



New South Wales

Assisted Reproductive Technology Amendment Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to establish a scheme where persons who were born as a result of ART treatment provided before 1 January 2010 using a donated gamete are able to obtain certain non-identifying information about the donor of the gamete and to require ART providers to retain records for this purpose for up to 75 years,
- (b) to make it an offence to knowingly falsify or destroy records required to be kept or retained under the *Assisted Reproductive Technology Act 2007* (the *principal Act*),
- (c) to extend to 15 years the maximum period for which donated gametes and embryos created using donated gametes may be stored and used,
- (d) to provide an exception to the 5 woman limit (which prevents ART treatment using a donated gamete being provided to a woman if there are already 5 other women who have given birth to offspring of the donor) if the woman or spouse of the woman is the parent of a child born as a result of ART treatment using a gamete from the same donor,
- (e) to permit information about a person born as a result of ART treatment using a donated gamete to be disclosed to the person's siblings and to the donor of the gamete if the Secretary of the Ministry of Health considers the information should be disclosed,
- (f) to permit donors of gametes and offspring of donors and parties to private ART arrangements to voluntarily provide information for inclusion in the central register,
- (g) to provide for the voluntary inclusion of information about donor conception in a birth registration statement and for the recording of that information in the Births, Deaths and

Marriages Register and for the person to whom the statement relates to be notified about the information if the person is older than 18 years of age and applies for a birth certificate,

- (h) to move a number of key provisions of the *Assisted Reproductive Technology Regulation 2014* into the principal Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act 28 days after the date of assent to the proposed Act except the following provisions which commence on the date of assent:

- (a) provisions updating references to the Ministry of Health and the Secretary of the Ministry,
- (b) provisions amending section 27 (Donated gametes or embryos—maximum number of families) of the principal Act,
- (c) proposed section 61A (Destruction or falsification of ART records) of the principal Act.

Schedule 1 **Amendment of Assisted Reproductive Technology Act 2007 No 69**

Schedule 1 [1] and [2] update terminology and references in the principal Act as a consequence of the commencement of the *Government Sector Employment Act 2013*.

Schedule 1 [3] also inserts definitions of *full name*, *identifying information* and *relevant medical history* to be used in the principal Act.

Schedule 1 [4] increases the maximum period that a donated gamete, or an embryo created using a donated gamete, may be stored from 10 years to 15 years. **Schedule 1 [5]** makes it an offence for an ART provider to use any such gamete or embryo in ART treatment after that 15 year period without the written authorisation of the Secretary of the Ministry of Health (the *Secretary*) with a maximum penalty of \$44,000 if the ART provider is a corporation or \$22,000 in any other case.

Schedule 1 [6] provides an exception to the 5 woman limit and permits the regulations under the principal Act to prescribe other exceptions. The **5 woman limit** is set out in section 27 of the principal Act and prevents ART treatment using a donated gamete being provided to a woman if there are already 5 other women who have given birth to offspring of the donor. ART treatment using a gamete of a donor may now be provided to a woman if the woman or the spouse of the woman is the parent of a child born as a result of ART treatment using a donated gamete from the same donor.

Schedule 1 [7] provides for additional information about a donor that must be provided by an ART provider if requested to do so by a registered ART provider for the purposes of complying with the 5 woman limit. The regulations made under the principal Act currently require this information to be provided and the proposed amendment moves this requirement into the principal Act.

Schedule 1 [8] permits the Secretary to provide information on the central register to an ART provider if the Secretary is of the opinion that provision of the information may be necessary to ensure that the ART provider does not fail to comply with the 5 woman limit.

Schedule 1 [9] sets out the information that an ART provider must obtain from a gamete provider before the ART provider obtains a gamete. The regulations made under the principal Act currently require this information to be obtained and the proposed amendment moves this requirement into the principal Act.

Schedule 1 [10] and [11] set out additional information that must be recorded by an ART provider in relation to any gamete or embryo in the ART provider's possession. The regulations made under the principal Act currently require records of this information to be kept about any such

gametes or embryos and the proposed amendments move these requirements into the principal Act.

Schedule 1 [12] omits section 33 (Information about ART treatment to be entered in central register) from the principal Act and instead inserts proposed sections 33–33D.

Proposed section 33 sets out the information that an ART provider must give the Secretary if a child is born as a result of ART treatment provided by the ART provider. Failure to provide the information is an offence with a maximum penalty of \$44,000 if the ART provider is a corporation or \$22,000 in any other case. The regulations made under the principal Act currently require this information to be provided to the Secretary and the proposed amendments move these requirements into the principal Act. The Secretary must enter information given under the proposed section in the central register.

Proposed section 33A provides for the parties to private ART arrangements (being the donor, the woman undergoing ART treatment and any spouse of the woman) to voluntarily provide information to the Secretary for inclusion on the central register. The Secretary may require the provision of evidence that demonstrates the accuracy of any such information.

Proposed section 33B provides for a donor of a gamete to voluntarily provide information about the personal characteristics of the donor to the Secretary for inclusion on the central register.

Proposed section 33C provides for an adult offspring of a donor of a gamete to voluntarily provide identifying information about the offspring to the Secretary for inclusion on the central register.

Proposed section 33D requires the Secretary to ensure that information on the central register is accurate and not misleading and consistent with the objectives of the register. The Secretary is also required to remove any information that was provided voluntarily if the person who provided the information seeks its removal.

Schedule 1 [13] sets out the information that the Secretary is to disclose to an adult offspring of the donor of a gamete about the donor of the gamete and about other offspring of the donor. The information that is required to be disclosed about the donor is information that is currently required to be disclosed by the regulations made under the principal Act and information about the personal characteristics of the donor that have been voluntarily given by the donor under proposed section 33B. The information that is required to be disclosed about other offspring is information that is currently required to be disclosed by the regulations made under the principal Act and other identifying information about the offspring that has been voluntarily given by the offspring under proposed section 33C.

Schedule 1 [14] sets out the information that the Secretary is to disclose to a parent of a child born as a result of ART treatment using a donated gamete about the donor of the gamete and other offspring of the donor. The information that is required to be disclosed is information that is currently required to be disclosed by the regulations made under the principal Act and information about the personal characteristics of the donor that have been voluntarily given by the donor under proposed section 33B and identifying information about the offspring that has been voluntarily given by the offspring under proposed section 33C.

Schedule 1 [15] sets out the information that the Secretary is to disclose to a donor about any person born as a result of ART treatment using a gamete donated by the donor. The information that is required to be disclosed is information that is currently required to be disclosed by the regulations made under the principal Act and identifying information about the offspring that has been voluntarily given by the offspring under proposed section 33C.

Schedule 1 [16] inserts proposed sections 40A and 40B into the principal Act.

Proposed section 40A permits the Secretary to disclose information held on the central register about a person who was born as a result of ART treatment using a donated gamete. The information may be disclosed to any sibling of the person or to the donor of the gamete. Identifying information may be disclosed only if the Secretary is of the opinion that contact is

justified to protect the welfare and best interests of the person seeking the information and the person whose information is proposed to be disclosed.

Proposed section 40B provides that a person whose information is held on the central register may consent to the disclosure of the information in circumstances that are not otherwise permitted under Part 3 of the principal Act.

Schedule 1 [17] inserts proposed Part 3A into the principal Act which deals with information that is not on the central register (which includes records about ART services provided before 1 January 2010 (*pre 2010 records*)).

Proposed Division 1 of Part 3A sets out definitions to be used in the proposed Part.

Proposed Division 2 of Part 3A provides for the retention of records and contains 3 sections. Proposed section 41O provides that an ART provider (which in the proposed Part includes a former ART provider) must retain a pre 2010 record during the *retention period* for the record (which is 75 years after the provision of the ART service to which the record relates). Failure to do so is an offence with a maximum penalty of \$22,000 if the ART provider is a corporation or \$11,000 in any other case. Proposed section 41P provides that a person (including an ART provider) who has a pre 2010 record in the person's control may transfer the record to a registered ART provider. A person who transfers a record under the proposed section and the registered ART provider to whom the record is transferred must both notify the Secretary of the transfer. An ART provider who fails to comply with the proposed section is guilty of an offence with a maximum penalty of \$11,000 if the ART provider is a corporation or \$5,500 in any other case. Proposed section 41Q permits a person to destroy a pre 2010 record with the written authorisation of the Secretary. The Secretary must not give any such authorisation unless satisfied that no person will be adversely affected by the destruction of the record.

Proposed Division 3 of Part 3A deals with access to information that may not be on the central register. Proposed section 41R sets out the objects of the proposed Division. Proposed section 41S sets out the meaning of *accessible information* about a donor (being the information that can be disclosed under the proposed Division) which is certain non-identifiable information about the donor. Proposed section 41T permits a person who was born as a result of ART treatment provided by an ART provider using a donated gamete (or if the person is a child, the parent of the person) to apply for accessible information about the donor of the gamete. The application may be made to an ART provider or to the Secretary. Proposed section 41U requires an ART provider who receives an application to give any accessible information that the ART provider has about the donor to the applicant and to the Secretary. The ART provider must also give the Secretary identifying information about the donor. Any failure of an ART provider to comply with the proposed section is an offence with a maximum penalty of \$22,000 if the ART provider is a corporation or \$11,000 in any other case. Proposed section 41V permits the Secretary to direct a person (including an ART provider) to give the Secretary information for the purposes of enabling the Secretary to give information to an applicant under the proposed Division. Failure to comply with a direction is an offence with a maximum penalty of \$22,000 if the person is a corporation or \$11,000 in any other case. Proposed section 41W requires information that is provided to the Secretary under the proposed Division to be entered in the central register. Proposed section 41X requires the Secretary to disclose to an applicant under the proposed Division any relevant accessible information about a donor that is held in the central register.

Schedule 1 [18] creates an offence (maximum penalty of \$44,000 if the person is a corporation or \$22,000 in any other case) if a person knowingly falsifies or destroys a pre 2010 record or any other record that is required to be kept or retained under the principal Act.

Schedule 1 [19] permits proceedings for an offence against the principal Act or the regulations made under that Act to be commenced up to 2 years after the offence was alleged to have been committed.

Schedule 1 [20] permits regulations to be made that contain provisions of a savings or transitional nature consequent on the enactment of any Act that amends the principal Act including the proposed Act.

Schedule 1 [22] re-enacts a provision that provided that section 25 (Storage of gametes or embryos) of the principal Act does not apply to gametes obtained before 1 January 2010 and provides that if the gamete is a donated gamete it may be stored by an ART provider for no longer than 15 years after it was obtained from the donor unless the Secretary authorises a longer period. The regulations made under the principal Act currently contain a similar provision. Schedule 1 [22] also inserts a similar provision in relation to embryos created before 1 January 2010. If any such embryo was created using a donated gamete, an ART provider cannot store the embryo for more than 15 years after it was created unless the Secretary authorises a longer period.

Schedule 1 [25] inserts a provision that permits a woman who conceived a child before 1 January 2010 using a donated gamete to receive ART treatment using a donated gamete from the same donor despite other provisions of the principal Act. The proposed amendment also permits a woman to receive ART treatment using an embryo created using a donated gamete before 1 January 2010 despite other provisions of the principal Act if the embryo was created before that day for that particular woman. The regulations made under the principal Act currently contain similar provisions.

Schedule 1 [21], [23] and [24] substitute references to the commencement of provisions with the day on which those provisions commenced for ease of reading and to provide consistency with the amendments made by Schedule 1 [22] and [25].

Schedule 2 Amendment of Births, Deaths and Marriages Registration Act 1995 No 62

Schedule 2 amends the *Births, Deaths and Marriages Registration Act 1995* to provide for the voluntary inclusion of information about donor conception in a birth registration statement and for the recording of that information in the Births, Deaths and Marriages Register and for the person to whom the statement relates to be notified about the information if the person is older than 18 years of age and applies for a birth certificate.

Schedule 3 Amendment of Assisted Reproductive Technology Regulation 2014

Schedule 3 amends the *Assisted Reproductive Technology Regulation 2014* to omit provisions that have been placed in the principal Act by Schedule 1 and to make other consequential amendments.



New South Wales

Assisted Reproductive Technology Amendment Bill 2016

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New South Wales

Assisted Reproductive Technology Amendment Bill 2016

No. , 2016

A Bill for

An Act to amend the *Assisted Reproductive Technology Act 2007* with respect to the keeping of records and the provision of information about donors of gametes and their offspring; to amend the *Births, Deaths and Marriages Registration Act 1995* to provide for donor conception information to be recorded on the Births, Deaths and Marriages Register; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Assisted Reproductive Technology Amendment Act 2016*.

2 Commencement

- (1) This Act commences 28 days after the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 [1], [2], [6]–[8], [18] and [20] commence on the date of assent to this Act.

Schedule 1	Amendment of Assisted Reproductive Technology Act 2007 No 69	1
		2
[1] Whole Act (except Schedule 1 and where otherwise amended by this Schedule)		3
	Omit “Director-General” and “Director-General’s” wherever occurring.	4
	Insert instead “Secretary” and “Secretary’s” respectively.	5
[2] Section 4 Definitions		6
	Omit the definitions of <i>Department</i> and <i>Director-General</i> from section 4 (1).	7
	Insert in alphabetical order:	8
	<i>Department</i> means the Ministry of Health.	9
	<i>Secretary</i> means the Secretary of the Department.	10
[3] Section 4 (1)		11
	Insert in alphabetical order:	12
	<i>full name</i> , in relation to a gamete provider who is a donor, includes each name by which the gamete provider is or has been known.	13
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	<i>identifying information</i> means information that identifies the individual to whom the information relates.	15
		16
	<i>relevant medical history</i> of a donor means any medical history or genetic test results of the donor or the donor’s family that are relevant to the future health of any of the following:	17
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		19
	(a) persons undergoing ART treatment using the donated gamete,	20
	(b) offspring born as a result of the treatment,	21
	(c) descendants of such offspring.	22
[4] Section 25 Storage of gametes or embryos		23
	Omit section 25 (3) (c). Insert instead:	24
	(c) in the case of a donated gamete, the period of 15 years from the date the gamete was obtained from the donor plus any additional period that may be authorised by the Secretary under section 26,	25
		26
		27
	(d) in the case of an embryo created using a donated gamete, the period of 15 years from the date the embryo was created plus any additional period that may be authorised by the Secretary under section 26.	28
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		30
[5] Section 26 Donated gametes or embryos—time limit on use		31
	Omit section 26 (1). Insert instead:	32
	(1) An ART provider must not provide the following ART treatment without the written authorisation of the Secretary:	33
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	(a) ART treatment using a donated gamete (but not ART treatment using an embryo created from a donated gamete) if the gamete was obtained from the donor more than 15 years before the provision of the ART treatment,	35
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(b)	ART treatment using an embryo created from a donated gamete if the embryo was created more than 15 years before the provision of the ART treatment.	1 2 3
	Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.	4 5
[6]	Section 27 Donated gametes or embryos—maximum number of families	6
	Insert after section 27 (1):	7
(1A)	This section does not prevent the provision of ART treatment using a donated gamete to a woman if:	8 9
(a)	the woman or the spouse of the woman is the parent of a child born as a result of ART treatment using a donated gamete from the same donor, or	10 11 12
(b)	the woman belongs to a class of women prescribed by the regulations for the purposes of this section.	13 14
[7]	Section 27 (4) (a1)–(a3)	15
	Insert after section 27 (4) (a):	16
(a1)	the number of women who are pregnant as a result of ART treatment provided by the ART provider using a gamete of the donor, but not including women referred to in paragraph (a),	17 18 19
(a2)	the number of women for whom an embryo has been created as a result of ART treatment provided by the ART provider using a gamete of the donor and placed in storage, but not including women referred to in paragraph (a) or (a1),	20 21 22 23
(a3)	the number of women of whom the ART provider is aware who have given birth to offspring of the donor other than as a result of ART treatment, but not including women referred to in paragraph (a), (a1) or (a2),	24 25 26 27
[8]	Section 27 (5) and (6)	28
	Insert after section 27 (4):	29
(5)	The Secretary is to provide to an ART provider information referred to in subsection (4) that is on the central register if:	30 31
(a)	the ART provider makes an application in an approved form for the information, or	32 33
(b)	the Secretary is of the opinion that provision of the information to the ART provider may be necessary to prevent offspring of a donor being born to more than 5 women.	34 35 36
(6)	Section 41 (Fees) applies to an application under subsection (5) in the same way as it applies to an application under Division 2 of Part 3.	37 38
[9]	Section 30 Collection of information	39
	Omit section 30 (1). Insert instead:	40
(1)	An ART provider must not obtain a gamete from a gamete provider unless the ART provider has obtained the following information:	41 42
(a)	the full name of the gamete provider,	43
(b)	the residential address of the gamete provider,	44
(c)	the date of birth of the gamete provider,	45

	(d) the place of birth of the gamete provider,	1
	(e) the ethnicity and physical characteristics of the gamete provider,	2
	(f) the relevant medical history of the gamete provider,	3
	(g) the sex and year of birth of each offspring of the gamete provider,	4
	(h) the name of each ART provider who has previously obtained a donated gamete from the gamete provider and the date on which the gamete was obtained.	5 6 7
	(1A) An ART provider is only required to obtain the information specified in subsection (1) (d)–(h) if the gamete is a donated gamete.	8 9
[10]	Section 31 Records to be kept by ART provider	10
	Omit section 31 (1) (a) (i). Insert instead:	11
	(i) the information required to be obtained under section 30 (1), and	12
[11]	Section 31 (1) (c)	13
	Omit the paragraph. Insert instead:	14
	(c) for each offspring born as a result of ART treatment provided by the ART provider:	15 16
	(i) the full name, sex and date of birth of the offspring, and	17
	(ii) the name of the woman who gave birth to the offspring, and	18
	(iii) if the offspring was born as a result of ART treatment using a donated gamete, the full name and date and place of birth of the donor of the gamete,	19 20 21
[12]	Sections 33–33D	22
	Omit section 33. Insert instead:	23
	33 Mandatory giving of information by ART providers	24
	(1) An ART provider that provides ART treatment using a donated gamete must give the Secretary, within 2 months after the birth of a live offspring born as a result of the ART treatment:	25 26 27
	(a) the records that the ART provider is required to keep under section 31 (1) (a) (i) and (iii) in relation to the gamete, and	28 29
	(b) the records about the offspring that the ART provider is required to keep under section 31 (1) (c).	30 31
	Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.	32 33
	(2) The Secretary must enter in the central register any information given to the Secretary under this section.	34 35
	33A Voluntary giving of information about private ART arrangements	36
	(1) In this section:	37
	<i>private ART arrangement</i> means ART treatment using a donated gamete that:	38
	(a) resulted in the birth of a live offspring, and	39
	(b) was not carried out for fee or reward or in the course of a business.	40
	(2) The parties to a private ART arrangement, being the donor of the gamete, the woman undergoing ART treatment and any spouse of the woman may, by notice in writing, give the Secretary information about the parties and about	41 42 43

the offspring, being information of a kind that an ART provider would be required to give the Secretary under section 33.	1 2
(3) The notice may be given at any time and must be given in an approved form.	3
(4) The Secretary may require that the notice be accompanied by any documents or other evidence that demonstrates the accuracy of the information contained in the notice.	4 5 6
(5) The Secretary may enter in the central register any information given to the Secretary under this section.	7 8
33B Voluntary giving of information about personal characteristics of donor	9
(1) The donor of a gamete may, by notice in writing, give the Secretary information about the personal characteristics of the donor for inclusion on the central register.	10 11 12
(2) The notice may be given at any time and must be given in an approved form.	13
(3) The notice may specify restrictions on the disclosure of the information.	14
(4) The Secretary may enter in the central register any information given to the Secretary under this section.	15 16
33C Voluntary giving of information by adult offspring of donor	17
(1) An adult offspring of a donor of a gamete may, by notice in writing, give the Secretary the following information about the offspring for inclusion on the central register:	18 19 20
(a) the full name, sex and date of birth of the offspring,	21
(b) the residential address of the offspring.	22
(2) The notice may be given at any time and must be given in an approved form.	23
(3) The notice may specify restrictions on the disclosure of the information.	24
(4) The Secretary may enter in the central register any information given to the Secretary under this section.	25 26
33D Secretary to ensure accuracy of central register	27
(1) The Secretary is to ensure that, as far as is practicable, the information in the central register is accurate and not misleading and is consistent with the objectives of the register and for these purposes the Secretary may do any one or more of the following:	28 29 30 31
(a) refuse to enter information, revise information or omit information,	32
(b) retain superseded information (such as a person's former name),	33
(c) add any notes or annotations that the Secretary considers to be appropriate.	34 35
(2) The Secretary must remove information from the register that has been provided voluntarily by a person if the person applies, in an approved form, to have the information removed and the Secretary is satisfied that the information is not information that is otherwise required to be on the register.	36 37 38 39

[13] Section 37	1
Omit the section. Insert instead:	2
37 Disclosure to offspring	3
(1) The Secretary must, if an application in an approved form is made by a person who is an adult and who was born as a result of ART treatment using a donated gamete, disclose to the person the following information held on the central register:	4
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(a) the information referred to in section 30 (1) (a)–(g) about the donor of the donated gamete,	8
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(b) any information about the donor that the donor has voluntarily given under section 33B (subject to any restrictions on the disclosure of the information specified by the donor under that section).	10
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(2) The Secretary must, if an application in an approved form is made by an adult offspring of a donor, disclose to the offspring the following information held on the central register:	13
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(a) the sex and year of birth of each other offspring of the donor,	16
(b) any information about any other offspring of the donor that the other offspring has voluntarily given under section 33C (subject to any restrictions on the disclosure of the information specified by the offspring under that section).	17
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[14] Section 38 Disclosure to parent of offspring	21
Omit section 38 (1) (a) and (b). Insert instead:	22
(a) the ethnicity and physical characteristics of the donor of the donated gamete,	23
	24
(a1) the relevant medical history of the donor,	25
(a2) the sex and year of birth of each offspring of the donor,	26
(a3) any information about the donor that the donor has voluntarily given under section 33B (subject to any restrictions on the disclosure of the information specified by the donor under that section),	27
	28
	29
(b) any information about any other offspring of the donor that the other offspring has voluntarily given under section 33C (subject to any restrictions on the disclosure of the information specified by the offspring under that section),	30
	31
	32
	33
[15] Section 39	34
Omit the section. Insert instead:	35
39 Disclosure to donor	36
The Secretary must, if an application in an approved form is made by the donor of a gamete, disclose to the donor the following information held on the central register:	37
	38
	39
(a) the sex and year of birth of each offspring of the donor who was born as a result of ART treatment using the donated gamete,	40
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(b) any information about each such offspring that the offspring has voluntarily given under section 33C (subject to any restrictions on the disclosure of the information specified by the offspring under that section).	42
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[16] Sections 40A and 40B	1
Insert after section 40:	2
40A Disclosure of information about offspring without consent	3
(1) The Secretary may, if an application in an approved form is made by any of the following, disclose to the applicant information (including identifying information) held on the central register about a person who was born as a result of ART treatment using a donated gamete:	4
(a) any sibling of the person,	5
(b) the donor of the gamete.	6
(2) The Secretary may disclose identifying information under this section only if the Secretary is of the opinion that contact is justified to protect the welfare and best interests of the applicant and the person whose information is proposed to be disclosed.	7
(3) In forming an opinion under this section, the Secretary must take into account any matters that may be prescribed by the regulations.	8
40B Disclosure permitted with consent	9
(1) A person whose information is held on the central register may consent to the disclosure of the information in circumstances that are not otherwise permitted under this Part.	10
(2) Consent is to be given by notice in writing to the Secretary.	11
(3) Consent given under this section may be revoked or varied at any time by giving further written notice to the Secretary.	12
(4) Written notice under this section must be given in an approved form and must be accompanied by such proof as the Secretary may require of the person's identity.	13
(5) Nothing in this Part prevents the Secretary from disclosing information about a person that is held on the central register if the person has consented to the disclosure under this section and the disclosure is in accordance with that consent.	14
[17] Part 3A	15
Insert after Part 3:	16
Part 3A Information generally not on central register	17
Division 1 Preliminary	18
41N Definitions	19
In this Part:	20
<i>ART provider</i> includes a person who was formerly an ART provider.	21
<i>pre 2010 record</i> means a record made by an ART provider about an ART service provided before 1 January 2010.	22
<i>retention period</i> in relation to a pre 2010 record means the period of 75 years after:	23
(a) the day on which the ART service to which the record relates was provided, or	24

- (b) if the record relates to more than one ART service—the day on which the last of those services was provided. 1
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Division 2 Retention of records 3

41O ART providers must retain records 4

An ART provider must ensure that any pre 2010 record within the ART provider's control is retained by the ART provider in a readily accessible form during the retention period for the record. 5
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Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case. 8
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41P Transfer of records 10

(1) A person (including an ART provider) may transfer any pre 2010 record within the person's control to a registered ART provider. 11
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(2) A person (including an ART provider) who transfers a pre 2010 record under this section, must, as soon as practicable after transferring the record, notify the Secretary in writing that the record has been transferred to the registered ART provider. 13
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(3) A registered ART provider to whom a pre 2010 record is transferred under this section must, as soon as practicable after the transfer, notify the Secretary in writing that the record has been transferred to the registered ART provider. 17
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(4) The transfer of a pre 2010 record under this section does not constitute a breach of section 41O or a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct. 20
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(5) The regulations may make further provision for or with respect to the transfer of pre 2010 records under this section including: 23
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(a) making provision for the transfer of pre 2010 records if an ART provider dies, is wound up or otherwise lacks capacity to retain the records in accordance with this Part, and 25
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(b) specifying the matters that are required to be included in any notice given to the Secretary under this section. 28
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(6) An ART provider must comply with this section. 30

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case. 31
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41Q Secretary may authorise destruction of records 33

(1) Despite any other provision of this Part, a person may destroy a pre 2010 record during the retention period if authorised in writing to do so by the Secretary. 34
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(2) The Secretary must not authorise the destruction of a pre 2010 record unless satisfied that no person would be adversely affected by the destruction of the record. 37
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Note. For example, the Secretary may authorise destruction of pre 2010 records if the records relate to gametes that no longer exist and the Secretary is satisfied that no person was born as a result of ART treatment using those gametes. 40
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Division 3	Access to information	1
41R	Objects of Division	2
	The objects of this Division are:	3
	(a) to enable a person born as a result of ART treatment provided by an ART provider using a donated gamete (or if the person is a child, the parent of the person) to make an application for certain non-identifying information about the donor of the gamete in circumstances where that information may not be held in the central register, and	4 5 6 7 8
	(b) to ensure that as far as possible the information, if still available, will be provided to the applicant.	9 10
	Note. Information about ART treatment provided before 1 January 2010 will generally not be in the central register. Adequate records in respect of ART services provided before this date may not exist.	11 12 13
41S	Meaning of “accessible information” about a donor	14
	In this Division, <i>accessible information</i> about the donor of a gamete means the following information about the donor but only to the extent that it is non-identifying information:	15 16 17
	(a) the ethnicity and physical characteristics of the donor,	18
	(b) the relevant medical history of the donor,	19
	(c) the sex and year of birth of each offspring of the donor.	20
41T	Application by or on behalf of persons born as a result of ART treatment	21
	(1) A person who was born as a result of ART treatment provided by an ART provider using a donated gamete (or if the person is a child, the parent of the person) may apply for accessible information about the donor of the gamete.	22 23 24
	(2) An application may be made to the ART provider who provided the treatment, to any other ART provider that the applicant reasonably suspects may have accessible information about the donor or to the Secretary.	25 26 27
	(3) An application is not to be made under this section if the applicant could obtain the information under section 37 or 38.	28 29
	(4) An application must be in an approved form and be accompanied by the fee (if any) prescribed by the regulations unless the ART provider or Secretary waives the fee in a particular case.	30 31 32
41U	Disclosure of information by ART provider	33
	(1) An ART provider who receives an application under this Division must, within the time prescribed by the regulations (or if no time is prescribed, a reasonable time) after receiving the application, give written notice to the applicant containing:	34 35 36 37
	(a) all accessible information about the donor that is held by the ART provider, and	38 39
	(b) if the ART provider has no accessible information about the donor—a statement to that effect, and	40 41
	(c) if the ART provider has reason to believe that another ART provider may have any additional accessible information about the donor—details of that other ART provider.	42 43 44
	(2) The ART provider must give a copy of the written notice to the Secretary.	45

(3)	The ART provider must, when giving the written notice to the Secretary, also give the Secretary:	1
		2
(a)	any information that the ART provider has about the identity of the donor including any donor code used by the ART provider, and	3
		4
(b)	any information in relation to ART services as may be prescribed by the regulations.	5
		6
(4)	The Secretary may require information given under this section to be in an approved form.	7
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(5)	An ART provider must comply with this section.	9
	Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.	10
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41V	Direction to provide information	12
(1)	The Secretary may give a person (including an ART provider) a written direction requiring the person to give the Secretary such of the following information as may be specified in the direction:	13
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(a)	all accessible information about a donor that is held by the person (but only if the information has been obtained by the person in relation to the provision of ART services),	16
		17
		18
(b)	any information that the person has about the identity of the donor including any donor code,	19
		20
(c)	any other information the person has that may assist in determining the identity of other persons who may hold accessible information about the donor,	21
		22
		23
(d)	any information in relation to ART services as may be prescribed by the regulations.	24
		25
(2)	A direction is not to be given unless it is for the purposes of enabling the Secretary to provide information to an applicant under this Division.	26
		27
(3)	A direction may require the information to be given by a particular time and in a particular form.	28
		29
(4)	A person who is given a direction must not fail to comply with the direction.	30
	Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.	31
		32
41W	Entry of information provided under Part in central register	33
	The Secretary must (subject to section 33D) enter any information about a donor that is given to the Secretary under this Division in the central register.	34
		35
41X	Disclosure of information by Secretary	36
	The Secretary must disclose to an applicant under this Division any relevant accessible information about a donor that is held in the central register.	37
		38
[18] Section 61A		39
	Insert in Part 7 before section 62:	40
61A	Destruction or falsification of ART records	41
(1)	A person must not knowingly falsify or destroy an ART record.	42
	Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.	43
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(2)	A person who destroys an ART record does not commit an offence under this section if the destruction of the record is authorised by the Secretary.	1 2
(3)	In this section: <i>ART record</i> means:	3 4
(a)	a pre 2010 record within the meaning of Part 3A, or	5
(b)	any other record that is required to be kept or retained under this Act.	6
[19]	Section 63 Summary proceedings for offences	7
	Insert after section 63 (2):	8
(3)	Proceedings for an offence against this Act or the regulations must be commenced not later than 2 years from when the offence was alleged to have been committed.	9 10 11
[20]	Schedule 1 Savings, transitional and other provisions	12
	Omit clause 1 (1). Insert instead:	13
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any other Act that amends this Act.	14 15
[21]	Schedule 1, clause 2	16
	Omit “the commencement of section 17”. Insert instead “1 January 2010”.	17
[22]	Schedule 1, clauses 3 and 3A	18
	Omit clause 3. Insert instead:	19
3	Storage of gametes obtained before 1 January 2010	20
(1)	Section 25 does not apply to a gamete obtained by an ART provider before 1 January 2010.	21 22
(2)	However, if the gamete is a donated gamete, an ART provider must not store the gamete for longer than 15 years after the date the gamete was obtained from the donor or such longer period as may be authorised by the Secretary under this clause.	23 24 25 26
(3)	The Secretary may give written authorisation for the gamete to be stored for a period longer than 15 years, if satisfied that there are reasonable grounds for doing so having regard to any relevant guidelines issued by the Secretary from time to time.	27 28 29 30
3A	Storage of embryos created before 1 January 2010	31
(1)	Section 25 does not apply to an embryo created before 1 January 2010.	32
(2)	However, if the embryo was created using a donated gamete, an ART provider must not store the embryo for longer than 15 years after the date the embryo was created or such longer period as may be authorised by the Secretary under this clause.	33 34 35 36
(3)	The Secretary may give written authorisation for the embryo to be stored for a period longer than 15 years, if satisfied that there are reasonable grounds for doing so having regard to any relevant guidelines issued by the Secretary from time to time.	37 38 39 40

[23] Schedule 1, clause 4 (1) and (2)	1
Omit “the commencement of that section” wherever occurring.	2
Insert instead “1 January 2010”.	3
[24] Schedule 1, clause 4 (4)	4
Omit “the commencement of section 33”. Insert instead “1 January 2010”.	5
[25] Schedule 1, clauses 4A and 4B	6
Insert after clause 4:	7
4A Completion of family—gametes donated before 1 January 2010	8
(1) This clause applies to a gamete that was obtained from a donor before 1 January 2010 that is to be used to provide ART treatment to a woman who, before that date, conceived an offspring using a donated gamete from the donor.	9 10 11 12
(2) The gamete may be used by an ART provider to provide ART treatment to the woman, or to create an embryo outside the body of a woman for use in ART treatment to the woman, and in such a case:	13 14 15
(a) the consent of the donor of the gamete is taken to have been provided for the use, and	16 17
(b) the ART provider is not required to do any of the following with respect to any such gamete or embryo:	18 19
(i) obtain any information under section 30,	20
(ii) keep a record of information under section 31,	21
(iii) provide information to the Secretary under section 33, and	22
(c) the ART treatment may be provided despite section 26 (1) or 27 (1), and	23
(d) the gamete or embryo may be stored for the purposes of that ART treatment despite clause 3 (or section 25).	24 25
(3) Consent of a gamete provider that is taken to have been provided under this clause may be modified or revoked in accordance with section 17.	26 27
4B Completion of family—embryos created before 1 January 2010	28
(1) This clause applies to an embryo created using a donated gamete before 1 January 2010 for the purposes of providing ART treatment to a particular woman.	29 30 31
(2) The embryo may be used by an ART provider to provide ART treatment to the woman and in such a case:	32 33
(a) the consent of each gamete provider is taken to have been provided for the use, and	34 35
(b) the ART provider is not required to do any of the following with respect to any such embryo:	36 37
(i) obtain any information under section 30,	38
(ii) keep a record of information under section 31,	39
(iii) provide information to the Secretary under section 33, and	40
(c) the ART treatment may be provided despite section 26 (1) or 27 (1), and	41
(d) the embryo may be stored for the purposes of that ART treatment despite clause 3 (or section 25).	42 43

Schedule 2	Amendment of Births, Deaths and Marriages Registration Act 1995 No 62	1 2
Part 3	Registration of births	3
	Insert after Division 5:	4
Division 6	Donor conception information	5
22A	Child conceived using a donated gamete	6
(1)	A birth registration statement for a child may include a declaration that the child was conceived using a donated gamete and in such a case the Registrar must note in the Register that the statement included that declaration.	7 8 9
(2)	The Registrar must, when issuing a birth certificate to a person who is 18 years of age or more and to whom a declaration under subsection (1) relates, attach an addendum to the birth certificate noting that declaration and stating that further information may be available from the central register established under the <i>Assisted Reproductive Technology Act 2007</i> .	10 11 12 13 14
(3)	A birth certificate for a person must not include any information that indicates that the person may be a person who was conceived using a donated gamete.	15 16

Schedule 3	Amendment of Assisted Reproductive Technology Regulation 2014	1
		2
[1] Clause 3 Definitions		3
	Omit the definitions of <i>full name</i> , <i>pre-Act gamete</i> and <i>Secretary</i> from clause 3 (1).	4
[2] Part 3 Information and records		5
	Omit the Part.	6
[3] Part 4, heading		7
	Insert “—surrogacy information” after “register”.	8
[4] Part 4, Division 1 and heading to Division 2		9
	Omit the Division and heading.	10
[5] Clauses 22 and 23		11
	Omit the clauses.	12