

# Assisted Reproductive Technology Act 2007 No 69

[2007-69]



New South Wales

## Status Information

### Currency of version

Historical version for 30 July 2010 to 6 January 2011 (accessed 25 November 2024 at 21:03)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Surrogacy Act 2010 No 102](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2010 No 119](#) (not commenced — to commence on 7.1.2011)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 29 November 2010

# Assisted Reproductive Technology Act 2007 No 69



New South Wales

## Contents

<b>Long title</b> .....	6
<b>Part 1 Preliminary</b> .....	6
1 Name of Act .....	6
2 Commencement .....	6
3 Objects of Act .....	6
4 Definitions .....	6
5 Application of other legislation .....	9
<b>Part 2 ART providers</b> .....	9
<b>Division 1 Registration</b> .....	9
Note .....	9
6 ART providers must be registered .....	9
7 Registration .....	9
8 Notice of change in registered particulars .....	10
9 Register of ART providers .....	11
<b>Division 2 Provision of ART services</b> .....	11
10 Infection control standards .....	11
11 ART services to be undertaken or supervised by a registered medical practitioner .....	12
12 Counselling to be available .....	12
13 Provision of information—ART treatment involving no donated gametes .....	12

14 Provision of information—ART services involving donated gametes.....	13
15 Donated gametes—disclosure of medical information .....	13
<b>Division 3 Use of gametes</b> .....	<b>14</b>
16 Interpretation .....	14
17 Giving, modifying and revoking consent .....	14
18 Use of gametes to create embryo outside a woman’s body .....	15
19 Use of gametes or embryos in ART treatment.....	15
20 Use of gametes or embryos for research.....	16
21 Supply of gametes or embryos to another person .....	16
22 Export of gametes or embryos from NSW .....	16
23 Use of gametes or embryos after death of gamete provider.....	16
24 Use of gametes or embryos provided more than 5 years ago.....	17
25 Storage of gametes or embryos .....	17
26 Donated gametes or embryos—time limit on use .....	18
27 Donated gametes or embryos—maximum number of families .....	18
28 Use of gametes to create embryo with close family member .....	19
29 Provision of ART treatment to a child.....	20
<b>Division 4 Records</b> .....	<b>20</b>
30 Collection of information .....	20
31 Records to be kept by ART provider.....	21
32 Records may be given to other ART providers .....	22
<b>Part 3 Central ART donor register</b> .....	<b>22</b>
33 Director-General to establish central ART donor register.....	22
34 Objectives of central ART donor register .....	23
35 Disclosure of information must be in accordance with Part.....	23
36 Disclosure to subject of information .....	23
37 Disclosure to offspring .....	24
38 Disclosure to parent of offspring .....	24
39 Disclosure to donor.....	25
40 Seeking consent of offspring to disclosure .....	26
41 Fees .....	26

<b>Part 4 Surrogacy</b> .....	27
42 Definitions .....	27
43 Commercial surrogacy prohibited .....	27
44 Commercial surrogacy soliciting prohibited .....	28
45 Surrogacy agreements void .....	28
<b>Part 5 Inspectors and enforcement</b> .....	28
46 Appointment of inspectors .....	28
47 Powers of inspectors .....	28
48 Provisions relating to exercise of powers .....	30
49 Requirement to provide information and records .....	30
50 Requirement to provide answers .....	31
51 Limitation on self-incrimination .....	31
52 Search warrants .....	32
53 Offences .....	32
54 Disallowance of seizure .....	33
55 Disposal of seized items .....	34
<b>Part 6 ART provider—enforcement provisions</b> .....	34
56 Interpretation .....	34
57 Persons may be prohibited from carrying on business .....	35
58 Offence of carrying on business while prohibited .....	37
59 Requirement to provide information .....	37
60 Court to notify Director-General of conviction .....	38
61 Order under section 10 of the Crimes (Sentencing Procedure) Act 1999 treated as conviction .....	38
<b>Part 7 Miscellaneous</b> .....	38
62 Person must not make false or misleading representation .....	38
63 Summary proceedings for offences .....	38
64 Penalty notices for certain offences .....	39
65 Offences by corporations .....	40
66 Evidentiary statements .....	40
67 How notice is to be given .....	40
68 Onus of proof concerning reasonable excuse .....	41

69 Disclosure of information by ART provider.....	41
70 Delegation.....	41
71 Regulations.....	41
72 Savings, transitional and other provisions.....	41
73 Amendment of other Acts.....	41
74 Review of Act.....	42
<b>Schedule 1 Savings, transitional and other provisions .....</b>	<b>42</b>
<b>Schedule 2 Amendment of other Acts .....</b>	<b>43</b>

# Assisted Reproductive Technology Act 2007 No 69



New South Wales

An Act relating to the regulation of assisted reproductive technology services, the registration of assisted reproductive technology service providers and the prohibition of commercial surrogacy; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Assisted Reproductive Technology Act 2007*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are:

- (a) to prevent the commercialisation of human reproduction, and
- (b) to protect the interests of the following persons:
  - (i) a person born as a result of ART treatment,
  - (ii) a person providing a gamete for use in ART treatment or for research in connection with ART treatment,
  - (iii) a woman undergoing ART treatment.

### 4 Definitions

(1) In this Act:

**adult** means a person who is not a child.

**approved** means approved by the Director-General.

**ART provider** means a person who provides ART services and includes a registered

ART provider, but does not include a person who provides ART services on behalf of a registered ART provider either under contract or in the course of the person's employment by the registered ART provider.

**ART service** means any one or more of the following services, treatments or procedures that is provided for fee or reward or provided in the course of a business (whether or not for profit):

- (a) an ART treatment,
- (b) the storage of gametes and embryos for use in ART treatment,
- (c) the obtaining of a gamete from a gamete provider for use in ART treatment or for research in connection with ART treatment.

**ART treatment** means assisted reproductive technology treatment being any medical treatment or procedure that procures or attempts to procure pregnancy in a woman by means other than sexual intercourse, and includes artificial insemination, in-vitro fertilisation, gamete intrafallopian transfer and any related treatment or procedure that is prescribed by the regulations.

**central ART donor register** means the central ART donor register established under Part 3.

**certificate of authority** means the certificate of authority issued to an inspector by the Director-General under Part 5.

**child** means a person who is under the age of 18 years and not married.

**Department** means the Department of Health.

**Director-General** means the Director-General of the Department.

**donated gamete** means a gamete donated by a gamete provider for use by a person other than the gamete provider or the gamete provider's spouse.

**donor** means the gamete provider from whom a donated gamete has been obtained.

**embryo** means the single entity formed by the combination of a human sperm and a human ovum until the time it is implanted in the body of a woman.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**gamete** means a human sperm or a human ovum.

**Note—**

Section 8 (b) of the [Interpretation Act 1987](#) provides that in any Act or instrument a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form.

**gamete provider**, in relation to a gamete, means the individual from whom the gamete has been obtained and in relation to an embryo, means an individual from whom a gamete used to create the embryo was obtained.

**inspector** means a person appointed as an inspector under Part 5.

**non-identifying information** means information that does not identify the individual to whom the information relates.

**obtain** a gamete from a gamete provider includes receive a gamete from a gamete provider.

**offspring** of a person means an individual to whom the person is a biological parent and includes an individual born as a result of ART treatment using the person's donated gamete.

**parent** of a child means a person having parental responsibility for the child.

**parental responsibility**, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children.

**premises** includes any land or building and part of any land or building.

**record** includes a book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, or on micro-film, or by electronic process, or in any other manner or by any other means.

**registered ART provider** means a person registered by the Director-General under Division 1 of Part 2 as an ART provider and whose registration is in force.

**seized item** means anything seized by an inspector under Part 5.

**spouse** of a person means:

- (a) the person's husband or wife, or
- (b) the person's de facto partner,

but if more than one person would so qualify as a spouse, means only the latest person to so qualify.

**Note—**

"De facto partner" is defined in section 21C of the [Interpretation Act 1987](#).

- (2) In this Act a reference to ART treatment involving the use of a gamete includes a reference to ART treatment using an embryo created from that gamete.
- (3) Notes included in this Act do not form part of this Act.



## 5 Application of other legislation

This Act does not limit or otherwise affect the operation of any of the following:

- (a) the *Status of Children Act 1996*,
- (b) the *Mutual Recognition Act 1992* of the Commonwealth,
- (c) the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

## Part 2 ART providers

### Division 1 Registration

#### Note—

Section 11 of the *Research Involving Human Embryos Act 2002* of the Commonwealth requires a person or body to be accredited by the Reproductive Technology Accreditation Committee of the Fertility Society of Australia or another prescribed body if the person or body intentionally uses a human embryo (other than an excess ART embryo as defined under that Act) outside the body of a woman.

#### 6 ART providers must be registered

- (1) An ART provider must not provide ART services unless the ART provider is a registered ART provider.
- (2) A person must not advertise or hold out that the person is a registered ART provider unless the person is a registered ART provider.

Maximum penalty: 1,000 penalty units in the case of a corporation or 400 penalty units or imprisonment for 2 years, or both, in any other case.

#### 7 Registration

- (1) A person may apply to the Director-General for registration as an ART provider.
- (2) An application is to be made in an approved form and be accompanied by the fee (if any) prescribed by the regulations.
- (3) An application must include the following:
  - (a) the name of the applicant,
  - (b) the address of each premises at which the applicant intends to provide ART services,
  - (c) the name of each registered medical practitioner who is to undertake or supervise ART services provided by the applicant,
  - (d) the name of each person who is to provide counselling services in relation to ART services provided by the applicant,

- (e) any other matter that is prescribed by the regulations.
- (4) The Director-General must grant the applicant's registration as an ART provider if an application for registration is duly made.
- (5) Despite subsection (4), the Director-General must refuse to grant a person registration as an ART provider if the person is prohibited under Part 6 from carrying on a business that provides ART services.
- (6) Registration as an ART provider takes effect when the Director-General gives the applicant notice of the decision to grant registration and remains in force until cancelled by the Director-General.
- (7) The Director-General must cancel a person's registration as an ART provider if:
  - (a) the person gives the Director-General notice that the person no longer provides ART services, or
  - (b) the person is prohibited under Part 6 from carrying on a business that provides ART services.
- (8) A registered ART provider must (within such times as may be prescribed) pay to the Director-General the annual registration fee (if any) prescribed by the regulations.
- (9) The regulations may prescribe different application fees and annual registration fees for different classes of ART providers, or on the basis of the number of premises at which an ART provider provides ART services, or both.
- (10) The Director-General may cancel a person's registration as an ART provider if the person fails to pay any fee as required by this section.

## **8 Notice of change in registered particulars**

- (1) A registered ART provider must give notice to the Director-General of the following events or changes:
  - (a) the ART provider ceasing to provide ART services,
  - (b) any change of premises at which the ART provider provides ART services,
  - (c) any change of registered medical practitioners undertaking or supervising ART services provided by the ART provider,
  - (d) any change in the persons providing counselling services in relation to ART services provided by the ART provider,
  - (e) any other events or changes that are prescribed by the regulations.

Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units

in any other case.

(2) Notice to the Director-General under subsection (1):

(a) is to be given before the end of the next business day after the event or change occurs, and

(b) is to be given in an approved form and be accompanied by the fee (if any) prescribed by the regulations.

(3) In this section:

**business day** means any day other than a Saturday, a Sunday or a public holiday throughout New South Wales.

## **9 Register of ART providers**

(1) The Director-General is to keep a register of all ART providers registered under this Part.

(2) The register is to contain the following, for each registered ART provider:

(a) the name of the ART provider,

(b) the address of each premises at which the ART provider provides ART services,

(c) the name of each registered medical practitioner who undertakes or supervises ART services provided by the ART provider,

(d) the name of each person who provides counselling services in relation to ART services provided by the ART provider.

(3) The register is to contain such other matters and is to be kept in such manner and form as the Director-General may from time to time determine, subject to the regulations.

(4) The Director-General is to cause the contents of the register to be made available for inspection free of charge by the public at the Department's head office and on the Department's website on the Internet.

## **Division 2 Provision of ART services**

### **10 Infection control standards**

The regulations may require an ART provider to meet such infection control standards as may be prescribed by the regulations in relation to any ART services provided by the ART provider.

### **11 ART services to be undertaken or supervised by a registered medical practitioner**

An ART provider must ensure that any ART services provided by the ART provider are undertaken by, or under the supervision of, a registered medical practitioner.

Maximum penalty: 800 penalty units in the case of a corporation or 400 penalty units in any other case.

### **12 Counselling to be available**

(1) An ART provider must ensure that counselling services are available to any woman who seeks ART treatment from the ART provider, any spouse of such a woman and any person proposing to provide a gamete to the ART provider.

Maximum penalty: 50 penalty units in the case of a corporation or 25 penalty units in any other case.

(2) The counselling services under subsection (1) must:

- (a) be available at the place where the ART treatment is provided or, in the case of a person proposing to provide a gamete, at the place where the gamete is to be provided, and
- (b) be provided by a person with such qualifications as may be prescribed by the regulations, and
- (c) be offered before the ART treatment is provided or, in the case of a person proposing to provide a gamete, before the gamete is provided.

(3) Nothing in this section:

- (a) prevents a person who provides the counselling service from charging a reasonable fee for that service, or
- (b) requires a person to make use of the counselling service.

### **13 Provision of information—ART treatment involving no donated gametes**

(1) An ART provider must inform a woman of the following before providing ART treatment to the woman:

- (a) the availability of counselling services,
- (b) any other matter that is prescribed by the regulations.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

(2) Subsection (1) does not apply if the ART treatment involves the use of a donated gamete.

#### **14 Provision of information—ART services involving donated gametes**

- (1) An ART provider must inform a woman of the matters set out in subsection (4) before providing ART treatment to the woman.

Maximum penalty: 800 penalty units in the case of a corporation or 400 penalty units in any other case.

- (2) Subsection (1) applies only if the ART treatment involves the use of a donated gamete.
- (3) An ART provider must inform a person who is a gamete provider of the matters set out in subsection (4):
- (a) before obtaining a donated gamete from the person, or
  - (b) in the case of a gamete that was not originally obtained from the person as a donated gamete, before using the gamete as a donated gamete in ART treatment.

Maximum penalty: 800 penalty units in the case of a corporation or 400 penalty units in any other case.

- (4) For the purposes of subsections (1) and (3), an ART provider must inform a person about the following:
- (a) the availability of counselling services,
  - (b) the information that the person will be required to disclose to the ART provider about the person and the person's offspring,
  - (c) the existence of the central ART donor register and the information about the person and the person's offspring that will be held on the register,
  - (d) the right of the person to obtain information held on the register about the person,
  - (e) the right of the person and the person's offspring to obtain information held on the register about other persons,
  - (f) the right of other persons to obtain information held on the register about the person and the person's offspring,
  - (g) any other matter that is prescribed by the regulations.

#### **15 Donated gametes—disclosure of medical information**

- (1) An ART provider may disclose medical information:
- (a) about a donor:
    - (i) to an adult offspring born as a result of ART treatment using the donor's

donated gamete, or

(ii) to the parent of an offspring born as a result of ART treatment using the donor's donated gamete, if the offspring is a child, or

(iii) to a woman who is pregnant as a result of ART treatment using the donor's donated gamete, or

(b) to a donor, about an offspring born as a result of ART treatment using the donor's donated gamete,

if a registered medical practitioner has certified in writing that it is necessary to make the disclosure to save a person's life or to warn the person to whom the information is disclosed about the existence of a medical condition that may be harmful to that person or to that person's offspring (including any future offspring of the person).

(2) If an ART provider discloses medical information under this section, the disclosure must be made by a registered medical practitioner on behalf of the ART provider.

(3) If a disclosure may be made to a person under this section, the disclosure may also be made to a registered medical practitioner who is treating the person.

(4) Nothing in this section requires an ART provider to disclose information to any person.

### **Division 3 Use of gametes**

#### **16 Interpretation**

In this Division:

(a) **consent** by a gamete provider means the gamete provider's consent given under section 17 in relation to a gamete as modified or revoked in accordance with that section, and

(b) a requirement that any matter be consistent with a gamete provider's consent is, if gametes from more than one gamete provider are involved, a requirement that the matter be consistent with each gamete provider's consent.

#### **17 Giving, modifying and revoking consent**

(1) A gamete provider may give an ART provider that obtains, or proposes to obtain, a gamete from the gamete provider a written notice setting out the gamete provider's wishes in relation to the gamete (the gamete provider's **consent**).

(2) A gamete provider's consent may address such matters as the uses that may be made of the gamete (or an embryo created using the gamete) and whether the gamete or embryo may be stored, exported from this State or supplied to another ART provider.

- (3) A gamete provider may modify or revoke his or her consent by giving written notice of the modification or revocation of consent to the ART provider:
  - (a) that obtained the gamete from the gamete provider, or
  - (b) that is in possession of the gamete or embryo to which the modification or revocation of consent relates.
- (4) A consent may be modified or revoked at any time up until:
  - (a) in the case of a donated gamete—the gamete is placed in the body of a woman or an embryo is created using the gamete, or
  - (b) in the case of a gamete other than a donated gamete—the gamete is placed in the body of a woman or an embryo created using the gamete is implanted in the body of a woman.
- (5) Modification or revocation of consent takes effect in relation to an ART provider as soon as the ART provider is given written notice in accordance with this section.
- (6) As soon as practicable after being given written notice in accordance with subsection (3) (whether by a gamete provider or by another ART provider) an ART provider must give written notice of the modification or revocation of consent to any other ART provider to whom the first ART provider has supplied the gamete or any embryo created using the gamete.

## **18 Use of gametes to create embryo outside a woman's body**

An ART provider must not use a gamete to create an embryo outside the body of a woman except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent.

Maximum penalty: 800 penalty units in the case of a corporation or 400 penalty units in any other case.

### **Note—**

Section 9 of the [Human Cloning for Reproduction and Other Prohibited Practices Act 2003](#) provides that a person commits an offence if the person intentionally develops a human embryo outside the body of a woman for a period of more than 14 days, excluding any period when development is suspended.

## **19 Use of gametes or embryos in ART treatment**

An ART provider must not provide ART treatment to a woman using a gamete except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent in relation to:

- (a) the ART treatment or classes of ART treatment for which the gamete may be used,  
and

(b) the woman or classes of women who may receive ART treatment using the gamete.

Maximum penalty: 800 penalty units in the case of a corporation or 400 penalty units in any other case.

## **20 Use of gametes or embryos for research**

An ART provider must not use a gamete or an embryo for research except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent.

Maximum penalty: 800 penalty units in the case of a corporation or 400 penalty units in any other case.

### **Note—**

See also the [Research Involving Human Embryos Act 2002](#) of the Commonwealth which regulates research in relation to embryos.

## **21 Supply of gametes or embryos to another person**

An ART provider must not supply a gamete or an embryo to another person (including another ART provider) except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent.

Maximum penalty: 800 penalty units in the case of a corporation or 400 penalty units in any other case.

## **22 Export of gametes or embryos from NSW**

An ART provider must not export, or cause to be exported, a gamete or an embryo from this State except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent.

Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.

## **23 Use of gametes or embryos after death of gamete provider**

An ART provider must not provide ART treatment to a woman using a gamete if the ART provider knows or believes on reasonable grounds that the gamete provider is deceased, unless:

- (a) the gamete provider has consented to the use of the gamete after his or her death, and
- (b) the woman receiving the ART treatment has been notified of the death or suspected death of the gamete provider and the date of death (if known), and
- (c) the woman receiving the ART treatment has given written consent to the provision of



the ART treatment using the gamete despite the death or suspected death of the gamete provider.

Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.

**Note—**

The [Human Tissue Act 1983](#) regulates the removal of tissue (including gametes) from a deceased person.

## **24 Use of gametes or embryos provided more than 5 years ago**

- (1) An ART provider must not provide ART treatment using a gamete obtained from a gamete provider more than 5 years before the provision of the ART treatment, unless the ART provider has taken reasonable steps to establish whether the gamete provider is alive.

Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.

- (2) Despite subsection (1) an ART provider is not required to take reasonable steps to establish whether the gamete provider is alive if:
- (a) the ART provider (or another ART provider that supplied the gamete used in the ART treatment) has been contacted by the gamete provider less than 5 years before the provision of the ART treatment, or
  - (b) the ART provider knows or believes on reasonable grounds that the gamete provider is deceased.
- (3) For the purpose of subsection (1), **reasonable steps** include:
- (a) obtaining from the Registrar of Births, Deaths and Marriages a certificate under section 49 of the [Births, Deaths and Marriages Registration Act 1995](#) as to whether the death of the gamete provider has been recorded in the Register kept under that Act, and
  - (b) completing such other inquiries as may be prescribed by the regulations for the purpose of establishing whether the gamete provider is alive.
- (4) The Registrar of Births, Deaths and Marriages must not reject an application made under section 47 of the [Births, Deaths and Marriages Registration Act 1995](#) for the purposes of this section if the application is made in an appropriate form and is accompanied by the fee (if any) prescribed under that Act.

## **25 Storage of gametes or embryos**

- (1) An ART provider must not store a gamete or an embryo except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's

consent.

Maximum penalty: 800 penalty units in the case of a corporation or 400 penalty units in any other case.

- (2) If a gamete provider's consent authorises storage of a gamete or an embryo but does not specify a period for which the gamete or embryo may be stored, the gamete provider's consent is, for the purpose of this section, taken not to authorise storage of the gamete or embryo.
- (3) An ART provider must not store a gamete or an embryo for any longer than the shortest of the following periods:
  - (a) the period (if any) of proposed storage of which the ART provider has given written notice to the gamete provider (whether before or after the gamete was obtained),
  - (b) the period authorised by the gamete provider's consent or, if there is more than one gamete provider, the shorter of the periods authorised by the gamete providers' consents,
  - (c) in the case of a donated gamete or an embryo created using a donated gamete, the period of 10 years from the date the gamete was obtained from the donor plus any additional period that may be authorised by the Director-General under section 26.

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

## **26 Donated gametes or embryos—time limit on use**

- (1) An ART provider must not provide ART treatment using a donated gamete if the gamete was obtained from the donor more than 10 years before the provision of the ART treatment unless the Director-General has given written authorisation for the provision of the ART treatment.

Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.

- (2) The Director-General must not give an authorisation under subsection (1) unless the Director-General is satisfied that there are reasonable grounds for doing so having regard to any relevant guidelines issued by the Director-General from time to time.

## **27 Donated gametes or embryos—maximum number of families**

- (1) An ART provider must not provide ART treatment using a donated gamete if the treatment is likely to result in offspring of the donor being born, whether or not as a result of ART treatment, to more than 5 women (or such lesser number as may be specified in the donor's consent), including the donor and any current or former

spouse of the donor.

Maximum penalty: 800 penalty units in the case of a corporation or 400 penalty units in any other case.

- (2) It is a defence to a prosecution under this section if an ART provider establishes that the ART provider exercised due diligence to prevent the contravention.
- (3) Due diligence is not established if the ART provider failed to take any of the following steps to prevent the contravention:
  - (a) searching records held by the ART provider,
  - (b) making reasonable inquiries of the donor,
  - (c) requesting information from any other ART provider that the first ART provider has reason to believe obtained or has been supplied with a gamete of the donor or an embryo created using a gamete of the donor.
- (4) An ART provider must provide the following information in relation to a donor if requested to do so by a registered ART provider for the purposes of complying with this section:
  - (a) information in relation to the number of women who have given birth to offspring as a result of ART treatment, provided by the ART provider, using a gamete of the donor,
  - (b) the details of any other ART providers that have been supplied with a gamete of the donor, or an embryo created using a gamete of the donor,
  - (c) any other matter that is prescribed by the regulations.

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

## **28 Use of gametes to create embryo with close family member**

- (1) An ART provider must not use a gamete to create an embryo (whether inside or outside the body of a woman) if the ART provider knows that the gamete provider is a close family member of the other person whose gamete is to be used to create the embryo.

Maximum penalty: 1,000 penalty units in the case of a corporation or 400 penalty units or imprisonment for 2 years, or both, in any other case.

- (2) In this section:

**close family member** means a parent, son, daughter, sibling (including a half-brother or half-sister), grandparent or grandchild, being such a family member from

birth.

## **29 Provision of ART treatment to a child**

- (1) An ART provider must not:
  - (a) provide ART treatment to a child, or
  - (b) obtain a gamete from a child for use in ART treatment or for research in connection with ART treatment.

Maximum penalty: 800 penalty units in the case of a corporation or 400 penalty units in any other case.

- (2) An ART provider does not contravene this section if:
  - (a) a registered medical practitioner has certified that there is a reasonable risk of the child becoming infertile before becoming an adult, and
  - (b) the ART provider obtains a gamete from the child for the purpose of storing the gamete for the child's future benefit.
- (3) Despite section 25, a gamete obtained from a child, by an ART provider under subsection (2), must be stored by the ART provider until such time as the child becomes an adult and is able to provide his or her consent in relation to the gamete.

### **Note—**

Nothing in this section affects any other legal obligation a registered medical practitioner may have in relation to the medical treatment of a child.

## **Division 4 Records**

### **30 Collection of information**

- (1) An ART provider must not obtain a gamete from a gamete provider, unless the ART provider has obtained such information about the gamete provider, the gamete provider's spouse (if any) and any offspring of the gamete provider as the regulations may require the ART provider to obtain.
- (2) An ART provider must not use a gamete or an embryo for any purpose (including in the provision of ART treatment) unless the ART provider has obtained the information required under subsection (1) in relation to the gamete or gametes used to create the embryo.
- (3) An ART provider must not use a gamete in the provision of ART treatment to a woman unless the ART provider has obtained such information about the woman, the woman's spouse (if any) and any offspring of the woman as the regulations may require the ART provider to obtain.

- (4) An ART provider must not provide treatment to a woman that is intended to assist the woman to achieve pregnancy if the ART provider knows, or should reasonably suspect, that the woman intends to achieve pregnancy through ART treatment provided by a person other than a registered ART provider, unless the ART provider has obtained:
- (a) the information required under subsection (1) in relation to the gamete (or the gametes used to create the embryo) that the woman will use to achieve pregnancy, and
  - (b) the information required under subsection (3) in relation to the woman, the woman's spouse (if any) and any offspring of the woman.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

### **31 Records to be kept by ART provider**

- (1) An ART provider must keep a record in relation to each of the following in an approved form:
- (a) for any gamete or embryo that is in the ART provider's possession:
    - (i) the identity of each gamete provider and any other prescribed information about the gamete provider, the gamete provider's spouse (if any) and any offspring of the gamete provider, and
    - (ii) the provenance of any such gamete or embryo (including the provenance of the gametes used to create the embryo), and
    - (iii) the gamete provider's consent (within the meaning of Division 3) in relation to any such gamete or embryo, and
    - (iv) the uses that have been made of any such gamete or embryo, including exporting the gamete or embryo from this State or supplying the gamete or embryo to another ART provider, and
    - (v) the period during which any such gamete or embryo has been in storage,
  - (b) the identity of each woman who undergoes ART treatment provided by the ART provider and any other prescribed information about the woman, the woman's spouse (if any) and any offspring of the woman,
  - (c) the identity and any other prescribed information about each offspring born as a result of ART treatment provided by the ART provider,
  - (d) any information required to be collected by the ART provider under section 30 (4),
  - (e) any other matter that is prescribed by the regulations.

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

- (2) The ART provider must retain any records required to be kept under this section for a period of 50 years after the record is made or such other period as may be prescribed by the regulations.

Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.

- (3) In this section:

**provenance** of a gamete or an embryo means the particulars of each ART provider that has had possession of the gamete or embryo from the time the gamete was obtained from the gamete provider or from the time the embryo was created.

### **32 Records may be given to other ART providers**

If an ART provider supplies a gamete or an embryo to another ART provider, the first ART provider:

- (a) must give the second ART provider a copy of the gamete provider's consent (within the meaning of Division 3) in relation to the gamete or embryo, and
- (b) may give the second ART provider a copy of any other information required to be obtained by or under this Act in relation to the gamete or embryo.

## **Part 3 Central ART donor register**

### **33 Director-General to establish central ART donor register**

- (1) The Director-General is to establish and maintain a register called the central ART donor register.
- (2) The Director-General is to enter in the register such information relating to the following as may be prescribed by the regulations:
- (a) donors of gametes,
- (b) women undergoing ART treatment using a donated gamete,
- (c) offspring born as a result of ART treatment using a donated gamete,
- (d) offspring of a donor (other than offspring born as a result of ART treatment using the donor's donated gamete) but not information that identifies the offspring unless the offspring gives written notice to the Director-General of his or her consent to the inclusion of such information.
- (3) Consent given under this section may be revoked at any time by giving further written

notice to the Director-General.

- (4) Written notice under this section must be given in an approved form and must be accompanied by such proof as the Director-General may require of the person's identity.
- (5) The regulations may require an ART provider to provide to the Director-General, for entry into the register, such information as may be prescribed.

### **34 Objectives of central ART donor register**

The objectives of the central ART donor register are as follows:

- (a) to allow access to identifying information and certain non-identifying information about a donor by an adult offspring of the donor (who was born as a result of ART treatment using the donor's donated gamete),
- (b) to allow access to certain non-identifying information about an adult offspring of a donor by other offspring of the donor and to allow access to identifying information if the adult offspring consents,
- (c) to allow access to certain non-identifying information about a donor and other offspring of the donor by a parent of a child offspring of the donor (who was born as a result of ART treatment using the donor's donated gamete) and to allow access to identifying information about the donor in limited circumstances,
- (d) to allow access to certain non-identifying information about an adult offspring of a donor (who was born as a result of ART treatment using the donor's donated gamete) by the donor and to allow access to identifying information if the adult offspring consents,
- (e) to allow access to certain non-identifying information about a child offspring of a donor (who was born as a result of ART treatment using the donor's donated gamete) by the donor.

### **35 Disclosure of information must be in accordance with Part**

The Director-General may disclose information held on the central ART donor register only in accordance with this Part.

### **36 Disclosure to subject of information**

- (1) The Director-General must, if an application in an approved form is made by any of the following persons, provide to the person a copy of any information about that person held on the central ART donor register:
  - (a) a donor of a gamete,
  - (b) an adult offspring of a donor,

- (c) a woman who has undergone ART treatment using a donated gamete.
- (2) The Director-General must, if an application in an approved form is made by the parent of a child who is an offspring of a donor, provide to the parent a copy of any information about the child held on the central ART donor register.
- (3) This section does not authorise disclosure of:
  - (a) information about a person other than the applicant (or, in the case of an application under subsection (2), a person other than the child), or
  - (b) information about the applicant's relationship with other persons (or, in the case of an application under subsection (2), the child's relationship with other persons) unless such information was originally provided by the applicant.

### **37 Disclosure to offspring**

- (1) The Director-General 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 name of the donor of the gamete and any other information relating to the donor that may be prescribed by the regulations.
- (2) The Director-General 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 ART donor register:
  - (a) such non-identifying information relating to other offspring of that donor as may be prescribed by the regulations,
  - (b) such other information relating to other offspring of that donor, including information that identifies the other offspring, as the offspring has consented to being disclosed under this section, but only in accordance with that consent.
- (3) A person who is an adult offspring of a donor may consent to the disclosure of information about the person to another offspring of the donor by giving written notice to the Director-General of that consent.
- (4) Consent given under this section may be revoked at any time by giving further written notice to the Director-General.
- (5) Written notice under this section must be given in an approved form and must be accompanied by such proof as the Director-General may require of the person's identity.

### **38 Disclosure to parent of offspring**

- (1) The Director-General must, if an application in an approved form is made by a parent of a child who was born as a result of ART treatment using a donated gamete, disclose



to the parent the following information held on the central ART donor register:

- (a) such non-identifying information relating to the donor of the gamete as may be prescribed by the regulations,
  - (b) such non-identifying information relating to other offspring of the donor as may be prescribed by the regulations,
  - (c) information that identifies the donor, but only if the disclosure of that information is reasonably necessary to save the life of the child or to prevent serious damage to the child's physical or psychological health and the information cannot reasonably be obtained by the parent in any other way.
- (2) The Director-General must, if an application in an approved form is made by an appropriate person, disclose to the appropriate person such information as may be disclosed to the parent of a child under subsection (1) if:
- (a) the parent of the child is unwilling or unable to seek the information on the child's behalf, and
  - (b) the information cannot reasonably be obtained by the appropriate person in any other way.
- (3) The Director-General is not to make a disclosure under this section on the basis of preventing serious damage to the psychological health of a child unless a registered medical practitioner with expertise in mental health or a registered psychologist has certified in writing that the damage is likely to occur unless the disclosure takes place.
- (4) In this section, **appropriate person**, in relation to a child, means a person who the Director-General considers to be a representative of the child and to have a genuine interest in the welfare of the child.

### 39 Disclosure to donor

- (1) The Director-General 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 ART donor register:
- (a) such non-identifying information relating to a person who was born as a result of ART treatment using the donated gamete as may be prescribed by the regulations,
  - (b) such other information relating to a person who was born as a result of ART treatment using the donated gamete, including information that identifies the person, as the person has consented to being disclosed under this section, but only in accordance with that consent.
- (2) A person who was born as a result of ART treatment using a donated gamete, and who is an adult, may consent to the disclosure of information about the person to the

donor of the gamete by giving written notice to the Director-General of that consent.

- (3) Consent given under this section may be revoked at any time by giving further written notice to the Director-General.
- (4) Written notice under this section must be given in an approved form and must be accompanied by such proof as the Director-General may require of the person's identity.

#### **40 Seeking consent of offspring to disclosure**

- (1) The Director-General may contact a person who is an offspring of a donor and ask the person whether he or she wishes to consent to the disclosure of information under this Part.
- (2) The Director-General may contact a person under subsection (1):
  - (a) at the request of the donor, or
  - (b) at the request of an adult offspring of the donor, or
  - (c) on the Director-General's own initiative.
- (3) The Director-General is not to contact a person under subsection (1) unless the person is an adult and the Director-General is of the opinion that the contact is justified in order to promote the welfare and best interests of one or more of the persons concerned.
- (4) The Director-General may consult any person or body that the Director-General believes may assist the Director-General in the exercise of his or her functions under this section.
- (5) The Director-General may arrange for any one or more of the persons concerned to be provided with such counselling as the Director-General believes is necessary to assist the person and the Director-General in the matter.
- (6) The Director-General must exercise his or her functions under this section in accordance with any guidelines that may be prescribed by the regulations.

#### **41 Fees**

- (1) The regulations may prescribe fees in relation to any application or notice under this Part.
- (2) An application or notice under this Part is incomplete unless it is accompanied by the prescribed fee (if any).

## Part 4 Surrogacy

### 42 Definitions

In this Part:

**commercial surrogacy agreement** means a surrogacy agreement involving a fee or reward to the woman who gives birth, or intends to give birth, to the child that is the subject of the agreement.

**surrogacy agreement** means an agreement, whether formal or informal, under which:

- (a) a woman agrees (whether or not for fee or reward) to become, or try to become, pregnant, with the intention:
  - (i) that a child born as a result of the pregnancy is to be treated as the child of another person (whether by adoption, agreement or otherwise), or
  - (ii) of transferring custody of, or parental responsibility for, a child born as a result of the pregnancy to another person, or
  - (iii) that the right to care for a child born as a result of the pregnancy be permanently surrendered to another person, or
- (b) a pregnant woman agrees (whether or not for fee or reward):
  - (i) that a child born as a result of the pregnancy is to be treated as the child of another person (whether by adoption, agreement or otherwise), or
  - (ii) that custody of, or parental responsibility for, a child born as a result of the pregnancy is to be transferred to another person, or
  - (iii) that the right to care for a child born as a result of the pregnancy is to be permanently surrendered to another person.

### 43 Commercial surrogacy prohibited

A person must not:

- (a) enter into a commercial surrogacy agreement, or
- (b) arrange a commercial surrogacy agreement, or
- (c) accept any benefit under a commercial surrogacy agreement, whether for himself or herself or for another person.

Maximum penalty: 2,500 penalty units in the case of a corporation or 1,000 penalty units or imprisonment for 2 years, or both, in any other case.

#### **44 Commercial surrogacy soliciting prohibited**

A person must not publish, or cause to be published, any publication that is intended to encourage a person to agree to enter into a commercial surrogacy agreement or that states that:

- (a) a person is or may be willing to enter into a commercial surrogacy agreement, or
- (b) a person is seeking another person who is or may be willing to enter into a commercial surrogacy agreement or to arrange a commercial surrogacy agreement, or
- (c) a person is or may be willing to arrange a commercial surrogacy agreement, or
- (d) a person is or may be willing to accept any benefit under a commercial surrogacy agreement, whether for himself or herself or for another person.

Maximum penalty: 2,500 penalty units in the case of a corporation or 1,000 penalty units or imprisonment for 2 years, or both, in any other case.

#### **45 Surrogacy agreements void**

A surrogacy agreement is void whether made before, on or after the commencement of this section.

### **Part 5 Inspectors and enforcement**

#### **46 Appointment of inspectors**

- (1) The Director-General may appoint any member of staff of the Department, or any person who the Director-General considers is suitably qualified for the purpose, to be an inspector for the purposes of this Act.
- (2) On appointing an inspector under subsection (1), the Director-General must issue to the inspector a certificate of authority that authorises the inspector to exercise the functions conferred on an inspector by this Act.
- (3) A certificate of authority must:
  - (a) state that it is issued under the *Assisted Reproductive Technology Act 2007*, and
  - (b) give the name of the person to whom it is issued, and
  - (c) state the date, if any, on which it expires, and
  - (d) describe the nature of the functions conferred and the source of the functions.

#### **47 Powers of inspectors**

- (1) An inspector may, for the purpose of ascertaining whether or not a provision of this Act, or the regulations, is being or has been contravened:

- (a) at any time, enter and inspect premises that are recorded in the register of ART providers under Division 1 of Part 2 as premises at which an ART provider provides ART services, and
  - (b) at any reasonable time, enter and inspect any other premises.
- (2) While on premises entered under this section or under the authority of a search warrant under this Part, an inspector may do one or more of the following:
- (a) inspect anything that the inspector reasonably believes may provide evidence of an offence against this Act or the regulations,
  - (b) take and remove for analysis or testing a sample of any substance that the inspector reasonably believes may provide evidence of an offence against this Act or the regulations,
  - (c) inspect any records kept on those premises and require any person whom the inspector reasonably believes to have custody or control of those records to produce them for inspection,
  - (d) require any person on those premises to answer questions or otherwise furnish information in relation to a contravention of this Act or the regulations,
  - (e) make and take away copies of the whole or any part of any records or other information,
  - (f) take away and retain, for such period as may be reasonably necessary, any records or other information, or any part of them, in order to make copies of them,
  - (g) take away and retain any records or other information, if the inspector concerned reasonably believes that the records or information are evidence of an offence against this Act or the regulations, until proceedings for the offence have been disposed of,
  - (h) seize and detain anything that the inspector reasonably believes may provide evidence of an offence against this Act or the regulations,
  - (i) place anything seized, as referred to in paragraph (h), in a container, or in a room, compartment or cabinet located on the premises where it was seized, and mark, fasten and seal that container or, as the case may be, the door or opening providing access to the room, compartment or cabinet,
  - (j) take such photographs, films, audio, video and other recordings as the inspector considers necessary.
- (3) Anything seized under this section may, at the option of the inspector who made the seizure or another inspector acting in place of that inspector, be detained on the premises where it was found or be removed to other premises and detained there.

- (4) Before taking away a record or statement or anything seized under this section, an inspector must tender an appropriate receipt to the person from whom it was taken.
- (5) This section does not authorise an inspector to enter any part of premises that is being used for residential purposes except:
  - (a) with the consent of the occupier, or
  - (b) under the authority of a search warrant.
- (6) An inspector must, when exercising on any premises any power of an inspector under this section, produce the inspector's certificate of authority if required to do so by the occupier of the premises.

#### **48 Provisions relating to exercise of powers**

- (1) A power conferred by this Act to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the inspector proposing to exercise the power:
  - (a) is in possession of the inspector's certificate of authority, and
  - (b) gives reasonable notice to the occupier of the premises of the intention to exercise the power unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and
  - (c) exercises the power at a reasonable time, unless it is being exercised in an emergency or in relation to premises that are recorded in the register of ART providers under Division 1 of Part 2 as premises at which an ART provider provides ART services, and
  - (d) uses no more force than is reasonably necessary to effect the entry or make the inspection or take other action.
- (2) If damage is caused by an inspector exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the Crown to the owner of the premises unless the occupier obstructed the exercise of the power.
- (3) This section does not apply to a power conferred by a search warrant issued under the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

#### **49 Requirement to provide information and records**

- (1) An inspector may, by written notice given to a person, require the person to furnish to the inspector such information or records (or both) as the inspector requires by the notice, being information that relates to the question of whether or not a provision of this Act or the regulations is being or has been contravened.
- (2) A notice under this section:

- (a) must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished, and
  - (b) may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (3) The inspector to whom any record is furnished under this Part may take copies of it.
  - (4) If any record required to be furnished under this Part is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.
  - (5) This section applies whether or not a power of entry under this Act is being or has been exercised.

#### **50 Requirement to provide answers**

- (1) An inspector may require a person who the inspector suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.
- (2) An inspector may, by written notice, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.

#### **51 Limitation on self-incrimination**

- (1) A person who is required under this Part to answer a question or to produce a thing is not excused from answering the question or producing that thing on the ground that the answer to the question or the production of the thing might tend to incriminate the person or make the person liable to a penalty.
- (2) The answer to the question or production of the thing by an individual is not admissible in evidence against the individual in any criminal proceedings (except proceedings for an offence under section 53 (1)) if:
  - (a) the individual objected at the time to answering the question or producing the thing on the ground that it might incriminate the individual, or
  - (b) the individual was not warned on that occasion that the individual may object to answering the question or producing the thing on the ground that it might incriminate the individual.

## 52 Search warrants

- (1) An inspector may apply to an authorised officer for a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An inspector may not apply for a search warrant unless the inspector has notified the Director-General of the intended application.
- (3) An authorised officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant, when accompanied by a police officer, and any other person named in the warrant:
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section:

**authorised officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## 53 Offences

- (1) A person must not:
  - (a) without reasonable excuse, neglect or fail to comply with a requirement made of the person by an inspector under this Act, or
  - (b) without reasonable excuse, hinder or obstruct an inspector in the exercise of any of the powers conferred by this Act.

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

- (2) A person is not guilty of an offence under subsection (1) (a) unless it is established by the prosecutor that the inspector concerned warned the person that a failure or refusal to comply with the requirement was an offence.
- (3) A person is not guilty of an offence under subsection (1) (b) unless it is established by the prosecutor that:
  - (a) the inspector produced at the relevant time the inspector's certificate of authority, and



- (b) the person was informed by the inspector, or otherwise knew, that the inspector was empowered to exercise the power to which the offence relates.

#### **54 Disallowance of seizure**

- (1) Any person claiming to be entitled to any seized item (other than a sample of any substance taken for analysis or testing) may, within 10 days after the date on which the seizure took place, make an application to the Local Court for an order disallowing the seizure.
- (2) An application made under this section must not be heard unless the applicant has served a copy of the application on the Director-General.
- (3) The Director-General is entitled to appear as respondent at the hearing of an application made under this section.
- (4) The Local Court must, on the hearing of an application made under this section, make an order disallowing the seizure if:
  - (a) the Court is satisfied that:
    - (i) the applicant would, but for the seizure, be entitled to the seized item, and
    - (ii) the respondent has failed to prove beyond all reasonable doubt that, at the time of the seizure, an offence was being or had been committed in relation to the seized item, or
  - (b) the Court is of the opinion that there are exceptional circumstances justifying the making of an order disallowing the seizure.
- (5) In any other case, the Local Court must refuse the application.
- (6) If on the hearing of an application made under this section it appears to the Local Court that the seized item that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence against this Act or the regulations, the Court may, either on the application of the respondent or on its own motion, adjourn the hearing until the conclusion of those proceedings.
- (7) If the Local Court makes an order under subsection (4) disallowing the seizure of any seized item, the Court must also make one or both of the following orders:
  - (a) an order directing the respondent to cause the seized item to be delivered to the applicant or to such other person as appears to the Court to be entitled to it,
  - (b) if the seized item cannot for any reason be so delivered or has in consequence of the seizure depreciated in value, an order directing the Director-General to pay to the applicant such amount by way of compensation as the Court considers to be

just and reasonable.

- (8) The award of costs with respect to the hearing of an application made under this section is at the discretion of the Local Court.
- (9) If the Local Court makes an order for the payment of any amount as compensation under subsection (7) (b) or awards any amount as costs under subsection (8), that order is enforceable as a judgment of the Court.

## **55 Disposal of seized items**

- (1) The Director-General must immediately cause a seized item (whether or not the item is forfeited to the Crown) to be delivered to such person as appears to the Director-General to be entitled to it, if:
  - (a) the Director-General becomes satisfied that there has been no contravention of this Act or the regulations in relation to the seized item, and
  - (b) the seized item has not been disposed of or destroyed in a manner that would prevent it from being dealt with in accordance with this subsection.
- (2) A seized item is forfeited to the Crown and may be destroyed or disposed of in such manner as the Director-General directs if:
  - (a) no application for disallowance of the seizure of a seized item has been made within the period allowed by this Part, or
  - (b) an application has been made within that period and the application has been refused or withdrawn before a decision in respect of that application has been made, or
  - (c) the item is a sample of a substance taken for analysis or testing and the analysis or testing will damage or destroy the item.
- (3) If any seized item is delivered to a person in accordance with subsection (1), such proprietary and other interests as existed immediately before the forfeiture are revived.

## **Part 6 ART provider—enforcement provisions**

### **56 Interpretation**

- (1) For the purposes of this Part, a person is taken to be carrying on a business that provides ART services if the person provides ART services in the course of the carrying on of a business (whether or not for profit) operated by the person.
- (2) If ART services are provided on premises on which a business is carried on, it is to be presumed for the purposes of this Part, unless the contrary is established, that the ART

services are provided in the course of the carrying on of that business.

(3) For the purposes of this Part:

(a) a person is considered to carry on a business if the person:

- (i) owns, manages, controls, conducts or operates the business, or
- (ii) has a management role or substantial interest in a corporation that operates the business or a substantial interest in a trust under which the business is operated, and

(b) a person is considered to have a management role or substantial interest in a corporation if:

- (i) the person is a director, secretary or officer (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the corporation, or
- (ii) the person is entitled to more than 10% of the issued share capital of the corporation (with the shares to which the person is entitled including shares to which the person has a relevant interest within the meaning of the *Corporations Act 2001* of the Commonwealth), and

(c) a person is considered to have a substantial interest in a trust if the person (whether or not as the trustee of another trust) is the beneficiary in respect of more than 10% of the value of the interests in the trust.

### **57 Persons may be prohibited from carrying on business**

(1) The Director-General may by written notice given to a person prohibit the person from carrying on a business that provides ART services.

(2) A prohibition may only be imposed under subsection (1) if the Director-General is satisfied that there are reasonable grounds to do so.

(3) Without limiting subsection (2), a prohibition may be imposed on a person under subsection (1), if the Director-General believes on reasonable grounds that:

(a) the person has contravened any one or more of the following Acts or the regulations made under those Acts:

- (i) this Act,
- (ii) the *Human Cloning for Reproduction and Other Prohibited Practices Act 2003*,
- (iii) the *Research Involving Human Embryos (New South Wales) Act 2003*,
- (iv) the *Prohibition of Human Cloning for Reproduction Act 2002* of the Commonwealth,

- (v) the *Research Involving Human Embryos Act 2002* of the Commonwealth, or
  - (b) the person has been refused accreditation by the Reproductive Technology Accreditation Committee of the Fertility Society of Australia (or another prescribed body (as referred to in paragraph (b) of the definition of **accredited ART centre** in section 8 of the *Research Involving Human Embryos Act 2002* of the Commonwealth) or has had any such accreditation suspended, cancelled or otherwise revoked.
- (4) If a corporation or the trustee of a trust is the subject of a prohibition under this section, the Director-General may by written notice given to the person, prohibit any of the following persons from carrying on a business that provides ART services:
- (a) each person who has a management role or substantial interest in the corporation or a substantial interest in the trust,
  - (b) each corporation in which a person referred to in paragraph (a) has a management role or substantial interest (whether or not the corporation was in existence at the date of the prohibition),
  - (c) the trustee and any manager of a trust in which a person referred to in paragraph (a) has a substantial interest (whether or not the trust was in existence at the date of the prohibition).
- (5) A prohibition under this section may be expressed to be:
- (a) for a fixed period (in which case the prohibition remains in force only for that fixed period), or
  - (b) for an unlimited period subject to an entitlement to apply after a specified time for the lifting of the prohibition (in which case the prohibition remains in force until it is lifted).
- (6) A prohibition under this section may be limited in its operation in either or both of the following ways:
- (a) to specified premises, but only if the person concerned carries on a business that provides ART services at those premises,
  - (b) to premises within a specified area.
- (7) If a prohibition under this section is subject to an entitlement to apply after a specified time for the prohibition to be lifted, such an application may be made to the Director-General after that time.
- (8) If an application is made under subsection (7), the Director-General may, by written notice to the applicant, lift the prohibition or confirm the prohibition and set a further period after which an application for the prohibition to be lifted can be made under

subsection (7).

### **58 Offence of carrying on business while prohibited**

- (1) A person who is prohibited under this Part from carrying on a business that provides ART services for any period is guilty of an offence if the person:
  - (a) carries on a business that provides ART services during that period in contravention of the prohibition, or
  - (b) offers to provide ART services at any premises to which the prohibition applies during that period.

Maximum penalty:

- (a) in the case of a corporation, 800 penalty units for a first offence or 1,600 penalty units for a second or subsequent offence, or
  - (b) in any other case, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence.
- (2) If a continuing state of affairs is created by an offence under this section, the offender is liable to a penalty of not more than:
    - (a) 100 penalty units in the case of a corporation, or
    - (b) 50 penalty units in any other case,in respect of each day on which that offence continues, in addition to the penalty specified in subsection (1).

### **59 Requirement to provide information**

- (1) This section applies if a corporation or the trustee of a trust is the subject of a prohibition under this Part.
- (2) The Director-General may require the corporation or trustee to provide information that the Director-General may reasonably require to ascertain the identity of each person who has a management role or substantial interest in the corporation or a substantial interest in the trust.
- (3) The Director-General may require any person who the Director-General reasonably believes has a management role or substantial interest in the corporation or a substantial interest in the trust to provide information that the Director-General may reasonably require to ascertain:
  - (a) the identity of each corporation in which that person has a management role or substantial interest, or
  - (b) the identity of the trustee and any manager of a trust in which that person has a

substantial interest.

- (4) A requirement to provide information is to be imposed by written notice served on the person, corporation or trustee concerned. The notice must specify a period of not less than 7 days as the period within which the required information must be provided.
- (5) A person who fails, without reasonable excuse, to comply with a requirement of a notice under this section is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

#### **60 Court to notify Director-General of conviction**

When a court convicts a person for an offence under this Act or the *Human Cloning for Reproduction and Other Prohibited Practices Act 2003*, the registrar or other proper officer of the court must give the Director-General written notice of the conviction.

#### **61 Order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* treated as conviction**

For the purposes of this Part, the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of an offence is taken to be a conviction for the offence.

### **Part 7 Miscellaneous**

#### **62 Person must not make false or misleading representation**

A person must not, without reasonable excuse, make a representation that is false or misleading in a material particular in an application or notice under this Act or in response to a request for information that is required to be obtained under Part 2.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

#### **63 Summary proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that

the Local Court may impose for the offence is 100 penalty units or such other amount as may be prescribed by the regulations, despite any higher maximum monetary penalty provided in respect of the offence.

#### **64 Penalty notices for certain offences**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section:

**authorised officer** means:

  - (a) an inspector, or
  - (b) a person declared by the regulations to be an authorised officer for the purposes of this section.

## **65 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each officer of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the act or omission constituting the offence.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1), whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.

## **66 Evidentiary statements**

In a prosecution for an offence against this Act or the regulations, a statement, purporting to be signed by the Director-General or other prescribed person, relating to:

- (a) the registration of an ART provider under Division 1 of Part 2, or
- (b) the prohibition of a person from carrying on a business that provides ART services under Part 6, or
- (c) any other prescribed matter relating to the administration of this Act,

and certifying that the contents of the statement are in accordance with the particulars contained in the document, is admissible in any proceedings and is evidence of the matters contained in the statement without proof of the signature of the person by whom the statement purports to have been signed.

## **67 How notice is to be given**

- (1) A requirement of this Act that a person be given notice is a requirement that the person be given notice either personally or by post.
- (2) For the purposes of section 76 of the *Interpretation Act 1987*, a notice from the Director-General served by post on a person for the purposes of this Act is to be treated as being properly addressed if it is addressed:
  - (a) to the address of the person last known to the Director-General, or
  - (b) if the person is a registered ART provider, to any address of the ART provider recorded in the register of ART providers kept under Division 1 of Part 2, including the address of any premises at which the ART provider provides ART services.



### **68 Onus of proof concerning reasonable excuse**

In any proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant.

### **69 Disclosure of information by ART provider**

A requirement made by or under this Act has effect despite any duty of confidentiality or other restriction on disclosure and a disclosure made in accordance with this Act or the regulations by or on behalf of an ART provider does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

### **70 Delegation**

- (1) The Director-General may delegate to an authorised person the exercise of any of the functions of the Director-General under this Act or the regulations, other than this power of delegation.
- (2) In this section, **authorised person** means:
  - (a) a member of staff of the Department, or
  - (b) any person or persons of a class as may be prescribed by the regulations.

### **71 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may apply, adopt or incorporate any publication as in force at a particular time or from time to time.
- (3) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.
- (4) In particular, the regulations may make provision with respect to the manner and form in which consent or modification or revocation of any such consent is to be given for the purposes of this Act.

### **72 Savings, transitional and other provisions**

Schedule 1 has effect.

### **73 Amendment of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

## **74 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Savings, transitional and other provisions**

(Section 72)

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Use of gametes**

Division 3 of Part 2 extends to a gamete obtained before the commencement of section 17, except as otherwise provided by this Part.

#### **3 Storage of gametes**

- (1) Section 25 does not apply to a gamete obtained by an ART provider before the commencement of that section.

- (2) The regulations may make provision in relation to the storage or disposal of gametes referred to in subclause (1).

#### **4 Central ART donor register**

- (1) Section 33 does not apply to or in relation to ART treatment provided before the commencement of that section.
- (2) Despite subclause (1), the Director-General may enter in the register, in accordance with section 33, information that relates to ART treatment provided before the commencement of that section, if the individual to whom the information relates makes an application for registration of the information in the approved form.
- (3) Section 41 applies to an application made under subclause (2).
- (3A) The Director-General may, on receipt of an application under this clause, direct an ART provider in writing to provide such information as the Director-General may require to enable the Director-General to identify:
- (a) in the case of an application by a donor of a gamete—any offspring of the donor born as a result of ART treatment using the donated gamete, and
  - (b) in the case of an application by a person who was born as a result of ART treatment using a donated gamete—the donor of the gamete.
- (3B) An ART provider must comply with any such direction of the Director-General.
- (4) Part 3 applies in relation to information referred to in subclause (2) or (3A) in the same way as it applies to information that relates to ART treatment provided on or after the commencement of section 33.
- (5) The Director-General must not disclose information provided under subclause (3A) that identifies a person unless the person:
- (a) is an adult, and
  - (b) has made an application under this clause or has provided written consent to the disclosure.

## **Schedule 2 Amendment of other Acts**

(Section 73)

### **2.1 Fines Act 1996 No 99**

#### **Schedule 1 Statutory provisions under which penalty notices issued**

Insert in alphabetical order:

*Assisted Reproductive Technology Act 2007*, section 64

## 2.2 Human Tissue Act 1983 No 164

### [1] Section 4 Definitions

Omit the definitions of **artificial insemination**, **authorised supplier**, **dentist**, **donor** and **medical practitioner** from section 4 (1).

Insert in alphabetical order:

**donor**, in relation to blood, means the person from whom the blood has been removed.

### [2] Section 4 (1), definition of “exempt supplier”

Omit “relevant exemption, or” from paragraph (a2).

Insert instead “relevant exemption.”

### [3] Section 4 (1), definition of “exempt supplier”

Omit paragraph (b).

### [4] Section 4 (3)

Omit “and the artificial insemination of semen”.

### [5] Part 3, heading

Omit “**and semen**”.

### [6] Sections 18 and 18A (1)

Omit “, with respect to blood and blood products,” wherever occurring.

### [7] Section 20C Application of Division

Omit “(a), and” from section 20C (b). Insert instead “(a).”.

### [8] Section 20C (c)

Omit the paragraph.

### [9] Section 20D Certificates by donors

Omit section 20D (2). Insert instead:

(2) A person must not remove or use a donor’s blood for a purpose referred to in section 20C (a) unless the donor has signed a certificate and had the signature witnessed by a person (or a person belonging to a class of persons) (the

***prescribed witness***) prescribed by the regulations.

Maximum penalty: 100 penalty units.

**[10] Section 20D (4)**

Omit the subsection.

**[11] Section 20G Restrictions as to legal proceedings involving infection by a prescribed contaminant involving semen**

Omit the section.

**[12] Part 3B Regulation of business supplying semen**

Omit the Part.

**[13] Section 21W Application**

Omit section 21W (2) (c).

**[14] Section 21ZB Effect of authority under this Part**

Omit “and semen” from the note to section 21ZB (2).

**[15] Section 34 Act does not prevent specified removals of tissue**

Insert after section 34 (1) (b3):

(b4) the provision of a gamete by a living person to an ART provider in accordance with the *Assisted Reproductive Technology Act 2007*,

**[16] Section 34 (2)**

Omit “or the obtaining or receipt of semen”.

**[17] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Assisted Reproductive Technology Act 2007* (but only to the extent that it amends this Act)

## **2.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

### **Schedule 2 Search warrants under other Acts**

Insert in alphabetical order:

*Assisted Reproductive Technology Act 2007*, section 52