

# Assisted Reproductive Treatment Further Amendment Act 2014

No. of 2014

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(b) to amend the **Human Tissue Act 1982** to allow approval of advertisements for donations of ova to be delegated to the Victorian Assisted Reproductive Treatment Authority.

## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 29 June 2015, it comes into operation on that day.

## 3 Principal Act

In this Act, the **Assisted Reproductive Treatment Act 2008** is called the Principal Act.

See:  
Act No.  
76/2008.  
Reprint No. 1  
as at 1  
December  
2013.  
LawToday:  
www.  
legislation.  
vic.gov.au

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**PART 2—AMENDMENTS TO ASSISTED REPRODUCTIVE  
TREATMENT ACT 2008**

**4 Definitions**

In section 3 of the Principal Act **insert** the following definitions—

*"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;

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

**5 New section 49A inserted**

After section 49 of the Principal Act **insert**—

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

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."

**6 New sections 52A and 52B inserted**

After section 52 of the Principal Act **insert—**

**"52A Information to be given to Registrar 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 Registrar any additional information that has been included in the register in the preceding 12 months.

**52B Information may be given to Registrar by individuals—pre-1988 donor treatment procedures**

- (1) A natural person who is in possession of or has control of records relating to pre-1988 donor treatment procedures may—
  - (a) give the records to the Registrar; or
  - (b) give copies of the records to the Registrar.

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

**7 Heading to section 54 substituted**

For the heading to section 54 of the Principal Act **substitute—**

**"Registrar to correct Central Register on request".**

**8 New section 54A inserted**

After section 54 of the Principal Act **insert—**

**"54A Registrar to correct or include information on Central Register without request**

- (1) The Registrar may use information provided under section 52A or 140 to amend or correct information, or create a new entry, in the Central Register if, in the Registrar's opinion, the amendment, correction or new entry will make the Central Register more accurate or complete.
- (2) The Registrar may use information or records obtained under section 52B or 56A(2) to amend or correct information, or create a new entry, in the Central Register, if, in the Registrar'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 Registrar must have regard to the desirability of including in the Central Register as much as possible of the information required under section 53."

**9 New section 56A inserted**

After section 56 of the Principal Act **insert**—

**"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 Registrar may access records transferred to the Public Record Office from Prince Henry's Institute of Medical Research that relate to donor treatment procedures.
- (3) The Registrar, in accordance with this Part, may disclose to the applicant information obtained from the Public Record Office if the information is of a kind that could be included in the Register under section 54A(2)."

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

In section 59 of the Principal Act—

- (a) in paragraph (a)(ii)(B), for "Registrar, in writing," **substitute** "Registrar under section 67A(3)";
- (b) in paragraph (b)(ii) of the Principal Act, for "between 1 July 1988 and" **substitute** "before".

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

(1) In section 60 of the Principal Act, before "the Registrar" **insert** "subject to subsection (2),".

(2) At the end of section 60 of the Principal Act **insert**—

"(2) If the applicant is descended from a person born as a result of a donor treatment procedure using gametes donated before 31 December 1997, the Registrar must not disclose the information unless the donor has given consent to the disclosure and the disclosure is in accordance with that consent."

**12 New section 60A inserted**

After section 60 of the Principal Act **insert**—

**"60A Application for information on Central Register about donor siblings**

(1) A person born as a result of a donor treatment procedure or a parent of a person born as a result of a donor treatment procedure may apply for the disclosure of information recorded on the Central Register relating to—

- (a) donor siblings of the person; or
- (b) donor siblings of the applicant's child.

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

- (a) be made in the form and way approved by the Registrar; and
- (b) be accompanied by the prescribed fee.

- (3) On receipt of an application under subsection (1) the Registrar may disclose to the applicant the following information—
- (a) the total number of the applicant's or the child's donor siblings and the number of those donor siblings born to each woman;
  - (b) the sex of each of the applicant's or the child's donor siblings;
  - (c) the month and year of birth of each of the applicant's or the child's donor siblings."

### **13 Requirement for counselling**

- (1) For section 61(1)(b) of the Principal Act **substitute—**
- "(b) in the case of identifying information—the Registrar has received confirmation under section 67A(3) that the person has received counselling."
- (2) In section 61(3) of the Principal Act, for paragraph (b) of the definition of *counsellor* **substitute—**
- "(b) who provides counselling on behalf of the Authority."

### **14 Disclosure of information to the Authority**

At the end of section 63 of the Principal Act **insert—**

- "(2) The Registrar may only disclose identifying information or contact information under subsection (1) for purposes relating to the Authority's functions under Division 2 of Part 7 if the person to whom the information relates has consented to disclosure of that information."
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**15 New section 67A inserted**

After section 67 of the Principal Act **insert—**

**"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.
- (2) On referring the person for counselling, the Registrar must inform the counsellor about the kind of information sought by the person from the Central Register.
- (3) On completion of counselling, the counsellor must give to the Registrar 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.
- (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 Registrar a statement of the applicant's reasons for the application, to be given to the person whose consent is required."

**16 New Part 6A inserted**

After Part 6 of the Principal Act **insert**—

**"PART 6A—ACCESS TO CERTAIN KINDS OF  
MEDICAL INFORMATION**

**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.

**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.
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**68C Disclosure of medical information**

- (1) A registered ART provider may disclose medical information that is not identifying information about a donor or a person born as a result of a donor treatment procedure if a doctor has certified in writing that the disclosure is necessary—
  - (a) to save a person's life; or
  - (b) to warn the person to whom the information is to be disclosed about the existence of a genetic or hereditary condition that may be harmful to that person or that person's descendants.
- (2) A disclosure of medical information to a person under this section must be made by a doctor on behalf of the registered ART provider.
- (3) If medical information is disclosed to a person under this section, the registered ART provider may also disclose the information to a doctor who is treating the person.
- (4) Medical information may be disclosed under this section without the consent of the person to whom the information relates.

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

On request of a registered ART provider, the Registrar may disclose information (including identifying information) on the Central Register about the following persons for the purposes of disclosing medical information under this Part—

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

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

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

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**17 Heading to Part 7 substituted**

For the heading to Part 7 of the Principal Act substitute—

**"PART 7—VOLUNTARY REGISTER AND DONOR-LINKING".**

**18 Division heading inserted**

After the heading to Part 7 of the Principal Act insert—

**"Division 1—Voluntary Register".**

**19 Application of Part**

In section 69 of the Principal Act, for "Part 6" substitute "Parts 6 and 6A".

**20 Requirement for counselling**

- (1) For section 73(1)(b) of the Principal Act substitute—

"(b) in the case of identifying information—the Registrar has received confirmation under section 73A(3) that the person has received counselling."

- (2) In section 73(3) of the Principal Act, for paragraph (b) of the definition of *counsellor* substitute—

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"(b) who provides counselling on behalf of the Authority."

**21 New section 73A and Division 2 of Part 7 inserted**

After section 73 of the Principal Act **insert—**

**"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 Registrar 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 Registrar 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.

**Division 2—Donor-linking**

**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;
- (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).

**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."

**22 Powers, functions, duties and consultation requirements**

After section 100(1)(c) of the Principal Act  
**insert—**

- "(ca) to provide counselling and support services in relation to matters relating to persons born as a result of donor treatment procedures;"
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**23 New section 121A inserted**

After section 121 of the Principal Act **insert—**

**"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 section 52B(1)(a), a natural 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.

(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**."

**24 Division 5 of Part 13 inserted**

After Division 4 of Part 13 of the Principal Act **insert—**

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

**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.

- (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."

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**PART 3—AMENDMENT OF HUMAN TISSUE ACT 1982 AND  
REPEAL OF AMENDING ACT**

**25 Amendment of Human Tissue Act 1982**

At the end of section 40 of the **Human Tissue Act 1982** insert—

"(2) The Minister, by instrument, may delegate to the Victorian Assisted Reproductive Treatment Authority established under the **Assisted Reproductive Treatment Act 2008** the approval under subsection (1) of advertisements for the donation of ova."

See:  
Act No.  
9860/1982.  
Reprint No. 4  
as at  
20 May 2010  
and  
amending  
Act Nos  
13/2010 and  
83/2012.  
LawToday:  
www.  
legislation.  
vic.gov.au

**26 Repeal of amending Act**

This Act is **repealed** on 29 June 2016.

**Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## ENDNOTES

† *Minister's second reading speech—*

*Legislative Assembly:*

*Legislative Council:*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Assisted Reproductive Treatment Act 2008** and the **Human Tissue Act 1982** and for other purposes."