

# Assisted Reproductive Technology Act 2007 No 69

[2007-69]



New South Wales

## Status Information

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### Authorisation

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New South Wales

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# 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 form** means a form approved by the Secretary.

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

**certificate of authority** means the certificate of authority issued to an inspector by the Secretary under Part 5.

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

**Department** means the Ministry of Health.

**donated embryo**—see section 4B.

**donated gamete**—see section 4B.

**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.

**full name**, in relation to a gamete provider who is a donor, includes each name by which the gamete provider is or has been known.

**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.

**health services provider** means any of the following—

- (a) an ART provider or a person that has at any time been an ART provider,
- (b) a registered medical practitioner, a person who has at any time been a registered medical practitioner or a person who, at any time before the repeal of the *Medical Practice Act 1992*, was registered as a medical practitioner under that Act,
- (c) a public health organisation within the meaning of the *Health Services Act 1997*,
- (d) a private health facility within the meaning of the *Private Health Facilities Act 2007*,
- (e) any person or body of a class prescribed by the regulations.

**identifying information** means information that identifies the individual to whom the information relates.

**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 Secretary under Division 1 of Part 2 as an ART provider and whose registration is in force.

**relevant medical history** 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—

- (a) persons undergoing ART treatment using the donated gamete,
- (b) offspring born as a result of the treatment,
- (c) descendants of such offspring.

**Secretary** means the Secretary of the Department.

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

**spouse** of a person means—

- (a) a person to whom the person is legally married (including a husband or wife of the person), 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](#).

**surrogacy arrangement** has the same meaning as it has in the [Surrogacy Act 2010](#).

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) (Repealed)
- (3) Notes included in this Act do not form part of this Act.

#### **4A References to ART treatment involving gametes**

A reference in this Act to ART treatment involving the use of a gamete includes a reference to ART treatment involving the use of an embryo created from a gamete.

#### **4B References to "donated gametes" and "donated embryos"**

- (1) A reference in this Act to a **donated gamete**—
  - (a) is a reference to a gamete donated by a gamete provider for use by a person other than the gamete provider or the gamete provider's spouse, and
  - (b) includes a reference to a gamete used to create a donated embryo (whether or not the gamete was originally obtained from the gamete provider as a donated

gamete and whether or not the embryo was originally created for use as a donated embryo).

- (2) A reference in this Act to a **donated embryo** is a reference to an embryo donated after its creation for use by a person who is not—
  - (a) one of the gamete providers from whom the gametes used to create the embryo were obtained, or
  - (b) the spouse of one of those gamete providers.

## 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 Secretary 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 Secretary must grant the applicant's registration as an ART provider if an application for registration is duly made.
- (5) Despite subsection (4), the Secretary 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 Secretary gives the applicant notice of the decision to grant registration and remains in force until cancelled by the Secretary.
- (7) The Secretary must cancel a person's registration as an ART provider if—
- (a) the person gives the Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary may from time to time determine, subject to the regulations.
- (4) The Secretary 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) (Repealed)

(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.

(2A) An ART provider that has possession of a gamete, or an embryo created using a gamete, that was not originally obtained from the gamete provider as a donated gamete must ensure that counselling services are made available to the gamete provider if the gamete provider proposes to donate the gamete or embryo for use by a person other than the gamete provider or the gamete provider's spouse.

(2B) The counselling services under subsection (2A) must—

(a) be available at the premises of the ART provider, and

(b) be offered before the gamete or embryo is used.

(2C) Counselling services under this section must be provided by a person with the

qualifications (if any) prescribed by the regulations.

(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 to participants in ART services

(1) An ART provider must, in accordance with this section—

(a) inform a person specified in Column 1 of the Table to this subsection of the matters specified opposite in Column 2, and

(b) obtain confirmation from the person that the person understands those matters,

before providing an ART service specified opposite in Column 3.

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

#### Table

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Person</b>	<b>Matters</b>	<b>ART service</b>
1	A woman seeking ART treatment that does not use donated gametes	Basic list of matters	ART treatment to the woman
2	A woman seeking ART treatment that uses donated gametes	Extended list of matters	ART treatment to the woman
3	A person proposing to provide a gamete (other than as a donated gamete)	Basic list of matters	Obtaining the gamete from the person
4	A person proposing to provide a donated gamete	Extended list of matters	Obtaining the gamete from the person

5	A gamete provider from whom the gamete was not originally obtained as a donated gamete	Extended list of matters	Using the gamete, or an embryo created using the gamete, in providing ART treatment to a person who is not the gamete provider or the gamete provider's spouse
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- (2) The **basic list of matters** that a person must be informed of under this section is as follows—
- (a) the availability of counselling services,
  - (b) the effect of a gamete provider's consent under Division 3, and how and until when such a consent may be modified or revoked,
  - (c) any other matter that is prescribed by the regulations.
- (3) The **extended list of matters** that a person must be informed of under this section is as follows—
- (a) the availability of counselling services,
  - (b) the effect of a gamete provider's consent under Division 3, and how and until when such a consent may be modified or revoked,
  - (c) the obligations of the ART provider in relation to obtaining information about the person and the person's offspring,
  - (d) the application of section 62 to the person, including in relation to information provided to the ART provider by the person,
  - (e) the existence of the central register and the information about the person and the person's offspring that will be held on the register,
  - (f) the right of the person to obtain information held on the register about the person,
  - (g) the right of the person and the person's offspring to obtain information held on the register about other persons,
  - (h) the right of other persons to obtain information held on the register about the person and the person's offspring,
  - (i) any other matter that is prescribed by the regulations.
- (4) Any information required to be provided under this section is to be provided in the approved form (if any).
- (5) Any confirmation required to be obtained under this section is to be obtained in the



approved form (if any).

**14 (Repealed)**

**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.

**15A Assessment report in relation to surrogacy arrangements**

(1) An ART provider must not provide treatment to a woman that is intended to assist the woman to achieve pregnancy, and which is sought in connection with a surrogacy arrangement, unless the ART provider has been provided with an assessment report in relation to the surrogacy arrangement.

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

(2) A registered medical practitioner who undertakes or supervises the provision of ART services by an ART provider must ensure that any treatment intended to assist a woman to achieve pregnancy, and which is sought in connection with a surrogacy arrangement, is not provided to the woman unless the medical practitioner is satisfied

it is appropriate to do so, having regard to an assessment report.

- (3) Contravention of subsection (2) is not an offence, but may constitute improper conduct by the medical practitioner for the purposes of the *Health Practitioner Regulation National Law (NSW)*.
- (4) For the purposes of this section, an **assessment report** is a report by an independent counsellor about the surrogacy arrangement, that is based on interviews with the parties to the surrogacy arrangement.
- (5) An assessment report must include the independent counsellor's opinion as to whether the parties to the surrogacy arrangement understand the surrogacy arrangement, including the possible outcomes of the surrogacy arrangement, and are suitable persons to enter into or continue with the surrogacy arrangement.
- (6) An assessment report must address such other matters as the regulations require the report to address.
- (7) An ART provider or medical practitioner does not contravene this section unless it is proved that the ART provider or medical practitioner knew, or should reasonably have suspected, that the treatment concerned was sought in connection with a surrogacy arrangement.
- (8) In this section—

**independent counsellor** means a qualified counsellor (within the meaning of the *Surrogacy Act 2010*) who is not employed or engaged by the ART provider.

## Division 3 Use of gametes

### 16 Interpretation

In this Division—

- (a) **consent** of 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, in the approved form (if any), 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, in the approved form (if any), of the modification or revocation of consent to—
  - (a) the ART provider that obtained the gamete from the gamete provider, or
  - (b) any ART provider that is, or has ever been, 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 that is used to create a donated embryo—the embryo is implanted in the body of a woman, or
  - (c) in any other case—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) As soon as practicable after an ART provider is given written notice by a gamete provider of the modification or revocation of his or her consent, the ART provider must give written notice of the modification or revocation to any other ART provider to which the ART provider has supplied the gamete or any embryo created using the gamete.
- (6) As soon as practicable after an ART provider is given written notice by another ART provider of the modification or revocation of a gamete provider's consent, the ART provider must give written notice of the modification or revocation to any other ART provider to which the ART provider has supplied the gamete or any embryo created using the gamete.
- (7) Except as provided by section 17A, a modification or revocation of consent takes effect in relation to an ART provider as soon as the ART provider is given written notice of the modification or revocation in accordance with this section.
- (8) A reference in this section to a **donated gamete** does not include a reference to a gamete that becomes a donated gamete only after being used to create an embryo.

#### **17A Verification of identify of person giving, modifying or revoking consent**

- (1) An ART provider that is given a written notice under section 17 must take the following steps to verify the identity of the person purportedly giving the consent to which the notice relates—

- (a) the steps (if any) prescribed by the regulations,
- (b) if there are no steps prescribed by the regulations, reasonable steps.

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

- (2) A gamete provider's consent has no effect in relation to an ART provider that is required to comply with subsection (1) in connection with that consent until the ART provider so complies.
- (3) An ART provider that is given a written notice under section 17 (5) or (6) is not required to comply with subsection (1) in connection with the modification or revocation to which the notice relates if the ART provider has reasonable grounds to believe that another ART provider has already complied with subsection (1) in connection with the modification or revocation.
- (4) In this section, **consent** includes the modification or revocation of consent.

#### **17B ART provider to take steps to obtain confirmation of consent in certain cases**

- (1) An ART provider must not carry out any of the following activities in respect of a gamete or embryo (other than a donated gamete or donated embryo) unless the ART provider has taken the required steps, in accordance with this section, to obtain confirmation of the gamete provider's consent to the activity concerned—
  - (a) use the gamete to create an embryo outside the body of a woman,
  - (b) provide ART treatment to a woman using the gamete or embryo,
  - (c) supply the gamete or embryo to another person (including an ART provider),
  - (d) export, or cause to be exported, the gamete or embryo from this State.

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

- (2) The **required steps** are the steps (if any) prescribed by the regulations or, if there are no steps prescribed by the regulations, reasonable steps.
- (3) The ART provider must take the required steps no earlier than the period of time, determined in accordance with the regulations, before the activity concerned.
- (4) An ART provider is not required to comply with this section—
  - (a) if the ART provider knows or believes on reasonable grounds that the gamete provider is deceased, or
  - (b) in any other circumstances prescribed by the regulations.

## **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.
- (5) A reference in this section to the **supply** of a gamete includes a reference to the supply of an embryo created using the gamete.

## 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, 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,

- (d) in the case of an embryo created using a donated gamete, or a donated embryo, 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.

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 the following ART treatment without the written authorisation of the Secretary—

- (a) ART treatment using a donated gamete (but not ART treatment referred to in paragraph (b)) if the gamete was obtained from the donor more than 15 years before the provision of the ART treatment,
- (b) ART treatment using an embryo created from a donated gamete, or using a donated embryo, if the embryo was created more than 15 years before 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 Secretary must not give an authorisation under subsection (1) unless the Secretary is satisfied that there are reasonable grounds for doing so having regard to any relevant guidelines issued by the Secretary 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.

- (1A) This section does not prevent the provision of ART treatment using a donated gamete to a woman if—

- (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
- (b) the woman belongs to a class of women prescribed by the regulations for the purposes of this section.

- (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,
    - (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),
    - (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),
    - (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),
  - (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.

- (5) The Secretary is to provide to an ART provider relevant information that is on the central register if—
- (a) the ART provider makes an application in an approved form for the information, or
  - (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.

- (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.
- (7) Subject to the regulations, the Secretary may—
- (a) give relevant information to an interstate government agency or interstate ART provider in the circumstances prescribed by the regulations, and
  - (b) authorise an ART provider to give relevant information to an interstate government agency or interstate ART provider in the circumstances prescribed by the regulations.
- (8) The regulations may—
- (a) provide for the kinds of relevant information that may not be given to an interstate government agency or an interstate ART provider, and
  - (b) prescribe, or authorise the Secretary to impose, conditions on the giving of relevant information to an interstate government agency or interstate ART provider.

- (9) In this section—

***interstate ART provider*** means a person who—

- (a) provides ART services in another State or Territory, and
- (b) is prescribed by the regulations.

***interstate government agency*** means a Minister or head of a government department in another State or Territory who—

- (a) has similar functions to the Secretary under this Act, and
- (b) is prescribed by the regulations.

***relevant information*** means the information in relation to a donor specified in subsection (4).

## **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 the following information—
  - (a) the full name of the gamete provider,
  - (b) the residential address of the gamete provider,
  - (c) the date of birth of the gamete provider,
  - (d) the place of birth of the gamete provider,
  - (e) the ethnicity and physical characteristics of the gamete provider,
  - (f) the relevant medical history of the gamete provider,

- (g) the sex and year of birth of each offspring of the gamete provider,
  - (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.
- (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 specified in subsection (1) in relation to the gamete or gametes used to create the embryo.
- (2A) An ART provider is only required to obtain the information specified in subsection (1) (d)–(h) if the gamete is a donated gamete.
- (3) An ART provider must not use a gamete in the provision of ART treatment to a woman unless the ART provider has obtained the following information—
- (a) the full name, residential address and date of birth of the woman,
  - (b) any other information about the woman, the woman’s spouse (if any) and any offspring of the woman that 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.
- (5) An ART provider that provides ART treatment to a woman using a donated gamete must take reasonable steps to find out from the woman, no earlier than 1 month and no later than 4 months after the treatment, whether or not she is pregnant as a result of the treatment.
- (6) The ART provider is not required to take those steps if the ART provider knows that the woman is not pregnant as a result of the treatment.
- (7) The ART provider must take further reasonable steps to find out from the woman, no earlier than 10 months and no later than 15 months after the ART treatment—
- (a) whether or not an offspring was born as a result of the treatment, and
  - (b) the full name, sex and date of birth of the offspring.

- (8) The ART provider is not required to take those steps if the ART provider—
- (a) is informed by the woman earlier than 10 months after the treatment that an offspring was born as a result of the treatment and the woman informs the ART provider of the full name, sex and date of birth of the offspring, or
  - (b) knows that no offspring was born as a result of the treatment.

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 information required to be obtained under section 30 (1) or (2), 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) for each woman who is provided ART treatment by the ART provider—
    - (i) the full name, residential address and date of birth of the woman, and
    - (ii) any other information required to be obtained under section 30 (3) about the woman, the woman's spouse (if any) and any offspring of the woman,
  - (b1) for each woman who has been provided ART treatment by the ART provider using a donated gamete—
    - (i) whether or not the woman is or has been pregnant, up until at least 1 month after the treatment, as a result of the treatment, or
    - (ii) if the ART provider does not know whether or not the woman is or has been pregnant, up until at least 1 month after the treatment, as a result of the treatment—information to that effect,
  - (c) for each offspring known by the ART provider to have been born as a result of ART

treatment provided by the ART provider—

- (i) the full name, sex and date of birth of the offspring, and
  - (ii) the full name of the woman who gave birth to the offspring, and
  - (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,
- (c1) if at least 15 months have passed since the ART provider provided ART treatment to a woman and the ART provider does not know whether or not an offspring has been born as a result of the treatment—information to that effect,
- (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 register**

### **Division 1 Preliminary**

### **32A Establishment of central register**

- (1) The Secretary is to establish and maintain a register called the central register.
- (2) The Secretary is to enter in the register such information as the Secretary is required to enter in the register by or under this Part.

**Note—**

Division 2 requires the Secretary to enter in the register information about ART treatment. Division 3 requires the Secretary to enter in the register information about surrogacy arrangements.

### **32B Disclosure of information on the central register generally**

- (1) The Secretary may disclose information held on the central register only in accordance with this Part or Part 3A.
- (2) For the purposes of the provisions of this Part and Part 3A relating to disclosure, the Secretary is entitled to assume that information provided to the Secretary and held on the central register is accurate.
- (3) Nothing in this section limits section 33D (1).

## **Division 2 Information about ART treatment**

### **32C Objectives of central register—ART treatment**

The objectives of the central register, in relation to ART treatment, 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.

### **33 Mandatory giving of information by ART providers**

- (1) An ART provider that provides ART treatment using a donated gamete must, within 2 months after becoming aware that a live offspring has been born as a result of the treatment, give the Secretary—
- (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 embryo created from that gamete, and
  - (b) the records that the ART provider is required to keep under section 31 (1) (c) in relation to the offspring.

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

- (1A) An ART provider that provides ART treatment to a woman using a donated gamete must, no earlier than 15 months and no later than 16 months after the treatment, do the following if the ART provider does not know whether or not a live offspring has been born as a result of the treatment—

- (a) inform the Secretary that the ART provider does not know whether or not a live offspring has been born as a result of the treatment,
- (b) give the Secretary—
  - (i) the records that the ART provider is required to keep under section 31 (1) (a) (i) and (iii) in relation to the gamete and embryo created from that gamete, and
  - (ii) the full name of the woman.

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

- (2) The Secretary must enter in the central register any information given to the Secretary under this section.

### **33A Voluntary giving of information about private ART arrangements**

- (1) In this section—

***private ART arrangement*** means ART treatment using a donated gamete that—

- (a) resulted in the birth of a live offspring, and
- (b) was not carried out for fee or reward or in the course of a business.

- (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 the offspring, being information of a kind that an ART provider would be required to give the Secretary under section 33.

- (3) The notice may be given at any time and must be given in an approved form.
- (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.
- (5) The Secretary may enter in the central register any information given to the Secretary under this section.

### **33B Voluntary giving of information about personal characteristics of donor**

- (1) A donor may, by notice in writing, give the Secretary information about the personal characteristics of the donor for inclusion on the central register.
- (2) The notice may be given at any time and must be given in an approved form.
- (3) The notice may specify restrictions on the disclosure of the information.
- (4) The Secretary may enter in the central register any information given to the Secretary under this section.

### **33C Voluntary giving of information by adult offspring of donor**

- (1) An adult offspring of a donor may, by notice in writing, give the Secretary the following information about the offspring for inclusion on the central register—
  - (a) the full name, sex and date of birth of the offspring,
  - (b) the residential address of the offspring.
- (2) The notice may be given at any time and must be given in an approved form.
- (3) The notice may specify restrictions on the disclosure of the information.
- (4) The Secretary may enter in the central register any information given to the Secretary under this section.

### **33D Secretary to ensure accuracy of central register in relation to ART treatment**

- (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—
  - (a) refuse to enter information, or revise information or omit information,

- (b) retain superseded information (such as a person's former name),
- (c) add any notes or annotations that the Secretary considers to be appropriate.

(1A) The Secretary may, on the Secretary's own initiative, enter in the central register information relating to any of the following persons—

- (a) a live offspring whom the Secretary has reasonable grounds to be satisfied was born as a result of the provision by an ART provider of ART treatment, on or after 1 January 2010, using a donated gamete,
- (b) a person whom the Secretary has reasonable grounds to be satisfied is the donor from whom the donated gamete was obtained (the **gamete provider**),
- (c) the woman who gave birth to the offspring.

(1B) The information that may be entered on the central register under subsection (1A) includes any of the following—

- (a) the full name, sex and date of birth of the offspring,
- (b) the full name, residential address, date of birth, ethnicity, physical characteristics and relevant medical history of the gamete provider,
- (c) the sex and year of birth of each offspring of the gamete provider,
- (d) the gamete provider's consent (within the meaning of Division 3 of Part 2) relating to the gamete or embryo that the Secretary has reasonable grounds to be satisfied was used in the ART treatment,
- (e) the full name of the woman who gave birth to the offspring,
- (f) the full name of the spouse (if any) of that woman,
- (g) any other matters that are prescribed by the regulations.

(1C) Without limiting subsection (1) (c), the Secretary must note in the central register the source of any information entered in the central register under subsection (1A) (including whether the information was obtained in response to a direction under section 34).

(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.

### **33E Disclosure of information on Secretary's own initiative**

(1) The Secretary may, on the Secretary's own initiative, disclose information held on the

central register that has been revised or entered under section 33D.

- (2) The Secretary may disclose the information only to a person who would be entitled, if the person made an application under this Part, to be given the information.

### **34 Direction to answer questions and provide information about donor-conceived births**

- (1) The Secretary may give a health services provider a written direction requiring the provider to answer specified questions, or to furnish any other information specified in the direction, for the purposes of—
- (a) determining whether or not a live offspring was born as a result of the provision by an ART provider of ART treatment, on or after 1 January 2010, using a donated gamete, or
  - (b) determining whether or not any registrable information in connection with such an offspring has been correctly entered in the central register, or
  - (c) obtaining any registrable information in connection with such an offspring.
- (2) A direction under this section may require the questions to be answered, or the other information to be furnished, in a specified manner, by a specified time and in a specified form.
- (3) A person who is given a direction under this section must not, without reasonable excuse, refuse or fail to comply with the direction.

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

- (4) In this section, **registrable information** means any of the following—
- (a) the full name, sex and date of birth of an offspring who was born as a result of the provision by an ART provider of ART treatment using a donated gamete,
  - (b) the full name, residential address, date of birth, ethnicity, physical characteristics and relevant medical history of the gamete provider,
  - (c) the sex and year of birth of each offspring of the gamete provider,
  - (d) the gamete provider's consent (within the meaning of Division 3 of Part 2) relating to the gamete or embryo used in the ART treatment,
  - (e) the full name of the woman who gave birth to the offspring,
  - (f) the full name of the spouse (if any) of that woman,
  - (g) any other matters that are prescribed by the regulations.

### **35 Information sharing between Secretary and Registrar of Births, Deaths and Marriages**

**about donor-conceived births**

- (1) The Secretary and the Registrar of Births, Deaths and Marriages may share information for the purpose of enabling or assisting the Secretary to ensure the completeness and accuracy of the central register in relation to—
  - (a) live offspring born as a result of ART treatment provided by ART providers using donated gametes, and
  - (b) the donors from whom the gametes were obtained, and
  - (c) the women who gave birth to the offspring, and
  - (d) the spouses (if any) of those women.
- (2) This section has effect despite any law to the contrary.

**36 Disclosure to subject of information**

- (1) The Secretary 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 register—
  - (a) a donor,
  - (b) an adult offspring of a donor,
  - (c) a woman who has undergone ART treatment using a donated gamete.
- (2) The Secretary 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 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 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—
  - (a) the information referred to in section 30 (1) (a)–(g) about the donor of the donated gamete,

- (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).
- (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—
- (a) the sex and year of birth of each other offspring of the donor,
  - (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).

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

- (1) The Secretary 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 register—
- (a) the ethnicity and physical characteristics of the donor of the donated gamete,
    - (a1) the relevant medical history of the donor,
    - (a2) the sex and year of birth of each offspring of the donor,
    - (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),
  - (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),
  - (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 Secretary 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 Secretary 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 Secretary considers to be a representative of the child and to have a genuine interest in the welfare of the child.

### **39 Disclosure to donor**

The Secretary must, if an application in an approved form is made by a donor, disclose to the donor the following information held on the central register—

- (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,
- (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).

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

- (1) The Secretary 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 Division.
- (2) The Secretary 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 Secretary's own initiative.
- (3) The Secretary is not to contact a person under subsection (1) unless the person is an adult and the Secretary 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 Secretary may consult any person or body that the Secretary believes may assist the Secretary in the exercise of his or her functions under this section.
- (5) The Secretary may arrange for any one or more of the persons concerned to be provided with such counselling as the Secretary believes is necessary to assist the person and the Secretary in the matter.
- (6) The Secretary must exercise his or her functions under this section in accordance with any guidelines that may be prescribed by the regulations.

#### **40A Disclosure of information about offspring without consent**

- (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—
  - (a) any sibling of the person,
  - (b) the donor.
- (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.
- (3) In forming an opinion under this section, the Secretary must take into account any matters that may be prescribed by the regulations.

#### **40B Disclosure permitted with consent**

- (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.
- (2) Consent is to be given by notice in writing to the Secretary.
- (3) Consent given under this section may be revoked or varied at any time by giving further written notice to the Secretary.
- (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.
- (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.

#### **41 Fees**

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

### **Division 3 Information about surrogacy arrangements**

#### 41A Definitions

In this Division—

**affected party**, in relation to a surrogacy arrangement, has the same meaning as it has in the [Surrogacy Act 2010](#).

**biological sibling** of a person means a brother or sister of the person, whether the relationship is of the whole blood or half blood.

**birth parent** has the same meaning as it has in the [Surrogacy Act 2010](#).

**gamete provider** means a person whose gamete is used under a surrogacy arrangement to conceive a child born as a result of the surrogacy arrangement.

**parentage order** means a parentage order under the [Surrogacy Act 2010](#).

#### 41B Information about surrogacy arrangements to be entered in central register

- (1) The Secretary is to enter in the central register such information about surrogacy arrangements as may be prescribed by the regulations.
- (2) For the purposes of this Division, a reference to **information about a surrogacy arrangement** includes a reference to the following—
  - (a) information about affected parties in relation to surrogacy arrangements,
  - (b) information about persons born as a result of surrogacy arrangements,
  - (c) information about gamete providers under surrogacy arrangements,
  - (d) information about the biological siblings of persons born as a result of surrogacy arrangements.

#### 41C Provision of surrogacy information by parties to surrogacy arrangement

- (1) An affected party in relation to a surrogacy arrangement may, by notice to the Secretary, provide to the Secretary any registrable information about the surrogacy arrangement.
- (2) An affected party in relation to a surrogacy arrangement may at any time, by notice to the Secretary, update any registrable information provided to the Secretary, including after a parentage order has been made in relation to the surrogacy arrangement.
- (3) A gamete provider under a surrogacy arrangement may at any time, by notice to the Secretary, provide to the Secretary any registrable information about the surrogacy arrangement.
- (4) A biological sibling of a person born as a result of a surrogacy arrangement may at



any time, by notice to the Secretary, provide to the Secretary any registrable information about the surrogacy arrangement.

- (5) The Secretary is under no obligation to inquire into, or verify, the information provided about a surrogacy arrangement by a person.
- (6) In this section, **registrable information** about a surrogacy arrangement is any information about a surrogacy arrangement the Secretary may enter in the central register under this Division.

**Note—**

Provision of registrable information about a surrogacy arrangement is a precondition to the making of a parentage order under the [Surrogacy Act 2010](#) in respect of the surrogacy arrangement.

**41D Objective of central register—surrogacy arrangements**

The objective of the central register, in relation to surrogacy arrangements, is to ensure that an adult whose parentage has been transferred as a result of a parentage order, affected parties in relation to a surrogacy arrangement and gamete providers under a surrogacy arrangement have access to certain information about the surrogacy arrangement, including identifying information in some circumstances.

**41E Disclosure of information to person to whom it relates**

- (1) The Secretary must, on an application by any of the following persons, provide to the person a copy of any information about that person held on the central register—
  - (a) an adult who was born as a result of a surrogacy arrangement,
  - (b) an affected party in relation to a surrogacy arrangement,
  - (c) a gamete provider under a surrogacy arrangement,
  - (d) an adult biological sibling of a person born as a result of a surrogacy arrangement.
- (2) The Secretary must, on application by the parent of a child under 18 years whose parentage was transferred by a parentage order, provide to the parent a copy of any information about the child held on the central register.
- (3) This section does not authorise the 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 the information was originally provided by the applicant.

**41F Disclosure of information to person about birth parents, gamete providers and**

### **siblings**

- (1) The Secretary must, on application by a person who is an adult and whose parentage was transferred by a parentage order, disclose to the person the name of a birth parent of the person and any other information relating to the birth parent held on the central register that the regulations require the Secretary to disclose.
- (2) The Secretary must, on application by a person who is an adult and whose parentage was transferred by a parentage order, disclose to the person the name of any gamete provider under the surrogacy arrangement concerned and any other information relating to the gamete provider held on the central register that the regulations require the Secretary to disclose.
- (3) The Secretary must, on application by an adult person whose parentage has been transferred by a parentage order, disclose to the person the following information held on the central register—
  - (a) such non-identifying information relating to the person's biological siblings as may be prescribed by the regulations,
  - (b) such other information (including identifying information) relating to a biological sibling as the sibling has consented to being disclosed under this section, but only in accordance with that consent.
- (4) A biological sibling can consent to the disclosure of information under this section only if he or she has attained the age of 18 years.

### **41G Disclosure of information to birth parent and gamete provider**

- (1) The Secretary must, on application by a person who is the birth parent, or a gamete provider under a surrogacy arrangement, of a person whose parentage is transferred to another person as a result of a parentage order, disclose to the person the following information held on the central register—
  - (a) such non-identifying information relating to the person whose parentage is transferred as may be prescribed by the regulations,
  - (b) such other information relating to the person whose parentage is transferred, 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 whose parentage is transferred as a result of a parentage order can consent to the disclosure of information under this section only if he or she has attained the age of 18 years.

### **41H Seeking consent to disclosure**

- (1) The Secretary may contact a person and ask the person whether he or she wishes to

consent to the disclosure of information under this Division.

- (2) The Secretary may contact a person—
  - (a) at the request of a birth parent of the person or a gamete provider under a surrogacy arrangement that relates to the person, or
  - (b) at the request of any biological sibling of the person, or
  - (c) on the Secretary's own initiative.
- (3) The Secretary is not to contact a person under this section unless the person is an adult and the Secretary 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 Secretary may consult any person or body that the Secretary believes may assist the Secretary in the exercise of his or her functions under this section.
- (5) The Secretary may arrange for any one or more of the persons concerned to be provided with such counselling as the Secretary believes is necessary to assist the person and the Secretary in the matter.
- (6) The Secretary must exercise his or her functions under this section in accordance with any guidelines that may be prescribed by the regulations.

#### **41I Consent to registration or disclosure of information**

- (1) A person may consent to the inclusion of information about the person in the central register, or the disclosure of information about the person in the central register to another person, under this Division by giving written notice of that consent to the Secretary.
- (2) Consent given may be revoked at any time by giving further written notice to the Secretary.

#### **41J Form of application or notice**

- (1) An application made or notice given to the Secretary under this Division must be made or given in an approved form.
- (2) An application or notice must be accompanied by such proof as the Secretary may require of the person's identity.

#### **41K Fees**

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

the prescribed fee (if any).

#### **41L Information that relates to both ART treatment and surrogacy arrangement**

- (1) The Secretary can approve such arrangements as he or she considers appropriate to facilitate the joint collection and disclosure of information about a person that relates both to ART treatment and a surrogacy arrangement, including arrangements that permit—
  - (a) a single application or notice of consent to be made or given in relation to information held on the central register both under Division 2 and under this Division, and
  - (b) a single disclosure to be made by the Secretary of information that is required to be disclosed both under Division 2 and under this Division.
- (2) A provision of this Part that permits the regulations to prescribe a fee in respect of an application or notice given under Division 2 or this Division also permits a single fee to be prescribed for an application or notice that relates to both Division 2 and this Division.

#### **41M Removal of information from register**

The Secretary may, on application by an affected party in relation to a surrogacy arrangement or on the Secretary's own initiative, remove information about a surrogacy arrangement from the central register if—

- (a) the surrogacy arrangement did not involve the provision of ART treatment, and
- (b) a parentage order has not been granted in relation to the surrogacy arrangement, or has been discharged.

### **Part 3A Information generally not on central register**

#### **Division 1 Preliminary**

##### **41N Definitions**

In this Part—

**ART provider** includes a person who was formerly an ART provider.

**pre 2010 record** means a record made by an ART provider about an ART service provided before 1 January 2010.

**retention period** in relation to a pre 2010 record means the period of 75 years after—

- (a) the day on which the ART service to which the record relates was provided, or
- (b) if the record relates to more than one ART service—the day on which the last of those

services was provided.

## **Division 2 Retention of records**

### **41O ART providers must retain records**

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.

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

### **41P Transfer of records**

- (1) A person (including an ART provider) may transfer any pre 2010 record within the person's control to a registered ART provider.
- (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.
- (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.
- (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.
- (5) The regulations may make further provision for or with respect to the transfer of pre 2010 records under this section including—
  - (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
  - (b) specifying the matters that are required to be included in any notice given to the Secretary under this section.
- (6) An ART provider must comply with this section.

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

### **41Q Secretary may authorise destruction of records**

- (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.

- (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.

**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.

## **Division 3 Access to information**

### **41R Objects of Division**

The objects of this Division are—

- (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 in circumstances where that information may not be held in the central register, and
- (b) to ensure that as far as possible the information, if still available, will be provided to the applicant.

**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.

### **41S Meaning of “accessible information” about a donor**

In this Division, **accessible information** about a donor means the following information about the donor but only to the extent that it is non-identifying information—

- (a) the ethnicity and physical characteristics of the donor,
- (b) the relevant medical history of the donor,
- (c) the sex and year of birth of each offspring of the donor.

### **41T Application by or on behalf of persons born as a result of ART treatment**

- (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.
- (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.
- (3) An application is not to be made under this section if the applicant could obtain the information under section 37 or 38.

- (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.

#### **41U Disclosure of information by ART provider**

- (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—
  - (a) all accessible information about the donor that is held by the ART provider, and
  - (b) if the ART provider has no accessible information about the donor—a statement to that effect, and
  - (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.
- (2) The ART provider must give a copy of the written notice to the Secretary.
- (3) The ART provider must, when giving the written notice to the Secretary, also give the Secretary—
  - (a) any information that the ART provider has about the identity of the donor including any donor code used by the ART provider, and
  - (b) any information in relation to ART services as may be prescribed by the regulations.
- (4) The Secretary may require information given under this section to be in an approved form.
- (5) An ART provider must comply with this section.

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

#### **41V Direction to provide information**

- (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—
  - (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),
  - (b) any information that the person has about the identity of the donor including any

donor code,

(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,

(d) any information in relation to ART services as may be prescribed by the regulations.

(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.

(3) A direction may require the information to be given by a particular time and in a particular form.

(4) A person who is given a direction must not fail to comply with the direction.

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

#### **41W Entry of information provided under Part in central register**

The Secretary must (subject to section 33D (1)) enter any information about a donor that is given to the Secretary under this Division in the central register.

#### **41X Disclosure of information by Secretary**

The Secretary must disclose to an applicant under this Division any relevant accessible information about a donor that is held in the central register.

### **Part 4**

#### **42-45 (Repealed)**

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

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

(1) The Secretary may appoint any member of staff of the Department, or any person who the Secretary 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 Secretary 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 Secretary 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 Secretary.
- (3) The Secretary 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 Secretary 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 Secretary 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 Secretary to be entitled to it, if—
- (a) the Secretary 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 Secretary 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.

## **55A Use of enforcement powers in connection with [Surrogacy Act 2010](#)**

- (1) An inspector may exercise any function conferred on the inspector by this Part in connection with the enforcement of this Act or the regulations for the purpose of

ascertaining whether or not a provision of the *Surrogacy Act 2010* or the regulations under that Act is being or has been contravened by an ART provider or in connection with the provision of ART treatment.

- (2) For that purpose, a reference in this Part to this Act or the regulations includes a reference to the *Surrogacy Act 2010* or the regulations under that Act.

## **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 Secretary 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 Secretary 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 Secretary 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,
    - (vi) the *Surrogacy Act 2010*, 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 Secretary 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 Secretary after that time.
- (8) If an application is made under subsection (7), the Secretary 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 Secretary may require the corporation or trustee to provide information that the Secretary 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 Secretary may require any person who the Secretary reasonably believes has a management role or substantial interest in the corporation or a substantial interest in the trust to provide information that the Secretary 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 Secretary 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 Secretary 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

### 61A Destruction or falsification of ART records

- (1) A person must not knowingly falsify or destroy an ART record.

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

- (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.

- (3) In this section—

**ART record** means—

- (a) a pre 2010 record within the meaning of Part 3A, or  
(b) any other record that is required to be kept or retained under this Act.

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

- (1) A person must not, without reasonable excuse, make a representation that is false or misleading in a material particular—

- (a) in an application or notice under this Act, or  
(b) in response to a request for information that an ART provider is required to obtain, or to take steps to obtain, under Part 2.

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

- (2) Without limiting subsection (1), a person who forges a signature in any application or notice under this Act is taken to have made a representation that is false or misleading in a material particular.
- (3) A reference in this section to **information** includes a reference to the confirmation of a gamete provider's consent within the meaning of Division 3 of Part 2.

### 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.

- (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.

#### **64 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means—
  - (a) an inspector, or
  - (b) a person who is declared by the regulations to be an authorised officer for the purposes of this section or who belongs to a class of persons so declared.

#### **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 Secretary 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 under this Act that a person be given notice is a requirement that the person be given notice—
  - (a) personally or by post, or
  - (b) by email to an email address specified by the person for the service of notices of that kind, or
  - (c) by any other method authorised by the regulations for the service of notices of that kind.
- (2) For the purposes of section 76 of the *Interpretation Act 1987*, a notice from the Secretary 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 Secretary, 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 providers and others**

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 a health services provider does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

## **70 Delegation**

- (1) The Secretary may delegate to an authorised person the exercise of any of the functions of the Secretary 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 (Repealed)**

## **74 Review of Part 3A**

- (1) The Minister is to review Part 3A to determine whether that Part achieves the objects set out in section 41R.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the commencement of that Part.
- (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 12 months.

## **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 this Act or any other Act that amends 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 1 January 2010, except as otherwise provided by this Part.

#### **3 Storage of gametes obtained before 1 January 2010**

- (1) Section 25 does not apply to a gamete obtained by an ART provider before 1 January 2010.
- (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.
- (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.

#### **3A Storage of embryos created before 1 January 2010**

- (1) Section 25 does not apply to an embryo created before 1 January 2010.

- (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.
- (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.

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

- (1) Section 33 does not apply to or in relation to ART treatment provided before 1 January 2010.
- (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 1 January 2010, 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 1 January 2010.
- (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.

#### **4A Completion of family—gametes donated before 1 January 2010**

- (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.



- (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—
  - (a) the consent of the donor of the gamete is taken to have been provided for the use, and
  - (b) the ART provider is not required to do any of the following with respect to any such gamete or embryo—
    - (i) obtain any information under section 30,
    - (ii) keep a record of information under section 31,
    - (iii) provide information to the Secretary under section 33, and
  - (c) the ART treatment may be provided despite section 26 (1) or 27 (1), and
  - (d) the gamete or embryo may be stored for the purposes of that ART treatment despite clause 3 (or section 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.

**4B Completion of family—embryos created before 1 January 2010**

- (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.
- (2) The embryo may be used by an ART provider to provide ART treatment to the woman and in such a case—
  - (a) the consent of each gamete provider is taken to have been provided for the use, and
  - (b) the ART provider is not required to do any of the following with respect to any such embryo—
    - (i) obtain any information under section 30,
    - (ii) keep a record of information under section 31,
    - (iii) provide information to the Secretary under section 33, and
  - (c) the ART treatment may be provided despite section 26 (1) or 27 (1), and
  - (d) the embryo may be stored for the purposes of that ART treatment despite clause 3 (or section 25).

## **Part 3 Provisions consequent on enactment of [Surrogacy Act 2010](#)**

### **5 Central register**

- (1) The central register under section 32A is a continuation of, and the same register as, the central ART donor register established under section 33 before the commencement of section 32A, as inserted by the [Surrogacy Act 2010](#).
- (2) A reference in any Act, any instrument made under an Act or in any document to the central ART donor register is to be read as a reference to the central register.

### **6 Information about surrogacy arrangements to be included in register**

Division 3 of Part 3, as inserted by the [Surrogacy Act 2010](#), extends to information about surrogacy arrangements entered into before the commencement of that Division, subject to the regulations.

## **Part 4 Provisions consequent on enactment of [Health Legislation Amendment Act \(No 3\) 2018](#)**

### **7 Interpretation**

- (1) In this Part—  
**amending Act** means the [Health Legislation Amendment Act \(No 3\) 2018](#).
- (2) A reference in this Part to a new provision is a reference to the provision as inserted by the amending Act.

### **8 Collection of information and keeping of records**

- (1) New section 30 (5) and (6) extend to ART treatment provided to a woman using a donated gamete within the period of 1 month before the commencement of those provisions.
- (2) New section 30 (7) and (8) extend to ART treatment provided to a woman using a donated gamete within the period of 10 months before the commencement of those provisions.
- (3) New section 31 (1) (b1) applies only in relation to a woman who has been provided ART treatment using a donated gamete on or after the period of 1 month before the commencement of that provision.
- (4) Section 31 (1) (c), as amended by the amending Act, applies only in relation to offspring who are born on or after the commencement of the amendment.
- (5) New section 31 (1) (c1) applies only in relation to ART treatment provided to a woman on or after the period of 15 months before the commencement of that provision.

**9 Information required to be given to Secretary by ART providers**

- (1) New section 33 (1) applies only in relation to a live offspring born on or after the commencement of that provision.
- (2) Section 33 (1), as in force immediately before its substitution by the amending Act, continues to apply in relation to a live offspring born before that substitution.
- (3) New section 33 (1A) extends to ART treatment provided by an ART provider within the period of 15 months before the commencement of that provision.

**Schedule 2 (Repealed)**