

Authorised Version No. 021
Assisted Reproductive Treatment Act 2008

No. 76 of 2008

Authorised Version incorporating amendments as at
1 March 2018

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
Part 1—Preliminary	1
1 Purposes	1
2 Commencement	2
3 Definitions	2
4 Interpretation of references to procedures and treatment	8
5 Guiding principles	9
6 Act to bind the Crown	10
Part 2—Treatment procedures	11
Division 1—General	11
7 Assisted reproductive treatment	11
8 Artificial insemination	11
9 Section 8 not applicable to self-insemination	12
Division 2—General requirements for treatment procedures	12
10 Persons who may undergo treatment procedures	12
11 Requirements as to consent	13
12 Child protection order check	14
13 Counselling	15
14 Presumption against treatment	15
15 Application for review	16
Division 3—Requirements for donors	17
16 Donation of gametes or an embryo	17
17 Requirements as to consent	17
18 Counselling requirements	18
19 Requirements as to the giving and receiving of information	18
Division 4—Provisions about consent	19
20 Withdrawal of consent	19
21 Lapsing of consent	19
22 Record of consent and withdrawal of consent	20
23 Transfer of documents	20

<i>Section</i>	<i>Page</i>
24 Information about transfer of donated gametes or an embryo	20
Division 5—Requirements for donor treatment procedures	21
25 Information and advice	21
Part 3—Offences relating to use and storage of gametes and embryos and other matters	22
Division 1—Prohibited procedures	22
26 Procedures involving gametes produced by children	22
27 Ban on certain procedures	23
28 Ban on sex selection	23
29 Ban on using donated gametes to produce more than 10 families	24
30 Ban on destructive research on embryos created for treatment purposes	24
Division 2—Storage	25
31 Storing gametes	25
31A Panel may approve longer or further storage period	26
31B Time for removal of gametes from storage	26
32 Prohibition on storing embryos except in particular circumstances	28
33 Storing embryos for later transfer	29
33A Patient Review Panel may approve longer or further storage of embryos	30
34 Removal of embryos from storage	30
34A Time for removal of embryos from storage	31
Division 3—General offences in relation to gametes and embryos	33
35 Formation of embryos	33
36 Moving donated gametes and embryos into and out of Victoria	34
37 Exemption	35
Division 4—Offence in relation to giving information	36
38 False or misleading information	36
Part 4—Surrogacy	38
39 Certain surrogacy arrangements to require approval of Patient Review Panel	38
40 Matters to be considered by Patient Review Panel in deciding application for approval of surrogacy arrangement	38
41 Patient Review Panel may approve non-complying surrogacy arrangement in exceptional circumstances	40
42 Application of general requirements for treatment to surrogacy arrangement	40

<i>Section</i>	<i>Page</i>	
43	Counselling and legal information	40
44	Surrogacy costs	41
45	Prohibition on certain publications	41
Part 5—Posthumous use of gametes		43
46	Requirements for posthumous use of gametes or an embryo in treatment provided by a registered ART provider	43
47	Approval by Patient Review Panel	43
48	Counselling	44
Part 6—Registers and access to information		45
Division 1—Registers kept by registered ART providers and doctors		45
49	Register to be kept by registered ART providers	45
49A	Register of pre-1988 donor treatment procedures to be kept by registered ART provider	47
50	Register to be kept by doctor carrying out artificial insemination	47
51	Information to be given to the Authority by registered ART providers	48
52	Information to be given to Authority by doctors	49
52AA	Information to be given to the Registrar by the Authority	50
52A	Information to be given to Authority by registered ART provider—register of pre-1988 donor treatment procedures	51
52B	Information may be given to Authority by persons other than registered ART providers—pre-1988 donor treatment procedures	51
53	Authority to keep a Central Register	52
54	Authority to correct Central Register on request	52
54A	Authority to correct or include information on Central Register without request	53
Division 2—Information to be given by registered ART providers		54
55	Information recorded by registered ART providers that is to be given to donors	54
Division 3—Disclosure of information on Central Register		55
56	Application for information on Central Register	55
56A	Application relating to person born as a result of pre-1988 donor treatment procedure—access to public records	56
56B	Authority may request records—pre-1988 donor treatment procedures	57
56C	Offence to disclose that Authority has requested records—pre-1988 donor treatment procedures	58
56D	Authority may apply to Magistrates' Court for production order	59

<i>Section</i>	<i>Page</i>	
56E	Hearing of application for production order	60
56F	Magistrates' Court may make production order	61
56G	Expiry of production order	61
56H	Failure to comply with production order	61
56I	Medical professional privilege, contravention of ethics not a reasonable excuse	61
56J	Authority may request additional information in order to identify pre-1998 donor	62
56K	Offence to disclose that Authority has requested additional information relating to donor or donor treatment procedures	63
56L	Authority may request genetic test results of suspected donor	64
56M	Authority may request genetic test results of relative of suspected donor	64
56N	Authority to be satisfied of relationship before disclosing information	67
57	Disclosure of information that does not identify a person	69
58	Disclosure of information to parent of person born as a result of donor treatment or donor	69
59	Disclosure of information to persons born as a result of a donor treatment procedure	70
60	Disclosure of information to persons descended from persons born as a result of donor treatment procedure	71
60A	Application for information on Central Register about donor siblings	71
61	Requirement for counselling	72
62	Notice to be given of intended disclosure	72
Division 3A—Disclosure and contact preferences for pre-1998 donors		74
63	Disclosure of information if pre-1998 donor deceased or not located	74
63A	Information leading to location of donor	75
63B	Time limit for disclosure of identifying information about pre-1998 donors	75
63C	Contact preference for pre-1998 donors	76
63D	Duration of contact preferences lodged by pre-1998 donors	77
63E	Amendment of contact preferences lodged by pre-1998 donors	78
63F	Withdrawal of contact preferences lodged by pre-1998 donors	79
63G	Undertaking required from applicant for identifying information relating to pre-1998 donors	80
63H	Applications from children for information relating to pre-1998 donors	81

<i>Section</i>	<i>Page</i>
Division 3B—Contact preferences for persons born as a result of a donor treatment procedure	81
63I Contact preferences for persons born as a result of a donor treatment procedure—application for disclosure	81
63J Form of contact preference	83
63K Duration of contact preferences for person born as a result of donor treatment procedure	83
63L Duration of contact preferences lodged by parent or guardian of person born as a result of donor treatment procedure	84
63M Amendment of contact preferences lodged in relation to persons born as a result of a donor treatment procedure	86
63N Withdrawal of contact preferences lodged in relation to persons born as a result of a donor treatment procedure	86
63O Undertaking required from applicant for identifying information relating to person born as a result of a donor treatment procedure	87
Division 4—General provisions	88
64 Information	88
65 Disclosure of information to doctor	88
66 Records of information disclosed	89
66A Confidentiality of information on the Central Register	89
66B Confidentiality of other information provided to the Authority under this Part	90
66C Confidentiality of information on the Central Register disclosed by the Authority	90
67 Consent	91
67A Counselling under this Part	92
67B Authorisation of organisations	93
68 Exemption from Freedom of Information Act 1982	93
Part 6A—Access to certain kinds of medical information	95
68A Application of Part	95
68B Registered ART provider may disclose medical information	95
68C Disclosure of medical information	95
68D Disclosure of information from Central Register to registered ART provider	96
68E Registered ART provider not required to disclose medical information under this Part	97
Part 7—Voluntary Register and donor-linking	98
Division 1—Voluntary Register	98
69 Application of Part	98
70 Authority to keep Voluntary Register	98
71 Information and matter to be entered in Voluntary Register	98
72 Disclosure of information	100

<i>Section</i>	<i>Page</i>
73 Requirement for counselling	100
73A Counselling under this Part	101
Division 2—Donor-linking	101
73B Who may use donor-linking services?	101
73C Authority may provide donor-linking services	102
Part 8—Registration and designated officers	103
Division 1—Registration as an ART provider	103
74 Registration as an ART provider	103
75 Authority may impose conditions on registration	103
Division 2—General provisions about registrations	104
76 Suspension of registration	104
77 Immediate suspension of registration	105
78 Offence of failing to notify authority if RTAC accreditation no longer held	106
79 Notification to Minister	106
Division 3—Designated officers	106
80 Designated officers for registered ART providers	106
Division 4—List of registered ART providers	106
81 Authority to keep list	106
Part 9—Patient Review Panel	108
Division 1—Constitution and procedures of Patient Review Panel	108
82 Establishment of Panel	108
83 Constitution of Panel	108
85 Functions of Panel	108
86 Chairperson and deputy chairpersons	109
87 Acting chairperson	110
87A Other members	110
88 Payment of members	110
89 Notice of hearing	111
90 Conduct of hearing	111
91 Decision by Patient Review Panel	112
92 Written reasons for decisions	113
93 Effect of vacancy or defect	114
94 Immunity	114
95 Evidence	114
Division 2—Review of Patient Review Panel's decisions	114
96 Reviewable decisions	114
97 Who may apply for review	115
98 When application must be made	115

<i>Section</i>	<i>Page</i>
Part 10—Victorian Assisted Reproductive Treatment Authority	116
Division 1—Constitution of the Authority	116
99 Establishment of Authority	116
100 Powers, functions, duties and consultation requirements	116
100A Guidelines	118
100B Directions	119
101 Membership	119
102 Terms of office	120
103 Resignation and removal	120
104 Chairperson and deputy chairperson	120
105 Acting member	121
106 Payment of members	121
107 Procedure of Authority	122
108 Effect of vacancy or defect	122
109 Member's interests	122
110 Immunity	123
111 Engagement or employment of persons	124
112 Delegation	124
113 Committees	124
Division 2—Reporting and financial provisions	124
114 Report to Minister	124
115 Victorian Assisted Reproductive Treatment Authority Fund	125
116 Investment powers	126
Part 11—General	127
117 No action if gametes used without knowing consent withdrawn or lapsed	127
118 Identity cards	127
119 Powers and duties of members of Authority to inspect documents	127
120 Offence to obstruct or hinder	128
121 Prohibition on destruction of or tampering with documents	129
121A Records identifying donor treatment procedure participants to be kept	129
122 Requirements if registered ART provider ceases to operate	130
123 Indictable offences	131
Part 12—Regulations	132
124 Regulations	132
125 Application etc of regulations	133
Part 13—Repeal, savings and transitional provisions	135
Division 1—Repeal	135
126 Repeal	135

<i>Section</i>	<i>Page</i>
Division 2—Transitional provisions	135
127 Definitions	135
128 References to repealed Act etc	135
129 Consents	136
130 Registers	136
131 Licence holders	136
132 Authority	136
133 Applications	137
Division 3—Savings provision	137
135 Continued operation of Infertility Treatment Regulations	137
Division 4—Transitional provisions—Assisted Reproductive Treatment Amendment Act 2013	137
136 Definitions	137
137 Validation of storage of certain gametes past expiry	138
138 Validation of storage of certain embryos past expiry	138
139 Continuation of the Patient Review Panel	139
Division 5—Transitional provisions—Assisted Reproductive Treatment Further Amendment Act 2014	139
140 Initial provision of information on register of pre-1988 donor treatment procedures	139
Division 6—Transitional provisions—Assisted Reproductive Treatment Amendment Act 2016	140
141 Registrar must provide Authority with copy of Central Register	140
142 Applications	141
143 Lodgement of contact preferences	141
144 Continuation of Central Register	142
145 Continuation of Voluntary Register	142
<hr style="border-top: 3px double #000;"/>	
Endnotes	144
1 General information	144
2 Table of Amendments	146
3 Amendments Not in Operation	148
4 Explanatory details	149

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No. 76 of 2008

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1 March 2018

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to regulate the use of assisted reproductive treatment and artificial insemination procedures (other than self-insemination); and
- (b) to regulate access to information about treatment procedures carried out under this Act; and
- (c) to promote research into the incidence, causes and prevention of infertility; and
- (d) to make provision with respect to surrogacy arrangements; and
- (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 Authority under section 53;

S. 3 def. of ***Central Register*** amended by No. 6/2016 s. 4(1)(a).

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**—

S. 3 def. of ***child protection order*** amended by No. 61/2014 s. 162.

- (a) a family reunification order;
- (b) a care by 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;

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

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

criminal records check, in relation to a person, means a statement prepared by a police officer that specifies—

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

- (a) the police officer has checked records kept by Victoria Police 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;

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

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

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

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

donor gametes means a donor oocyte or donor sperm;

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

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

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

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

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

embryo means a discrete entity that has arisen from either—

- (a) the first mitotic division when fertilisation of a human oocyte by a human sperm is complete; or
- (b) any other process that initiates organised development of a biological entity with a human nuclear genome or altered human nuclear genome that has the potential to develop up to, or beyond, the stage at which the primitive streak appears—

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

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;

Health Services Commissioner means the Commissioner as defined in the **Health Services (Conciliation and Review) Act 1987**;

S. 3 def. of
*Health
Services
Commissioner*
inserted by
No. 6/2016
s. 4(2).¹

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;

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

police officer has the same meaning as in the **Victoria Police Act 2013**;

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

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

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

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

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

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

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

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

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

S. 3 def. of
Secretary
substituted by
No. 29/2010
s. 46.

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—

- (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 Authority under section 70.

S. 3 def. of
Voluntary Register
amended by
No. 6/2016
s. 4(1)(b).

4 Interpretation of references to procedures and treatment

- (1) This section applies to a reference in this Act to—
 - (a) a kind of procedure; or
 - (b) a kind of assisted reproductive treatment; or
 - (c) a kind of treatment procedure; or
 - (d) a procedure, assisted reproductive treatment or treatment procedure of a particular kind.
- (2) Unless a contrary intention appears, a reference to the procedure or treatment includes—
 - (a) the nature or type of procedure or treatment; and
 - (b) whether the procedure or treatment involves the use of a donor oocyte or donor sperm, or an embryo formed from a donor oocyte or donor sperm (or both); and

- (c) in relation to a consent or withdrawal of consent of a donor, whether—
 - (i) gametes or an embryo may be used in a procedure or treatment to be carried out on a woman who is not the donor; and
 - (ii) gametes or embryo may be used in such a procedure or treatment to be carried out on any woman, or only on a named woman.

5 Guiding principles

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

- (a) the welfare and interests of persons born or to be born as a result of treatment procedures are paramount;
- (b) at no time should the use of treatment procedures be for the purpose of exploiting, in trade or otherwise—
 - (i) the reproductive capabilities of 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;
- (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.

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.

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

9 Section 8 not applicable to self-insemination

Section 8 does not apply to—

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

Division 2—General requirements for treatment procedures

10 Persons who may undergo treatment procedures

- (1) A woman may undergo a treatment procedure only if—
 - (a) the woman and her partner, if any, have consented, in the prescribed form, to the carrying out of a procedure of that kind; and
 - (b) either—
 - (i) the criteria in subsection (2) apply to the woman; or
 - (ii) the Patient Review Panel has decided there is no barrier to the woman undergoing a treatment procedure of that kind.
- (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

- (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

- (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.

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.

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 except as permitted by section 31B—
 - (a) if the person knows that the person who produced the gametes has asked for those gametes to be removed; or
 - (b) in any other case, after the end of the latest of the following periods—
 - (i) 10 years; or
 - (ii) if the gametes have been obtained under section 26(2) from a child, 20 years; or
 - (iii) if the gametes have been produced by a person in respect of whom a certification has been made under subsection (2), 20 years; or
 - (iv) if the Patient Review Panel has given written approval under section 31A for a longer or further storage period, the approved period.
- Penalty: 240 penalty units or 2 years imprisonment or both.
- (2) A doctor may certify that a person is, at the time of producing the gametes, at reasonable risk of becoming prematurely infertile because of a medical procedure or condition.

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

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

31A Panel may approve longer or further storage period

- (1) If the person who produced the gametes has given written approval for a specified longer storage period, the Patient Review Panel may approve the longer storage period if it considers there are reasonable grounds to do so in the particular case.
- (2) If the person who produced the gametes is unable to give written approval, or the person's written approval cannot be obtained, the Patient Review Panel may approve the longer storage period if it considers there are exceptional circumstances for doing so in the particular case.
- (3) If an application is made for approval under subsection (1) or (2) after the period for storage of gametes referred to in section 31(1)(b) has expired, the Patient Review Panel may approve a further storage period if it considers there are exceptional circumstances in the particular case for failing to seek approval before the expiry of the period.
- (4) An approval under this section may be subject to conditions.

Note

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

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

31B Time for removal of gametes from storage

- (1) A person may cause or permit gametes to remain in storage for up to 3 months after—
 - (a) the person becomes aware that the person who produced the gametes has asked for those gametes to be removed; or
 - (b) the expiry of the relevant period referred to in section 31(1)(b); or

- (c) in case of a pending application, the relevant day unless the Tribunal approves the longer storage period on the relevant day; or
 - (d) if the Patient Review Panel refuses to approve a further storage period under section 31A(3), the relevant day unless the Tribunal approves the further storage period on the relevant day.
- (2) In case of a pending application, a person may cause or permit gametes to remain in storage until the earlier of the following—
- (a) the Patient Review Panel approves the longer storage period; or
 - (b) if the Patient Review Panel refuses or has refused to approve a longer storage period, the relevant day.
- (3) A person must not use gametes kept in storage under subsection (1) or (2), unless the use by the person consists only of—
- (a) storage of the gametes; or
 - (b) removal of the gametes from storage.
- Penalty: 240 penalty units or 2 years imprisonment or both.

- (4) For the purposes of this section—
- pending application*** means either of the following that, on the expiry of the relevant period referred to in section 31(1)(b), had been made but not yet decided—
- (a) an application to the Patient Review Panel for approval of a longer storage period; or

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

relevant day means the day—

- (a) that is 28 days after the Patient Review Panel refuses to approve the longer or further storage period; or
- (b) if an application is made to the Tribunal for review of the Patient Review Panel's decision, the Tribunal decides the application.

32 Prohibition on storing embryos except in particular circumstances

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

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

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 except as permitted by section 34A—
- (a) if one of the persons who produced the gametes used to form the embryo has specified a storage period of less than 5 years, after that period; or
 - (b) in any other case, after the latest of the following days—
 - (i) the day that is 5 years after the day the embryo was placed in storage;
 - (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 section 33A for a longer or further period of storage, the day that is the end of the period approved by the Panel.

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

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

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

* * * * *

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

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

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

- (1) If the persons who produced the gametes from which the embryo has been formed have given written approval for a specified longer storage period, the Patient Review Panel may approve the longer storage period if it considers there are reasonable grounds to do so in the particular case.
- (2) If a person who produced gametes from which the embryo has been formed is unable to give written approval, or the person's written approval is unable to be obtained, the Patient Review Panel may approve a longer storage period if it considers there are exceptional circumstances for doing so in the particular case.
- (3) If an application is made for approval under subsection (1) or (2) after the period for storage of the embryo referred to in section 33(2)(b) has expired, the Patient Review Panel may approve a further storage period if it considers there are exceptional circumstances in the particular case for failing to seek approval before the expiry of the period.
- (4) An approval under this section may be subject to conditions.

Note

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

34 Removal of embryos from storage

- (1) A registered ART provider must not remove an embryo from storage, or cause or permit an embryo to be removed from storage, unless—
 - (a) it is to be used, in accordance with this Act, in a treatment procedure; or

- (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
- (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.

34A Time for removal of embryos from storage

- (1) A registered ART provider may cause or permit an embryo to remain in storage for up to 3 months after—
 - (a) the persons who produced the gametes from which the embryo was formed give written consent to its removal; or
 - (b) the expiry of the relevant period referred to in section 33(2); or

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

- (c) in case of a pending application, the relevant day unless the Tribunal approves the longer storage period on the relevant day; or
 - (d) if the Patient Review Panel refuses to approve a further storage period under section 33A(3), the relevant day unless the Tribunal approves the further storage period on the relevant day; or
 - (e) in case of a direction under section 34(1)(c), the relevant day unless the Tribunal decides on the relevant day that the embryo should not be removed.
- (2) In case of a pending application or a direction under section 34(1)(c), a registered ART provider may cause or permit an embryo to remain in storage until the earlier of the following—
- (a) in case of a pending application, the Patient Review Panel approves the longer storage period; or
 - (b) if the Patient Review Panel refuses or has refused to approve a longer storage period, or has directed that an embryo be removed from storage, the relevant day.
- (3) A person must not use an embryo kept in storage under subsection (1) or (2) unless the use by the person consists only of—
- (a) storage of the embryo; or
 - (b) removal of the embryo from storage.

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

(4) For the purposes of this section—

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

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

relevant day means the day—

- (a) that is 28 days after the Patient Review Panel refuses to approve the longer or further storage period, or directs that an embryo be removed from storage; or
- (b) if an application is made to the Tribunal for review of the Patient Review Panel's decision, the Tribunal decides the application.

Division 3—General offences in relation to gametes and embryos

35 Formation of embryos

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

- (a) is a doctor or scientist who provides services on behalf of a registered ART provider; and
- (b) forms the embryo in the course of providing services for the registered ART provider.

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

36 Moving donated gametes and embryos into and out of Victoria

- (1) A person must not—
- (a) bring donor gametes, or an embryo produced from donor gametes, into Victoria; or
 - (b) take donor gametes, or an embryo produced from donor gametes, from Victoria.
- Penalty: 240 penalty units or 2 years imprisonment or both.
- (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

Assisted Reproductive Treatment Act 2008
No. 76 of 2008
Part 3—Offences relating to use and storage
of gametes and embryos and other matters

- (b) with respect to the giving of information that is required—
- (i) to be given under this Act; or
 - (ii) to be included in a register, record or notice under this Act.

Penalty: 50 penalty units.

Part 4—Surrogacy

39 Certain surrogacy arrangements to require approval of Patient Review Panel

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

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

- (1) The Patient Review Panel may approve a surrogacy arrangement if the Panel is satisfied of the following—
 - (a) that a doctor has formed an opinion that—
 - (i) in the circumstances, the 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;

- (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—

- (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—

- (a) to the effect that a person is or may be willing to enter into a surrogacy arrangement; or
- (b) to the effect that a person is seeking another person who is or may be willing to enter into a surrogacy arrangement or to act as a surrogate mother or to arrange a surrogacy arrangement; or
- (c) to the effect that the person is or may be willing to arrange a surrogacy arrangement; or
- (d) to the effect that a person is or may be willing to accept any benefit under a surrogacy arrangement, whether for himself or herself or for another person; or
- (e) that is intended or likely to counsel or procure a person to agree to act as a surrogate mother; or
- (f) to the effect that a person is or may be willing to act as a surrogate mother.

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

(2) In this section—

publish means—

- (a) publish in any newspaper; or
- (b) publish by means of television, radio or the Internet; or
- (c) otherwise disseminate to the public.

Part 5—Posthumous use of gametes

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

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

- (a) the treatment procedure is carried out—
 - (i) on the deceased person's partner; or
 - (ii) 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.

- (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;

- (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.

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

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

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

- (a) the donors of gametes used in pre-1988 donor treatment procedures;
- (b) each woman on whom a pre-1988 donor treatment procedure was carried out and the woman's partner;
- (c) the outcomes of pre-1988 donor treatment procedures including particulars of—
 - (i) a confirmed pregnancy resulting from the treatment procedure; and
 - (ii) the miscarriage of a pregnancy resulting from the treatment procedure;
- (d) any pre-1988 donor treatment procedure carried out on a woman;
- (e) the use of donor gametes in a pre-1988 donor treatment procedure;
- (f) a person born as a result of a pre-1988 donor treatment procedure, including particulars of the birth of the person.

50 Register to be kept by doctor carrying out artificial insemination

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

- (2) The doctor must keep a register that includes the prescribed information in relation to the following—
- (a) each artificial insemination carried out by the doctor;
 - (b) if donor sperm is used for the artificial insemination, the donor;
 - (c) the woman who is inseminated and her partner, if any;
 - (d) a person born as a result of the artificial insemination, including particulars of the birth, if known to the doctor;
 - (e) each consent given in relation to the artificial insemination or withdrawal or lapsing of the consent.

S. 51
(Heading)
amended by
No. 6/2016
s. 5(1).

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

S. 51(1)
amended by
No. 6/2016
s. 5(2).

- (1) Each registered ART provider must, not later than 1 July in each year, give to the Authority 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 Authority, each donor treatment procedure carried out by the registered ART provider in the preceding financial year, if the outcome of that procedure is not known by the provider.

S. 51(1)(c)
amended by
No. 6/2016
s. 5(2).

Penalty: 10 penalty units.

- (2) The information provided under subsection (1) must include the following details—
- (a) in the case of a birth, the name of the person born as a result of the donor treatment procedure;
- (b) in all cases, the name of the donor;
- (c) in all cases, the name of the woman on whom the procedure was carried out and the name of her partner, if any;
- (d) in all cases, the kind of procedure carried out.

52 Information to be given to Authority by doctors

S. 52
(Heading)
amended by
No. 6/2016
s. 6(1).

- (1) A doctor who has carried out artificial insemination other than on behalf of a registered ART provider must, by 1 August in each year, give to the Authority 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;
- (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;

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

- (c) each artificial insemination procedure carried out by the doctor in the preceding financial year.
- (2) The information provided under subsection (1) must include the following details—
 - (a) in the case of a birth, the name of the person born as a result of artificial insemination;
 - (b) if donor sperm was used in the artificial insemination, the name of the donor;
 - (c) in all cases, the name of the woman on whom the procedure was carried out and the name of her partner, if any;
 - (d) in all cases, the kind of procedure carried out.

S. 52AA
inserted by
No. 6/2016
s. 7.

52AA Information to be given to the Registrar by the Authority

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

- (a) the name and date of birth of the person born as a result of the donor treatment procedure; and
- (b) the name of the woman on whom the procedure was carried out and the name of her partner, if any.

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

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

S. 52A
(Heading)
amended by
No. 6/2016
s. 8(1).

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

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

S. 52B
(Heading)
substituted by
No. 6/2016
s. 9(1).

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

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

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

(a) give the records to the Authority; or

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

(b) give copies of the records to the Authority.

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

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

S. 52B(2)
amended by
No. 6/2016
s. 9(3).

S. 53
(Heading)
amended by
No. 6/2016
s. 10(1).

53 Authority to keep a Central Register

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

S. 53
amended by
No. 6/2016
s. 10(2).

S. 53(a)
amended by
No. 6/2016
s. 10(2).

(a) the information given to the Authority under this Division; and

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

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

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

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

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

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

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

(b) the prescribed information.

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

54 Authority to correct Central Register on request

S. 54(1)
amended by
No. 6/2016
s. 11(2).

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

S. 54(3)
amended by
No. 6/2016
s. 11(3).

S. 54(4)
amended by
No. 6/2016
s. 11(4).

54A Authority to correct or include information on Central Register without request

S. 54A
(Heading)
amended by
No. 6/2016
s. 12(1).

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

- (1) The Authority may use information provided under section 52A, 63A or 140 to amend or correct information, or create a new entry, in the Central Register if, in the Authority's opinion, the amendment, correction or new entry will make the Central Register more accurate or complete.
- (2) The Authority may use information or records obtained under section 52B, 56A(2), 56B or 56J or under a production order to amend or correct information, or create a new entry, in the Central

S. 54A(1)
amended by
No. 6/2016
s. 12(2).

S. 54A(2)
amended by
No. 6/2016
s. 12(3).

S. 54A(3)
amended by
No. 6/2016
s. 12(4).

Register, if, in the Authority's opinion, the amendment, correction or new entry will make the Central Register more accurate or complete.

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

Division 2—Information to be given by registered ART providers

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

- (1) This section applies if a registered ART provider proposes to carry out a donor treatment procedure using a donor's gametes or an embryo formed from the donor's gametes.
- (2) The donor may ask a designated officer of the registered ART provider for any information required to be recorded in the registered ART provider's register about—
 - (a) the woman on whom the procedure is proposed to be carried out; and
 - (b) the woman's partner, if any.
- (3) On receiving a request for information under subsection (2), the designated officer must disclose to the donor, in accordance with subsection (4)—
 - (a) the information in the registered ART provider's register about the woman and her partner, if any, other than identifying information about the woman or her partner; and

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

Penalty: 50 penalty units.

- (4) Information disclosed under subsection (3) must be given—
 - (a) in writing; and
 - (b) in accordance with any conditions or limitations imposed by the woman or her partner, if any.
- (5) In this section—

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

Division 3—Disclosure of information on Central Register

56 Application for information on Central Register

- (1) The following persons may apply to the Authority 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.

S. 56(1)
amended by
No. 6/2016
s. 13(1).

- (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 Authority; and
 - (b) accompanied by the prescribed fee.

S. 56(3)(a)
amended by
No. 6/2016
s. 13(2).

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

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

- (1) This section applies if an application under section 56(1) requests information relating to a person born as a result of a pre-1988 donor treatment procedure.
- (2) For the purposes of obtaining information requested in the application, the Authority may access records transferred to the Public Record Office from Prince Henry's Institute of Medical Research that relate to donor treatment procedures.

S. 56A(2)
amended by
No. 6/2016
s. 14.

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

S. 56A(3)
amended by
No. 6/2016
s. 14.

56B Authority may request records—pre-1988 donor treatment procedures

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

- (1) This section applies if—
- (a) an applicant under section 56(1) requests information relating to a person born as a result of a pre-1988 donor treatment procedure; and
 - (b) records relating to the donor treatment procedure are not among records from Prince Henry's Institute of Medical Research in the custody of the Public Record Office.
- (2) If the Authority believes on reasonable grounds that a person (other than a registered ART provider) is in possession of or has control of records relating to the donor treatment procedure, the Authority may, subject to subsection (3), request the person to locate and give the records to the Authority.
- (3) The Authority must not request records under this section from a child of a donor unless—
- (a) the donor consents to the Authority making the request; or
 - (b) the child has previously initiated contact with the Authority.
- (4) A request under subsection (2) must be in writing and must set out the requirements of this section.

- (5) A person who receives a request under subsection (2) must, within 60 days of receiving the request—
 - (a) make all reasonable efforts to locate the requested records; and
 - (b) provide a written declaration to the Authority stating—
 - (i) that the person has made all reasonable efforts to locate the requested records; and
 - (ii) whether the person is in possession of or has control of the requested records.
- (6) If the declaration states that the person is in possession of or has control of the requested records, the person must, within 21 days after providing the declaration—
 - (a) give the records to the Authority; or
 - (b) give copies of the records to the Authority.
- (7) A person is not liable for prosecution for an offence, or to a civil action, only for giving records, or copies of records, to the Authority under subsection (6).

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

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

- (1) A person who receives a request from the Authority under section 56B(2) must not disclose, whether directly or indirectly, to any other person that the Authority has made that request unless—
 - (a) the disclosure is reasonably necessary for the purposes of locating the records that are the subject of the request; or

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

Penalty: 50 penalty units.

(2) Subsection (1) does not apply to a disclosure of information if the Authority has not advised the person that it is a criminal offence to disclose to any other person that the Authority has made the request.

56D Authority may apply to Magistrates' Court for production order

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

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

- (a) the Authority requested the person under section 56B to provide records relating to that donor treatment procedure; and
- (b) the person, within 90 days of the Authority giving the request—
 - (i) did not provide the requested records; or
 - (ii) did not provide all the requested records; and
- (c) the Authority believes on reasonable grounds that the person is in possession of or has control of the requested records.

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

- (3) An application under subsection (1) must be—
- (a) supported by an affidavit made on behalf of the Authority stating—
 - (i) the particulars of the request that the Authority has made under section 56B; and
 - (ii) whether the person complied with any part of the request under section 56B; and
 - (iii) the grounds on which the Authority considers that the person against whom the order is sought is in possession of or has control of the records that are the subject of the request; and
 - (b) accompanied by any declaration made by the person under section 56B(5).
- (4) As soon as practicable after the Authority makes an application under subsection (1), the Authority must serve a copy of the application and the supporting affidavit on the person against whom the production order is sought.

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

56E Hearing of application for production order

- (1) The Magistrates' Court hearing an application under section 56D(1) may require the Authority to give the Court any additional information that the Court requires concerning the grounds on which the order is sought.
- (2) The respondent is entitled to be present at any hearing of an application under section 56D(1).
- (3) Despite anything to the contrary in the **Open Courts Act 2013**, an application under section 56D(1) must be heard in closed court.

56F Magistrates' Court may make production order

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

- (1) If the Magistrates' Court is satisfied that there are reasonable grounds for believing that the person is in possession of or has control of records relating to the pre-1988 donor treatment procedure to which the application relates, the Court may make a production order requiring the person to produce to the Authority before a day specified in the order—
 - (a) the records specified in the order; or
 - (b) copies of the records specified in the order.
- (2) The Authority must serve a copy of an order made under this section on the person against whom it is made.

56G Expiry of production order

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

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

56H Failure to comply with production order

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

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

Penalty: 50 penalty units.

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

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

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

- (1) It is not a reasonable excuse for a person to refuse to or fail to comply with a production order on the ground of medical professional privilege or on the

ground that complying with the order would constitute unprofessional conduct or a breach of professional ethics.

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

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

56J Authority may request additional information in order to identify pre-1998 donor

- (1) This section applies if—
- (a) an application has been made under section 56(1) by a person born as a result of a pre-1998 donor treatment procedure; and
 - (b) there is insufficient information on the Central Register to identify the donor of gametes used in the procedure; and
 - (c) the Authority is satisfied that records identifying the donor are not among records from Prince Henry's Institute of Medical Research in the custody of the Public Record Office; and
 - (d) the applicant consents to the Authority requesting information under this section.
- (2) Subject to subsections (4) and (5), the Authority may for the purposes of identifying the donor—
- (a) request information relating to the donor or to the donor treatment procedure from any person (including a registered ART provider); and
 - (b) for the purposes of making a request under paragraph (a), disclose to any person information contained on the Central Register.

- (3) A request under subsection (2)(a) must be made in accordance with any guidelines issued under section 100A.
- (4) The Authority must not request information under subsection (2)(a) from a child of a person whose name is entered on the Central Register as a donor unless—
 - (a) the person whose name is entered on the Central Register consents to the Authority making the request; or
 - (b) the child has previously initiated contact with the Authority.
- (5) The Authority must not request under subsection (2)(a) records relating to pre-1988 donor treatment procedures.

56K Offence to disclose that Authority has requested additional information relating to donor or donor treatment procedures

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

- (1) A person who receives a request from the Authority under section 56J(2) must not disclose, whether directly or indirectly, to any other person that the Authority has made that request unless—
 - (a) the disclosure is reasonably necessary for the purposes of locating the information that is the subject of the request; or
 - (b) in the case of records, the disclosure is made to the person to whom the requested records relate.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply to a disclosure of information if the Authority has not advised the person or the registered ART provider that it is a criminal offence to disclose to any other person that the Authority has made the request.

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

56L Authority may request genetic test results of suspected donor

- (1) This section applies if—
 - (a) an application has been made under section 56(1) by a person born as a result of a pre-1998 donor treatment procedure; and
 - (b) there is insufficient information on the Central Register to determine whether a person whose name is entered on the Central Register as a donor is the donor of gametes used in the procedure.
- (2) The Authority may, for the purposes of establishing a genetic link between the person whose name is entered on the Central Register and the applicant, request that the person whose name is entered on the Central Register—
 - (a) undergo genetic testing at a place specified by the Authority; and
 - (b) consent to the comparison of the results of the genetic testing described in paragraph (a) with a DNA profile or genetic test results relating to the applicant; and
 - (c) consent to the results of the comparison described in paragraph (b) being given to the Authority.

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

56M Authority may request genetic test results of relative of suspected donor

- (1) This section applies if—
 - (a) an application has been made under section 56(1) by a person born as a result of a pre-1998 donor treatment procedure; and

- (b) the Authority reasonably believes that a person whose name is entered on the Central Register as a donor may be the donor of gametes used in the procedure; and
 - (c) the Authority has—
 - (i) made a request under section 56L(2) of the person whose name is entered on the Central Register; or
 - (ii) made all reasonable efforts to locate the person whose name is entered on the Central Register for the purposes of making a request under section 56L(2).
- (2) Subject to subsection (3), the Authority may, for the purposes of establishing a genetic link between the person whose name is entered on the Central Register and the applicant, request that an adult blood relative of the person whose name is entered on the Central Register—
- (a) undergo genetic testing at a place specified by the Authority; and
 - (b) consent to the comparison of the results of the genetic testing described in paragraph (a) with a DNA profile or genetic test results relating to the applicant; and
 - (c) consent to the results of the comparison described in paragraph (b) being given to the Authority.
- (3) The Authority may make a request under subsection (2) only if—
- (a) the person whose name is entered on the Central Register is deceased; or
 - (b) the person whose name is entered on the Central Register is considered to be a missing person by Victoria Police, the

- police force of any other State or a territory or the Australian Federal Police; or
- (c) the Authority considers that there are exceptional circumstances that justify making a request under subsection (2) in the particular case.
- (4) If the Authority intends to make a request under subsection (2) on the basis that there are exceptional circumstances that justify making the request, the Authority must make all reasonable efforts to give notice of the intended request to the person whose name is entered on the Central Register.
- (5) If a person is given notice under subsection (4) of an intended request, that person may apply to VCAT for a review of the decision of the Authority to make the intended request.
- (6) An application to VCAT must be made—
- (a) if the person does not request reasons for the decision under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, within 28 days of receiving the notice under subsection (4); or
 - (b) if the person does request reasons for the decision under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, within 28 days of receiving the written reasons under that Act.
- (7) If notice of an intended request is given under subsection (4), the Authority may make that request only if—
- (a) the person does not apply for a review of the decision of the Authority to make the intended request within the period set out in subsection (6)(a) or (b); or

- (b) VCAT has reviewed the Authority's decision to make the intended request and has confirmed the Authority's decision.

56N Authority to be satisfied of relationship before disclosing information

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

- (1) The Authority must not disclose information (whether identifying or non-identifying) under this Part about a person whose name is entered on the Central Register as a donor to a person born as a result of a donor treatment procedure or a parent or descendant of a person born as a result of a donor treatment procedure unless satisfied under subsection (4) that the person whose name is entered on the Central Register and the person born as a result of a donor treatment procedure are related.
- (2) The Authority must not disclose information (whether identifying or non-identifying) under this Part about a person born as a result of a donor treatment procedure to a person whose name is entered on the Central Register as a donor unless satisfied under subsection (4) that the person whose name is entered on the Central Register and the person born as a result of a donor treatment procedure are related.
- (3) The Authority must not disclose information about a donor sibling under section 60A to a person born as a result of a donor treatment procedure or a parent of that person unless satisfied under subsection (4) that—
 - (a) the person whose name is entered on the Central Register as a donor and the person born as a result of donor treatment are related; and

- (b) the donor sibling—
 - (i) is a person born as a result of a donor treatment procedure; and
 - (ii) is related to the person whose name is entered on the Central Register referred to in paragraph (a).
- (4) The Authority may be satisfied that a person whose name is entered on the Central Register as a donor and a person born as a result of a donor treatment procedure are related if—
 - (a) a unique donor identifier recorded in the Central Register links the person whose name is entered on the Central Register and the person born as a result of a donor treatment procedure; or
 - (b) a comparison of genetic testing results provided to the Authority establishes that the person whose name is entered on the Central Register and the person born as a result of a donor treatment procedure are genetically related; or
 - (c) the Authority, having regard to all available information and any guidelines issued under section 100A, reasonably believes that—
 - (i) the person whose name is entered on the Central Register and the person born as a result of a donor treatment procedure are genetically related; and
 - (ii) there is no reasonable likelihood that any other person may be the donor of the person born as a result of a donor treatment procedure.

(5) In this section—

unique donor identifier means a unique identifier used by a registered ART provider or a doctor carrying out artificial insemination other than on behalf of a registered ART provider for the purposes of identifying an individual donor.

57 Disclosure of information that does not identify a person

- (1) On receipt of an application under section 56, the Authority 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.

S. 57(1)
amended by
No. 6/2016
s. 16.

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 Authority must disclose to the parent or donor identifying information if—
 - (a) the person to whom the information relates consents to the disclosure of the information and the disclosure is in accordance with that consent; or
 - (b) if the person is a child—
 - (i) the child's parent or guardian has consented to the disclosure of the information; and
 - (ii) the disclosure is in accordance with the consent; and

S. 58(1)
amended by
No. 6/2016
s. 17(1).

S. 58(1)(b)(iii)
amended by
No. 6/2016
s. 17(1).

(iii) the child has not indicated to the Authority that the child does not want the information disclosed.

(2) If a child born as a result of a donor treatment procedure has indicated to the Registrar that the child does not want identifying information about the child disclosed to a person, the Registrar may disclose the information only if the Registrar considers it reasonable in the circumstances.

S. 58(3)
inserted by
No. 6/2016
s. 17(2).

(3) Disclosure of identifying information under this section is subject to—

(a) if the application was made by a parent of a person born as a result of a donor treatment procedure, Division 3A;

(b) if the application was made by a donor, Division 3B.

S. 59
amended by
No. 58/2014
s. 10,
substituted by
No. 6/2016
s. 18.

59 Disclosure of information to persons born as a result of a donor treatment procedure

Subject to Division 3A, on receipt of an application under section 56 from a person born as a result of a donor treatment procedure, the Authority must disclose to the applicant identifying information about another person—

(a) if the applicant is an adult; or

(b) if the applicant is a child and—

(i) the applicant's parent or guardian has consented to the making of the application; or

(ii) a counsellor has provided counselling to the person and advised the Authority under section 67A(3) that the applicant is sufficiently mature to understand the consequences of the disclosure.

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

S. 60
amended by
No. 58/2014
s. 11,
substituted by
No. 6/2016
s. 19.

Subject to Division 3A, on receipt of an application under section 56 from a person who is descended from a person born as a result of a donor treatment procedure, the Authority may disclose to the person identifying information about the donor from whom the person is descended.

60A Application for information on Central Register about donor siblings

S. 60A
inserted by
No. 58/2014
s. 12.

- (1) A person born as a result of a donor treatment procedure or a parent of a person born as a result of a donor treatment procedure may apply for the disclosure of information recorded on the Central Register relating to—
 - (a) donor siblings of the person; or
 - (b) donor siblings of the applicant's child.
- (2) An application under subsection (1) must—
 - (a) be made in the form and way approved by the Authority; and
 - (b) be accompanied by the prescribed fee.
- (3) On receipt of an application under subsection (1) the Authority may disclose to the applicant the following information—
 - (a) the total number of the applicant's or the child's donor siblings and the number of those donor siblings born to each woman;
 - (b) the sex of each of the applicant's or the child's donor siblings;
 - (c) the month and year of birth of each of the applicant's or the child's donor siblings.

S. 60A(2)(a)
amended by
No. 6/2016
s. 20.

S. 60A(3)
amended by
No. 6/2016
s. 20.

61 Requirement for counselling

S. 61(1)
amended by
No. 6/2016
s. 21(1)(a).

(1) The Authority may disclose information to a person who makes an application under section 56 only if—

S. 61(1)(a)
amended by
No. 6/2016
s. 21(1)(a).

(a) in the case of the disclosure of non-identifying information—the Authority has offered the person counselling by a counsellor; or

S. 61(1)(b)
substituted by
No. 58/2014
s. 13(1),
amended by
No. 6/2016
s. 21(1).

(b) in the case of identifying information—the Authority has received confirmation under section 67A(3) that the person has received counselling on prescribed matters.

(2) This section applies despite any other provision of this Division.

S. 61(3)
amended by
No. 58/2014
s. 13(2),
repealed by
No. 6/2016
s. 21(2).

* * * * *

S. 62
substituted by
No. 6/2016
s. 22.

62 Notice to be given of intended disclosure

(1) If the Authority intends to disclose under this Division identifying information relating to a person (other than a pre-1998 donor or a person born as a result of a donor treatment procedure), the Authority must make all reasonable efforts to give notice of the intended disclosure to that person.

(2) If the Authority intends to disclose identifying information under this Division relating to a pre-1998 donor, the Authority must make all reasonable efforts to inform the donor that—

- (a) an application for the disclosure of the donor's identifying information has been made by—
 - (i) a person born as a result of a donor treatment procedure; or
 - (ii) the parent of a person born as a result of a donor treatment procedure; or
 - (iii) a person who is descended from a person born as a result of a donor treatment procedure; and
 - (b) the donor may lodge with the Authority a contact preference under section 63C; and
 - (c) the donor may undergo counselling by a counsellor on behalf of the Authority before the donor lodges a contact preference.
- (3) If the Authority intends to disclose identifying information under this Division relating to a person born as a result of a donor treatment procedure, the Authority must make all reasonable efforts to inform that person or, if the person is a child, the person's parent or guardian—
- (a) that an application for the disclosure of the person's identifying information has been made by the donor whose gametes were used in the donor treatment procedure; and
 - (b) that the person born as a result of a donor treatment procedure or, if the person is a child, the person's parent or guardian, may lodge with the Authority a contact preference under section 63I; and
 - (c) that the person or, if the person is a child, the person's parent or guardian, may undergo counselling by a counsellor on behalf of the Authority before a contact preference is lodged.

Pt 6 Div. 3A
(Heading)
inserted by
No. 6/2016
s. 23.

S. 63
amended by
No. 58/2014
s. 14,
substituted by
No. 6/2016
s. 23.

Division 3A—Disclosure and contact preferences for pre-1998 donors

63 Disclosure of information if pre-1998 donor deceased or not located

- (1) If a person applies under section 56(1) for the disclosure of identifying information about a pre-1998 donor, the Authority may disclose identifying information under Division 3 about the donor without giving notice under section 62(2) if—
 - (a) despite making all reasonable efforts to locate the donor, the Authority has not located the pre-1998 donor within 4 months of the application being made; or
 - (b) the donor is deceased.
- (2) The Authority must not disclose identifying information under Division 3 about a pre-1998 donor unless the applicant gives the Secretary—
 - (a) an undertaking not to contact the donor; and
 - (b) an undertaking to provide the Authority with any information the applicant subsequently receives from a source other than the Authority from which the pre-1998 donor may be directly or indirectly located.
- (3) An applicant who gives an undertaking under subsection (2)(a) must not knowingly contact the pre-1998 donor unless the contact is a continuation of, or a similar kind to, contact that the applicant had with the donor before the applicant made the application.

Penalty: 50 penalty units.

63A Information leading to location of donor

- (1) If, after receiving identifying information from the Authority about a pre-1998 donor who could not be located, an applicant receives, from a source other than the Authority, information from which the pre-1998 donor may be directly or indirectly located, the applicant must, as soon as reasonably practicable, provide the Authority with that information.
- (2) If the Authority receives information relating to a pre-1998 donor under subsection (1), the Authority must make all reasonable efforts to inform the donor—
 - (a) that their identifying information has been released to a person under Division 3; and
 - (b) that the donor may lodge with the Authority a contact preference under section 63C relating to that person; and
 - (c) that the donor may undergo counselling by a counsellor on behalf of the Authority before the donor lodges a contact preference.

S. 63A
inserted by
No. 6/2016
s. 23.

63B Time limit for disclosure of identifying information about pre-1998 donors

- (1) If the Authority has given a pre-1998 donor a notice under section 62(2), the Authority must disclose under Division 3 the identifying information about the pre-1998 donor as soon as reasonably practicable after the earlier of the following—
 - (a) if the donor consents to the disclosure, the day of that consent;
 - (b) 4 months after the notice was given.
- (2) If, under section 63, the Authority is not required to give a notice before disclosing identifying information about a pre-1998 donor under

S. 63B
inserted by
No. 6/2016
s. 23.

Division 3, the Authority must disclose the information as soon as reasonably practicable after 4 months after the application under section 56 was made.

- (3) Despite subsections (1)(b) and (2), the Authority may delay disclosure of the identifying information by a further 4 months if the Authority considers there are exceptional circumstances that justify delaying the disclosure of the information.

S. 63C
inserted by
No. 6/2016
s. 23.

63C Contact preference for pre-1998 donors

- (1) If an application is made for the disclosure of identifying information about a pre-1998 donor, the donor may lodge with the Authority either or both of the following—
- (a) a written statement setting out the donor's wishes about being contacted by the applicant for the disclosure of the information;
 - (b) a written statement setting out the donor's wishes about the donor's child being contacted by the applicant for the disclosure of the donor's information.
- (2) A contact preference lodged under subsection (1) must be in the form approved by the Secretary.
- (3) A contact preference lodged under subsection (1) must be lodged with the Authority before the first day on which there is contact between the donor and the applicant to whom the contact preference relates.
- (4) A contact preference lodged under subsection (1)(a) may state either that—
- (a) the pre-1998 donor does not wish to be contacted by the applicant; or
 - (b) the donor wishes any contact with the applicant to occur only in a specified way.

- (5) A contact preference lodged under subsection (1)(b) may state either that—
 - (a) the pre-1998 donor does not wish the child to be contacted by the applicant; or
 - (b) the donor wishes any contact between the child and the applicant to occur only in a specified way.
- (6) If a pre-1998 donor lodges a contact preference under subsection (1)(b), the Authority may—
 - (a) have regard to the child's wishes in relation to the lodgement of the contact preference; and
 - (b) if the child's wishes in relation to the lodgement are different from the pre-1998 donor's, comply with the donor's wishes only if the Authority considers it reasonable in the circumstances.
- (7) The Authority must give the applicant a copy of a contact preference lodged under subsection (1) as soon as practicable after it is lodged with the Authority.
- (8) The Authority must maintain records of contact preferences lodged under subsection (1).

63D Duration of contact preferences lodged by pre-1998 donors

- (1) Subject to subsection (2), a contact preference lodged under section 63C continues in force for 5 years after—
 - (a) the contact preference is lodged with the Authority; or
 - (b) the contact preference is extended under subsection (3).

S. 63D
inserted by
No. 6/2016
s. 23.

- (2) A contact preference lodged under section 63C(1)(b) expires on the day on which the child who is the subject of the contact preference turns 18 years of age.
- (3) A pre-1998 donor who lodges a contact preference under section 63C may extend that contact preference by written notice to the Authority.
- (4) Before a contact preference expires under subsection (1), the Authority must make all reasonable efforts to give the pre-1998 donor who lodged the contact preference written notice—
 - (a) as to when the contact preference will expire under subsection (1); and
 - (b) that the donor may extend the contact preference under subsection (3).
- (5) The Authority must, as soon as practicable after a contact preference expires under subsection (1) or (2) or is extended under subsection (3), notify the applicant to whom the contact preference relates.

S. 63E
inserted by
No. 6/2016
s. 23.

63E Amendment of contact preferences lodged by pre-1998 donors

- (1) Subject to subsection (2), a pre-1998 donor who lodges a contact preference under section 63C may amend the contact preference by written notice to the Authority.
- (2) A pre-1998 donor must not amend a contact preference unless there has been no contact between the donor and the applicant to whom the contact preference relates.

- (3) If a pre-1998 donor amends a contact preference, the Authority must, as soon as practicable after the contact preference is amended—
 - (a) notify the applicant to whom the amended contact preference relates—
 - (i) that the contact preference has been amended; and
 - (ii) of the particulars of the amendment; and
 - (iii) that the applicant may undergo counselling by a counsellor on behalf of the Authority; and
 - (b) give the applicant a copy of the amended contact preference.

63F Withdrawal of contact preferences lodged by pre-1998 donors

S. 63F
inserted by
No. 6/2016
s. 23.

- (1) A pre-1998 donor may, by written notice to the Authority, withdraw a contact preference lodged under section 63C by that donor.
- (2) If a pre-1998 donor withdraws a contact preference, the donor cannot lodge a subsequent contact preference in relation to the applicant to whom the withdrawn contact preference relates if there has been contact between the applicant and the donor.
- (3) If a pre-1998 donor withdraws a contact preference, the Authority must, as soon as practicable after the contact preference is withdrawn, notify the applicant to whom the withdrawn contact preference relates.

S. 63G
inserted by
No. 6/2016
s. 23.

63G Undertaking required from applicant for identifying information relating to pre-1998 donors

- (1) The Authority must not disclose identifying information relating to a pre-1998 donor in response to an application under section 56(1) unless the applicant gives an undertaking to the Secretary to comply with the donor's contact preferences as set out in—
 - (a) any contact preference lodged by the donor under section 63C (whether or not the contact preference is lodged at the time the undertaking is given); and
 - (b) if the contact preference is amended by the donor under section 63E, that preference as amended (whether or not the amended contact preference is lodged at the time the undertaking is given).
- (2) An applicant who gives an undertaking under subsection (1) must not knowingly contact the pre-1998 donor in contravention of the contact preference or the amended contact preference unless the contact is a continuation of, or of a similar kind to, contact that the applicant had with the donor before the applicant knew of the contact preference or the amended contact preference (as the case requires).

Penalty: 50 penalty units.
- (3) Subsection (2) does not apply if the applicant has not been given—
 - (a) in case of a contravention of a contact preference, a copy of the contact preference under section 63C(7); or
 - (b) in case of a contravention of an amended contact preference, a copy of the amended contact preference under section 63E(3)(b).

63H Applications from children for information relating to pre-1998 donors

S. 63H
inserted by
No. 6/2016
s. 23.

- (1) This section applies in relation to an application made under section 56(1) if the applicant is a person born as a result of a pre-1998 donor treatment procedure who is a child at the time the application is made.
- (2) The Authority must not release identifying information relating to the pre-1998 donor in response to the application unless a counsellor has provided counselling to the applicant and advised the Authority under section 67A(3) that the applicant is sufficiently mature to understand the consequences of giving an undertaking under section 63G(1).

Division 3B—Contact preferences for persons born as a result of a donor treatment procedure

Pt 6 Div. 3B
(Heading and
ss 63I–63O)
inserted by
No. 6/2016
s. 23.

63I Contact preferences for persons born as a result of a donor treatment procedure—application for disclosure

S. 63I
inserted by
No. 6/2016
s. 23.

- (1) If an application is made under section 56(1) for the disclosure of identifying information about a person born as a result of a donor treatment procedure, the person or, if the person is a child, a parent or guardian of the person, may lodge with the Authority a written statement setting out the person's wishes about being contacted by the applicant for the disclosure of the information.

- (2) If the person born as a result of the donor treatment procedure is a child, the Authority may—
 - (a) have regard to the child's wishes in relation to the lodgement of the contact preference; and
 - (b) if the child's wishes in relation to the lodgement are different from the wishes of the child's parent or guardian, comply with the wishes of the parent or guardian only if the Authority considers it reasonable in the circumstances.
- (3) Subject to subsection (4), a contact preference lodged under subsection (1) must be lodged with the Authority before the first day on which there is contact between the person born as a result of a donor treatment procedure and the applicant to whom the contact preference relates.
- (4) A person born as a result of a donor treatment procedure who was a child at the time the application under section 56 was made may lodge a contact preference under subsection (1) in relation to the applicant if any contact between the person and the applicant occurred—
 - (a) before the day on which the person turned 18 years of age; or
 - (b) within 6 months after the day on which the person turned 18 years of age, and the contact was in accordance with the wishes set out in a contact preference lodged by the person's parent or guardian under subsection (1).
- (5) The Authority must notify a person born as a result of a donor treatment procedure that the person may lodge a contact preference as soon as practicable after the person turns 18 years of age.

- (6) The Authority must give the applicant a copy of a contact preference under subsection (1) as soon as practicable after it is lodged with the Authority.
- (7) The Authority must maintain records of contact preferences lodged under this section.

63J Form of contact preference

S. 63J
inserted by
No. 6/2016
s. 23.

- (1) A contact preference lodged under section 63I must be in the form approved by the Secretary.
- (2) A contact preference may state that—
 - (a) the person does not wish to be contacted by the applicant; or
 - (b) the person wishes any contact with the applicant to occur only in a specified way.
- (3) The Authority must, before the contact preference is lodged, offer the following persons counselling by a counsellor on matters prescribed for the purposes of this section—
 - (a) if the contact preference is to be lodged by the person born as a result of a donor treatment procedure, that person;
 - (b) if the contact preference is to be lodged by the parent or guardian of a child born as a result of a donor treatment procedure—
 - (i) the parent or guardian; and
 - (ii) if the Authority is informed that the child wishes to have counselling, the child.

63K Duration of contact preferences for person born as a result of donor treatment procedure

S. 63K
inserted by
No. 6/2016
s. 23.

- (1) Subject to section 63L, a contact preference lodged under section 63I continues in force for 5 years after—

- (a) the contact preference is lodged with the Authority; or
 - (b) the contact preference is extended under subsection (2).
- (2) A person who lodges a contact preference under section 63I may extend that contact preference by written notice to the Authority.
- (3) Before a contact preference expires under subsection (1), the Authority must make all reasonable efforts to give the person who lodged the contact preference written notice—
- (a) as to when the contact preference will expire under subsection (1); and
 - (b) that the person may extend the contact preference under subsection (2).
- (4) The Authority must, as soon as practicable after a contact preference expires under subsection (1) or is extended under subsection (2), notify the applicant to whom the contact preference relates.

S. 63L
inserted by
No. 6/2016
s. 23.

63L Duration of contact preferences lodged by parent or guardian of person born as a result of donor treatment procedure

- (1) This section applies if a contact preference lodged under section 63I—
- (a) is lodged by the parent or guardian of a person born as a result of a donor treatment procedure; and
 - (b) is in force on the day on which the person born as a result of a donor treatment procedure turns 18 years of age.
- (2) A contact preference to which this section applies expires 6 months after the day on which the person born as a result of a donor treatment procedure turns 18 years of age.

- (3) Before a contact preference expires under subsection (2), the Authority must make all reasonable efforts to give the person born as a result of a donor treatment procedure written notice—
- (a) as to when the contact preference will expire under subsection (2); and
 - (b) that the person may—
 - (i) withdraw the contact preference; or
 - (ii) withdraw the contact preference and lodge a contact preference in relation to the applicant to whom the withdrawn contact preference related; or
 - (iii) if the contact preference expires, lodge a contact preference in relation to the applicant to whom the expired contact preference related.
- (4) The person born as a result of a donor treatment procedure may, within 6 months after the day on which that person turns 18 years of age, withdraw the contact preference.
- (5) If the person born as a result of a donor treatment procedure withdraws the contact preference under subsection (4), the person may lodge a contact preference under section 63I in relation to the applicant to whom the withdrawn contact preference related.
- (6) The Authority must, as soon as practicable after a contact preference expires under subsection (2) or is withdrawn under subsection (4), notify any applicant to whom the contact preference relates.

S. 63M
inserted by
No. 6/2016
s. 23.

63M Amendment of contact preferences lodged in relation to persons born as a result of a donor treatment procedure

- (1) Subject to subsection (2), a person who lodges a contact preference under section 63I may amend the contact preference by written notice to the Authority.
- (2) A person must not amend a contact preference unless there has been no contact between the applicant to whom the contact preference relates and the person born as a result of a donor treatment procedure.
- (3) If a person amends a contact preference, the Authority must—
 - (a) notify the applicant to whom the amended contact preference relates—
 - (i) that the contact preference has been amended; and
 - (ii) of the particulars of the amendment; and
 - (iii) that the applicant may undergo counselling by a counsellor on behalf of the Authority; and
 - (b) give the applicant a copy of the amended contact preference.

S. 63N
inserted by
No. 6/2016
s. 23.

63N Withdrawal of contact preferences lodged in relation to persons born as a result of a donor treatment procedure

- (1) A person who lodges a contact preference under section 63I may, by written notice to the Authority, withdraw the contact preference.
- (2) If a person withdraws a contact preference, the person cannot lodge a subsequent contact preference in relation to the applicant to whom the

withdrawn contact preference relates if there has been contact between the applicant and the person born as a result of a donor treatment procedure.

- (3) If a person withdraws a contact preference, the Authority must, as soon as practicable after the contact preference is withdrawn, notify the applicant to whom the withdrawn contact preference relates.

630 Undertaking required from applicant for identifying information relating to person born as a result of a donor treatment procedure

S. 630
inserted by
No. 6/2016
s. 23.

- (1) The Authority must not disclose identifying information relating to the person born as a result of a donor treatment procedure in response to an application under section 56(1) unless the applicant gives an undertaking to the Secretary to comply with the person's contact preferences as set out in—
- (a) any contact preference (whether or not the contact preference is lodged at the time the undertaking is given) lodged under section 63I by—
 - (i) the person born as a result of the donor treatment procedure; and
 - (ii) a parent or guardian of a person born as a result of a donor treatment procedure; and
 - (b) if the contact preference is amended under section 63M by the person who lodged it, that preference as amended (whether or not the amended contact preference is lodged at the time the undertaking is given).
- (2) An applicant who gives an undertaking under subsection (1) must not knowingly contact the person born as a result of the donor treatment procedure in contravention of the contact

preference or the amended contact preference unless the contact is a continuation of, or of a similar kind to, contact that the applicant had with the person before the applicant knew of the contact preference or the amended contact preference (as the case requires).

Penalty: 50 penalty units.

- (3) Subsection (2) does not apply if the applicant has not been given—
- (a) in case of a contravention of a contact preference, a copy of the contact preference under section 63I(6); or
 - (b) in case of a contravention of an amended contact preference, a copy of the amended contact preference under section 63M(3)(b).

Division 4—General provisions

64 Information

Any reference in this Act or the regulations to the disclosure of identifying information means the disclosure of information from which a person will or may be identified, directly or indirectly.

65 Disclosure of information to doctor

- (1) This section applies if—
- (a) a person has applied for information under this Part or the regulations; and
 - (b) the information to be disclosed is or includes information that is of a medical or psychiatric nature; and
 - (c) the person to whom the application has been made considers the disclosure of the information may be prejudicial to the physical or mental health or well-being of the applicant.

- (2) The person to whom the application has been made may decide not to disclose that information to the applicant but to disclose it instead to a doctor nominated by the applicant.

66 Records of information disclosed

A person who discloses information under this Part or the regulations must keep a record of—

- (a) the person to whom the information is disclosed; and
(b) the information disclosed.

66A Confidentiality of information on the Central Register

S. 66A
inserted by
No. 6/2016
s. 24.

- (1) A member of the Authority or a person employed or engaged by the Authority or an organisation authorised under section 67B must not disclose to any person, whether directly or indirectly, any information recorded in the Central Register.

Penalty: 50 penalty units.

- (2) Despite subsection (1), the Authority or a person employed or engaged by the Authority or an organisation authorised under section 67B may disclose information recorded in the Central Register—
- (a) in the exercise in good faith of a power or a function of the Authority under this Act; or
(b) to a court or a tribunal; or
(c) as required in the course of disciplinary proceedings against a doctor; or
(d) as required under any other Act; or
(e) for the purposes of law enforcement.

S. 66B
inserted by
No. 6/2016
s. 24.

66B Confidentiality of other information provided to the Authority under this Part

- (1) A member of the Authority or a person employed or engaged by the Authority or an organisation authorised under section 67B must not disclose to any person, whether directly or indirectly, any information obtained under section 52B, 56A(2), 56B or 56J or under a production order that cannot be included on the Central Register under section 54A.

Penalty: 50 penalty units.

- (2) Despite subsection (1), the Authority or a person employed or engaged by the Authority or an organisation authorised under section 67B may disclose the information—
- (a) in the exercise in good faith of a power or a function of the Authority under this Act; or
 - (b) to a court or a tribunal; or
 - (c) as required in the course of disciplinary proceedings against a doctor; or
 - (d) as required under any other Act; or
 - (e) for the purposes of law enforcement.

S. 66C
inserted by
No. 6/2016
s. 24.

66C Confidentiality of information on the Central Register disclosed by the Authority

- (1) If the Authority has disclosed information recorded on the Central Register to a person, that person must not disclose the information to any other person, whether directly or indirectly.

Penalty: 50 penalty units.

- (2) Despite subsection (1), the person may disclose information disclosed by the Authority—
 - (a) to a court or a tribunal; or
 - (b) in the course of disciplinary proceedings against a doctor; or
 - (c) as required under any other Act; or
 - (d) for the purposes of law enforcement.
- (3) Subsection (1) does not apply if—
 - (a) the Authority disclosed the information to a person who made an application under section 56(1) or 60A or to a doctor nominated by that person; or
 - (b) the Authority disclosed the information to a person in a notice given to that person under section 62; or
 - (c) the Authority did not advise the person, at the time of disclosure, that it is a criminal offence to disclose that information to any other person; or
 - (d) the information is disclosed to another person by a registered ART provider in accordance with Part 6A.

67 Consent

- (1) This section applies if, under this Part or the regulations, consent is required to be given before information may be disclosed.
- (2) If the person required to give consent is dead, the consent may be given by the senior available next of kin of that person, within the meaning of the **Human Tissue Act 1982**.
- (3) If the person required to give consent is a child, the consent may be given by a parent of the child or by the child's guardian.

- (4) If the consent required is given but is withdrawn in writing before the information is disclosed, the information must not be disclosed.

S. 67A
inserted by
No. 58/2014
s. 15.

67A Counselling under this Part

- (1) This section applies if a person is required to receive counselling under this Part before disclosure of information on the Central Register.

S. 67A(1A)
inserted by
No. 6/2016
s. 25(2).

- (1A) Counselling under this Part must be provided by a counsellor who provides counselling on behalf of the Authority.

S. 67A(2)
amended by
No. 6/2016
s. 25(1).

- (2) On referring the person for counselling, the Authority must inform the counsellor about the kind of information sought by the person from the Central Register.

S. 67A(3)
amended by
No. 6/2016
s. 25(1).

- (3) On completion of counselling, the counsellor must give to the Authority a statement—

- (a) confirming that the person has received counselling and whether the person wishes to proceed with the application; and
- (b) if the person is a child and is born as a result of a donor treatment procedure, stating whether the child is sufficiently mature to understand the consequences of the disclosure; and
- (c) in any other case, that the person has received counselling about potential consequences of disclosure of information from the Central Register.

S. 67A(4)
amended by
No. 6/2016
s. 25(1).

- (4) If any person is required under this Part to give consent before information on the Central Register may be disclosed, on completion of counselling, the counsellor must give to the Authority a statement of the applicant's reasons for the application, to be given to the person whose consent is required.

67B Authorisation of organisations

S. 67B
inserted by
No. 6/2016
s. 26.

- (1) The Secretary may, by written notice, authorise an organisation to assist the Authority in obtaining—
 - (a) information relating to the identity of persons from whom the Authority may request information under section 56J; or
 - (b) if the disclosure of identifying information relating to a person has been applied for under section 56(1), information from which that person may be located.
- (2) A notice of an authorisation under this section, and notice of any revocation or suspension of an authorisation under this section, must be published in the Government Gazette.
- (3) The Authority may disclose information recorded in the Central Register to an organisation authorised under this section to enable that organisation to exercise a function under this section.

68 Exemption from Freedom of Information Act 1982

- (1) For the purposes of the **Freedom of Information Act 1982**, a document is an exempt document if—
 - (a) it contains information (whether or not that information is kept in a register under this Part) about or provided by a person as—
 - (i) a donor; or
 - (ii) a woman on whom a treatment procedure is being or has been carried out or on whom a treatment procedure may be carried out; or
 - (iii) a person who is or has been the partner of a woman referred to in paragraph (ii); or

- (iv) a person who was born as a result of a treatment procedure; or
 - (b) it is the Central Register or part of the Central Register.
- (2) Despite subsection (1), a document is not an exempt document under subsection (1)(a)—
- (a) to the extent that it only contains information—
 - (i) about or provided by the applicant and no other person; or
 - (ii) about or provided by one person only and the applicant is that person's guardian; or
 - (b) in the prescribed circumstances and to the extent the document does not contain identifying information.

Part 6A—Access to certain kinds of medical information

Pt 6A
(Heading and
ss 68A–68E)
inserted by
No. 58/2014
s. 16.

68A Application of Part

This Part applies in relation to medical information about an individual that is or could be predictive of the health (at any time) of the individual or any descendants of the individual.

S. 68A
inserted by
No. 58/2014
s. 16.

68B Registered ART provider may disclose medical information

- (1) A registered ART provider may disclose medical information about a donor to the following persons in accordance with section 68C—
 - (a) a person born as a result of a donor treatment procedure;
 - (b) the parent of a person born as a result of a donor treatment procedure;
 - (c) the woman and her partner, if any, who is to undergo a treatment procedure using the donor's gametes.
- (2) A registered ART provider may disclose medical information about a person born as a result of a donor treatment procedure to the following persons in accordance with section 68C—
 - (a) the donor;
 - (b) an adult donor sibling of the person;
 - (c) the parent of a donor sibling of the person.

S. 68B
inserted by
No. 58/2014
s. 16.

68C Disclosure of medical information

- (1) A registered ART provider may disclose medical information that is not identifying information about a donor or a person born as a result of a

S. 68C
inserted by
No. 58/2014
s. 16.

donor treatment procedure if a doctor has certified in writing that the disclosure is necessary—

- (a) to save a person's life; or
 - (b) to warn the person to whom the information is to be disclosed about the existence of a genetic or hereditary condition that may be harmful to that person or that person's descendants.
- (2) A disclosure of medical information to a person under this section must be made by a doctor on behalf of the registered ART provider.
 - (3) If medical information is disclosed to a person under this section, the registered ART provider may also disclose the information to a doctor who is treating the person.
 - (4) Medical information may be disclosed under this section without the consent of the person to whom the information relates.

S. 68D
inserted by
No. 58/2014
s. 16,
amended by
No. 6/2016
s. 27 (ILA
s. 39B(1)).

68D Disclosure of information from Central Register to registered ART provider

- (1) On request of a registered ART provider, the Authority may disclose information (including identifying information) on the Central Register about the following persons for the purposes of disclosing medical information under this Part—
 - (a) a donor;
 - (b) a person born as a result of a donor treatment procedure;
 - (c) a parent of a person born as a result of a donor treatment procedure.

(2) Before disclosing that a person is a donor of a person born as a result of a donor treatment procedure, the Authority must be satisfied that a donor and a person born as a result of a donor treatment procedure are related within the meaning of section 56N(4).

S. 68D(2)
inserted by
No. 6/2016
s. 27(2).

68E Registered ART provider not required to disclose medical information under this Part

S. 68E
inserted by
No. 58/2014
s. 16.

Nothing in this Part requires a registered ART provider to disclose medical information to a person.

Pt 7 (Heading)
substituted by
No. 58/2014
s. 17.

Part 7—Voluntary Register and donor-linking

Pt 7 Div. 1
(Heading)
inserted by
No. 58/2014
s. 18.

Division 1—Voluntary Register

S. 69
amended by
No. 58/2014
s. 19.

69 Application of Part

This Part applies despite Parts 6 and 6A.

S. 70
(Heading)
amended by
No. 6/2016
s. 28(1).

70 Authority to keep Voluntary Register

S. 70(1)
amended by
No. 6/2016
s. 28(2).

- (1) The Authority 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.

S. 71
(Heading)
amended by
No. 6/2016
s. 29(1).

71 Information and matter to be entered in Voluntary Register

S. 71(1)(a)
amended by
No. 6/2016
s. 29(2)(a)(i).

- (1) The following may be entered in the Voluntary Register—
 - (a) the names and addresses of persons who have asked the Registrar or the Authority, 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—
- (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
- (ba) in relation to each person whose name is entered in the Register, any photograph, toy, jewellery or other item approved by the Authority that the person has asked to have entered in the Register;
- (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 Authority may from time to time publicise the establishment and purpose of the Voluntary Register.

S. 71(1)(a)(v)
amended by
No. 6/2016
s. 29(2)(a)(ii).

S. 71(1)(ba)
inserted by
No. 6/2016
s. 29(2)(b).

S. 71(1)(c)
amended by
No. 6/2016
s. 29(2)(c).

S. 71(2)
amended by
No. 6/2016
s. 29(3).

S. 71(3)
amended by
No. 6/2016
s. 29(3).

- (3) The Authority 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.

S. 72
amended by
No. 6/2016
s. 30.

72 Disclosure of information

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

73 Requirement for counselling

S. 73(1)
amended by
No. 6/2016
s. 31(1)(a).

- (1) The Authority may disclose information in the Voluntary Register to a person only if—

S. 73(1)(a)
amended by
No. 6/2016
s. 31(1)(a).

- (a) in the case of the disclosure of non-identifying information—the Authority has offered the person counselling by a counsellor; or

S. 73(1)(b)
substituted by
No. 58/2014
s. 20(1),
amended by
No. 6/2016
s. 31(1).

- (b) in the case of identifying information—the Authority has received confirmation under section 73A(3) that the person has received counselling on prescribed matters.

- (2) This section applies despite any other provision of this Part.

S. 73(3)
amended by
No. 58/2014
s. 20(2),
substituted by
No. 6/2016
s. 31(2).

- (3) In this section—
counsellor means a counsellor who provides counselling on behalf of the Authority.

73A Counselling under this Part

- (1) This section applies if a person is required to receive counselling under section 73 before disclosure of information on the Voluntary Register.
- (2) On referring the person for counselling, the Authority must inform the counsellor about the kind of information sought by the person from the Voluntary Register.
- (3) On completion of counselling, the counsellor must give to the Authority a statement—
 - (a) confirming that the person has received counselling and whether the person wishes to proceed with the application; and
 - (b) if any person is required under section 73 to give consent before information on the Voluntary Register may be disclosed, a statement of the applicant's reasons for the application to be given to the person whose consent is required.

S. 73A
inserted by
No. 58/2014
s. 21.

S. 73A(2)
amended by
No. 6/2016
s. 32.

S. 73A(3)
amended by
No. 6/2016
s. 32.

Division 2—Donor-linking

Pt 7 Div. 2
(Heading)
inserted by
No. 58/2014
s. 21.

73B Who may use donor-linking services?

The Authority may provide donor-linking services under this Division to the following persons—

- (a) persons born as a result of a donor treatment procedure;
- (b) donors;
- (c) descendants of persons born as a result of donor treatment procedures;

S. 73B
inserted by
No. 58/2014
s. 21.

- (d) women who have undergone donor treatment procedures and their partners, if any;
- (e) relatives of persons referred to in paragraph (a), (b), (c) or (d).

S. 73C
inserted by
No. 58/2014
s. 21.

73C Authority may provide donor-linking services

- (1) On request of a person referred to in section 73B, the Authority may do one or both of the following—
 - (a) facilitate exchange of information or correspondence with another person referred to in section 73B;
 - (b) assist the person to arrange contact with another person referred to in section 73B.
- (2) The Authority must not, under subsection (1), disclose identifying information or contact information about any person, without that person's consent to the disclosure.

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.

- (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.

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

The Patient Review Panel consists of—

- (a) a chairperson appointed by the Governor in Council; and
- (b) up to 3 deputy chairpersons appointed by the Governor in Council; and
- (c) as many other members, appointed by the Governor in Council, as to enable the proper functioning of the Panel.

S. 83
substituted by
No. 18/2013
s. 9.

S. 84
repealed by
No. 18/2013
s. 10.

* * * * *

S. 85
amended by
No. 18/2013
s. 11 (ILA
s. 39B(1)).

85 Functions of Panel

- (1) The functions of the Patient Review Panel are—
 - (a) to consider applications for surrogacy arrangements; and
 - (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.
- (2) The Patient Review Panel may exercise its functions under subsection (1)(a) to (f) as constituted by—
- (a) a Division of the Patient Review Panel; or
 - (b) if exercising a function under subsection (1)(f), the chairperson or a single member determined by the chairperson.
- (3) A Division of the Patient Review Panel is constituted by the chairperson and the following, determined by the chairperson—
- (a) a deputy chairperson; and
 - (b) 3 other members, at least one of whom must have expertise in child protection matters.

S. 85(2)
inserted by
No. 18/2013
s. 11.

S. 85(3)
inserted by
No. 18/2013
s. 11.

86 Chairperson and deputy chairpersons

S. 86
(Heading)
amended by
No. 18/2013
s. 12(1).

- (1) The chairperson and deputy chairpersons of the Patient Review Panel hold office for the period, not more than 3 years, specified in the person's instrument of appointment.
- (2) A person appointed as chairperson or deputy chairperson may resign that office by written notice given to the Minister.

S. 86(1)
amended by
No. 18/2013
s. 12(2).

S. 86(3)
amended by
No. 18/2013
s. 12(3).

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

S. 87
substituted by
No. 18/2013
s. 13.

87 Acting chairperson

- (1) The Minister may appoint a deputy chairperson to act as chairperson if the chairperson is absent or otherwise unable to perform the duties and functions of the office.
- (2) An acting chairperson holds office for the period that the chairperson is absent or otherwise unable to perform the duties and functions of the office.
- (3) The Minister may at any time terminate the appointment of an acting chairperson.
- (4) While the appointment of an acting chairperson remains in force, the acting chairperson has and may exercise all the powers and perform all the duties and functions of the chairperson.

S. 87A
inserted by
No. 18/2013
s. 13.

87A Other members

- (1) A member of the Patient Review Panel holds office for the period, not more than 3 years, specified in the person's instrument of appointment.
- (2) A person appointed as a member of the Patient Review Panel may resign that office by written notice given to the Minister.
- (3) The Governor in Council may, at any time, remove a member from office.

88 Payment of members

A member of the Patient Review Panel, other than a member who is an employee of the public service within the meaning of the **Public Administration Act 2004**, is entitled to receive the fees that are fixed from time to time by the Minister for that member.

89 Notice of hearing

- (1) On receiving an application, the chairperson of the Patient Review Panel must—
 - (a) fix a time and place for the hearing of the application to be conducted; and
 - (b) serve a notice of the hearing on the applicant that states—
 - (i) the nature of the hearing; and
 - (ii) the time and place of the hearing; and
 - (iii) that the applicant is entitled to be present at the hearing, to make submissions and to be accompanied by another person; and
 - (iv) that the hearing is not open to the public; and
 - (v) that there is no right to legal representation at the hearing without leave from the Panel; and
 - (vi) the possible findings or orders that the Panel may make.
- (2) The chairperson of the Patient Review Panel must ensure the hearing of an application is arranged and conducted as expeditiously as practicable.

90 Conduct of hearing

- (1) At a hearing, the Patient Review Panel must hear and determine the application before it.
- (2) Subject to subsection (3), the procedure of the Patient Review Panel is in the Panel's discretion.

- (3) At a hearing of an application by the Patient Review Panel—
- (a) the proceedings must be conducted with as little formality and technicality as proper consideration of the application permits; and
 - (b) there is no right to legal representation unless the Panel grants leave to the applicant to have legal representation; and
 - (c) the applicant is entitled to—
 - (i) be present; and
 - (ii) to make submissions; and
 - (iii) to be accompanied by another person; and
 - (d) the proceedings must not be open to the public; and
 - (e) subject to paragraph (f), the Panel is bound by the rules of natural justice; and
 - (f) the Panel is not bound by the rules of evidence and may inform itself in any way it thinks fit.

91 Decision by Patient Review Panel

- (1) Within 14 days after hearing the application, the Patient Review Panel must decide—
- (a) for an application for approval of a surrogacy arrangement, to approve or not to approve the arrangement; or
 - (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.

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;
 - (ab) to keep the Central Register;

S. 100(1)(ab)
inserted by
No. 6/2016
s. 33.

(ac) to keep the Voluntary Register;

S. 100(1)(ac)
inserted by
No. 6/2016
s. 33.

(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;

(ca) to provide counselling and support services in relation to matters relating to persons born as a result of donor treatment procedures;

S. 100(1)(ca)
inserted by
No. 58/2014
s. 22.

(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;
 - (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.

S. 100A
inserted by
No. 6/2016
s. 34 (as
amended by
No. 22/2016
s. 162).

100A Guidelines

- (1) Subject to subsection (2), the Secretary may issue written guidelines to the Authority for the performance of functions and the exercise of powers by the Authority under this Act.
- (2) The Secretary must consult with the Health Complaints Commissioner before issuing guidelines under subsection (1) that relate to the disclosure by the Authority of identifying information about a person born as a result of a pre-1998 donor treatment procedure or a pre-1998 donor.
- (3) The Authority must comply with any guidelines issued under this section.

100B Directions

- (1) The Secretary may issue written directions to the Authority in relation to the following matters—
 - (a) the keeping of the Central Register;
 - (b) the amendment or correction of information in the Central Register;
 - (c) the keeping of the Voluntary Register;
 - (d) the provision of donor-linking services under section 73C;
 - (e) requests for records under section 56B;
 - (f) obtaining information under section 56J;
 - (g) the provision of counselling services;
 - (h) the interpretation of guidelines issued under section 100A.
- (2) The Authority must comply with a direction issued under subsection (1).

S. 100B
inserted by
No. 6/2016
s. 34 (as
amended by
No. 22/2016
s. 162).

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
 - (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.

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.

- (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 or tampering with documents

A person must not destroy, remove, cancel or tamper with a document required to be kept by or under this Act or the regulations unless authorised by this Act or the regulations to do so.

Penalty: 50 penalty units.

S. 121
(Heading)
amended by
No. 6/2016
s. 35(1).

S. 121
amended by
No. 6/2016
s. 35(2).

121A Records identifying donor treatment procedure participants to be kept

(1) In this section—

identifying record means a record relating to a donor treatment procedure that identifies the donor and the woman on whom the treatment procedure was carried out, and her partner (if any).

(2) Subject to subsection (3A), a person must ensure that an identifying record is kept for at least 99 years after the creation of the record.

(3) A registered ART provider must ensure that an identifying record is kept for at least 99 years after the creation of the record.

(3A) Subsection (2) does not apply to a person who has given original records to the Authority under section 52B(1)(a) or 56B(6)(a) or in compliance with a production order.

(4) The requirement in this section applies to records created before or after the commencement of section 23 of the **Assisted Reproductive Treatment Further Amendment Act 2014**.

S. 121A
inserted by
No. 58/2014
s. 23.

S. 121A(2)
amended by
No. 6/2016
s. 36(1).

S. 121A(3A)
inserted by
No. 6/2016
s. 36(2).

122 Requirements if registered ART provider ceases to operate

- (1) This section applies if a registered ART provider intends to cease operating.
- (2) Before the registered ART provider ceases to operate the registered ART provider must make all reasonable efforts to—
 - (a) transfer to another registered ART provider or a hospital any gametes or embryos stored by the registered ART provider; and
 - (b) transfer to another registered ART provider, a hospital or the Registrar any record required, by or under this Act or the regulations, to be kept by the registered ART provider; and
 - (c) notify patients that the registered ART provider intends to cease to operate.

Example

By placing an advertisement in a newspaper published in the area in which the registered ART provider operates.

- (3) In this section—

hospital means any of the following hospitals—

- (a) a denominational hospital within the meaning of the **Health Services Act 1988**;
- (b) a metropolitan hospital within the meaning of the **Health Services Act 1988**;
- (c) a privately-operated hospital within the meaning of the **Health Services Act 1988**;
- (d) a public hospital within the meaning of the **Health Services Act 1988**.

123 Indictable offences

An offence under section 7, 8, 34(1) or 35 is an indictable offence.

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;

- (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—

S. 125(d)
amended by
No. 29/2011
s. 3(Sch. 1
item 4.2).

Assisted Reproductive Treatment Act 2008
No. 76 of 2008
Part 12—Regulations

- (i) wholly or partially or as amended by the regulations; or
- (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
- (iii) as formulated, issued, prescribed or published from time to time.

Part 13—Repeal, savings and transitional provisions

Division 1—Repeal

126 Repeal

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

Division 2—Transitional provisions

127 Definitions

In this Division—

commencement means the commencement of this section;

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

128 References to repealed Act etc

From the commencement, a reference in an Act (other than this Act) or a document—

- (a) to the repealed Act is taken, if the context permits, to be a reference to this Act; and
- (b) to a licensed centre under the repealed Act is taken to be a reference to a registered ART provider under this Act; and
- (c) to the Central Register under the repealed Act is taken to be a reference to the Central Register kept under this Act; and
- (d) to a register kept by a licensed centre under the repealed Act is taken to be a reference to a register kept under this Act by a registered ART provider.

129 Consents

- (1) This section applies to a consent given under the repealed Act and not withdrawn or lapsed immediately before the commencement.
- (2) From the commencement, the consent is taken to be a consent given under this Act.

130 Registers

A register kept by a licensed provider of ART services under the repealed Act is taken to be a register kept by a registered ART provider under this Act.

131 Licence holders

A person who was, immediately before the commencement, a licence holder under the repealed Act is taken, from the commencement, to be registered under this Act.

132 Authority

- (1) The Infertility Treatment Authority established under the repealed Act is taken, on the commencement, to be the Victorian Assisted Reproductive Treatment Authority.
- (2) A person who was, immediately before the commencement, a member of the Infertility Treatment Authority continues from the commencement as a member of the Victorian Assisted Reproductive Treatment Authority.
- (3) The Infertility Treatment Authority Fund kept by the Infertility Treatment Authority under the repealed Act is taken on the commencement to be the Victorian Assisted Reproductive Treatment Authority Fund under this Act.

133 Applications

- (1) This section applies if—
- (a) before the commencement a person had applied to the Infertility Treatment Authority for access to information on a register kept under the repealed Act; and
 - (b) immediately before the commencement the application had not been dealt with.
- (2) From the commencement, the application is taken to be an application made to the Registrar under this Act.

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S. 134
expired by
force of
No. 76/2008
s. 134(4).

Division 3—Savings provision

135 Continued operation of Infertility Treatment Regulations

Despite the **Subordinate Legislation Act 1994**, the Infertility Treatment Regulations 1997, as in force immediately before the commencement of this section, continue until the commencement of section 124.

Division 4—Transitional provisions—Assisted Reproductive Treatment Amendment Act 2013

Pt 13 Div. 4
(Heading and
ss 136–138)
inserted by
No. 18/2013
s. 14.

136 Definitions

In this Division—

2013 Act means the **Assisted Reproductive Treatment Amendment Act 2013**;

New s. 136
inserted by
No. 18/2013
s. 14.

commencement day means the day on which section 14 of the 2013 Act comes into operation.

New s. 137
inserted by
No. 18/2013
s. 14.

137 Validation of storage of certain gametes past expiry

- (1) This section applies if immediately before the commencement day—
 - (a) a person had caused or permitted gametes to remain in storage; and
 - (b) the gametes had been in storage for more than 10 years without approval under this Act or a corresponding previous enactment for a longer storage period.
- (2) Section 31 as substituted by the 2013 Act does not apply to prohibit the continued storage of the gametes for the period ending 18 months after the commencement day.
- (3) The person is not liable for an offence against section 31(1), as in force immediately before the commencement day, only for the reason that the person caused or permitted the gametes to remain in storage for more than 10 years without the approval of the Patient Review Panel.

New s. 138
inserted by
No. 18/2013
s. 14.

138 Validation of storage of certain embryos past expiry

- (1) This section applies if immediately before the commencement day—
 - (a) a registered ART provider caused or permitted an embryo to remain in storage; and
 - (b) the embryo had been in storage for more than—
 - (i) 5 years; or

(ii) if the persons who produced the gametes from which the embryo was formed had consented to the embryo remaining in storage for an additional period not exceeding 5 years, that period—

without approval under this Act or a corresponding previous enactment for a longer storage period.

- (2) Section 33 as amended by the 2013 Act does not apply to prohibit the continued storage of the embryo for the period ending 18 months after the commencement day.
- (3) The registered ART provider is not liable for an offence against section 33(2), as in force immediately before the commencement day, only for the reason that the registered ART provider permitted or caused the embryo to remain in storage for more than a period referred to in subsection (1)(b)(i) or (ii) without the approval of the Patient Review Panel.

139 Continuation of the Patient Review Panel

The Patient Review Panel continues to be the same body despite its change in constitution.

New s. 139
inserted by
No. 18/2013
s. 15.

Division 5—Transitional provisions— Assisted Reproductive Treatment Further Amendment Act 2014

Pt 13 Div. 5
(Heading and
s. 140)
inserted by
No. 58/2014
s. 24.

140 Initial provision of information on register of pre-1988 donor treatment procedures

- (1) This section applies to a registered ART provider who, on the relevant day, is in possession of or has control of records relating to pre-1988 donor treatment procedures.

New s. 140
inserted by
No. 58/2014
s. 24.

- (2) The registered ART provider must, within 6 months of the relevant day, give to the Registrar a copy of the register required to be kept under section 49A.

Penalty: 10 penalty units.

- (3) In this section—

relevant day means the day on which section 5 of the **Assisted Reproductive Treatment Further Amendment Act 2014** comes into operation.

Pt 13 Div. 6
(Heading and
ss 141–147)
inserted by
No. 6/2016
s. 37.

Division 6—Transitional provisions—Assisted Reproductive Treatment Amendment Act 2016

New s. 141
inserted by
No. 6/2016
s. 37.

141 Registrar must provide Authority with copy of Central Register

- (1) The Registrar must, as soon as reasonably practicable after the commencement of section 37 of the **Assisted Reproductive Treatment Amendment Act 2016**, provide the Authority with—
- (a) a copy of the information contained on the Central Register as at the date the information is provided; and
 - (b) a copy of the information contained on the Voluntary Register as at the date the information is provided.

- (2) A member of the Authority or a person employed or engaged by the Authority must not, before the commencement of section 10 of the **Assisted Reproductive Treatment Amendment Act 2016**, disclose to any person, whether directly or indirectly, any information provided to the Authority under subsection (1).

Penalty: 50 penalty units.

142 Applications

This Act as amended by Part 2 (other than section 37) of the **Assisted Reproductive Treatment Amendment Act 2016** applies to an application under section 56(1) made before that amendment if, immediately before that amendment, the Registrar had not disclosed the requested information to the applicant.

New s. 142
inserted by
No. 6/2016
s. 37.

143 Lodgement of contact preferences

- (1) Division 3A of Part 6, as inserted by section 23 of the **Assisted Reproductive Treatment Amendment Act 2016**, does not apply to permit a pre-1998 donor to lodge a contact preference in relation to an applicant to whom identifying information was disclosed before the commencement of that section 23.
- (2) Division 3B of Part 6, as inserted by section 23 of the **Assisted Reproductive Treatment Amendment Act 2016**, does not apply to permit a person born as a result of a donor treatment procedure to lodge a contact preference in relation to an applicant to whom identifying information was disclosed before the commencement of that section 23.

New s. 143
inserted by
No. 6/2016
s. 37.

New s. 144
inserted by
No. 6/2016
s. 37.

144 Continuation of Central Register

The commencement of section 10 of the **Assisted Reproductive Treatment Amendment Act 2016** does not affect the operation of the Central Register and the Central Register is taken to be the same document on and after that commencement as it was before that commencement.

New s. 145
inserted by
No. 6/2016
s. 37.

145 Continuation of Voluntary Register

The commencement of section 28 of the **Assisted Reproductive Treatment Amendment Act 2016** does not affect the operation of the Voluntary Register and the Voluntary Register is taken to be the same document on and after that commencement as it was before that commencement.

New
ss 146, 147
inserted by
No. 6/2016
s. 37,
repealed by
No. 76/2008
s. 147.

* * * * *

Pt 14
(Heading and
ss 136–148)
repealed by
No. 76/2008
s. 148.

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Pt 15
(Heading and
ss 149–154)
repealed by
No. 21/2015
s. 3(Sch. 1
item 6).

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Assisted Reproductive Treatment Act 2008
No. 76 of 2008

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**Pt 16
(Heading and
ss 155–159)
repealed by
No. 70/2013
s. 3(Sch. 1
item 1).**

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 10 September 2008

Legislative Council: 10 October 2008

The long title for the Bill for this Act was "A Bill for an Act to regulate assisted reproductive treatment and artificial insemination, to make provision with respect to surrogacy arrangements, to repeal the **Infertility Treatment Act 1995**, to amend the **Status of Children Act 1974** and the **Births, Deaths and Marriages Registration Act 1996** and other Acts and for other purposes."

The **Assisted Reproductive Treatment Act 2008** was assented to on 11 December 2008 and came into operation as follows:

Sections 1, 2 and 135 on 12 December 2008: section 2(1); rest of Act on 1 January 2010: section 2(3).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

Assisted Reproductive Treatment Act 2008
No. 76 of 2008
Endnotes

a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

Assisted Reproductive Treatment Act 2008
No. 76 of 2008
Endnotes

2 Table of Amendments

This publication incorporates amendments made to the **Assisted Reproductive Treatment Act 2008** by Acts and subordinate instruments.

Assisted Reproductive Treatment Act 2008, No. 76/2008

<i>Assent Date:</i>	11.12.08
<i>Commencement Date:</i>	Ss 134(4), 148 on 1.1.10: s. 2(3); new s. 147 inserted on 18.5.16 by No. 6/2016 s. 37: Special Gazette (No. 153) 17.5.16 p. 1
<i>Notes:</i>	S. 134(4) provided that s. 134 expired on 1.1.11; s. 148 repealed Pt 14 (ss 136–148) on 1.1.11; s. 147 repealed ss 146, 147 on 1.3.18
<i>Current State:</i>	This information relates only to the provision/s amending the Assisted Reproductive Treatment Act 2008

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

<i>Assent Date:</i>	30.3.10
<i>Commencement Date:</i>	S. 51(Sch. item 6) on 1.7.10: s. 2(2)
<i>Current State:</i>	This information relates only to the provision/s amending the Assisted Reproductive Treatment Act 2008

Health and Human Services Legislation Amendment Act 2010, No. 29/2010

<i>Assent Date:</i>	8.6.10
<i>Commencement Date:</i>	S. 46 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
<i>Current State:</i>	This information relates only to the provision/s amending the Assisted Reproductive Treatment Act 2008

Statute Law Revision Act 2011, No. 29/2011

<i>Assent Date:</i>	21.6.11
<i>Commencement Date:</i>	S. 3(Sch. 1 item 4) on 22.6.11: s. 2(1)
<i>Current State:</i>	This information relates only to the provision/s amending the Assisted Reproductive Treatment Act 2008

Assisted Reproductive Treatment Amendment Act 2013, No. 18/2013

<i>Assent Date:</i>	23.4.13
<i>Commencement Date:</i>	Ss 4-8, 14 on 23.4.13: s. 2(1); ss 9–13, 15 on 28.5.13: Special Gazette (No. 180) 21.5.13 p. 1
<i>Current State:</i>	This information relates only to the provision/s amending the Assisted Reproductive Treatment Act 2008

Statute Law Revision Act 2013, No. 70/2013

<i>Assent Date:</i>	19.11.13
<i>Commencement Date:</i>	S. 3(Sch. 1 item 1) on 1.12.13 s. 2(1)
<i>Current State:</i>	This information relates only to the provision/s amending the Assisted Reproductive Treatment Act 2008

Assisted Reproductive Treatment Act 2008
No. 76 of 2008
Endnotes

Act 2008

**Victoria Police Amendment (Consequential and Other Matters) Act 2014,
No. 37/2014**

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 5) on 1.7.14: Special Gazette
(No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s
amending the **Assisted Reproductive Treatment
Act 2008**

Assisted Reproductive Treatment Further Amendment Act 2014, No. 58/2014

Assent Date: 2.9.14
Commencement Date: Ss 4-9, 16, 19, 23, 24 on 30.10.14: Special Gazette
(No. 400) 29.10.14 p. 1; ss 10-15, 17, 18, 20-22 on
29.6.15: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Assisted Reproductive Treatment
Act 2008**

**Children, Youth and Families Amendment (Permanent Care and Other Matters)
Act 2014, No. 61/2014**

Assent Date: 9.9.14
Commencement Date: S. 162 on 1.3.16: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Assisted Reproductive Treatment
Act 2008**

Statute Law Revision Act 2015, No. 21/2015

Assent Date: 16.6.15
Commencement Date: S. 3(Sch. 1 item 6) on 1.8.15: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Assisted Reproductive Treatment
Act 2008**

Assisted Reproductive Treatment Amendment Act 2016, No. 6/2016 (as amended
by No. 22/2016)

Assent Date: 1.3.16
Commencement Date: Ss 4(2), 37 on 18.5.16: Special Gazette (No. 153)
17.5.16 p. 1; ss 4(1), 5-36 on 1.3.17: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Assisted Reproductive Treatment
Act 2008**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

¹ S. 3 def. of *Health Services Commissioner*: The amendment proposed by section 161 of the **Health Complaints Act 2016**, No. 22/2016 is not included in this publication due to the earlier commencement of section 4(2) of the **Assisted Reproductive Treatment Amendment Act 2016**, No. 6/2016.

Section 161 reads as follows:

161 Definitions

In section 4(2) of the **Assisted Reproductive Treatment Amendment Act 2016**, for the proposed definition of *Health Services Commissioner* substitute—

"Health Complaints Commissioner means the Commissioner as defined in the **Health Complaints Act 2016**;"