispense with consent of the surrogate mother if satisfied—
- (a) that the commissioning parents cannot, after reasonable inquiries, find the surrogate mother; or
 - (b) that the surrogate mother is deceased; or

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- (c) on evidence given in accordance with subsection (4), that the surrogate mother is, and is likely to continue to be, in such a physical or mental condition as to be incapable of properly considering whether to give consent.
- (2) Despite section 22(3), the court may dispense with consent of the surrogate mother's partner if satisfied—
- (a) that the commissioning parents cannot, after reasonable inquiries, find the surrogate mother's partner; or
- (b) that the surrogate mother's partner is deceased; or
- (c) on evidence given in accordance with subsection (4), that the surrogate mother's partner is, and is likely to continue to be, in such a physical or mental condition as to be incapable of properly considering whether to give consent.
- (3) For the purposes of subsections (1)(a) and (2)(a), the commissioning parents have made reasonable inquiries if they have—
- (a) sent the person a letter, by registered post, to the person's last known place of residence and seeking the person's consent; and
- (b) sent a letter referred to in paragraph (a) to the address of any other person that the commissioning parents believe may know where the person may be found; and
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- (c) searched the roll of electors under the Commonwealth Electoral Act 1918 and confirmed that the address of the person could not be found; and
 - (d) made enquiries of such persons, bodies, agencies and government departments as might reasonably be expected to have known where the person may be found; and
 - (e) made any other enquiries the court determines.
- (4) For the purposes of subsections (1)(c) and (2)(c), the evidence required is a certificate signed by at least two medical practitioners registered under the **Health Professions Registration Act 2005** certifying as to the matters referred to in that paragraph.

25 Ancillary orders

On making a substitute parentage order, the court may make any consequential or ancillary order it thinks fit—

- (a) in the interests of justice; or
- (b) for the welfare and in the best interests of the child in respect of whom the order is made.

26 Effect of substitute parentage order

- (1) If the court makes a substitute parentage order in respect of a child, the provisions of the **Adoption Act 1984** set out in subsection (2) (the *applied provisions*) apply in relation to the substitute parentage order as if that order were an adoption order made under that Act and as if the child were an adopted child.

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- (2) The applied provisions are sections 53 to 58 of the **Adoption Act 1984**, except sections 53(1)(d) and (e).
- (3) An applied provision applies to a substitute parentage order as if—
- (a) a reference to an adopted child were a reference to a child who is the subject of a substitute parentage order; and
 - (b) a reference to an adoptive parent were a reference to the commissioning parents in whose favour the substitute parentage order was made; and
 - (c) a reference to the commencement of the **Adoption of Children Act 1964** were a reference to the commencement of the **Assisted Reproductive Treatment Act 2008**; and
 - (d) a reference to an adoption order were a reference to a substitute parentage order made under this Act; and
 - (e) any other necessary changes have been made to the applied provision.

Note

The applied provisions clarify the effect of a substitute parentage order by reference to the **Adoption Act 1984** rather than inserting new provisions in this Act. However, a substitute parentage order is not an adoption order and a child who is the subject of a substitute parentage order is not an adopted child.

The applied provisions provide for the following—

- the general effect of a substitute parentage order, including that the child is to be treated in law as a child of the commissioning parents as if the child had been born to the commissioning parents (section 53);
 - the disposition of property, whether by will or otherwise, in circumstances in which a substitute parentage order has been made (section 54);
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- bequests by will to an unascertained person who is the subject of a substitute parentage order (section 55);
- the names of a child who is the subject of a substitute parentage order (section 56);
- the domicile of a child who is the subject of a substitute parentage order (section 57);
- that a substitute parentage order does not affect the distribution of property by trustees or personal representatives except in certain circumstances (section 58).

Subdivision 2—Discharge of substitute parentage orders

27 Who may apply for discharge of substitute parentage order

- (1) The following persons may apply for an order discharging a substitute parentage order—
 - (a) the Attorney-General;
 - (b) the Secretary of the Department of Justice;
 - (c) a child whose parentage was transferred by the substitute parentage order and who has reached the age of 18 years.
 - (2) Any person may apply for leave to intervene in an application under subsection (1) and the court may make an order entitling the person to intervene in the application.
 - (3) A person who is permitted under subsection (2) to intervene in an application under subsection (1) is to be treated as a party to the application with all the rights, duties and liabilities of a party, unless the court orders otherwise.
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28 Court may order discharge of substitute parentage order

- (1) On an application under section 27, the court may make an order discharging a substitute parentage order if it is satisfied that—
- (a) the substitute parentage order was obtained by fraud, duress or other improper means; or
 - (b) a consent relied on for the making of the substitute parentage order was not an effective consent because it was obtained by fraud, duress or material inducement; or
 - (c) there is an exceptional reason the substitute parentage order should be discharged.
- (2) The court must not make an order under subsection (1) discharging a substitute parentage order unless—
- (a) the order is in the best interests of the child whose parentage would be affected; and
 - (b) the court is satisfied that reasonable efforts have been made to give notice of the application to—
 - (i) the surrogate mother of the child whose parentage would be affected; and
 - (ii) if the surrogate mother had a partner who was also a party to the surrogacy arrangement, that partner; and
 - (iii) each of the commissioning parents; and
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- (iv) if the court considers it appropriate having regard to the child's age, the child whose parentage would be affected.
 - (3) If the court makes an order discharging the substitute parentage order, the court must declare the name by which the child is to be known, having regard to the principle that a child's first name should not be changed except in special circumstances.
 - (4) A declaration under subsection (3) does not prevent a subsequent change of name under a law of the State.
 - (5) On making an order discharging a substitute parentage order, the court may make any consequential or ancillary order it thinks fit in the interests of justice or in the best interests of the child whose parentage is affected, including any order relating to—
 - (a) the ownership or possession of property; or
 - (b) any matter affecting the child in relation to the duties, powers, responsibilities and authority which, by law, parents have in relation to children; or
 - (c) the domicile of the child.
 - (6) For the purposes of subsection (1), ***material inducement*** does not include the reimbursement of costs as permitted by section 44 of the **Assisted Reproductive Treatment Act 2008**.
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29 Effect of discharge of a substitute parentage order

- (1) On the discharge of a substitute parentage order, the rights, duties, liabilities and relationships of persons are as if the substitute parentage order had not been made.
- (2) Subsection (1)—
 - (a) does not apply to the extent that its application would be inconsistent with any order made under section 28; and
 - (b) does not affect—
 - (i) anything lawfully done while the substitute parentage order was in force; or
 - (ii) the consequences of anything lawfully done while the substitute parentage order was in force; or
 - (iii) any proprietary right or interest that became vested in any person, while the substitute parentage order was in force.

Subdivision 3—Appeals

30 Appeals

- (1) A party to a proceeding under this Part may appeal to the Court of Appeal against an order of the court in the proceeding or a refusal of the court to make an order.
- (2) In this section *party* includes an intervener in an application under section 27.

Division 3—Proceedings under this Part

31 Registrar of Births, Deaths and Marriages to receive copy of orders

The court must serve a sealed copy of the order on the Registrar of Births, Deaths and Marriages if the court makes either of the following orders—

- (a) a substitute parentage order; or
- (b) a discharge order.

32 Proceedings to be heard in closed court

- (1) Any proceeding to which this Part applies must be heard in closed court, and all persons other than the parties to the proceedings and their legal representatives (if any) are to be excluded during the proceedings, except as otherwise directed by the court.
- (2) The court may order any person to leave the courtroom or other place during the examination of a witness in the proceedings.

33 Restrictions on publication of proceedings

- (1) This section applies to—
 - (a) a proceeding under this Part; or
 - (b) an order made under this Part.
 - (2) A person must not publish, or cause to be published, a report of the proceeding or about the order that contains any particulars likely to lead to the identification of a party to a surrogacy arrangement or a child who is the subject of a surrogacy arrangement.
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Penalty: 1000 penalty units, in the case of a
body corporate;
100 penalty units or imprisonment
for 2 years, in the case of an
individual.

(3) 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.

34 Access to court records

- (1) A person must not access the court record for
a proceeding under this Part without leave of
the court.
- (2) The court may grant leave for access to the
court record on application in writing by—
 - (a) a child to whom the proceeding relates;
or
 - (b) a surrogate mother of the child; or
 - (c) if the surrogate mother had a partner
who was also a party to the surrogacy
arrangement, the partner; or
 - (d) a commissioning parent of the child; or
 - (e) an intervener in a proceeding under
section 27; or
 - (f) any other person who was a party to the
proceeding.

- (3) The court may refuse the application—
- (a) if the applicant has not produced to the registrar of the court proof of the applicant's identity; or
 - (b) if granting access would be contrary to any court order in relation to exclusion of persons from the hearing of the proceedings; or
 - (c) for any other reason the court considers appropriate in the circumstances.

35 Access to court records if person deceased or cannot be found

- (1) If a person referred to in section 34(2) is deceased, an application under that section may be made by an adult who is—
- (a) a parent or grandparent of the deceased; or
 - (b) a child or grandchild of the deceased; or
 - (c) a sibling of the deceased.
- (2) If the child to whom the proceeding related is now an adult and cannot be found or contacted after making reasonable inquiries, an application under section 34(2) may be made by an adult who is—
- (a) a parent or grandparent of the child; or
 - (b) a child or grandchild of the child; or
 - (c) a sibling of the child.

**PART V—POSTHUMOUS USE OF GAMETES—
STATUS OF CHILDREN**

36 Definitions

In this Part—

treatment procedure has the meaning given
in the **Assisted Reproductive
Treatment Act 2008**.

**37 Presumption as to status of child if male
partner is deceased**

- (1) This section applies if—
- (a) a woman undergoes a treatment procedure in accordance with Part 5 of the **Assisted Reproductive Treatment Act 2008** as a result of which she becomes pregnant; and
 - (b) either of the following applies—
 - (i) the semen used in the procedure—
 - (A) was produced by the woman's partner before his death; or
 - (B) was collected from the woman's partner after his death; or
 - (ii) the embryo used in the procedure was created before the woman's partner died using sperm produced by him.
- (2) If a woman becomes pregnant—
- (a) the woman who gave birth is the mother of any child born as a result of the pregnancy; and

- (b) her partner is taken to be the father of any child born as a result of the pregnancy for the sole purpose of enabling the particulars of the deceased to be entered as the particulars of the child's parent in the Register of births kept under the **Births, Deaths and Marriages Registration Act 1996**; and
- (c) if a donor ovum, or an embryo created from a donor ovum, was used in the procedure, the woman who produced the ovum is presumed, for all purposes, not to be a parent of any child born as a result of the pregnancy.

38 Presumption as to status of child if female partner is deceased

- (1) This section applies if—
 - (a) a woman undergoes a treatment procedure in accordance with Part 5 of the **Assisted Reproductive Treatment Act 2008** as a result of which she becomes pregnant; and
 - (b) either of the following applies—
 - (i) the ovum used in the procedure—
 - (A) was produced by the woman's partner before her death; or
 - (B) was collected from the woman's partner after her death; or
 - (ii) the embryo used in the procedure was created before the woman's partner died using an ovum produced by her.
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- (2) If a woman becomes pregnant—
- (a) the woman who gave birth is the mother of any child born as a result of the pregnancy; and
 - (b) the deceased is taken to be a parent of any child born as a result of the pregnancy for the sole purpose of enabling the particulars of the deceased to be entered as the particulars of the child's parent in the Register of births kept under the **Births, Deaths and Marriages Registration Act 1996**; and
 - (c) the man who produced the semen used in the procedure, or used to create the embryo used in the procedure, is presumed, for all purposes, not to be the father of any child born as a result of the pregnancy, whether or not the man is or was known to the woman or the deceased.

39 Presumption as to status of child if female partner is deceased—surrogacy arrangements

- (1) This section applies if—
- (a) a man commissions a surrogacy arrangement in accordance with the **Assisted Reproductive Treatment Act 2008**; and
 - (b) the surrogate mother undergoes a procedure as a result of which she becomes pregnant; and
 - (c) either of the following applies—
 - (i) the ovum used in the procedure—
 - (A) was produced by the man's partner before her death; or

- (B) was collected from the man's partner after her death; or
 - (ii) the embryo used in the procedure was created before the man's partner died using an ovum produced by her.
- (2) If the surrogate mother becomes pregnant, the man may apply to the court under section 20 for a substitute parentage order to be made in respect of the child and in favour of the man and the deceased.
- (3) In addition to the matters set out in section 22, the court must also be satisfied as to the matters set out in Part 5 of the **Assisted Reproductive Treatment Act 2008**.
- (4) If a substitute parentage order is made, the deceased is taken to be a parent of any child born as a result of the pregnancy for the sole purpose of enabling the particulars of the deceased to be entered as the particulars of the child's parent in the Register of births kept under the **Births, Deaths and Marriages Registration Act 1996**.

40 Legal status of deceased parent

- (1) A deceased person referred to in section 37, 38 or 39—
- (a) is to be treated in law as a parent of the child for the purpose referred to in that section; but
 - (b) is not to be treated in law as a parent of the child for any other purpose.
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- (2) To avoid doubt, this section does not apply in relation to a will executed by the deceased that expressly refers to a child born as a result of a procedure referred to in section 37, 38 or 39.

PART VI—GENERAL

41 Regulations

The Governor in Council may make regulations for or with respect to—

- (a) forms for the purposes of this Act;
- (b) fees to be charged under this Act;
- (c) generally, any matter or thing which is authorised or required to be prescribed for carrying this Act into effect.

PART VII—TRANSITIONAL PROVISIONS— ASSISTED REPRODUCTIVE TREATMENT ACT 2008

42 Definition

In this Part, *2008 Act* means the **Assisted Reproductive Treatment Act 2008**.

43 Transitional—Definitions

For the purposes of Part II, on and from the commencement of Part 14 of the 2008 Act—

- (a) *embryo* includes an embryo as defined in section 10A(3) as in force immediately before its repeal;
 - (b) *ovum in the process of fertilisation* includes an ovum in the process of fertilisation as defined in section 10A(3) as in force immediately before its repeal;
-

- (c) *syngamy* includes syngamy as defined in section 10A(3) as in force immediately before its repeal.

44 Transitional—Repeal of section 10F

- (1) This section applies if, before the commencement of section 146 of the 2008 Act—
- (a) a man produced semen that was used in a procedure of artificial insemination of a woman who was not a married woman or of a married woman otherwise than in accordance with the consent of her husband; and
 - (b) as a result of that procedure the woman became pregnant.
- (2) Despite its repeal, section 10F continues to apply in respect of a child born as a result of a pregnancy referred to in subsection (1).

45 Transitional—Application of Part III

- (1) On and from the commencement of Part 14 of the 2008 Act, the provisions of Part III apply—
- (a) in respect of a pregnancy referred to in Part III, whether the pregnancy occurred before or after the commencement of Part 14 of the 2008 Act and whether or not it resulted from a procedure carried out in Victoria; and
 - (b) in respect of any child born in Victoria as a result of a pregnancy referred to in Part III, whether the child was born before or after the commencement of Part 14 of the 2008 Act.
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-
- (2) Nothing in this Part affects the vesting in possession or in interest of any property that occurred before the commencement of Part 14 of the 2008 Act.

46 Transitional—Application of Part IV

- (1) Part IV applies in respect of a child born to a surrogate mother under a surrogacy arrangement if—
- (a) the child was born—
 - (i) before the commencement of Part 14 of the 2008 Act; or
 - (ii) within 10 months of that commencement; and
 - (b) the commissioning parents were ordinarily resident in Victoria at the time the child was conceived.
- (2) Subsection (1) applies whether or not the child was conceived in Victoria.
- (3) Nothing in Part IV affects the vesting in possession or in interest of any property that occurred before the commencement of Part 14 of the 2008 Act.

47 Transitional—Application of Part V

- (1) Part V applies in respect of a pregnancy which resulted from a procedure carried out in Victoria after the commencement of Part 14 of the 2008 Act.
- (2) Nothing in Part V affects the vesting in possession or in interest of any property that occurred before the commencement of Part 14 of the 2008 Act."

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Part 14—Amendments to the Status of Children Act 1974

s. 148

148 Repeal of Part

This Part is repealed on the first anniversary of its commencement.

**PART 15—AMENDMENTS TO BIRTHS, DEATHS AND
MARRIAGES REGISTRATION ACT 1996**

149 Purposes

After section 3(c) of the **Births, Deaths and
Marriages Registration Act 1996** insert—

"(caa) the keeping of information relating to donors
and surrogacy arrangements under the
**Assisted Reproductive Treatment Act
2008**; and".

See:
Act No.
43/1996.
Reprint No. 2
as at
16 November
2006
and
amending
Act Nos
97/2005,
12/2008 and
46/2008.
LawToday:
www.
legislation.
vic.gov.au

150 Definitions

(1) In section 4(1) of the **Births, Deaths and
Marriages Registration Act 1996** insert the
following definitions—

"parent means a person who is presumed under
the **Status of Children Act 1974** to be the
mother, father or parent of a child;

partner, in relation to a person, means—

- (a) the person's spouse; or
- (b) a person who lives with the first person
as a couple on a genuine domestic
basis;

surrogacy arrangement has the meaning given by
the **Assisted Reproductive Treatment Act
2008**;

surrogate mother means a woman who gives birth
to a child pursuant to a surrogacy
arrangement;".

- (2) In section 4(1) of the **Births, Deaths and Marriages Registration Act 1996**, in the definition of *registrable event*, for "or adoption" substitute ", adoption or surrogacy arrangement".

151 Registrar's general functions

After section 6(ba) of the **Births, Deaths and Marriages Registration Act 1996** insert—

- "(bb) to perform functions given to the Registrar by the **Assisted Reproductive Treatment Act 2008**; and".

152 Registration of parentage details

In section 16(1)(a) of the **Births, Deaths and Marriages Registration Act 1996** for "father and the mother" substitute "parents".

153 New sections 17A and 17B

After section 17 of the **Births, Deaths and Marriages Registration Act 1996** insert—

"17A Addition of details after birth registration—registration of partner

- (1) This section applies if—
- (a) a woman has undergone a procedure within the meaning of Part III of the **Status of Children Act 1974** as a result of which she became pregnant and gave birth to a child; and
 - (b) by application of a presumption in that Part the woman's female partner is presumed to be a parent of the child; and
 - (c) the child's birth was registered before the commencement of the **Assisted Reproductive Treatment Act 2008**.
-

- (2) If the Register only names the mother of the child, the mother and her partner may apply to amend the Register to name the partner as a parent of the child.
- (3) If the Register names the mother and father of the child, the Register must not be amended to name the partner as a parent of the child without a court order.
- (4) An application under subsection (2) must be accompanied by a statutory declaration made by the woman's partner stating that she consented to the procedure that resulted in the pregnancy.

17B Birth registration of child conceived by a treatment procedure

- (1) If a birth registration statement specifies the child was conceived by a donor treatment procedure, the Registrar must mark the words "donor conceived" against the entry about the child's birth in the Register.
- (2) Subject to subsection (3), when the Registrar issues a certificate certifying particulars contained in an entry about the birth of a person conceived by a donor treatment procedure, the Registrar must attach an addendum to the certificate stating that further information is available about the entry.
- (3) The Registrar must not issue the addendum referred to in subsection (2) to any person other than the person conceived by a donor treatment procedure named in the entry.
- (4) In this section *donor treatment procedure* means a donor treatment procedure within the meaning of the **Assisted Reproductive Treatment Act 2008**.

154 New section 19A

After section 19 of the **Births, Deaths and Marriages Registration Act 1996** insert—

'19A Surrogate birth registration

- (1) If the court makes a substitute parentage order under the **Status of Children Act 1974**, on receipt of the sealed copy of the substitute parentage order the Registrar must—
 - (a) register the surrogacy by entering the prescribed particulars in the Surrogate Birth Register; and
 - (b) mark the words "closed—surrogate" against the original birth entry in the Register.
 - (2) If the court makes an order under the **Status of Children Act 1974** for the discharge of a substitute parentage order, on receipt of the sealed copy of the discharge order the Registrar must—
 - (a) cancel the relevant entry in the Surrogate Birth Register; and
 - (b) remove the words "closed—surrogate" from the original birth entry in the Register.'
-

PART 16—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Division 1—Amendment of Freedom of Information Act 1982

155 Document affecting personal privacy

In section 33(8) of the **Freedom of Information Act 1982**, for "Division 1 of Part 7 of the **Infertility Treatment Act 1995**" substitute "Division 1 of Part 6 of the **Assisted Reproductive Treatment Act 2008**".

Division 2—Amendment of Magistrates' Court Act 1989

156 Amendment of Schedule 4

For clause 62 of Schedule 4 to the **Magistrates' Court Act 1989** substitute—

"62 Assisted Reproductive Treatment Act 2008

Indictable offences under the **Assisted Reproductive Treatment Act 2008**."

Division 3—Amendment of Public Health and Wellbeing Act 2008

157 Tissue donations

In section 152(1)(b)(i) of the **Public Health and Wellbeing Act 2008**, for "fertilisation procedure within the meaning of the **Infertility Treatment Act 1995**" substitute "treatment procedure within the meaning of the **Assisted Reproductive Treatment Act 2008**".

158 Definition of Secretary

Section 278 of the **Public Health and Wellbeing Act 2008** is repealed.

Division 4—Amendment of Victorian Civil and Administrative Tribunal Act 1998

159 Amendment of Schedule 1

After Part 2 of Schedule 1 of the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"PART 2A—ASSISTED REPRODUCTIVE TREATMENT ACT 2008

4A Fees

Despite section 68, no fee is payable in respect of an application under the **Assisted Reproductive Treatment Act 2008**.

4B Constitution of Tribunal for hearings

The Tribunal is to be constituted for the purposes of reviewing a decision under Division 2 of Part 9 of the **Assisted Reproductive Treatment Act 2008** by at least 3 members, of whom at least one must be a woman."

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 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."

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