



Western Australia

Assisted Reproductive Technology and Surrogacy Act 2025

Assisted Reproductive Technology and Surrogacy Act 2025

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Western Australia

Assisted Reproductive Technology and Surrogacy Act 2025

No. 19 of 2025

An Act —

- **about the provision of assisted reproductive technology services and arrangements for surrogacy and related matters; and**
- **to establish the Assisted Reproductive Technology Advisory and Review Board; and**
- **to repeal the *Artificial Conception Act 1985*, the *Human Reproductive Technology Regulations 1993*, the *Surrogacy Act 2008* and the *Surrogacy Regulations 2009* and to revoke the *Human Reproductive Technology Directions 2021* and the *Surrogacy Directions 2022*; and**
- **to make consequential and related amendments to other Acts.**

[Assented to 18 December 2025]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

Division 1 — Introduction

1. Short title

This is the *Assisted Reproductive Technology and Surrogacy Act 2025*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 Division 1 — on the day on which this Act receives the Royal Assent (***assent day***);
- (b) Part 17 Division 13 —
 - (i) if the *Privacy and Responsible Information Sharing Act 2024* section 158 comes into operation on or before assent day — on the day after assent day; or
 - (ii) otherwise — immediately after the *Privacy and Responsible Information Sharing Act 2024* section 158 comes into operation;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Division 2 — Objects and principles

4. Objects of Act

The objects of this Act are —

- (a) to regulate the provision of assisted reproductive technology services to ensure that the services are provided in accordance with best practices, including by —
 - (i) requiring the providers of services to be licensed; and
 - (ii) requiring information about assisted reproductive technology services to be collected and kept; and
 - (iii) requiring information relating to donor conception to be made available to persons who are entitled to access it under this Act or another written law;and
- (b) to regulate particular matters relating to surrogacy arrangements, including by —
 - (i) prohibiting surrogacy arrangements for reward; and
 - (ii) establishing procedures to ensure the parties to a surrogacy arrangement understand its nature and implications; and
 - (iii) providing for the circumstances in which the Family Court can transfer the parentage of a child born under a surrogacy arrangement; and
 - (iv) requiring information relating to surrogacy arrangements and the transfer of parentage to be recorded and made available to persons who are entitled to access it under this Act or another written law;and

- (c) to support research related to —
 - (i) the incidence, causes and prevention of infertility; and
 - (ii) assisted reproductive technology, including, for example, the impact of assisted reproductive technology procedures on the health outcomes of persons who undergo the procedures and persons born of pregnancies achieved as a result of the procedures;
- and
- (d) to establish the Assisted Reproductive Technology Advisory and Review Board to provide advice and support governance and oversight of assisted reproductive technology services in the State.

5. Principles

- (1) This section applies to —
 - (a) a person performing a function under this Act; and
 - (b) a person who provides assisted reproductive technology services under a licence under this Act.
- (2) The person must have regard to the following principles in performing the function or providing the service —
 - (a) the wellbeing and best interests (including the physical, emotional and mental health, safety and rights) of persons born as the result of assisted reproductive technology or surrogacy arrangements are paramount;
 - (b) the wellbeing and best interests (including the physical, emotional and mental health, safety and rights) of persons who become pregnant, or try to become pregnant, as a result of assisted reproductive technology or surrogacy arrangements are the next most paramount consideration;

- (c) the physical, emotional and mental health, wellbeing and safety of persons provided with assisted reproductive technology services or who participate in surrogacy arrangements (including donors, contributing parents and intended parents) should be protected;
- (d) informed consent should be obtained from all persons provided with assisted reproductive technology services before the services are provided;
- (e) informed agreement should be obtained from all persons who enter into a surrogacy arrangement before a child is conceived under the arrangement;
- (f) persons provided with assisted reproductive technology services must not be subjected to unlawful discrimination, including, for example, discrimination based on sexual orientation, relationship status, gender identity, disability, race or religion;
- (g) trade in the reproductive capabilities of persons and the exploitation of people for commercial purposes in relation to their reproductive capabilities is not acceptable;
- (h) persons born as the result of assisted reproductive technology or under a surrogacy arrangement have the right to information, if available, about their genetic and biological heritage and the circumstances of their birth, including donors and birth parents (including surrogates);
- (i) assisted reproductive technology services provided by licensees should —
 - (i) be transparent and open to scrutiny; and
 - (ii) protect the privacy of all persons who contribute to or benefit from the services; and
 - (iii) be safe and human-centred; and
 - (iv) foster continuous improvement in safety and quality; and

- (v) be underpinned by policies that support effective and efficient practices and minimise interventions not supported by evidence of successful clinical outcomes.

Division 3 — Interpretation

6. Terms used

In this Act —

5 family worldwide limit has the meaning given in section 17;

appropriately qualified has the meaning given in section 23;

approved form means a form approved under section 272(1);

ART participant means a person who undergoes, or is to undergo, an ART procedure;

ART procedure has the meaning given in section 8(1) and (2);

ART service has the meaning given in section 7;

authorised officer means a person appointed under section 209(1) as an authorised officer;

authorised practitioner has the meaning given in section 29(1);

birth parent has the meaning given in section 12;

Board means the Assisted Reproductive Technology Advisory and Review Board established under section 235;

CEO means the chief executive officer of the Department;

compliance notice has the meaning given in section 227(2);

consent, of a person, means consent given by the person to do something in relation to reproductive material or an embryo that would be required for a licensee to do the thing under section 50(2);

contributing parent has the meaning given in section 13;

corresponding law means a written law of another jurisdiction that regulates the provision of ART services or performance of ART procedures;

couple has the meaning given in section 10(2);

Department means the department of the Public Service principally assisting in the administration of this Act;

disciplinary action means suspending or cancelling a licence under Part 7 Division 8;

donated reproductive material has a meaning affected by section 15(3)(b);

donor —

- (a) in relation to reproductive material or an embryo — has the meaning given in section 15; or
- (b) in relation to a donor-conceived person — means a donor of reproductive material used in the ART procedure, or to create an embryo used in the ART procedure, that resulted in the donor-conceived person's birth;

Note for this definition:

A person is a donor of reproductive material used in an ART procedure if the person's donated reproductive material is used to create an embryo used in the ART procedure. See section 15(3)(a).

donor-conceived person means a person born as a result of an ART procedure that used donated reproductive material or a donated embryo;

embryo has the meaning given in section 9(2) and (3);

Note for this definition:

Also see section 73(1) for the meaning of embryo in relation to a deceased person.

genetic testing, of an embryo, includes removing cells from the embryo to enable genetic testing of the cells;

health practitioner means a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* to practise in a health profession;

health service has the meaning given in the *Health Services Act 2016* section 7;

health service provider means a health service provider established by an order made under the *Health Services Act 2016* section 32(1)(b);

intended parent —

- (a) in relation to reproductive material, an embryo or a child — has the meaning given in section 14; and
- (b) in relation to a surrogacy arrangement — has the meaning given in section 16;

licence means a licence to provide an ART service issued under Part 7;

licensee means a person who holds a licence;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

member means a member of the Board;

overseas surrogacy arrangement has the meaning given in section 16(2);

parentage order has the meaning given in section 119(2)(a);

partner, of a person, has the meaning given in section 10(1);

perform, in relation to an ART procedure, means to administer, conduct or deliver the procedure;

personal information has the meaning given in the *Privacy and Responsible Information Sharing Act 2024* section 4;

prescribed means prescribed by regulations made under this Act;

prescribed storage period, in relation to reproductive material or an embryo, means the period prescribed as the maximum period for which reproductive material or an embryo can be stored;

procedure includes treatment;

register of identity has the meaning given in section 97(1);

reproductive material has the meaning given in section 9(1);

Note for this definition:

Also see section 73(1) for the meaning of reproductive material in relation to a deceased person.

still-born child has the meaning given in the *Births, Deaths and Marriages Registration Act 1998* section 4;

surrogacy arrangement has the meaning given in section 16;

surrogate has the meaning given in section 16;

surviving partner, of a deceased person, means the person who was the deceased person's partner immediately before the person died;

term, of a licence, means the period for which the licence has effect;

time-sensitive ART procedure means an ART procedure in progress that would be adversely affected if it were suddenly stopped or delayed.

7. ART services

An **ART service** is a service provided for fee or reward, or in carrying on a business (whether or not for profit), in which —

- (a) ART procedures are performed; or
- (b) reproductive material collected, or embryos created, for a purpose related to ART procedures are stored.

8. ART procedures

(1) An **ART procedure** is any of the following —

- (a) a procedure that involves the collection of reproductive material for use, or possible future use, in a procedure mentioned in paragraph (b), (c) or (d);
- (b) a procedure performed using reproductive material to create an embryo;

- (c) a procedure performed using reproductive material or an embryo to achieve, or attempt to achieve, a pregnancy;
 - (d) a procedure prescribed to be an ART procedure.
- (2) Self-insemination is not an **ART procedure**.
- (3) In subsection (2) —
self-insemination means a procedure in which collected semen is transferred into a person's body for the purpose of the person becoming pregnant —
 - (a) performed by the person or someone else assisting the person; and
 - (b) performed other than —
 - (i) as a medical or clinical procedure; or
 - (ii) for fee or reward, or in carrying on a business (whether or not for profit).
- (4) In a provision about an ART procedure —
 - (a) a reference to a licence is a reference to the licence that authorises the provision of the ART service as part of which the ART procedure is performed; and
 - (b) a reference to a licensee is a reference to the person who holds the licence mentioned in paragraph (a).

9. Reproductive material and embryos

- (1) **Reproductive material** —
 - (a) is a human reproductive cell, called a gamete, including spermatozoon (sperm) and oocyte (an egg); and
 - (b) includes human tissue containing a gamete.
- (2) An **embryo** is a discrete entity that —
 - (a) has arisen from the first mitotic division when fertilisation of a human egg by a human sperm is complete; and

(b) has not yet reached 8 weeks of development since the first mitotic division.

(3) In this Act, a reference to an **embryo** is a reference to an embryo as defined in subsection (2) created outside a human body as a result of an ART procedure.

10. Partners and couples

(1) A person is the **partner** of another person if the persons are married to each other or in a de facto relationship.

(2) Two persons who are married to each other or in a de facto relationship are a **couple**.

11. Person's or couple's reproductive purposes

(1) An ART procedure is performed for a person's or couple's **reproductive purposes** if the procedure is performed for the purpose of the person becoming a parent, or the couple jointly becoming the parents, of a child of a pregnancy, were a pregnancy to be achieved —

(a) as a result of the ART procedure; or

(b) as a result of another ART procedure that uses reproductive material collected or an embryo created in the ART procedure.

(2) Reproductive material is collected, or an embryo is created, for a person's or couple's **reproductive purposes** if the ART procedure to collect the material or create the embryo is performed for the person's or couple's reproductive purposes.

(3) Reproductive material or an embryo that has been donated is allocated to a person or couple for their **reproductive purposes** if a licensee allocates the donated material or donated embryo for the person or couple to use in ART procedures to be performed for their reproductive purposes.

12. Birth parent

- (1) The **birth parent** of a child is the person who gives birth to the child.
- (2) Subsection (1) applies —
 - (a) regardless of whether the person is a contributing parent of the child; and
 - (b) even if the child is born under a surrogacy arrangement.

13. Contributing parents

A person is a **contributing parent** —

- (a) in relation to reproductive material — if the reproductive material was collected from the person for the person's reproductive purposes; and
- (b) in relation to a child — if the child is born as a result of an ART procedure performed for the person's reproductive purposes using —
 - (i) the person's reproductive material; or
 - (ii) an embryo created using the person's reproductive material.

14. Intended parents

- (1) A person, or each person in a couple, is an **intended parent** in relation to reproductive material if —
 - (a) the person is the contributing parent of the reproductive material; or
 - (b) the reproductive material is donated and a licensee allocates the material to the person or couple for their reproductive purposes.
- (2) A person, or each person in a couple, is an **intended parent** of an embryo if —
 - (a) the embryo is created for the person's or couple's reproductive purposes; or

- (b) the embryo is donated and a licensee allocates the embryo to the person or couple for their reproductive purposes.
- (3) If an ART procedure is performed for a person's or couple's reproductive purposes, the person, or each person in the couple, is an **intended parent** in relation to the ART procedure.

15. Donor

- (1) This section applies if —
 - (a) reproductive material is collected from a person; or
 - (b) a person is an intended parent of an embryo.
- (2) The person is a **donor** of the reproductive material or an embryo if the person donates the material or embryo to be used other than for the person's reproductive purposes.
- (3) In this Act —
 - (a) a reference to a **donor** of reproductive material used in an ART procedure includes a reference to a person who donated reproductive material used to create an embryo used in the ART procedure; and
 - (b) a reference to **donated reproductive material** includes a reference to an embryo created using donated reproductive material.
- (4) A person stops being a contributing parent in relation to reproductive material, or an intended parent of an embryo, and becomes a donor of the reproductive material or embryo if the person donates it for use as described in subsection (2).

16. Surrogacy arrangement, surrogate, intended parents and overseas surrogacy arrangement

- (1) A **surrogacy arrangement** is an arrangement between a person (a **surrogate**) and another person (an **intended parent**) or a

couple (each person in the couple is an ***intended parent***) under which they agree —

- (a) the surrogate is to become, or try to become, pregnant and give birth to a child of the pregnancy; and
- (b) each intended parent is to be a parent of, and to raise, a child of the pregnancy.

- (2) A surrogacy arrangement under subsection (1) includes an arrangement (an ***overseas surrogacy arrangement***) under which the surrogate lives, and the child is to be born, outside Australia.

Note for this subsection:

See section 123(1)(c) for the requirement for the intended parents under a surrogacy arrangement to live in the State for an order transferring the parentage of a child born under the arrangement to the intended parents to be made.

- (3) There may be other parties to a surrogacy arrangement, including, for example, the surrogate's partner.

- (4) In this Act —

- (a) in a provision about a surrogacy arrangement or a child born under a surrogacy arrangement —
 - (i) a reference to the ***surrogate*** is a reference to the person who is the surrogate under the arrangement; and
 - (ii) a reference to the ***intended parent*** is a reference to each person who is an intended parent under the arrangement;
- and
- (b) in a provision about a parentage order for a child —
 - (i) a reference to the ***surrogate*** is a reference to the person who gave birth to the child; and
 - (ii) a reference to the ***intended parent*** is a reference to each person who applied for the order or is named in the order as a parent of the child.

17. 5 family worldwide limit

- (1) The **5 family worldwide limit** is the principle that no more than 5 families worldwide should be related through the same donor, excluding the donor's own family.
- (2) The 5 family worldwide limit does not limit the number of children for any family, regardless of how many of those children are related through the same donor.
- (3) For the purposes of this section, children are related through the same donor only if the children were conceived using reproductive material donated by the same donor.

Part 2 — ART services to be licensed

18. What licence authorises

A licence authorises the licensee to provide the ART service stated in the licence at the premises stated in the licence.

19. Requirement to hold licence

- (1) A person must not provide an ART service unless the person is licensed to provide the ART service.

Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

- (2) This section does not apply to a person who —

- (a) provides an ART service as an employee of a licensee;
or
- (b) provides an ART service, continues time-sensitive ART procedures or continues to store reproductive material or embryos as required by the CEO after the surrender, end of term, suspension or cancellation of a licence.

20. Provision of ART services restricted to licence premises

- (1) A licensee must not provide an ART service at premises other than premises stated on its licence.

Penalty for this subsection: a fine of \$50 000.

- (2) Subsection (1) does not apply to a licensee in relation to an ART procedure performed for the licensee —

- (a) by an authorised practitioner at the premises specified in the authorisation given to the practitioner under section 29(1); or
- (b) in a hospital.

Examples for this subsection:

For the purposes of paragraph (b), ART procedures that may be performed in a hospital include —

- (a) the collection of reproductive material from a person undergoing treatment that is likely to affect the person's fertility; and
- (b) the posthumous collection of reproductive material under the *Human Tissue and Transplant Act 1982* Part 3A.

Part 3 — ART procedures

Division 1 — Access to ART procedures

21. Access to ART procedures provided by licensee

- (1) A person may access an ART procedure performed, or to be performed, as part of an ART service provided by a licensee if a medical practitioner certifies that the procedure is appropriate for the person, having considered the person's current, and likely future, physical, psychological and social circumstances.
- (2) However, a person under 18 years of age can access an ART procedure only if —
 - (a) there is a reasonable risk of the person becoming infertile before becoming an adult; and
 - (b) the procedure is to collect reproductive material for the purpose of storing it for the person's future use.

Note for this subsection:

See also section 26 in relation to the collection of reproductive material from children.

- (3) Subsection (1) does not apply to a person who accesses an ART procedure for the purpose of being a donor of reproductive material.

Division 2 — Performing ART procedures

22. Application of Division

This Division applies to an ART procedure performed as part of an ART service provided by a licensee.

23. Appropriately qualified

- (1) In this section —
health profession and *recognised specialty* have the meanings given in the *Health Practitioner Regulation National Law (Western Australia)* section 5.
- (2) A person is ***appropriately qualified*** to perform an ART procedure only if —
- (a) in the case that performing the ART procedure falls within the practice of a particular health profession or a recognised specialty in a health profession — the person is registered under the *Health Practitioner Regulation National Law (Western Australia)* to practise in that health profession or that recognised specialty; or
 - (b) in the case that a specific qualification or experience is prescribed as a requirement to perform the ART procedure — the person has the prescribed qualification or experience; or
 - (c) in the case that a class of persons is prescribed as persons who are qualified to perform the ART procedure — the person is a member of the prescribed class; or
 - (d) otherwise — the person has the qualifications, knowledge and experience necessary to lawfully and safely perform the procedure.

24. ART procedures to be performed or supervised by appropriately qualified persons

- (1) A licensee commits an offence if —
- (a) an ART procedure is performed by a person who the licensee knows, or ought to have known, is not appropriately qualified to perform the procedure; and

- (b) the performance of the ART procedure is not supervised by a person who is appropriately qualified to perform the procedure.

Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

- (2) A licensee commits an offence if the performance of an ART procedure is supervised by a person who the licensee knows, or ought to have known, is not appropriately qualified to perform the procedure.

Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

- (3) A person must not perform an ART procedure unless the person —

- (a) is appropriately qualified to perform the ART procedure; or
- (b) while performing the ART procedure, is supervised by a person who is appropriately qualified to perform the ART procedure.

Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

- (4) A person must not supervise another person performing an ART procedure unless the person is appropriately qualified to perform the ART procedure.

Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

25. Requirement for medical practitioner to certify ART procedure is appropriate

- (1) A licensee commits an offence if —
 - (a) a person undergoes an ART procedure; and
 - (b) in relation to the person and each person who is an intended parent in relation to the procedure, a medical

practitioner has not certified that the medical practitioner —

- (i) has considered the matters mentioned in section 21(1) in relation to the person; and
- (ii) considers the ART procedure is appropriate for the person.

Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

- (2) A person must not perform an ART procedure on a person unless, in relation to the person and each person who is an intended parent in relation to the procedure, a medical practitioner has certified that the medical practitioner —
 - (a) has considered the matters mentioned in section 21(1) in relation to the person; and
 - (b) considers the ART procedure is appropriate for the person.

Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

- (3) Subsections (1) and (2) do not apply in relation to an ART procedure performed on a person for the purpose of the person being a donor of reproductive material.

26. Performing ART procedures on children

- (1) A licensee commits an offence if an ART procedure is performed on a person who is under 18 years of age.

Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

- (2) A person must not perform an ART procedure on a person who is under 18 years of age.

Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

- (3) Subsections (1) and (2) do not apply to an ART procedure to collect reproductive material from a person if —
- (a) a medical practitioner has certified that there is a reasonable risk of the person becoming infertile before becoming an adult; and
 - (b) the procedure is performed for the purpose of storing the reproductive material collected for the person's future use.
- (4) A licensee commits an offence if reproductive material collected from a person when the person was under 18 years of age is used in an ART procedure before the person reaches 18 years of age.
- Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

27. Exceeding 5 family worldwide limit

- (1) A licensee commits an offence if —
- (a) donated reproductive material or a donated embryo is used in an ART procedure; and
 - (b) the licensee knows, or ought to have known, that using the reproductive material or embryo in the procedure is likely to result in the 5 family worldwide limit being exceeded.
- Penalty for this subsection: a fine of \$50 000.
- (2) Subsection (1) does not apply if the Board approves the 5 family worldwide limit being exceeded in relation to a specified donor and a specified ART participant or intended parent.
- (3) A licensee may apply to the Board for approval to exceed the 5 family worldwide limit in relation to a donor and an ART participant or intended parent.
- (4) The Board may decide to give the approval or to refuse the application.

28. Disclosure of information permitted to ensure compliance with 5 family worldwide limit

- (1) This section applies if a licensee (the *first licensee*) is undertaking due diligence for the purpose of complying with section 27 in relation to a particular donor.
- (2) The first licensee may give information about the identity of the donor to another licensee for the purpose of asking the other licensee for information relevant to determining the number of families worldwide related through the donor.
- (3) In response to the request from the first licensee, the other licensee may give the first licensee information it has about ART procedures, and donated reproductive material or donated embryos, relevant to determining the number of families worldwide related through the donor.
- (4) In this section, a reference to another licensee includes a reference to a person who lawfully provides ART services outside the State.

29. Authorising health practitioners to perform ART procedures at other premises

- (1) The licensee may, in writing, authorise a health practitioner (an *authorised practitioner*) to perform an ART procedure for the licensee at premises, other than premises stated on the licensee's licence, specified in the authorisation.
- (2) An authorisation can only be given under subsection (1) if —
 - (a) the ART procedure is, under the regulations, an ART procedure in respect of which an authorisation may be given; and
 - (b) the authorised practitioner is appropriately qualified to perform the procedure; and
 - (c) the specified premises are in the State and comply with any prescribed requirements.

- (3) This section does not relieve the licensee from any responsibility under this Act in relation to the ART procedure or affect what may be done under this Act in relation to the procedure, including, for example, taking disciplinary action against the licensee.

Division 3 — Parentage of children

30. Application of Division

- (1) This Division —
- (a) establishes the parentage of a child of a pregnancy achieved as a result of an ART procedure for the purposes of any written law; and
 - (b) applies regardless of whether the ART procedure was performed, or the child was born, in or outside of the State.
- (2) For the purposes of proceedings in any court, a statement in this Division about a matter is conclusive evidence of the matter unless otherwise stated.

31. Child of pregnancy

- (1) A reference in this Division to a child of a pregnancy includes a reference to any child of the pregnancy, including —
- (a) an unborn child; and
 - (b) a still-born child.
- (2) The reference in section 30(1)(b) to a child includes a reference to a still-born child.

32. Parents of child of pregnancy resulting from ART procedure

- (1) A person who becomes pregnant as a result of an ART procedure is the parent of a child of the pregnancy, whether or

not the person contributed reproductive material used in the procedure or to create an embryo used in the procedure.

- (2) The person's partner is also the parent of a child of the pregnancy —
 - (a) if the ART procedure that resulted in the pregnancy was performed for the reproductive purposes of the person and partner; and
 - (b) whether or not the partner contributed reproductive material used in the procedure or to create an embryo used in the procedure.
- (3) For the purposes of subsection (2) —
 - (a) it is presumed that the ART procedure was performed for the reproductive purposes of the person and the partner; and
 - (b) the presumption in paragraph (a) may be rebutted by evidence to the contrary.
- (4) The partner's status as a parent of the child is not affected if, before the child is born —
 - (a) the marriage or de facto relationship of the partner and the person who became pregnant with the child ends; or
 - (b) the partner dies.

33. Donor

A donor of reproductive material or an embryo is not a parent of a child of a pregnancy achieved as a result of an ART procedure that uses the reproductive material or embryo.

34. Deceased person

- (1) This section applies if a pregnancy is achieved as a result of an ART procedure that uses the reproductive material or an embryo of a deceased person (as those terms are defined in section 73(1)).

- (2) The deceased person is a parent of the child of the pregnancy under section 32(2) only if the ART procedure is performed —
 - (a) in accordance with section 78; or
 - (b) in another jurisdiction in accordance with a written law of that jurisdiction.

Division 4 — Record keeping and access to information

Subdivision 1 — Licensee must keep records

35. Licensee must keep required records

A licensee must keep, for the prescribed period, a record of the information the licensee is required to keep under this Subdivision.

Penalty: a fine of \$50 000.

36. Required records: ART procedures

- (1) This section applies if a licensee provides ART services that include performing ART procedures.
- (2) The licensee must keep the following information about each ART procedure performed —
 - (a) a description of the procedure;
 - (b) the verified identity information of the person who underwent the procedure and, if the procedure involved donated reproductive material or a donated embryo, the person's contact preferences;
 - (c) the verified identity information and contact preferences of each donor of reproductive material or an embryo used in the procedure;
 - (d) the verified identity information of each person, other than a person mentioned in paragraph (b), who is an intended parent in relation to the procedure;

- (e) if the procedure is performed for the purpose of a surrogacy arrangement — that fact;
- (f) a copy of each consent obtained in relation to the procedure;
- (g) if the procedure was performed by an authorised practitioner — the name of the authorised practitioner;
- (h) whether the procedure achieves a pregnancy that results in a birth (including the birth of a still-born child) and, if so, the prescribed details of the birth;
- (i) the prescribed information.

- (3) In subsection (2) —

contact preferences, of a person, has the meaning given in section 44(1);

verified identity information, about a person, means —

- (a) information about the person's identity; and
- (b) information that a licensee uses to identify the person, including, for example, a unique identifying code; and
- (c) information about the way in which the person's identity was verified.

- (4) It is a defence to a charge of an offence against section 35 in relation to the information required to be kept under subsection (2)(h) for the licensee to prove that the licensee has been unable to obtain information about the outcome of the ART procedure despite making reasonable efforts to do so.

37. Required records: storage

A licensee that provides ART services that include the storage of reproductive material or embryos must keep the prescribed information relating to the reproductive material or embryos stored by the licensee.

38. Required records: register of authorisations

- (1) A licensee must —
 - (a) maintain a register of authorisations given under section 29(1); and
 - (b) if the CEO requests, make the register available for inspection by the CEO.
- (2) The regulations may provide for the form and content of the register maintained under subsection (1)(a).

39. Licensee must give information to CEO for register of identity and register of ART procedures

- (1) A licensee must give to the CEO, at the prescribed time and in the manner approved by the CEO —
 - (a) the prescribed information about the ART procedures performed as part of an ART service provided by the licensee; and
 - (b) if an ART procedure mentioned in paragraph (a) achieves a pregnancy, the prescribed information about all of the following —
 - (i) the person who became pregnant as a result of the ART procedure;
 - (ii) each person who is an intended parent in relation to the procedure;
 - (iii) each donor of reproductive material used in the procedure;
 - (iv) each donor of an embryo used in the procedure and each person whose reproductive material was used to create the embryo;
 - (v) whether the pregnancy resulted in the birth of a child (including a still-born child) and, if so, the prescribed details of the birth.

Penalty for this subsection: a fine of \$50 000.

- (2) It is a defence to a charge of an offence for failing to provide the information mentioned in subsection (1)(b)(v) for the licensee to prove that —
- (a) the licensee has been unable to obtain information about the outcome of the pregnancy, despite making reasonable efforts to do so; and
 - (b) for the reason stated in paragraph (a), the licensee did not know about the birth of a child of the pregnancy.

40. Licensee must correct inaccurate information

- (1) This section applies if a licensee becomes aware that information in a record kept under this Subdivision is inaccurate.
- (2) As soon as practicable after becoming aware of the inaccuracy, the licensee must ensure that the record is updated so that it —
- (a) contains the correct information; and
 - (b) clearly identifies the original information that is inaccurate; and
 - (c) specifies the date on which the information was corrected.

Penalty for this subsection: a fine of \$10 000.

- (3) If the licensee becomes aware that information provided to the CEO under section 39 is inaccurate, the licensee must, as soon as practicable after becoming aware of the inaccuracy, notify the CEO of the inaccuracy and provide the correct information.
- Penalty for this subsection: a fine of \$10 000.

41. Confidentiality of information recorded under this Division

- (1) This section applies to the personal information of any of the following persons —
- (a) a person born as a result of an ART procedure;
 - (b) an ART participant;

- (c) a person who contributes reproductive material, either as a donor or a contributing parent;
 - (d) a person who donates an embryo;
 - (e) an intended parent in relation to an ART procedure;
 - (f) an intended parent under a surrogacy arrangement.
- (2) A person must not disclose any personal information of another person held by a licensee unless —
 - (a) the disclosure is authorised by this Act or another written law; or
 - (b) the other person consents in writing to the disclosure of their personal information.

Penalty for this subsection: a fine of \$25 000.

42. False or misleading records

A licensee must not create a false or misleading record of a record the licensee is required to keep under this Division.

Penalty for this subsection: a fine of \$25 000.

Subdivision 2 — Access to information

43. Licensee must provide access to information

- (1) This section applies if —
 - (a) a person has the right to access information under subsection (3), (4) or (5); and
 - (b) the information is kept by a licensee under section 36.
- (2) If the person asks the licensee for the information, the licensee must —
 - (a) give the requested information to the person; or
 - (b) advise the person that —
 - (i) the requested information is held in the register of identity; and

- (ii) the person can access the information from the register under section 98.

Penalty for this subsection: a fine of \$25 000.

- (3) A person born as a result of an ART procedure who reaches 16 years of age has the right to access prescribed information about —
 - (a) the person's birth parent; and
 - (b) if the person is a donor-conceived person — each donor in relation to the person.
- (4) Before a person born as a result of an ART procedure (the **child**) reaches 16 years of age, another person who has parental responsibility for the child has the right to access prescribed information about a person mentioned in subsection (3)(a) or (b) in relation to the child.
- (5) A donor in relation to a donor-conceived person has the right to access prescribed information about the person.

44. Contact preferences

- (1) This section applies if a licensee has a record of a person's preferences (**contact preferences**) about whether and, if so, how the person would like to be contacted by another person who is entitled to access information about the person under section 43.
- (2) When the licensee gives a person (the **first person**) information about another person under section 43, the licensee must also give the first person written notice of the other person's contact preferences.
Penalty for this subsection: a fine of \$10 000.
- (3) A person who is given information about another person under section 43 and notice of the other person's contact preferences under subsection (2) must not contact the other person unless

the contact is in accordance with the other person's contact preferences.

Penalty for this subsection: a fine of \$10 000.

Part 4 — Reproductive material and embryos

Division 1 — Rights over reproductive material and embryos

45. Rights over reproductive material

A contributing parent of reproductive material has the right to decide what happens to the material, including, for example —

- (a) the ART procedures in which the reproductive material is to be used; and
- (b) if the material becomes excess to the contributing parent's needs, whether it is to be donated; and
- (c) the period for which the material is to be stored.

46. Rights over embryos

- (1) An intended parent of an embryo, or the 2 intended parents of an embryo jointly, have the right to decide what happens to the embryo, including, for example —
 - (a) the ART procedures in which the embryo is to be used; and
 - (b) if the embryo becomes excess to the needs of the person or couple, whether it is to be donated; and
 - (c) the period for which the embryo is to be stored.
- (2) An intended parent's rights in relation to a donated embryo are subject to —
 - (a) conditions attached to the donation by the donor of the embryo; and
 - (b) the right of the donor to revoke the donation before the embryo is used.

47. Rights of donor over donated reproductive material or donated embryo

- (1) If a person donates reproductive material or an embryo, the donor may —
- (a) in giving consent under Division 2 to the use or storage of the material or embryo, attach specified conditions to the donation; and
 - (b) revoke the donation before the reproductive material or embryo is used.

Examples for this subsection:

For the purposes of paragraph (a), conditions that may be attached to the donation include —

- (a) donated reproductive material is to be used to create an embryo for a specified person or couple; and
 - (b) if the donor dies, donated material or a donated embryo is not to be used in ART procedures to try to achieve a pregnancy, but may be used for research; and
 - (c) unused donated material is to be disposed of when it has been stored for 5 years.
- (2) A person cannot attach a condition to the donation of reproductive material or an embryo that is a condition prohibited by the regulations.
- (3) A donor's rights in relation to reproductive material or an embryo they donated end when —
- (a) in the case of donated reproductive material — the donated material is used in an ART procedure to create an embryo; or
 - (b) the donated material or donated embryo is otherwise used in an ART procedure; or
 - (c) if the donated material or donated embryo has not been allocated to a person or couple for their reproductive purposes — the prescribed storage period for the material or embryo ends.

Division 2 — Consent

48. Consent not required more than once

Nothing in this Division requires the consent of a person to be given or obtained more than once in relation to the same matter.

49. Consent of person under 18 years of age

- (1) This section applies if, for a licensee to do something, the consent of a person who is under 18 years of age is required under a provision of this Act.
- (2) If the person has sufficient understanding and intelligence to fully understand what is proposed, the person has the capacity to, and must, consent to the matter on their own behalf.
- (3) However, if the licensee considers the person does not have the capacity to consent to the matter as described in subsection (2), a parent or legal guardian of the person must consent on the person's behalf, instead of the person.

50. Requirement for consent

- (1) This section applies if something for which a person's consent is required under a provision of this Act is done as part of an ART service provided by a licensee.
- (2) The licensee commits an offence unless —
 - (a) the person's written consent is obtained before the thing is done; and
 - (b) the consent is effective under subsection (3); and
 - (c) the thing is done in accordance with the consent.Penalty for this subsection: a fine of \$50 000.
- (3) A person's consent is effective for the purposes of subsection (2) if —
 - (a) the consent states the matters prescribed for the consent; and

- (b) the consent is signed by the person; and
 - (c) before the consent is given —
 - (i) the person receives or is offered the counselling services, and is given the prescribed information, required for the consent under section 51(2); and
 - (ii) the identity of the person giving the consent is verified in accordance with section 52.
- (4) It is a defence to a charge of an offence against subsection (2) in relation to the use or storage of reproductive material or an embryo for the licensee to prove that it is not clinically appropriate for reproductive material or an embryo to be used or stored in accordance with the consent.
- (5) It is a defence to a charge of an offence against subsection (2) in relation to the use or storage of the reproductive material or an embryo of a deceased person for the licensee to prove that the licensee did not know that the deceased person had died.

51. Requirements relating to counselling services and information to support informed consent

- (1) This section applies if a person's consent is required under a provision of this Act for something to be done as part of an ART service provided by a licensee.
- (2) The licensee must ensure that, before the person gives the consent —
 - (a) if counselling services are prescribed as mandatory in relation to giving the consent — the person receives the mandatory counselling services; and
 - (b) if paragraph (a) does not apply — the person is offered counselling services in relation to giving the consent; and
 - (c) the person is given the prescribed information, in the prescribed way, that applies to giving the consent.

- (3) The licensee is taken to have complied with subsection (2)(a) in relation to the person giving the consent if the licensee is satisfied that the person received the counselling services mentioned in that subsection as part of an ART service provided by another licensee.
- (4) In subsection (3), a reference to another licensee includes a reference to a person who lawfully provides ART services outside the State.
- (5) Regulations may provide for any of the following —
 - (a) counselling services that are mandatory in relation to giving consent for something to be done as part of an ART service;
 - (b) the right of a person to choose who provides a counselling service to the person;
 - (c) matters relating to the cost of counselling services;
 - (d) the qualifications to be held by persons who provide counselling services;
 - (e) the record keeping and information sharing requirements to be complied with by licensees and persons who provide counselling services;
 - (f) requirements for the accessibility of information prescribed for subsection (2)(c), including, for example, interpretation or presentation of the information.

52. Verification of identity of consent giver

A licensee must not do something for which a person's consent is required under a provision of this Act, or allow the thing to be done, unless the licensee takes reasonable steps to verify the identity of the person before obtaining the person's consent for the thing.

Penalty: a fine of \$10 000.

53. Collection, use and storage of reproductive material

- (1) A person's consent is required for an ART procedure to be performed to collect reproductive material from the person.
- (2) If reproductive material is collected from a person, either as a contributing parent or a donor, the person's consent is required for the material —
 - (a) to be used in an ART procedure; and
 - (b) to be stored for the period specified in the consent.
- (3) A licensee must not allow an ART procedure to collect reproductive material from a person to be performed unless the licensee takes reasonable steps to verify the person's identity.
Penalty for this subsection: a fine of \$10 000.

54. Transfer procedure using reproductive material

- (1) In this section —
transfer procedure means an ART procedure in which reproductive material is transferred into a person's body for the purpose of the person becoming pregnant.
Examples for this definition:
Examples of a transfer procedure include artificial insemination, gamete intrafallopian transfer and intrauterine insemination.
- (2) The consent of each of the following persons is required for a transfer procedure to be performed —
 - (a) the person who is to undergo the transfer procedure;
 - (b) each person who is a contributing parent of reproductive material to be used in the procedure;
 - (c) each person who is an intended parent in relation to the procedure.

- (3) Also, if reproductive material to be used in the transfer procedure is donated, the consent of each donor of the donated reproductive material is required for it to be used in the procedure.

55. Creation of embryo

- (1) In this section —
embryo creation procedure means an ART procedure in which reproductive material is used to create, or to attempt to create, 1 or more embryos.
- (2) The consent of each of the following persons is required for an embryo creation procedure to be performed —
- (a) each person who is a contributing parent of reproductive material to be used in the procedure;
 - (b) each person who would be an intended parent of an embryo created by the procedure, were the procedure to result in the creation of 1 or more embryos.
- (3) Also, if reproductive material to be used in the embryo creation procedure is donated, the consent of each donor of the donated reproductive material is required for it to be used in the procedure.

56. Storage of embryo

The consent of each person who is an intended parent or donor of an embryo is required for an embryo to be stored by a licensee for the period specified in the consent.

57. Allocation of donated embryo

The consent of the following persons is required for a licensee to allocate a donated embryo to a person or couple —

- (a) each person who is a donor of the embryo;
- (b) the person, or each person in the couple, to whom the licensee proposes to allocate the embryo.

58. Use of embryo in embryo transfer procedure

- (1) In this section —
embryo transfer procedure means an ART procedure in which an embryo is transferred into a person's body for the purpose of the person becoming pregnant.
- (2) The consent of each of the following persons is required for an embryo transfer procedure to be performed —
- (a) the person who is to undergo the procedure;
 - (b) each person who is an intended parent in relation to the procedure.
- (3) Also, if an embryo to be used in the embryo transfer procedure is donated, the consent of each donor of the embryo is required for it to be used in the procedure.

59. Amendment or withdrawal of consent

- (1) A person may amend or withdraw the person's consent to an ART procedure being performed at any time before the procedure is performed.
- (2) A person may amend or withdraw the person's consent to the use of reproductive material or an embryo for an ART procedure or its storage at any time before —
- (a) the material or embryo is used; or
 - (b) the end of the period stated in the consent as the maximum period for which the material or embryo may be stored; or
 - (c) if the person is the donor of the material or embryo and the material or embryo has not been allocated to a person or couple for their reproductive purposes — the end of the prescribed storage period for the material or embryo.
- (3) Amendment of a consent must be in writing.

- (4) Withdrawal of a consent —
- (a) if the consent is to the storage of reproductive material or an embryo — must be in writing; or
 - (b) otherwise —
 - (i) may be oral or written; and
 - (ii) if the withdrawal is oral — must be confirmed in writing as soon as practicable after it is given.
- (5) A licensee must not accept an amendment or withdrawal of a person's consent under subsection (1) or (2) unless the licensee takes reasonable steps to verify the person's identity.
- Penalty for this subsection: a fine of \$10 000.

60. Steps after withdrawal of consent

If a person withdraws the person's consent to the use or storage of reproductive material or an embryo, a licensee must —

- (a) take immediate action to ensure the material or embryo is not used; and
- (b) deal with the material or embryo as directed in —
 - (i) if the withdrawal of the consent specifies how the material or embryo is to be dealt with — the withdrawal of the consent; or
 - (ii) otherwise — the consent that relates to the storage of the material or embryo.

Penalty: a fine of \$25 000.

Examples for this section:

For the purposes of paragraph (b), examples of directions that may be given in the consent or withdrawal of consent include that the reproductive material or embryo be —

- (a) donated to the licensee for use as the licensee considers appropriate; and
- (b) transferred to another licensee for further storage; and
- (c) disposed of or allowed to succumb.

Note for this section:

See sections 69 and 71 in relation to the steps to be taken in relation to the period for storing reproductive material or an embryo ending.

61. Disputes and unforeseen circumstances relating to embryos

- (1) This section applies if —
 - (a) a couple are the intended parents of an embryo; and
 - (b) there is a dispute between the intended parents about the embryo, including, for example, a dispute arising because —
 - (i) 1 of the intended parents wants to amend or withdraw a consent relating to the embryo; or
 - (ii) circumstances arise that are not covered by a consent relating to the embryo.
- (2) One or both of the intended parents may apply to the Family Court for an order about the use of the embryo.
- (3) The Family Court may make any order about the use of the embryo that the court considers is reasonable in all the circumstances.
- (4) Despite any provision to the contrary, the licensee that is storing the embryo to which a consent relates is authorised and required to continue to store it while —
 - (a) the court considers an application made under subsection (2); or
 - (b) the licensee is otherwise aware there is a dispute between the intended parents of the embryo.

62. Disposal or limited use of unviable material or unviable embryos

- (1) This section applies if —
 - (a) reproductive material collected from a person is not viable to be used in an ART procedure or stored; or

- (b) an embryo created as a result of an ART procedure, or other human material resulting after the procedure, is not viable to be used in an ART procedure or stored.
- (2) Nothing in this Division requires a person's consent for the unviable reproductive material, embryo or other human material to be disposed of.
- (3) However, the consent of each of the following persons is required for the unviable reproductive material, embryo or other human material to be used by a licensee for training, quality assurance or other similar purposes —
 - (a) in the case of unviable reproductive material — the contributing parent or donor of the reproductive material;
 - (b) in the case of an unviable embryo or other human material — each person who is an intended parent in relation to the ART procedure that created the unviable embryo or other human material.

Division 3 — Genetic testing

63. Limited genetic testing of embryos

- (1) In this section —
approved conditions list means the list of genetic conditions, diseases or abnormalities approved by the CEO and published under section 65.
- (2) A licensee must not carry out genetic testing of an embryo unless the testing is —
 - (a) for a genetic condition, disease or abnormality in the approved conditions list; or
 - (b) approved by the Board; or
 - (c) a prescribed type of testing.

Penalty for this subsection: a fine of \$25 000.

- (3) Subsection (2) does not authorise genetic testing of an embryo for the purpose of sex selection in the absence of a medical reason to do so.
- (4) A licensee may apply to the Board for approval to carry out genetic testing of an embryo for a genetic condition, disease or abnormality not in the approved conditions list.
- (5) The Board may decide to give the approval or to refuse the application.

64. Prohibition on sex selection

A licensee must not carry out genetic testing of an embryo for the purpose of sex selection unless there is a medical reason to do so.

Penalty: imprisonment for 2 years and a fine of \$50 000.

65. Approved conditions list

- (1) The CEO may approve a list of genetic conditions, diseases or abnormalities for which embryos may be tested.
- (2) The list approved under subsection (1) must —
 - (a) be published on a website maintained by or on behalf of the Department; and
 - (b) include the date on which the list takes effect; and
 - (c) be published as a new version each time the list is changed.

Division 4 — Storage

66. Appropriate storage of reproductive material and embryos

A licensee commits an offence if the storage facilities for reproductive material or embryos operated by the licensee fail to store reproductive material or embryos in a safe condition.

Penalty: imprisonment for 2 years and a fine of \$50 000.

67. Purposes for storage of reproductive material and embryos

(1) In this section —

authorised research means —

- (a) research that uses reproductive material that is approved by a Human Research Ethics Committee acting in accordance with the National Ethical Statement; or
- (b) research that uses an embryo that is conducted under a licence issued by the National Health and Medical Research Council under the *Research Involving Human Embryos Act 2002* (Commonwealth);

Human Research Ethics Committee means a human research ethics committee constituted in accordance with the National Ethical Statement as in effect from time to time;

National Ethical Statement means the guidelines on ethical issues relating to health —

- (a) issued under the *National Health and Medical Research Council Act 1992* (Commonwealth) section 7(1)(a)(v); and
- (b) called the National Statement on Ethical Conduct in Human Research;

National Health and Medical Research Council means the National Health and Medical Research Council established by the *National Health and Medical Research Council Act 1992* (Commonwealth) section 5B.

(2) A licensee must not store reproductive material or an embryo for a purpose other than —

- (a) use in an ART procedure; or
- (b) possible future use in an ART procedure; or
- (c) use in authorised research; or
- (d) a prescribed purpose.

Penalty for this subsection: a fine of \$25 000.

68. Period of storage for reproductive material

- (1) The period for storing reproductive material is the period specified in the consent to storage given by the contributing parent or donor of the reproductive material.
- (2) However, the period for storing donated reproductive material is the prescribed storage period if —
 - (a) the reproductive material has not been allocated to a person or couple for their reproductive purposes; and
 - (b) the consent to the storage of the reproductive material given by its donor —
 - (i) specifies a longer period than the prescribed storage period; or
 - (ii) does not specify a period for storing the material.

69. Steps relating to end of storage period for reproductive material

- (1) In this section —

prescribed grace period, in relation to reproductive material, means the period that —

 - (a) starts before, and ends after, the day on which the storage period for the reproductive material ends; and
 - (b) is prescribed as the grace period for the storage of reproductive material;

storage period, in relation to reproductive material, means the period for storing the reproductive material under section 68.
- (2) A licensee storing reproductive material must take reasonable steps to contact the contributing parent of the reproductive material, in accordance with subsection (3), to give the contributing parent an opportunity to give further consent about the use, storage or disposal of the material.

Penalty for this subsection: a fine of \$25 000.

- (3) The licensee must take the reasonable steps —
 - (a) starting before the storage period for the reproductive material ends; and
 - (b) continuing during the prescribed grace period for the material until the licensee contacts the contributing parent or the prescribed grace period ends.
- (4) The licensee must dispose of stored reproductive material if —
 - (a) the licensee has complied with subsection (2) in relation to the material and the contributing parent has confirmed that the material is no longer to be stored or is to be disposed of; or
 - (b) the licensee is unable to contact the contributing parent under subsection (2) despite reasonable efforts to do so and the prescribed grace period for the material ends; or
 - (c) the reproductive material is donated and the storage period for the material ends.

Penalty for this subsection: a fine of \$25 000.

70. Period of storage for embryos

- (1) The period for storing an embryo is the period specified in the consent to storage given by —
 - (a) if the embryo has been donated — the donor or donors of the embryo; or
 - (b) otherwise — the intended parent or intended parents of the embryo.
- (2) However, the period for storing a donated embryo is the prescribed storage period if —
 - (a) the embryo has not been allocated to a person or couple for their reproductive purposes; and

- (b) the consent to the storage of the embryo given by its donor or donors —
 - (i) specifies a longer period than the prescribed storage period; or
 - (ii) does not specify a period for storing the embryo.

71. Steps relating to end of storage period for embryos

- (1) In this section —

prescribed grace period, in relation to an embryo, means the period that —

- (a) starts before, and ends after, the day on which the storage period for the embryo ends; and
- (b) is prescribed as the grace period for the storage of embryos;

storage period, in relation to an embryo, means the period for storing the embryo under section 70.

- (2) A licensee storing an embryo must take reasonable steps to contact each intended parent of the embryo, in accordance with subsection (3), to give the intended parent an opportunity to give further consent about the use, storage or disposal of the embryo.

Penalty for this subsection: a fine of \$25 000.

- (3) The licensee must take the reasonable steps —

- (a) starting before the storage period for the embryo ends; and
- (b) continuing during the prescribed grace period for the embryo until the licensee contacts each intended parent or the prescribed grace period ends.

- (4) Subsection (2) does not apply if the embryo has been donated.

- (5) The licensee must allow the embryo to succumb if —
- (a) the licensee has complied with subsection (2) in relation to the embryo and each intended parent of the embryo has confirmed that the embryo is no longer to be stored or is to be allowed to succumb; or
 - (b) the licensee is unable to contact each intended parent under subsection (2) despite reasonable efforts to do so and the prescribed grace period for the embryo ends; or
 - (c) the embryo is donated and the storage period for the embryo ends.

Penalty for this subsection: a fine of \$25 000.

Division 5 — Posthumous use of reproductive material and embryos

Subdivision 1 — Preliminary

72. Purpose of Division

The purpose of this Division is to establish —

- (a) that the consent of a deceased person given before the person died, to the extent that it expressly states what is to happen to the person's reproductive material or embryos after the person dies, is generally to be given effect; and
- (b) the rights of the surviving partner of a deceased person in relation to deciding what happens to a deceased person's reproductive material or embryos; and
- (c) the requirements that must be met before a deceased person's reproductive material or embryos can be used; and
- (d) the obligations of a licensee in relation to the use, storage and disposal of a deceased person's reproductive material or embryos.

73. Terms used

- (1) In this Division —

consent, of a deceased person, means consent given by the person before the person died for something to be done in relation to reproductive material or an embryo that would be required under section 50(2) for a licensee to do the thing if the person had not died;

embryo, of a deceased person, means —

- (a) an embryo of which the person was an intended parent or donor immediately before the person's death; or
- (b) an embryo created after the person's death using reproductive material of the deceased person in accordance with section 78;

removed posthumously, in relation to the reproductive material of a deceased person, means the reproductive material was removed from the person's body after the person's death under the *Human Tissue and Transplant Act 1982* Part 3A or a written law of another jurisdiction;

reproductive material, of a deceased person, means —

- (a) reproductive material collected from the person before the person's death; or
- (b) reproductive material removed posthumously from the person's body.

- (2) In this Division, a reference to a deceased person who does not have a surviving partner is a reference to a deceased person who did not have a partner immediately before the person's death.

Subdivision 2 — Permitted use of deceased person's reproductive material and embryos

74. Deceased person's consent

- (1) This section applies if a deceased person's consent expressly states what is to happen to the deceased person's reproductive material or embryos after the person dies.
- (2) The deceased person's reproductive material or embryos can be used for 1 of the following purposes, if the use after the person's death is expressly permitted by the person's consent —
 - (a) the reproductive purposes of the person's surviving partner;
 - (b) in the case of reproductive material or an embryo donated before the person's death — the continuing donation of the material or embryo;
 - (c) the donation of the material or embryo after the person's death for use for a purpose other than the reproductive purposes of any person or couple.
- (3) Also, the deceased person's reproductive material or embryos can, to the extent expressly permitted by the person's consent —
 - (a) be stored in relation to a permitted use of the material or embryos mentioned in subsection (2); or
 - (b) be disposed of or allowed to succumb.
- (4) If the surviving partner of the deceased person is a joint intended parent or joint donor of the deceased person's embryos —
 - (a) subsection (2)(b) applies unless the surviving partner withdraws the partner's consent to the donation; and
 - (b) subsection (2)(c) applies subject to the surviving partner also consenting to the donation.

75. Limited use of reproductive material removed posthumously

- (1) This section applies if reproductive material is removed posthumously from a deceased person's body.
- (2) The reproductive material can be used only —
 - (a) for the reproductive purposes of the deceased person's surviving partner; and
 - (b) with the approval of the Board.
- (3) Subsection (2) also applies to an embryo created in accordance with that subsection using the reproductive material.
- (4) Reproductive material, or an embryo created using the reproductive material, not used for the surviving partner's reproductive purposes must be disposed of or allowed to succumb.

76. Surviving partner's right in relation to deceased person's reproductive material or embryos for reproductive purposes

- (1) The surviving partner of a deceased person has the right to use the person's reproductive material or, if the partner is a joint intended parent of the deceased person's embryos, the person's embryos, in an ART procedure for the partner's reproductive purposes, but only if the use for that purpose is expressly permitted by —
 - (a) the deceased person's consent; or
 - (b) the approval of the Board.

Note for this subsection:

The Board cannot approve use of the deceased person's reproductive material or embryos for the use mentioned in subsection (1) if that use is contrary to the deceased person's consent. See section 83(6).

- (2) Subsection (1) applies in relation to embryos of which the deceased person and surviving partner are joint intended parents, with the approval of the Board as mentioned in subsection (1)(b), if —
- (a) the deceased person's consent expressly states that the embryos are to be donated, either before or after the person's death; and
 - (b) the surviving partner withdraws the partner's earlier consent to the donation of the embryos, or does not consent to their donation, as provided in section 74(4); and
 - (c) the surviving partner wishes to use the embryos for the partner's reproductive purposes.
- (3) The surviving partner may decide that the deceased person's reproductive material is to be disposed of or embryos (of which the partner is a joint intended parent) be allowed to succumb, even if —
- (a) the deceased person's consent provides for the material or embryos to be used after the person's death for the partner's reproductive purposes; or
 - (b) in the case of the person's reproductive material — the material was removed posthumously.
- (4) Subsection (3) does not apply if the deceased person's consent expressly states that the person's reproductive material is to be donated, either before or after the person's death.

77. No other rights in relation to reproductive material or embryos of deceased person

The next of kin of a deceased person, other than the person's surviving partner, does not have any right to decide what happens to the deceased person's reproductive material or embryos.

Subdivision 3 — Obligations of licensees

78. Use of deceased person's reproductive material or embryos for surviving partner's reproductive purposes

A licensee must not use the reproductive material or an embryo of a deceased person in an ART procedure performed for the reproductive purposes of the deceased person's surviving partner unless —

- (a) that use after the person's death is expressly permitted by the deceased person's consent or the approval of the Board; and
- (b) a medical practitioner has certified that the medical practitioner —
 - (i) has, after the person's death, considered the matters mentioned in section 21(1) in relation to the surviving partner; and
 - (ii) considers the ART procedure is appropriate for the partner.

Penalty: a fine of \$25 000.

79. Donation of deceased person's reproductive material or embryos

- (1) This section applies if a deceased person's consent —
 - (a) expressly permits the person's reproductive material or embryos, donated before the person's death, to continue to be used as donated material or donated embryos after the person's death; or
 - (b) expressly states that the person's reproductive material or embryos are to be donated after the person's death.
- (2) A licensee commits an offence if the deceased person's reproductive material or embryos are used other than as donated material or donated embryos —
 - (a) in accordance with the person's consent; and

- (b) if the deceased person has a surviving partner who is a joint intended parent or joint donor of the deceased person's embryos — subject to the partner withdrawing consent to the donation, or not consenting to the donation, as provided in section 74(4); and
- (c) if the material or embryo is donated after the person's death — for a purpose other than the reproductive purposes of any person or couple.

Penalty for this subsection: a fine of \$25 000.

- (3) It is a defence to a charge of an offence against subsection (2) for the licensee to prove that it is not clinically appropriate for the reproductive material or an embryo to be used for the purpose for which it is donated in accordance with the deceased person's consent.
- (4) The licensee must allow the embryos to succumb if —
 - (a) as provided in section 74(4), the deceased person's surviving partner withdraws the partner's earlier consent to the donation of the embryos, or does not consent to the donation; and
 - (b) the surviving partner gives the licensee notice, in writing, that the partner does not wish to use the embryos for the partner's reproductive purposes.

Penalty for this subsection: a fine of \$25 000.

80. Storage of deceased person's reproductive material or embryos pending application to Board

- (1) This section applies if —
 - (a) reproductive material is posthumously removed from a deceased person's body; or
 - (b) all of the following apply —
 - (i) a deceased person and the person's surviving partner are joint intended parents of embryos;

- (ii) the deceased person's consent expressly states that the person's embryos are to be donated, either before or after the person's death;
- (iii) the surviving partner gives the licensee notice, in writing, that the partner wishes to use the embryos for the partner's reproductive purposes;

or

- (c) a deceased person's consent does not state what is to happen to the deceased person's reproductive material or embryos after the person dies.

Note for this subsection:

In the circumstances in which this section applies, the approval of the Board is required for the deceased person's reproductive material or embryos to be used for the reproductive purposes of the person's surviving partner. See sections 76(1) and 78.

- (2) A licensee may store the material until —
 - (a) in the case that the consent of the deceased person's surviving partner is required to store the reproductive material or embryos under subsection (3) — the surviving partner consents to the storage of the material or embryos; or
 - (b) the licensee is required to dispose of the material or allow the embryos to succumb under section 81(2).
- (3) If the Board approves the deceased person's reproductive material or embryos being used in an ART procedure for the reproductive purposes of the person's surviving partner, the partner's consent is required for the reproductive material or embryos —
 - (a) to be used in an ART procedure for the partner's reproductive purposes; or
 - (b) to be stored for the purpose mentioned in paragraph (a); or

- (c) if the material or an embryo is no longer required for the partner's reproductive purposes — to be disposed of or allowed to succumb.

81. Disposal of deceased person's reproductive material or embryos

- (1) This section applies if a deceased person's reproductive material or embryos are stored by a licensee under section 80(2).
- (2) The licensee storing a deceased person's reproductive material or embryos must dispose of the material or allow the embryos to succumb if —
 - (a) the person did not have a surviving partner; or
 - (b) in the case of the deceased person's reproductive material — the person's surviving partner gives the licensee notice, in writing, that the partner does not wish to use the reproductive material for the partner's reproductive purposes; or
 - (c) the Board decides to refuse an application for approval to use the deceased person's reproductive material or embryos for the reproductive purposes of the person's surviving partner; or
 - (d) in the case of reproductive material posthumously removed from a deceased person, all of the following apply —
 - (i) it has been more than the prescribed period since the reproductive material was removed from the person;
 - (ii) the licensee has taken reasonable steps to contact the person's surviving partner;

- (iii) the licensee has not received the notice mentioned in paragraph (b), or the consent required under section 80(3), from the person's surviving partner.

Penalty for this subsection: a fine of \$25 000.

- (3) The licensee must not act under subsection (2)(c) until —
 - (a) if the licensee applies to the State Administrative Tribunal for a review of the Board's decision — the licensee receives notice that the State Administrative Tribunal confirmed the Board's decision; or
 - (b) otherwise — the day that is 28 days after the day on which the Board gave notice of the decision to the licensee.
- (4) It is a defence to a charge of an offence against subsection (2) for the licensee to prove that the licensee did not know that the deceased person had died.

82. Other storage and disposal of deceased person's reproductive material and embryos

- (1) This section applies to a licensee storing a deceased person's reproductive material or embryos in accordance with —
 - (a) the person's consent; and
 - (b) if the deceased person has a surviving partner who is a joint intended parent or joint donor of the person's embryos — the surviving partner's consent.
- (2) The licensee may continue to store the reproductive material or embryos in accordance with the consent for a purpose mentioned in section 74(2).
- (3) Section 68 continues to apply in relation to the reproductive material.

- (4) If the deceased person has a surviving partner, section 69 continues to apply in relation to the deceased person's reproductive material as though a reference in that section to the contributing parent of the material were a reference to the surviving partner.
- (5) If the deceased person did not have a surviving partner —
 - (a) section 69(2) does not apply in relation to the deceased person's reproductive material; and
 - (b) section 69(4) applies as if the licensee is required to dispose of the person's reproductive material under that subsection when the storage period for the material (as defined in section 69(1)) ends.
- (6) Section 70 continues to apply in relation to the embryos.
- (7) If the deceased person has a surviving partner, section 71 continues to apply in relation to the deceased person's embryos as though a reference in that section to each intended parent of an embryo were a reference to the surviving partner.
- (8) If the deceased person did not have a surviving partner —
 - (a) section 71(2) does not apply in relation to an embryo of the person; and
 - (b) section 71(5) applies as if the licensee is required to allow an embryo of the person to succumb under that subsection when the storage period for the embryo (as defined in section 71(1)) ends.

Subdivision 4 — Board approval for use

83. Board approval to use reproductive material or embryo of deceased person

- (1) A licensee may apply to the Board for approval for the licensee to use the reproductive material or an embryo of a deceased

person in an ART procedure for the reproductive purposes of the person's surviving partner (the *requested use*).

- (2) The deceased person's surviving partner must consent in writing to the application being made.
- (3) In deciding the application, the Board must consider —
 - (a) any explicit wishes of the deceased person, either for or against the posthumous use of the reproductive material or embryo; and
 - (b) the deceased person's intentions in relation to becoming a parent; and
 - (c) the best interests of a child of the deceased person, including, for example, any implications for the child of being conceived after the person's death; and
 - (d) any other prescribed requirements.
- (4) The Board may decide —
 - (a) to approve the requested use of the reproductive material or embryo, with or without conditions; or
 - (b) to refuse the application.
- (5) The Board cannot approve the use of the reproductive material or embryo for any other purpose.
- (6) Also, the Board —
 - (a) can approve the requested use of the deceased person's embryo contrary to the person's consent only if the circumstances mentioned in section 76(2) apply; and
 - (b) otherwise, cannot approve the use of the deceased person's reproductive material or embryo if the requested use is contrary to the deceased person's consent.

- (7) If the reproductive material was collected when the deceased person was under 18 years of age, the Board may approve the use of the reproductive material only if —
- (a) the person had reached 18 years of age at the time of death; and
 - (b) the person's surviving partner has reached 18 years of age.

84. Decision to approve posthumous use of reproductive material or embryo

- (1) If the Board decides to approve the posthumous use of reproductive material or an embryo, the Board must give the applicant written notice of the decision.
- (2) The Board must give the notice as soon as practicable after making the decision.

85. Decision to refuse application

- (1) If the Board decides to refuse an application for approval to use the reproductive material or an embryo of a deceased person, the Board must give the applicant written notice of the decision.

Note for this subsection:

See the *State Administrative Tribunal Act 2004* section 20(1) for the requirement for a person who has the right to have a decision reviewed by the State Administrative Tribunal to be given written notice of that right.

- (2) If the reproductive material or embryo is stored by a licensee other than the applicant, the Board must give a copy of the notice to the licensee that is storing the reproductive material or embryo.

Division 6 — Transferring, exporting and importing reproductive material and embryos

86. Transferring reproductive material and embryos between licensees

A licensee must not transfer reproductive material or an embryo to another licensee unless —

- (a) each person who is an intended parent of the reproductive material or embryo requests the transfer in writing; and
- (b) in the case of donated reproductive material or a donated embryo — the transfer is consistent with the consent given by the donor in relation to the reproductive material or embryo; and
- (c) the licensee gives the other licensee the prescribed information for the transfer.

Penalty: a fine of \$25 000.

87. Exporting reproductive material and embryos

A licensee must not export reproductive material or an embryo out of the State unless —

- (a) the reproductive material or embryo is being exported —
 - (i) to a person (the **recipient**) who lawfully provides ART services outside the State; and
 - (ii) to be used for a purpose for which it could lawfully be used in the State under this Act or an Act of the Commonwealth;
- and
- (b) each person who is an intended parent of the reproductive material or embryo requests the export in writing; and

- (c) in the case of donated reproductive material or a donated embryo — the export is consistent with the consent given by the donor in relation to the reproductive material or embryo; and
- (d) in the case of the reproductive material or an embryo of a deceased person (as those terms are defined in section 73(1)) —
 - (i) if the export is for the reproductive purposes of the person's surviving partner — the use of the reproductive material or embryo for this purpose complies with section 78; or
 - (ii) if the export is for purposes related to the material or embryo being donated — the export complies with section 79(2);and
- (e) the licensee provides the prescribed information about the reproductive material or embryo to the recipient at the time of export.

Penalty: a fine of \$50 000.

88. Importing reproductive material and embryos

A licensee must not import reproductive material or an embryo into the State unless the licensee —

- (a) is able to comply with the requirements under this Act for the storage and use of the reproductive material or embryo in the State; and
- (b) for each person who is a donor of the reproductive material or, in the case of a donated embryo, each person who contributed reproductive material used to create the embryo —
 - (i) obtains the prescribed information about the person's identity and age; and

- (ii) verifies that the person has reached 18 years of age.

Penalty: a fine of \$50 000.

89. Exemption from export or import requirements

- (1) This section applies in relation to a requirement under section 87 or 88, other than the requirement to provide certain information to a recipient under section 87(e).
- (2) The requirement does not apply to a licensee to the extent that the Board exempts the licensee from the requirement.
- (3) A licensee may apply to the Board for an exemption from the requirement in relation to the export or import of specified reproductive material or an embryo.
- (4) The Board may decide to grant the exemption or to refuse the application.

90. Export or import prohibited if 5 family worldwide limit likely to be exceeded

- (1) A licensee must not export reproductive material or an embryo out of the State, or import reproductive material or an embryo into the State, if the licensee knows, or ought to have known, that using the material or embryo to achieve a pregnancy would likely result in the 5 family worldwide limit being exceeded.
Penalty for this subsection: a fine of \$50 000.
- (2) Subsection (1) does not apply if the Board approves the 5 family worldwide limit being exceeded in relation to the reproductive material or embryo of a specified donor.
- (3) A licensee may apply to the Board for approval to exceed the 5 family worldwide limit in relation to the export or import of the reproductive material or embryo of a specified donor.
- (4) The Board may decide to give the approval or to refuse the application.

91. Prescribed requirements for exporting or importing reproductive material and embryos

The regulations may prescribe additional requirements relating to licensees exporting or importing reproductive material and embryos.

Division 7 — Offences

92. Prohibition on commercial trading in reproductive material and embryos

(1) In this section —

reasonable expenses —

- (a) in relation to the supply of reproductive material, includes expenses relating to the collection, storage or transport of the material; or
- (b) in relation to the supply of an embryo —
 - (i) includes expenses relating to the storage or transport of the embryo; but
 - (ii) does not include any expenses incurred by a person before the embryo became excess to the needs of the person or another person;

valuable consideration, in relation to the supply of reproductive material or an embryo —

- (a) includes an inducement, discount or priority in relation to the supply; but
- (b) does not include the payment of reasonable expenses incurred by a person in connection with the supply.

(2) A person commits a crime if the person —

- (a) offers valuable consideration to another person for the supply of reproductive material or an embryo; or

- (b) receives, or offers to receive, valuable consideration from another person for the supply of reproductive material or an embryo.

Penalty for this subsection: imprisonment for 15 years and a fine of \$175 000.

93. Restrictions on creating embryos

- (1) A person must not create, or attempt to create, an embryo unless —
 - (a) the person performs ART procedures as part of an ART service provided by a licensee; and
 - (b) the creation of the embryo is for the sole purpose of achieving, or attempting to achieve, a pregnancy.
- (2) A person who creates, or attempts to create, an embryo in contravention of subsection (1) commits a crime.

Penalty for this subsection: imprisonment for 15 years and a fine of \$175 000.

94. Restrictions on using excess embryos

- (1) In this section —
 - authorised research** has the meaning given in section 67(1);
 - excess embryo** means an embryo that is not required for the reproductive purposes of an intended parent or intended parents of the embryo.
- (2) A person must not use an excess embryo unless —
 - (a) the embryo is donated by the intended parent or intended parents of the embryo; and
 - (b) the use of the embryo is consistent with the consent given by each intended parent in relation to the donation of the embryo; and

- (c) the person uses the embryo —
 - (i) to perform an ART procedure as part of an ART service provided by a licensee or a person who lawfully provides ART services outside the State; or
 - (ii) for another purpose, including, for example, authorised research, for which the embryo could lawfully be used under an Act of the Commonwealth or in this State under this Act.

Penalty for this subsection: imprisonment for 15 years and a fine of \$175 000.

Note for this section:

Part 4 Division 4 applies generally in relation to the storage of embryos and when an embryo is to be allowed to succumb.

95. Prohibition on cloning

A person who creates, or attempts to create, an embryo that is a genetic copy of a living or deceased human commits a crime.

Penalty: imprisonment for 15 years and a fine of \$175 000.

96. False or misleading information

- (1) In this section —

disability has the meaning given in the *Disability Services Act 1993* section 3;

health information, about a person, means personal information that relates to —

- (a) the health (at any time) of the person; or
- (b) the disability (at any time) of the person; or
- (c) the person's expressed wishes about the future provision of health services to the person; or
- (d) a health service provided, or to be provided, to the person;

- (2) This section applies to each of following persons —
- (a) an ART participant;
 - (b) a contributing parent of reproductive material;
 - (c) an intended parent of an embryo or in relation to an ART procedure;
 - (d) a donor of reproductive material or an embryo.
- (3) The person must not —
- (a) provide a false identity, or give other false or misleading personal information about themselves to a licensee; or
 - (b) give false or misleading health information about themselves to a licensee.

Penalty for this subsection: a fine of \$15 000.

Part 5 — Registers maintained by CEO

Division 1 — Register of identity

97. Register of identity

- (1) The CEO must maintain a register (the **register of identity**) about persons born as a result of an ART procedure.
- (2) An entry in the register of identity about a person born as a result of an ART procedure must contain the required information about —
 - (a) the person; and
 - (b) the person's birth parent; and
 - (c) if the person is a donor-conceived person — each donor in relation to the person.
- (3) The **required information** about a person mentioned in subsection (2) is —
 - (a) the person's name; and
 - (b) the prescribed identifying particulars about the person; and
 - (c) other prescribed information about the person.

98. Right of access to information in register of identity

- (1) This section applies if —
 - (a) a person has the right to access information under subsection (3), (4) or (5); and
 - (b) the information is in the register of identity.
- (2) The CEO must give the information to the person at the person's request.

- (3) A person born as a result of an ART procedure who has reached 16 years of age has the right to access prescribed information about —
 - (a) the person's birth parent; and
 - (b) if the person is a donor-conceived person — each donor in relation to the person.
- (4) Before a person born as a result of an ART procedure (the **child**) reaches 16 years of age, a person who has parental responsibility for the child has the right to access prescribed information about a person mentioned in subsection (3)(a) or (b) in relation to the child.
- (5) A donor in relation to a donor-conceived person has the right to access prescribed information about the person.

99. Contact preferences

- (1) This section applies if the register of identity includes a record of a person's preferences (**contact preferences**) about whether and, if so, how the person would like to be contacted by another person who is entitled to access information about the person under section 98.
- (2) When the CEO gives a person (the **first person**) information about another person under section 98(2), the CEO must also give the first person written notice of the other person's contact preferences.
- (3) A person who is given information about another person under section 98(2) and notice of the other person's contact preferences under subsection (2) must not contact the other person unless the contact is in accordance with the other person's contact preferences.

Penalty for this subsection: a fine of \$10 000.

Division 2 — Register of ART procedures

100. Register of ART procedures

- (1) The CEO must maintain a register (the ***register of ART procedures***) about ART procedures performed as part of ART services provided by licensees.
- (2) The purpose of the register of ART procedures is to collect data to help in monitoring and analysing, and to support research related to —
 - (a) the incidence, causes and prevention of infertility; and
 - (b) assisted reproductive technology, including, for example, the impact of ART procedures on the health outcomes of persons who undergo the procedures and persons born as a result of the procedures.
- (3) The register of ART procedures must contain the information about ART procedures that a licensee is required to give to the CEO under section 39.

101. Disclosure and use of information

- (1) Information in the register of ART procedures may be disclosed to and used by the following persons for a purpose mentioned in section 100(2) —
 - (a) an employee of the Department;
 - (b) an employee of a health service provider;
 - (c) a person approved by the CEO who is contracted by the Department or a health service provider to collect or analyse the information in the register;
 - (d) a person approved by the CEO who is undertaking research into a matter mentioned in section 100(2)(a) or (b).

- (2) However, information in the register of ART procedures that identifies an individual may only be disclosed to a person mentioned in subsection (1)(d) with the consent of the individual to whom the information relates.
- (3) Subsection (4) applies to a person who uses information about an individual disclosed to the person under subsection (1) for undertaking research into a matter mentioned in section 100(2)(a) or (b).
- (4) The person must not publish information relating to the research in a form that identifies the individual unless the individual consents to the information being published in that form.
Penalty for this subsection: a fine of \$25 000.
- (5) For the purposes of subsections (2) and (4), information **identifies** an individual if the identity of the individual is apparent, or can reasonably be ascertained, from the information.

Division 3 — General

102. Application of Division

This Division applies in relation to —

- (a) the register of identity; and
- (b) the register of ART procedures.

103. CEO must correct inaccurate information

- (1) This section applies if the CEO becomes aware that information in a register is inaccurate.
- (2) As soon as practicable after becoming aware of the inaccuracy, the CEO must ensure that the register is updated so that it —
 - (a) contains the correct information; and
 - (b) clearly identifies the original information that is inaccurate; and

- (c) specifies the date on which the information was corrected; and
 - (d) if the CEO was notified of the inaccuracy by a licensee under section 40(3) — specifies the date on which the CEO was notified of the inaccuracy.
- (3) If the CEO becomes aware that information in a register is inaccurate other than by being notified under section 40(3), the CEO must notify the licensee that provided the information about the inaccuracy.

104. CEO may direct licensee to provide information required for register

- (1) If the CEO becomes aware, or believes on reasonable grounds, that a register contains information that is inaccurate or incomplete, the CEO may direct the licensee that provided the information —
 - (a) to provide the correct or complete information to the CEO; or
 - (b) to explain how the information is correct or complete to the best of the licensee's knowledge.
- (2) If the CEO becomes aware, or believes on reasonable grounds, that a licensee has failed to provide information for a register to the CEO under section 39, the CEO may direct the licensee —
 - (a) to provide the information to the CEO; or
 - (b) to explain why the licensee cannot provide the information to the CEO.
- (3) The licensee must comply with a direction under subsection (1) or (2) within the period specified in the direction.
Penalty for this subsection: a fine of \$25 000.

Part 6 — Surrogacy

Division 1 — Preliminary

105. Terms used

In this Part —

for reward, in relation to a surrogacy arrangement, has the meaning given in section 107;

party, to a surrogacy arrangement, means each of the following —

- (a) the surrogate;
- (b) the intended parent, or 2 intended parents jointly;
- (c) another person identified in the arrangement as a party to the surrogacy arrangement, for example, the surrogate's partner;

qualified counsellor means a person who has the prescribed experience or prescribed qualifications (or both) to perform the functions of a counsellor under this Part;

register of births, deaths and marriages means the Register referred to in the *Births, Deaths and Marriages Registration Act 1998* section 49;

Registrar of Births, Deaths and Marriages means the Registrar of Births, Deaths and Marriages appointed under the *Births, Deaths and Marriages Registration Act 1998* section 5;

registration, of a birth, means registration under the *Births, Deaths and Marriages Registration Act 1998* Part 3 Division 2;

relationship plan has the meaning given in section 116;

surrogacy expense, in relation to a surrogacy arrangement, has the meaning given in section 108.

106. What this Part is about

This Part provides for matters related to surrogacy arrangements, including —

- (a) the status of surrogacy arrangements and the requirements for the arrangements to be valid; and
- (b) that surrogacy arrangements for reward are prohibited; and
- (c) the circumstances in which the Family Court can make an order about the parentage of a child born under a surrogacy arrangement.

Note for this section:

See section 16 for the meaning of the terms *surrogacy arrangement*, *surrogate*, *intended parent* and *overseas surrogacy arrangement*.

107. When is surrogacy arrangement for reward

A surrogacy arrangement is ***for reward*** if the arrangement provides for a person to receive payment or other valuable consideration for anything other than reasonable surrogacy expenses.

108. What is a surrogacy expense

- (1) A ***surrogacy expense*** is an expense of the surrogate associated with any of the following matters relating to a surrogacy arrangement —
 - (a) achieving, or attempting to achieve, a pregnancy, including as a result of an ART procedure;
 - (b) the surrogate being pregnant or giving birth;
 - (c) the surrogate or the surrogate's partner (if any) being a party to the arrangement or to proceedings in the Family Court for a parentage order.

- (2) Without limiting subsection (1), each of the following associated with a matter mentioned in that subsection is a **surrogacy expense** —
- (a) a medical expense of the surrogate;
 - (b) a reasonable expense for a child born under the surrogacy arrangement, including a reasonable medical expense;
 - (c) the value of the surrogate's lost earnings because of leave taken —
 - (i) for a period of not more than 2 months during which the birth happens or was expected to happen; or
 - (ii) at any time for medical reasons arising during the pregnancy;
 - (d) an expense for counselling for the surrogate or surrogate's partner (if any);
 - (e) a premium payable for health, disability or life insurance that —
 - (i) the surrogate would not have taken out if the surrogacy arrangement had not been entered into; and
 - (ii) provides cover for a period during which an expense referred to in this subsection is, or was expected to have been, incurred;
 - (f) an expense for the surrogate's reasonable travel or accommodation;
 - (g) an expense for childcare for the surrogate's child or children (if any);
 - (h) an expense associated with an assessment or expert advice, including legal advice, relating to the surrogacy arrangement or proceedings in the Family Court for a parentage order;
 - (i) a prescribed expense.

Division 2 — Surrogacy arrangements

109. When is surrogacy arrangement valid

- (1) A surrogacy arrangement is valid if the surrogate, each intended parent and any other party to the arrangement has reached 18 years of age when the party enters into the arrangement, and the arrangement —
- (a) is not for reward; and
 - (b) includes the contents of a surrogacy arrangement required under section 110; and
 - (c) is in writing; and
 - (d) is signed by the surrogate and each intended parent; and
 - (e) is entered into after the surrogate and each intended parent —
 - (i) received counselling from a qualified counsellor about the arrangement and its social and psychological implications; and
 - (ii) obtained independent legal advice, in writing, about the arrangement and its implications, including, in particular, the matters stated in subsection (2);
- and
- (f) is entered into before the surrogate becomes pregnant, unless the arrangement is to replace an existing surrogacy arrangement involving the same parties.
- (2) For the purposes of subsection (1)(e)(ii), the matters are —
- (a) that the surrogacy arrangement is not enforceable, other than in relation to the payment or reimbursement of surrogacy expenses; and
 - (b) that the surrogate is the legal parent of a child born under the surrogacy arrangement and remains so unless

- a parentage order for the child is made by the Family Court; and
 - (c) that the surrogate is under no obligation, and cannot be forced, to consent to a parentage order being made for the child.
- (3) For the purposes of subsection (1)(e)(ii), legal advice about a surrogacy arrangement is **independent** if the lawyer providing the advice —
- (a) is freely chosen by the person receiving the advice; and
 - (b) is not also providing advice about the arrangement to another party to the arrangement.

110. Required contents of surrogacy arrangement

- (1) For the purposes of section 109(1)(b), a surrogacy arrangement must provide for the following matters —
- (a) the surrogate's agreement —
 - (i) to become, or try to become, pregnant; and
 - (ii) to carry and give birth to a child of the pregnancy; and
 - (iii) for each intended parent to be a parent of, and to raise, the child;
 - (b) each intended parent's agreement —
 - (i) to be a parent of, and to raise, a child of the pregnancy; and
 - (ii) to pay or reimburse the surrogate's reasonable surrogacy expenses that are specified in the arrangement;
 - (c) any prescribed matter.

Note for this subsection:

For the purposes of paragraph (b)(ii) — a surrogate's surrogacy expenses paid or reimbursed under a surrogacy arrangement may affect whether the arrangement is for reward: see section 107.

- (2) Subsection (1) does not limit the matters that may be included in a surrogacy arrangement.

111. Limited enforcement of surrogacy arrangement

- (1) A surrogacy arrangement is not enforceable except to the extent that the arrangement provides for an obligation to pay or reimburse surrogacy expenses.
- (2) Subsection (1) does not affect the ability of the Family Court to consider a surrogacy arrangement in making a parentage order.

112. Entering surrogacy arrangement for reward prohibited

A person must not enter into, or participate in, a surrogacy arrangement for reward.

Penalty: a fine of \$50 000.

113. Recruiting surrogates

- (1) A person or couple who intend to enter into a surrogacy arrangement as an intended parent or intended parents may recruit a person to be a surrogate for a surrogacy arrangement that is not for reward, and may advertise for that purpose.
- (2) A licensee may recruit a person to be a surrogate for a surrogacy arrangement that is not for reward, and may advertise for that purpose.
- (3) A person must not receive, or seek to receive, payment or other valuable consideration to recruit a person to be a party to a surrogacy arrangement, regardless of whether the surrogacy arrangement is for reward.

Penalty for this subsection: a fine of \$50 000.

Note for this section:

See section 107 for when a surrogacy arrangement is for reward.

114. Rights of surrogate to manage pregnancy and birth

The surrogate under a surrogacy arrangement, while pregnant, has the same rights to make the following decisions, and to take the following actions, as a pregnant person who is not a surrogate under a surrogacy arrangement —

- (a) decisions and actions that are for, or that otherwise relate to, the management of the pregnancy;
- (b) decisions and actions that determine the circumstances in which the surrogate gives birth, or does not give birth, to the child.

115. Licensee must verify existence of written, signed surrogacy arrangement

A licensee commits an offence if —

- (a) a person undergoes an ART procedure for the purposes of achieving a pregnancy under a surrogacy arrangement; and
- (b) the ART procedure is performed as part of an ART service provided by the licensee; and
- (c) the licensee has not verified that the surrogacy arrangement is in writing and is signed by the surrogate and each intended parent under the arrangement.

Penalty: a fine of \$50 000.

Division 3 — Relationship plans

116. What is a relationship plan

- (1) A **relationship plan** is a written plan, agreed to by the parties to a surrogacy arrangement, that —
 - (a) is prepared in anticipation of a parentage order being made for a child born, or to be born, under the arrangement; and

- (b) sets out the parties' intentions about —
 - (i) whether the child and the child's intended parents are to have an ongoing relationship with the surrogate or another person after the parentage order is made; and
 - (ii) if so, matters relating to the ongoing relationship or relationships.
- (2) Without limiting the matters that a relationship plan may deal with, the plan may set out details of —
 - (a) any time the child is to spend with the surrogate or another person; and
 - (b) any communication the child is to have with the surrogate or another person; and
 - (c) the information that any of the parties to the plan is to provide to the other parties or another person.
- (3) In dealing with a matter, a relationship plan must —
 - (a) adequately balance the rights and responsibilities of the parties to the plan; and
 - (b) promote the long-term wellbeing and best interests of the child; and
 - (c) be reasonable in the circumstances.

117. Variation of relationship plan

- (1) The parties to a relationship plan may vary the plan with the agreement of all the parties.
- (2) A variation of the relationship plan may be to add a new party to, or remove a party from, the plan.
- (3) A party to the relationship plan may apply to the Family Court for approval to vary the plan if —
 - (a) all the parties to the plan cannot agree to the variation; and

- (b) the child the subject of the plan is under 18 years of age.
- (4) The Family Court may approve the variation of the relationship plan as specified in the application if satisfied that —
 - (a) the variation is appropriate because of a change of circumstances since the plan was agreed; and
 - (b) the varied plan would be consistent with section 116.

118. Family Court’s powers to deal with breach of relationship plan

- (1) If a party (the *first party*) to a relationship plan claims that another party has breached the plan, the first party may apply to the Family Court for relief in relation to the breach.
- (2) If the Family Court is satisfied that a breach of the relationship plan has happened or is likely to happen, the court may, on an application under subsection (1) —
 - (a) order the parties to the relationship plan to participate in a mediation process; or
 - (b) as it thinks fit, exercise its powers under the *Family Court Act 1997* to enforce the relationship plan as if the plan were an order made by the Family Court under that Act.
- (3) Without limiting subsection (2), the Family Court may deal with a breach of a relationship plan as if the person who breached the plan contravened an order made by the court under the *Family Court Act 1997* or were in contempt of the court.

Division 4 — Transferring child's parentage to intended parents

Subdivision 1 — Preliminary

119. When this Division applies and what it is about

- (1) This Division applies if a surrogate gives birth to a child under a surrogacy arrangement.
- (2) This Division —
 - (a) allows the intended parents of the child to apply to the Family Court to make an order (a **parentage order**) to transfer the parentage of the child to them; and
 - (b) provides for the Family Court to make the parentage order for the child if the requirements for making the order are met.
- (3) In this Division, in a provision about a parentage order or an application for a parentage order, a reference to the surrogacy arrangement is a reference to the surrogacy arrangement under which the child the subject of the application was born.

120. Child's best interests paramount

- (1) In making a decision about a parentage order for the child, the Family Court must consider the best interests of the child as paramount.
- (2) For the purposes of this Division, it is presumed to be in the best interests of the child for the intended parents to be the child's parents, unless there is evidence to the contrary.

121. References to intended parents if only 1 intended parent applies for parentage order

- (1) If only 1 intended parent applies for a parentage order for the child, a reference in this Division to the intended parents of the child is taken to be a reference to that intended parent.

- (2) If 2 intended parents of the child apply for a parentage order for the child and 1 of the intended parents dies before the Family Court decides the application, a reference in this Division to the intended parents of the child is taken to be a reference to the living intended parent.

Subdivision 2 — Orders for transfer of child's parentage generally

122. Applying for parentage order

- (1) The intended parents of the child may apply to the Family Court for a parentage order for the child.
- (2) The application —
- (a) cannot be lodged during the period of 28 days after the day on which the child is born; and
 - (b) cannot be lodged later than 6 months after the day on which the child is born, except with the leave of the court.
- (3) The Family Court may give leave under subsection (2)(b) only if satisfied that exceptional circumstances justify the leave being given.
- (4) To the extent possible, the following documents must be lodged with the application —
- (a) a certified copy of the child's birth certificate;
 - (b) a copy of the surrogacy arrangement under which the child was born;
 - (c) a copy of the relationship plan relating to the child.

123. Family Court may make parentage order

- (1) The Family Court may, on the application of the intended parents of the child under section 122, make a parentage order for the child if satisfied that —
- (a) it is in the best interests of the child to make the order; and

- (b) the surrogacy arrangement under which the child was born is a valid arrangement; and
- (c) the intended parents live in the State and, when the order is to be made, will have lived in the State for at least 12 months; and
- (d) the surrogate freely consents to the parentage order being made; and
- (e) the intended parents had, when the application was lodged with the Family Court, and will have, when the court makes the parentage order, responsibility for the day-to-day care, wellbeing and development of the child; and
- (f) the surrogate and the intended parents have agreed in writing to a relationship plan for the child.

Note for this subsection:

For the purposes of paragraph (b), see section 109 for the requirements that must be satisfied for a surrogacy arrangement to be valid.

- (2) A requirement for making a parentage order for the child under subsection (1) does not apply if the Family Court dispenses with the requirement under Subdivision 4.
- (3) For the purposes of subsection (1)(c), it does not matter whether or not the intended parents were present in the State for all of the 12 months.

124. Name of child

- (1) A parentage order for the child must include an order stating the name by which the child is to be known.
- (2) Before making an order about the child's name, the Family Court must consider —
 - (a) the principle that a child's first name should not be changed except in exceptional circumstances; and

- (b) anything relevant in the relationship plan relating to the child.
- (3) An order under subsection (1) does not prevent the child's name being changed later under a law of the State or the Commonwealth.

125. Ancillary orders

- (1) If the Family Court makes a parentage order for the child, the court may make any other order it considers appropriate —
 - (a) in the interests of justice; or
 - (b) for the wellbeing, and in the best interests, of the child.
- (2) Without limiting subsection (1), if the child was born outside Australia, the Family Court may order that the child's birth be registered in the register of births, deaths and marriages if the court is satisfied that —
 - (a) registration of the child's birth under an applicable law does not include the following —
 - (i) the full name by which the child is known before the parentage order becomes effective;
 - (ii) the date and place of birth of the child;
 - (iii) the name and address of the surrogate;or
 - (b) the child's birth was not registered under an applicable law.
- (3) In subsection (2) —
applicable law, in relation to the child's birth, means a law of the country in which the child was born that provides for the registration of births.

126. Effect of parentage order

- (1) For the purposes of the laws of the State, the effect of a parentage order for the child is that —
 - (a) the relationship between the child and each person named in the parentage order as a parent of the child becomes a relationship of child and parent; and
 - (b) the relationship between the child and the surrogate stops being a relationship of child and parent; and
 - (c) the relationships of other persons to the child are to be determined in accordance with paragraphs (a) and (b).
- (2) Subsection (1)(a) also applies to a person named in the parentage order as a parent of the child who died before the parentage order was made.
- (3) The appointment of a person as the guardian of the child made under a deed or will stops having effect when a parentage order for the child is made.

Note for this section:

See section 142(3) in relation to the effect of the discharge of a parentage order for the child for the purposes of applying a law of the State relating to sexual offences if the relationship between persons is relevant.

127. Finality of parentage order

A parentage order cannot be appealed against, reviewed, called in question or affected by a court in any way except —

- (a) in proceedings on an application for discharge of the order under Subdivision 5; or
- (b) under the *Family Court Act 1997* section 211(3).

Subdivision 3 — Orders for transfer of child's parentage in particular circumstances

128. Separation of intended parents

- (1) This section applies if the child's intended parents separate before a parentage order for the child is made.
- (2) If an application for a parentage order for the child has not been made under section 122, either of the child's intended parents, or both of them, may apply under that section.
- (3) If only 1 intended parent makes an application, that intended parent must serve a copy of the application on the other intended parent (the ***non-applicant intended parent***) within 14 days after making the application.
- (4) A non-applicant intended parent served a copy of an application under subsection (3) may, within 21 days after being served, apply to the Family Court to be joined as a party to proceedings on the application.
- (5) If the intended parents make the application jointly, either before or after they separate, 1 intended parent may withdraw from the application by —
 - (a) filing notice of the withdrawal in the Family Court; and
 - (b) serving a copy of the notice on the other intended parent within 14 days after filing the notice.
- (6) The Family Court may make a parentage order under section 123 transferring the parentage of the child solely to 1 intended parent (the ***applicant parent***) if —
 - (a) the other intended parent freely consents to an order transferring parentage of the child solely to the applicant parent; or
 - (b) the court, being satisfied that it is in the best interests of the child, dispenses with the requirement under paragraph (a) for the other intended parent's consent.

129. Death of intended parent before application for parentage order

- (1) This section applies if —
 - (a) an intended parent (the ***deceased person***) of the child dies before an application for a parentage order for the child is made under section 122; or
 - (b) both of the following apply —
 - (i) the surviving partner of a deceased person is an intended parent under a surrogacy arrangement entered into after the person's death;
 - (ii) the child born under the arrangement was conceived as a result of an ART procedure that used the reproductive material or an embryo of the deceased person (as those terms are defined in section 73(1)).
- (2) The living intended parent of the child may apply under section 122 for a parentage order to transfer the parentage of the child jointly to the living intended parent and the deceased person.
- (3) The Family Court may, with the consent of the living intended parent of the child, make a parentage order under section 123 transferring the parentage of the child jointly to the living and deceased intended parents.

130. Death of intended parent after application for parentage order

- (1) This section applies if an intended parent of the child dies —
 - (a) after an application for a parentage order for the child is made under section 122; and
 - (b) before the application is decided.

- (2) The Family Court may —
 - (a) continue to hear and decide the application; and
 - (b) with the consent of the living intended parent of the child, make a parentage order under section 123 transferring the parentage of the child jointly to the living and deceased intended parents.

131. Multiple births

- (1) This section applies if —
 - (a) an application for a parentage order for the child is made under section 122; and
 - (b) the child has a living sibling (a **living birth sibling**) born of the same pregnancy as the child.
- (2) The Family Court must not make a parentage order for the child unless it also makes a parentage order about each living birth sibling of the child.
- (3) Subsection (2) does not apply if the Family Court is satisfied there is an exceptional reason why a parentage order for the living birth sibling should not be made.

Subdivision 4 — Dispensing with requirements for making parentage orders

132. Application of Subdivision

This Subdivision provides for the circumstances in which the Family Court, in deciding whether to make a parentage order for the child under section 123, may dispense with 1 or more of the requirements of that section for making the order.

133. Requirements to be met by surrogate

- (1) This section applies if, in relation to an application for a parentage order for the child —
 - (a) the surrogate is deceased or incapacitated; or

- (b) the intended parents have been unable to contact the surrogate despite making reasonable efforts to do so; or
 - (c) the embryo from which the child was born was created without using reproductive material from the surrogate and at least 1 intended parent is a contributing parent of the child.
- (2) The Family Court may, if satisfied that it is in the best interests of the child, dispense with any or all of the following requirements —
- (a) the requirement in section 123(1)(d) for the surrogate to consent to the making of the parentage order;
 - (b) the requirement for the surrogate to have received counselling or obtained legal advice described in section 109(1)(e), to the extent it is a requirement in section 123(1)(b) for the surrogacy arrangement to be valid;
 - (c) the requirement in section 123(1)(f) for the surrogate to have agreed to a relationship plan for the child.

134. Requirement for surrogacy arrangement to be valid

The Family Court may dispense with 1 or more of the requirements in section 109(1) that must be satisfied for the surrogacy arrangement to be valid as required by section 123(1)(b), but only if the court is satisfied that —

- (a) having considered the circumstances of the surrogate, not making the parentage order would be contrary to the child's best interests and would significantly disadvantage the child; and
- (b) it is reasonable in all the circumstances to make the parentage order.

135. Requirement for intended parents to have responsibility for child's day-to-day care

- (1) The Family Court may dispense with the requirement in section 123(1)(e) for an intended parent to have had responsibility for the day-to-day care, wellbeing and development of the child at either or both of the following times —
 - (a) the time that the intended parents' application for a parentage order was lodged;
 - (b) the time that the court proposes to make a parentage order for the child.
- (2) However, the Family Court may only dispense with the requirement under subsection (1) if satisfied that —
 - (a) it is in the best interests of the child to do so; and
 - (b) either of the following applies —
 - (i) it is, or was, reasonable in the circumstances for the intended parents not to have had responsibility for the day-to-day care, wellbeing and development of the child at a relevant time;
 - (ii) there is a dispute about who is to have responsibility for the day-to-day care, wellbeing and development of the child.

Subdivision 5 — Discharge of parentage order

136. Grounds for discharge

A parentage order for the child may only be discharged on 1 or more of the following grounds —

- (a) the order was obtained by fraud, duress or other improper means;
- (b) a consent relied on for making the order was —
 - (i) obtained by fraud or duress; or

- (ii) in fact, not given; or
- (iii) given for payment, reward or other material benefit or advantage (other than payment of the surrogate's reasonable surrogacy expenses);
- (c) there is an exceptional reason why the order should be discharged.

137. Application for discharge order

- (1) The following persons may apply to the Family Court for an order discharging a parentage order for the child —
 - (a) the child, if the child has reached 18 years of age;
 - (b) the Attorney General;
 - (c) the CEO;
 - (d) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004*.
- (2) The applicant must make reasonable efforts to give notice of the application to —
 - (a) each person who became a parent of the child when the parentage order was made; and
 - (b) the surrogate who gave birth to the child; and
 - (c) the child.

138. Intervening in application for discharge of parentage order

- (1) A person may apply to the Family Court for leave to intervene in an application under section 137(1) for an order discharging a parentage order.
- (2) The Family Court may give the person leave to intervene in the application.
- (3) A person given leave to intervene in the application is a party to the application.

139. Family Court may make discharge of parentage order

- (1) On an application under section 137(1), the Family Court may make an order discharging a parentage order for the child.
- (2) However, the Family Court may make the order only if satisfied of all of the following matters —
 - (a) 1 of the grounds for discharging the parentage order mentioned in section 136 exists;
 - (b) reasonable efforts have been made to give notice of the application in accordance with section 137(2);
 - (c) discharging the parentage order would be in the best interests of the child.
- (3) An order discharging a parentage order for the child must include an order stating the name by which the child is to be known.
- (4) Before making an order about the child's name, the Family Court must consider the principle that a child's first name should not be changed except in exceptional circumstances.
- (5) An order under subsection (3) does not prevent the child's name being changed later under a law of the State or the Commonwealth.

140. Ancillary orders

- (1) If the Family Court makes an order discharging a parentage order for the child, the court may make any other order it considers appropriate —
 - (a) in the interests of justice; or
 - (b) for the wellbeing, and in the best interests, of the child.
- (2) Without limiting subsection (1), the Family Court may make an order relating to —
 - (a) the duties, powers, responsibilities and authority which, by law, parents have in relation to children; or

- (b) the home of the child; or
- (c) the ownership or possession of property.

141. Effect of discharge of parentage order

- (1) If a parentage order for the child is discharged, the rights, duties, liabilities and relationships of persons under a law of the State are the same as if the parentage order had not been made.
- (2) Subsection (1) —
 - (a) does not apply to the extent that its application would be inconsistent with an order made under section 139 or 140; and
 - (b) does not affect anything lawfully done, or the consequences of anything lawfully done, while the parentage order was in force; and
 - (c) does not affect any right or interest in property that vested in a person while the parentage order was in force.

Note for this section:

See also section 142(3) in relation to the effect of the discharge of a parentage order for the child for the purposes of applying a law of the State relating to sexual offences if the relationship between persons is relevant.

Subdivision 6 — Other provisions

142. Relationships for laws relating to sexual offences

- (1) This section applies for the purposes of applying a law of the State relating to sexual offences if the relationship between persons is relevant.
- (2) Despite section 126 —
 - (a) a parentage order for the child does not end any relationship that would have existed if the parentage order had not been made; and

- (b) relationships that existed before the parentage order was made are taken to exist in addition to the relationships that exist because the order was made.
- (3) Despite section 141(1), the discharge of a parentage order for the child —
 - (a) does not end any relationship that would have existed if the order had not been discharged; and
 - (b) relationships that existed before the order was discharged are taken to exist in addition to the relationships that exist because the order was discharged.

143. Family Court to notify Registrar

- (1) If the Family Court makes a parentage order for the child or an order discharging a parentage order for the child, the registrar of the court must give the Registrar of Births, Deaths and Marriages written notice of the following particulars —
 - (a) the date of the order;
 - (b) the full name, and the prescribed particulars, of each intended parent of the child;
 - (c) the full name by which the child is known before, and is to be known after, the order becomes effective;
 - (d) the date and place of birth of the child and the name and address of the surrogate;
 - (e) the terms of any consequential or ancillary order made in relation to the order under section 125 or 140(1);
 - (f) if available, any other information required by the Registrar of Births, Deaths and Marriages in relation to the registration under the *Births, Deaths and Marriages Registration Act 1998* of the birth of a child.
- (2) If the birth of the child is not registered in the State under the *Births, Deaths and Marriages Registration Act 1998*, the registrar of the Family Court must give the Registrar of Births,

Deaths and Marriages a copy of the original registration of the child's birth, if it is available.

- (3) If the child was born outside Australia, the Family Court must give the Registrar of Births, Deaths and Marriages the prescribed particulars about the child's birth.

Division 5 — Access to information

144. Application of this Division or order under it

- (1) If a relationship plan provides for a party to the plan to have greater or earlier access to information than is available under this Division, the party is entitled to access the information in accordance with the plan.
- (2) A right that this Division gives to access information, or an order that the Family Court makes giving access to information, prevails over a provision of any contract or relationship plan that purports to restrict or exclude that access.

145. Family Court order excluding access to information

- (1) This section applies if —
- (a) a person —
- (i) is a surrogate who gave birth to a child under a surrogacy arrangement; or
- (ii) has applied for a parentage order; or
- (iii) is named in a parentage order as a parent of a child;
- and
- (b) the person believes that, if a particular person (the ***specified person***) has access to information under this Division, it is likely the specified person would pose a serious risk of harm to the person, the person's partner or a child of the person.

- (2) The person may apply to the Family Court for an order (an **exclusion order**) excluding the specified person from having access to specified information under this Division.
- (3) The court may make an exclusion order in relation to the specified person if satisfied that the serious risk of harm mentioned in subsection (1)(b) would be likely to exist if the exclusion order was not made.
- (4) The exclusion order may exclude access to information under this Division as follows —
 - (a) to all or some of the specified information;
 - (b) in all or specified circumstances;
 - (c) from being given by the Family Court;
 - (d) under a specified right of access that would otherwise arise under this Division.
- (5) If an exclusion order is made, the registrar of the Family Court must give the Registrar of Births, Deaths and Marriages a certified copy of the exclusion order as soon as practicable after it is made.
- (6) The specified person in relation to an exclusion order may apply to the Family Court for the exclusion order to be revoked, suspended or varied.

146. Access to certain Family Court records

- (1) A person may access the record of proceedings in the Family Court relating to a parentage order for a child only with the court's approval.
- (2) The following persons may apply, in writing, to the Family Court for access to all or part of the record of proceedings —
 - (a) the child;
 - (b) the surrogate who gave birth to the child;

- (c) a person named as a parent of the child in a parentage order;
 - (d) another person who was a party to the proceedings.
- (3) The Family Court may approve a person's access to all or part of the record of proceedings on the person's application.
- (4) Without limiting the reasons for refusing a person's application, the Family Court may refuse the application if —
 - (a) the person has not provided proof of the person's identity; or
 - (b) the person has not complied with a requirement of the Family Court relating to the inspection and release of information from its record of proceedings; or
 - (c) giving access would be contrary to a Family Court order excluding the person from the hearing of the proceedings.

147. Access to registration of birth

- (1) A person has the right to access the registration of the birth of a child whose parentage was transferred by a parentage order only if the person is —
 - (a) the child; or
 - (b) the surrogate for the child; or
 - (c) named as a parent of the child in the parentage order.
- (2) For the purposes of the *Births, Deaths and Marriages Registration Act 1998* section 54 or 55, a person's right to access the registration of a birth under subsection (1) is an adequate reason for the Registrar of Births, Deaths and Marriages —
 - (a) to allow the person access to the register of births, deaths and marriages under section 54 of that Act; and

- (b) to provide the person with information extracted from the register of births, deaths and marriages under that Act; and
 - (c) to search for information in the register of births, deaths and marriages under section 55 of that Act.
- (3) Despite subsections (1) and (2), the person may be refused access if —
 - (a) the person has not produced proof of the person's identity to the Registrar of Births, Deaths and Marriages or another appropriate officer; or
 - (b) the person has not complied with a requirement of, or under, the *Births, Deaths and Marriages Registration Act 1998* relating to that access.

148. Portion of registration of birth not referring to parentage order

- (1) This section applies in relation to a child whose parentage was transferred by a parentage order.
- (2) If requested, the Registrar of Births, Deaths and Marriages must issue to the person making the request a certified copy of the portion of the registration of the birth of the child that does not refer to the surrogate who gave birth to the child or the change of parentage.
- (3) A request under subsection (2) can only be made by —
 - (a) if the child has reached 16 years of age — the child; or
 - (b) if the child is under 16 years of age — a person named as a parent of the child in the parentage order.
- (4) A certified copy of a portion of the registration of a child's birth issued under subsection (2) is admissible in any proceedings as evidence of the facts stated in it.

Division 6 — Family Court proceedings**149. Application of *Family Court Act 1997***

- (1) The *Family Court Act 1997* applies in relation to proceedings of the court under this Act as if —
- (a) a reference to proceedings under that Act, in a provision of that Act listed in the Table to this subsection, includes a reference to the proceedings under this Act; and
 - (b) a reference to jurisdiction of the court under that Act, in section 244 of that Act, includes a reference to jurisdiction conferred under this Act; and
 - (c) a reference in that Act to a family consultant were a reference only to a person appointed under section 25 of that Act.

Table

s. 60	s. 62(1)
s. 65	s. 73
s. 164	s. 165
s. 166	s. 194
s. 195	s. 201
s. 207	s. 208
s. 213	s. 216
s. 245(2)	

- (2) The *Family Court Act 1997* section 212 does not apply to proceedings of the court under this Act.

150. Family Court proceedings to be private

- (1) Proceedings of the Family Court under this Part, and proceedings of the Supreme Court arising out of those proceedings, must not be heard in open court.

- (2) All persons, other than a party to the proceedings and the party's lawyer, are to be excluded during the proceedings, unless otherwise directed by the court.
- (3) The Family Court may order a person to leave the court or another place during the examination of a witness in the proceedings.

Division 7 — Offences

151. Territorial application

This Division and section 112 apply in relation to —

- (a) acts done in the State regardless of the whereabouts of the offender at the time the act is done; or
- (b) acts done outside the State if the offender is ordinarily resident in the State at the time the act is done.

152. Publishing certain information for surrogacy arrangement for reward

A person must not publish —

- (a) anything intended, or likely, to induce a person to enter into, or participate in, a surrogacy arrangement for reward; or
- (b) anything to the effect that a person is sought who is willing to enter into, or participate in, a surrogacy arrangement for reward; or
- (c) anything to the effect that a person is or might be willing to enter into, or participate in, a surrogacy arrangement for reward.

Penalty: a fine of \$50 000.

Note for this section:

For when a surrogacy arrangement is taken to be for reward: see section 107.

153. Coercing person to enter surrogacy arrangement

- (1) In this section —

coerce includes to threaten or intimidate.

- (2) A person must not coerce another person to enter into, or participate in, a surrogacy arrangement.

Penalty for this subsection: imprisonment for 2 years and a fine of \$50 000.

Part 7 — Licensing of ART services

Division 1 — Preliminary

154. What this Part is about

This Part deals with the licences authorising the provision of ART services.

155. Terms used

In this Part —

discretionary condition, of a licence, has the meaning given in section 178(1)(b);

fit and proper person means a person who is fit and proper to be involved with the provision of ART services;

Health Act means —

- (a) an Act administered by the Minister, other than this Act; or
- (b) a prescribed Act;

interim licensee has the meaning given in section 192(3);

licensing, compliance and accreditation history, of a person, means —

- (a) the status of any licence held by the person under this Act or a corresponding law, including —
 - (i) any conditions imposed on the licence; and
 - (ii) any suspension or cancellation of the licence under this Act or a corresponding law;
- and
- (b) any contraventions of this Act or a corresponding law by the person; and
- (c) the status of the person's accreditation with a prescribed accreditation body;

mandatory condition, of a licence, has the meaning given in section 178(1)(a);

officer, in relation to a body corporate, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9AD;

person with management or control, of a licensee or proposed licensee, means —

- (a) in the case of a sole trader — the individual who is the sole trader; or
- (b) in the case of a body corporate — each officer of the body corporate; or
- (c) in the case of a partnership — each partner; or
- (d) in the case of a trust — each person who has a responsibility as trustee of the trust; or
- (e) in the case of an incorporated association under the *Associations Incorporation Act 2015* — each member of the management committee as defined in section 3 of that Act; or
- (f) in the case of any other type of entity — a person who has the responsibility, alone or with others, for managing the operations of the licensee or proposed licensee;

policies and procedures means the policies and procedures relating to the provision of ART services that a licensee must have as required by the regulations;

statement of reasons, for a decision, means a written statement containing —

- (a) the reasons for the decision; and
- (b) any findings on material questions of fact that led to the decision, referring to the evidence or other materials on which those findings were based.

Division 2 — Application for licence

156. Application for licence

A person may apply to the CEO for a licence.

157. Requirements for application for licence

- (1) An application for a licence must —
 - (a) be made in the approved form; and
 - (b) specify the proposed licensee; and
 - (c) specify the ART services that would be provided by the proposed licensee; and
 - (d) list each person proposed to have management or control of the proposed licensee; and
 - (e) state the premises at which the proposed licensee would provide ART services; and
 - (f) include the policies and procedures that the proposed licensee would have if it were granted a licence; and
 - (g) include the information required by the approved form; and
 - (h) be accompanied by the prescribed fee.
- (2) If an application for a licence does not comply with subsection (1), the CEO may reject the application without further consideration.

158. Investigations related to considering an application

After receiving an application for a licence made under section 156, the CEO may —

- (a) request that the applicant provide the CEO with further specified information in relation to the provision of ART services by the proposed licensee; and
- (b) inspect the premises at which ART services are proposed to be provided by the proposed licensee for the

purpose of investigating whether the premises, equipment, staffing and facilities are appropriate for the services; and

- (c) review the adequacy of the policies and procedures that the proposed licensee would have if it were granted a licence.

159. Criteria for deciding application for licence

- (1) In deciding an application for a licence, the CEO must consider —
 - (a) the application; and
 - (b) information provided to the CEO in response to a request for the information made under section 158(a); and
 - (c) the licensing, compliance and accreditation history of the proposed licensee and each person proposed to have management or control of the proposed licensee; and
 - (d) the information collected by the CEO under section 158(b) or 177.
- (2) The CEO may grant the licence only if satisfied that —
 - (a) the proposed licensee, and each person proposed to have management or control of the proposed licensee, are fit and proper persons; and
 - (b) the proposed licensee has the prescribed accreditation; and
 - (c) appropriate premises, equipment, staffing and facilities are available, and are likely to remain available, for the ART services to be provided by the proposed licensee; and
 - (d) the policies and procedures that the proposed licensee would have if it were granted a licence are adequate for the ART services to be provided by the proposed licensee.

- (3) The CEO must not grant the licence if —
- (a) the proposed licensee is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (b) in the case of a proposed licensee that is a body corporate, the body corporate is under receivership or official management or is in liquidation.

160. Decision on application for licence

- (1) This section applies if an application for a licence is made under section 156.
- (2) The CEO must, within the prescribed period after receiving the application, consider the application and decide to —
- (a) grant the licence; or
 - (b) grant the licence subject to such conditions as the CEO thinks fit; or
 - (c) refuse to grant the licence.
- (3) If the CEO requests further information from a person under section 158(a) or 177(2)(b), the period stated in subsection (2) is extended by the same number of days taken by the person to provide the CEO with all the requested information.

161. Notice of decision on application for licence

- (1) Within 10 business days after making a decision under section 160(2), the CEO must give the applicant written notice of the decision.
- (2) If the decision is to grant the licence with 1 or more conditions, or to refuse the grant of a licence, the notice of the decision must —
- (a) include a statement of reasons for the decision; and
 - (b) state that the applicant can request the CEO to reconsider the decision under section 195(1).

162. Grant of licence

- (1) If the CEO decides to grant a licence, the CEO must issue a licence to the licensee.
- (2) The licence has effect for the period specified in the licence, being a period of not more than 5 years, subject to surrender, suspension or cancellation.

Division 3 — Renewal of licence

163. Application for renewal of licence

A licensee may apply to the CEO to renew its licence.

164. Requirements for application for renewal of licence

- (1) An application for the renewal of a licence must —
 - (a) be made at least 3 months before the end of the term of the licence; and
 - (b) be made in the approved form; and
 - (c) confirm whether all recorded details of the licence remain correct; and
 - (d) if recorded details of the licence are not correct, specify the correct details; and
 - (e) include the information required by the approved form; and
 - (f) be accompanied by the prescribed fee.
- (2) If an application for the renewal of a licence does not comply with subsection (1), the CEO may reject the application without further consideration.

165. Considering application for renewal of licence

- (1) Sections 158 and 159 apply in relation to deciding an application for the renewal of a licence in the same way those sections apply to deciding an application for a licence.

- (2) If the term of a licence ends before an application for the renewal of the licence is decided, the term continues until the end of the day on which notice of the CEO's decision is given to the applicant under section 167(1).

166. Decision on application for renewal of licence

- (1) This section applies if an application to renew a licence is made under section 163.
- (2) The CEO must, within the prescribed period after receiving the application, consider the application and decide to —
 - (a) renew the licence; or
 - (b) renew the licence and either impose a new condition or amend an existing condition of the licence; or
 - (c) refuse to renew the licence.
- (3) If the CEO requests further information from a person under section 158(a) (as applied by section 165(1)) or 177(2)(b)), the period stated in subsection (2) is extended by the same number of days taken by the person to provide the CEO with all the requested information.

167. Notice of decision on application for renewal of licence

- (1) Within 10 business days after making a decision under section 166(2), the CEO must give the applicant written notice of the decision.
- (2) If the decision is to renew the licence and either impose a new condition or amend an existing condition of the licence, or refuse to renew the licence, the notice of the decision must —
 - (a) include a statement of reasons for the decision; and
 - (b) state that the applicant can request the CEO to reconsider the decision under section 195(1).

168. Renewal of licence

- (1) If the CEO decides to renew a licence, the CEO must issue a licence to the licensee to replace the previous licence.
- (2) The licence issued under subsection (1) —
 - (a) takes effect on the day after the day on which the term of the previous licence ends; and
 - (b) has effect for the period specified in the licence, being a period of not more than 5 years, subject to surrender, suspension or cancellation.

Division 4 — Variation of licence

169. Application for variation of licence

- (1) A licensee must apply to the CEO to vary its licence if there is, or there is proposed to be, a change to any of the following matters —
 - (a) the premises at which ART services are provided by the licensee;
 - (b) the ART services provided by the licensee;
 - (c) the licensee's trading name;
 - (d) a person with management or control of the licensee.
- (2) For the purposes of subsection (1)(a), an ART service provided by an authorised practitioner under section 29(1), or in a hospital, does not constitute a change of premises.

170. Requirements for application for variation of licence

- (1) An application to vary a licence must —
 - (a) be made in the approved form; and
 - (b) specify the change referred to in section 169(1) that is the subject of the application; and

- (c) be made —
 - (i) if the change is unexpected — as soon as practicable after the change happens; or
 - (ii) if the change is proposed to happen — within the prescribed period before the change happens;and
 - (d) include the information required by the approved form; and
 - (e) be accompanied by the prescribed fee.
- (2) If an application to vary a licence does not comply with subsection (1), the CEO may reject the application without further consideration.
- (3) Sections 158 and 159 apply, to the extent necessary, in relation to deciding an application for the variation of a licence, in the same way those sections apply to deciding an application for a licence.

171. Decision on application for variation of licence

- (1) This section applies if an application to vary a licence is made under section 169.
- (2) The CEO must, within the prescribed period after receiving the application, consider the application and decide to —
- (a) vary the licence; or
 - (b) vary the licence and either impose a new condition or amend an existing condition of the licence; or
 - (c) refuse to vary the licence.
- (3) If the CEO requests further information from a person under section 158(a) (as applied by section 165(1)) or 177(2)(b), the period stated in subsection (2) is extended by the same number of days taken by the person to provide the CEO with all the requested information.

172. Notice of decision on application for variation of licence

- (1) As soon as practicable after making a decision under section 171(2), the CEO must give the licensee written notice of the decision.
- (2) If the decision is to vary the licence and either impose a new condition or amend an existing condition of the licence, or refuse to vary the licence, the notice of the decision must —
 - (a) include a statement of reasons for the decision; and
 - (b) state that the applicant can request the CEO to reconsider the decision under section 195(1).

173. Variation of licence

- (1) If the CEO decides to vary a licence, the CEO must make the variation to the licence and reissue it to the licensee.
- (2) A variation of the licence does not restart or otherwise affect the term of the licence.

Division 5 — Other matters affecting licences

174. Annual service fee

Each year, a licensee must pay the prescribed annual service fee for that year before the prescribed date.

175. Surrender of licence

- (1) A licensee may surrender its licence by written notice given to the CEO.
- (2) The notice of surrender must —
 - (a) be in the approved form; and
 - (b) set out the date (the **surrender date**) on which the surrender takes effect, being a day not earlier than

3 months after the day on which the notice is given to the CEO; and

(c) include the information required by the approved form.

(3) The licence terminates on the surrender date.

(4) If a licensee (the **former licensee**) surrenders a licence under this section, the CEO may require the former licensee to do 1 or more of the following things by giving to the former licensee written notice of the requirement —

(a) if safe and appropriate, continue time-sensitive ART procedures until each ART participant can be safely transferred to the care of another licensee;

(b) transfer, in a timely manner, any clients, records or other information or stored reproductive material or embryos to an appropriate entity that is to provide an ART service in place of the licensee;

(c) provide specified information, in a specified way, to persons potentially affected by the surrender;

(d) take a prescribed action.

176. End of term of licence

(1) This section applies if the term of a licence ends and does not continue under section 165(2).

Note for this subsection:

Section 165(2) provides for the term of a licence to continue until an application for the renewal of the licence made before the end of the term is decided.

(2) The CEO may require the person who was the licensee under the licence (the **former licensee**) to do 1 or more of the following things by giving to the former licensee written notice of the requirement —

(a) if safe and appropriate, continue time-sensitive ART procedures until each ART participant can be safely transferred to the care of another licensee;

- (b) transfer, in a timely manner, any clients, records or other information or stored reproductive material or embryos to an appropriate entity that is to provide an ART service in place of the licensee;
- (c) keep a record the former licensee was required to keep under section 35 —
 - (i) for the period the record is required to be kept under that section; and
 - (ii) at the place and in the form specified in the notice;
- (d) provide specified information, in a specified way, to persons potentially affected by the term of the licence ending;
- (e) take a prescribed action.

Division 6 — Investigations as to fit and proper persons

177. Investigating whether person is fit and proper person

- (1) The CEO may, at any time, investigate whether any of the following persons is a fit and proper person —
 - (a) a person with management or control of a licensee;
 - (b) a person proposed to have management or control of a licensee;
 - (c) a person proposed to have management or control of a proposed licensee.
- (2) For the purpose of the investigation, the CEO may —
 - (a) investigate the licensing, compliance and accreditation history of the person being investigated; and
 - (b) request that the person being investigated provide the CEO with information that the CEO considers necessary for determining whether the person is a fit and proper person.

- (3) The request for information under subsection (2)(b) must —
 - (a) be made in writing; and
 - (b) specify the manner in which and the period (not less than 28 days after the request is made) within which the request must be complied with; and
 - (c) state that a failure to comply with the request will result in the CEO having sufficient grounds for forming the opinion that the person is not a fit and proper person.
- (4) If a request made under subsection (2)(b) is not complied with, the CEO is taken to have sufficient grounds for forming the opinion that the person being investigated is not a fit and proper person.

Division 7 — Conditions on licences

178. Conditions on licences

- (1) A licence is subject to the following conditions —
 - (a) the conditions (the ***mandatory conditions***) set out in subsections (3) and (4);
 - (b) each condition (a ***discretionary condition***) that is imposed by the CEO —
 - (i) when granting, renewing or varying the licence; or
 - (ii) under section 179(1)(b).
- (2) A reference to a condition in subsection (1)(b) includes a reference to the condition as amended from time to time under section 179(1)(a).
- (3) It is a condition of a licence that the licensee must ensure that ART services are provided in a way that ensures the health, safety and wellbeing of each of the following persons —
 - (a) a person born as a result of an ART procedure;
 - (b) an ART participant;

- (c) a contributing parent of reproductive material;
 - (d) an intended parent of an embryo or in relation to an ART procedure;
 - (e) a donor of reproductive material or an embryo.
- (4) It is a condition of a licence that the licensee must hold the insurances, accreditations, other licences and authorisations required by the regulations.
- (5) The CEO cannot impose a discretionary condition that is inconsistent with a mandatory condition.

179. Power to impose, amend or revoke discretionary conditions

- (1) The CEO may, at any time —
- (a) amend or revoke a discretionary condition of a licence; or
 - (b) impose a new condition on a licence.
- (2) The CEO may amend a discretionary condition, or impose a new condition, under subsection (1) only if the CEO considers the amended or new condition is necessary in the circumstances.
- (3) If the CEO acts under subsection (1), the CEO must notify the licensee in writing as soon as practicable after taking the action.
- (4) If the notice is about amending a discretionary condition or imposing a new condition, the notice must —
- (a) state the amended or new condition; and
 - (b) include a statement of reasons for the decision to amend the condition or impose the new condition; and
 - (c) state that the licensee can request the CEO to reconsider the decision under section 195(1).
- (5) An amendment or revocation of a discretionary condition, or imposition of a new condition, under subsection (1) takes effect on the day specified in the notice.

Division 8 — Disciplinary action

Subdivision 1 — Suspension with advance notice

180. Grounds for suspending licence

The CEO may suspend a licence if satisfied that —

- (a) a mandatory condition or discretionary condition of the licence has not been complied with; or
 - (b) the licensee has failed to ensure that the licensee's policies and procedures are complied with; or
 - (c) the licensee has contravened this Act, a Health Act or a corresponding law; or
 - (d) there has been a change to a matter to which section 169 applies and —
 - (i) the licensee did not apply to the CEO for a variation of the licence under section 170; or
 - (ii) the licensee applied to the CEO for a variation of the licence under section 170 and the CEO refused to vary the licence;
- or
- (e) a compliance notice given to the licensee has not been complied with; or
 - (f) the licensee has not paid a fee by the date on which the fee must be paid under this Act; or
 - (g) the CEO has formed the opinion that a person with management or control of the licensee is not a fit and proper person.

181. Show cause notice for proposed suspension

- (1) If the CEO proposes to suspend a licence, the CEO must give a written notice (the ***show cause notice***) to the licensee at least 14 days before the suspension is proposed to take effect.

- (2) The show cause notice must state —
 - (a) that the CEO proposes to suspend the licence; and
 - (b) the period of the proposed suspension; and
 - (c) the grounds on which the CEO relies for suspending the licence; and
 - (d) the actions, if any, that may be taken by the licensee in order for the suspension to be ended early; and
 - (e) that the licensee may respond to the show cause notice in writing given to the CEO within 7 days after receiving the notice.
- (3) The requirement to give a show cause notice under subsection (1) does not apply if the CEO decides to immediately suspend the licence under section 185.

182. Response to show cause notice

- (1) This section applies if a licensee receives a show cause notice under section 181(1) about a proposed suspension.
- (2) Within 7 days after receiving the notice, the licensee may give the CEO —
 - (a) written evidence or information to dispute the grounds for the proposed suspension; or
 - (b) a written undertaking to remedy the matter constituting, or each matter contributing to, the grounds for the proposed suspension and the timeframe for doing so.

183. Decision on suspension

- (1) After giving a licensee a show cause notice under section 181(1) and considering all evidence, information and undertakings provided by the licensee under section 182, the CEO must decide to —
 - (a) take no further action; or

- (b) accept an undertaking provided by the licensee instead of proceeding with the suspension; or
 - (c) suspend the licence.
- (2) As soon as practicable after making a decision under subsection (1), the CEO must give written notice of the decision to the licensee.
- (3) If the decision is to suspend the licence, the notice must —
 - (a) state that the CEO has decided to suspend the licence; and
 - (b) state the period of the suspension; and
 - (c) include a statement of reasons for the decision; and
 - (d) state the actions, if any, that may be taken by the licensee in order for the suspension to be ended early; and
 - (e) state that the licensee can request the CEO to reconsider the decision under section 195(1).
- (4) In addition to suspending the licence, the CEO may require the licensee to do 1 or more of the following things by giving written notice of the requirement to the licensee —
 - (a) if safe and appropriate, continue time-sensitive ART procedures until each ART participant can be safely transferred to the care of another licensee;
 - (b) transfer, in a timely manner, any clients, records or other information or stored reproductive material or embryos to an appropriate entity that is to provide an ART service in place of the licensee;
 - (c) provide specified information, in a specified way, to persons potentially affected by the suspension;
 - (d) take a prescribed action.

184. Ending suspension early

- (1) The CEO may end the suspension of a licence under this Subdivision early if satisfied that the grounds for the suspension have been appropriately addressed.
- (2) If the CEO decides to end a suspension early, the CEO must give the licensee written notice of the earlier day on which the suspension ends.

Subdivision 2 — Immediate suspension

185. Immediate suspension

- (1) This section applies if the CEO has reasonable grounds to believe —
 - (a) there is an immediate risk to the health, safety or wellbeing of any person being provided an ART service by a licensee; or
 - (b) there is an immediate risk to the safety or viability of any reproductive material or embryo stored by a licensee; or
 - (c) a prescribed circumstance exists in relation to a licensee or an ART service provided by the licensee.
- (2) The CEO may immediately suspend the licence of the licensee for a maximum period of 3 months by giving written notice of the suspension to the licensee.
- (3) The notice must —
 - (a) state that the CEO has decided to immediately suspend the licence; and
 - (b) state the period of the suspension; and
 - (c) include a statement of reasons for the decision to immediately suspend the licence; and

- (d) state the actions, if any, that may be taken by the licensee in order for the suspension to be ended early; and
 - (e) state that the licensee can request the CEO to reconsider the decision under section 195(1).
- (4) In addition to suspending the licence under this section, the CEO may require the licensee to do 1 or more of the following things by giving written notice of the requirement to the licensee —
 - (a) if safe and appropriate, continue time-sensitive ART procedures until each ART participant can be safely transferred to the care of another licensee;
 - (b) transfer, in a timely manner, any clients, records or other information or stored reproductive material or embryos to an appropriate entity that is to provide an ART service in place of the licensee;
 - (c) provide specified information, in a specified way, to persons potentially affected by the suspension;
 - (d) take a prescribed action.

186. Ending suspension early

- (1) The CEO may end the suspension of a licence under this Subdivision early if satisfied that the grounds for the suspension have been appropriately addressed.
- (2) If the CEO decides to end the suspension early, the CEO must give the licensee written confirmation of the earlier day on which the suspension ends.

Subdivision 3 — Cancellation

187. Grounds for cancelling licence

The CEO may cancel a licence if —

- (a) the licensee is found guilty of an offence under this Act;
or
- (b) for a licence that is suspended — the CEO is satisfied that the licensee has failed to comply with a requirement imposed on the licensee under section 183(4) or 185(4);
or
- (c) the licensee ceased providing ART services without surrendering its licence under section 175 and there is no interim licensee providing ART services under the licence; or
- (d) the licensee became unable to provide ART services under its licence, other than because its licence is suspended or cancelled, without notifying the CEO as required under section 191(2) and there is no interim licensee providing ART services under the licence; or
- (e) the CEO believes on reasonable grounds that the continued provision of ART services by the licensee presents an unacceptable risk to the health, safety or wellbeing of persons provided with those services; or
- (f) the CEO believes on reasonable grounds that the continued storage of reproductive material or embryos by the licensee presents an unacceptable risk to the safety or viability of the reproductive material or embryos; or
- (g) the CEO has formed the opinion that a person with management or control of the licensee is not a fit and proper person.

188. Show cause notice for proposed cancellation

- (1) If the CEO proposes to cancel a licence, the CEO must give a written notice (the **show cause notice**) to the licensee at least 14 days before the cancellation is proposed to take effect.
- (2) The show cause notice must state —
 - (a) that the CEO proposes to cancel the licence; and
 - (b) the grounds on which the CEO relies for cancelling the licence; and
 - (c) that the licensee may respond to the show cause notice in writing given to the CEO within 7 days after receiving the notice.

189. Response to show cause notice

- (1) This section applies if a licensee receives a show cause notice under section 188(1) about a proposed cancellation.
- (2) Within 7 days after receiving the notice, the licensee may give the CEO —
 - (a) written evidence or information to dispute the grounds for the proposed cancellation; or
 - (b) a written undertaking to remedy the matter constituting, or each matter contributing to, the grounds for the proposed cancellation and the timeframe for doing so.

190. Decision on cancellation

- (1) After giving a licensee a show cause notice under section 188(1) and considering all evidence, information and undertakings provided by the licensee under section 189, the CEO must decide to —
 - (a) take no further action; or
 - (b) accept an undertaking provided by the licensee instead of proceeding with the cancellation; or

- (c) suspend the licence instead of proceeding with the cancellation; or
 - (d) cancel the licence.
- (2) As soon as practicable after making a decision under subsection (1), the CEO must give written notice of the decision to the licensee.
- (3) If the decision is to suspend or cancel the licence, the notice must —
 - (a) state that the CEO has decided to suspend or cancel the licence; and
 - (b) include a statement of reasons for the decision; and
 - (c) if the decision is to suspend the licence, state —
 - (i) the period of the suspension; and
 - (ii) the actions, if any, that may be taken by the licensee in order for the suspension to be ended early;and
 - (d) if the decision is to cancel the licence — state the day on which the cancellation takes effect; and
 - (e) state that the licensee can request the CEO to reconsider the decision under section 195(1).
- (4) In addition to cancelling or suspending the licence, the CEO may require the licensee or former licensee to do 1 or more of the following things by giving written notice of the requirement to the licensee —
 - (a) if safe and appropriate, continue time-sensitive ART procedures until each ART participant can be safely transferred to the care of another licensee;
 - (b) transfer, in a timely manner, any clients, records or other information or stored reproductive material or embryos to an appropriate entity that is to provide an ART service in place of the licensee;

- (c) provide specified information, in a specified way, to persons potentially affected by the suspension or cancellation;
- (d) take a prescribed action.

Division 9 — Interim licensee

191. Licensee unable to provide ART services

- (1) This section applies if a licensee is unable to provide ART services (the ***affected services***) under its licence (the ***affected licence***) other than because its licence is suspended or cancelled.
- (2) The licensee must notify the CEO, in the approved form, within 7 days after the day on which the licensee becomes unable to provide the affected services.
- (3) The licensee is taken to have complied with subsection (2) if either of the following persons notifies the CEO as required under that subsection on behalf of the licensee —
 - (a) the legal representative of the licensee;
 - (b) if the licensee is an individual — any next of kin of the licensee.

192. Interim licensee to temporarily continue ART services

- (1) In this section —
affected licence has the meaning given in section 191(1);
affected services has the meaning given in section 191(1).
- (2) Subsection (3) applies if —
 - (a) the CEO receives a notice under section 191(2); or
 - (b) the CEO is otherwise satisfied that the circumstances referred to in subsection 191(1) exist.

- (3) The CEO may authorise a person (the ***interim licensee***) to continue to provide the affected services in place of the licensee if the CEO is satisfied that —
- (a) the licensee is unable to provide the affected services; and
 - (b) the interim licensee is able to provide the affected services in a safe manner.
- (4) The authorisation must —
- (a) be in writing; and
 - (b) be given to the interim licensee; and
 - (c) state —
 - (i) the period (the ***term***) for which the authorisation is in effect; and
 - (ii) the conditions, if any, that apply to the authorisation.
- (5) While the authorisation is in effect, the interim licensee is taken to be the licensee for the affected licence.
- (6) Before the end of the term for the authorisation, the interim licensee must —
- (a) apply under Division 2 for a licence to provide the affected services; or
 - (b) surrender the affected licence under section 175.

Division 10 — Review of decisions

Subdivision 1 — Internal reconsideration

193. Terms used

In this Division —

affected person has the meaning given in section 194(2);

reviewable decision has the meaning given in section 194(1).

194. Decisions of CEO that may be reviewed

- (1) A decision mentioned in column 1 of the Table is a ***reviewable decision***.
- (2) A person listed in column 2 of the Table opposite a reviewable decision is the ***affected person*** for the decision.

Table

Reviewable decision	Affected person
Grant of licence with condition under section 160(2)(b)	The applicant for the licence
Refusal to grant licence under section 160(2)(c)	The applicant for the licence
Renewal of licence with new condition or amended condition under section 166(2)(b)	The licensee
Refusal to renew licence under section 166(2)(c)	The licensee
Variation of licence with new condition or amended condition under section 171(2)(b)	The licensee
Refusal to vary licence under section 171(2)(c)	The licensee
Amend discretionary condition of, or impose new condition on, licence under section 179(1)	The licensee

Reviewable decision	Affected person
Suspension of licence under section 183(1)(c) or 185(2)	The licensee
Cancellation of licence under section 190(1)(d)	The licensee
Giving compliance notice under section 227(2)	The licensee

- (3) If the CEO fails to decide an application made under this Part by the end of the period within which the CEO is required to decide the application under this Part, the failure is taken to be a decision, made on the day after the period ends, to refuse the application.

195. Affected person may apply for reconsideration of decision

- (1) An affected person may, in the approved form, request the CEO to reconsider a reviewable decision for the person.
- (2) The request must be made within 10 business days, or a longer period allowed by the CEO, after —
- (a) the day on which the CEO gives the affected person notice of the reviewable decision; or
 - (b) if the CEO fails to make a decision — the day on which the CEO is taken to have made the decision under section 194(3).
- (3) The request must —
- (a) state the decision that the affected person wants the CEO to make after reconsidering the reviewable decision; and
 - (b) outline why that decision should be made.

- (4) The CEO may request the affected person to provide the CEO with any further information the CEO considers necessary for conducting the reconsideration.

196. Decision on reconsideration

- (1) This section applies if an affected person requests the CEO to reconsider a reviewable decision.
- (2) Within the prescribed period (the ***reconsideration period***) after receiving the request, the CEO must reconsider the reviewable decision and —
 - (a) confirm the decision; or
 - (b) amend the decision; or
 - (c) set aside the decision and make a new decision.
- (3) If the CEO requests further information under section 195(4), the reconsideration period is extended by the number of days between the request being made and the CEO receiving all the requested information.
- (4) Within 10 business days after the day on which the CEO reconsiders the reviewable decision, the CEO must give written notice to the affected person of the result of the reconsideration.
- (5) If the CEO does not make the decision sought by the affected person, the notice must —
 - (a) include a statement of reasons for the decision; and
 - (b) state that the affected person may apply to the State Administrative Tribunal for a review of the decision.
- (6) A failure of the CEO to reconsider the reviewable decision within the reconsideration period is taken to be a decision to confirm the original decision made on the day after the reconsideration period ends.

Subdivision 2 — External review

197. Application to State Administrative Tribunal for external review

A person aggrieved by a decision made, or taken to be made, by the CEO under section 196 may apply to the State Administrative Tribunal for a review of the decision.

Division 11 — Miscellaneous

198. Provision of ART services by health service provider

- (1) A health service provider that provides an ART service is exempt from the requirement to hold a licence under section 19.
- (2) A health service provider that provides an ART service has the obligations of a licensee under this Act.

Division 12 — Offences

199. Compliance with licence conditions

A licensee must comply with the conditions of its licence.

Penalty: imprisonment for 2 years and a fine of \$50 000.

200. Failure to comply with requirements imposed as part of disciplinary action or surrender

- (1) In this section —
licensee includes a former licensee.
- (2) This section applies if the CEO —
 - (a) requires a licensee to do stated things under section 175(4), 176(2), 183(4), 185(4) or 190(4); and
 - (b) gives to the licensee a notice stating the things the licensee is required to do.

- (3) The licensee must not, without reasonable excuse, fail to do the things stated in the notice.

Penalty for this subsection: a fine of \$50 000.

201. Failure to notify reportable events

- (1) A licensee must, in the approved form, notify the CEO of either of the following events (each a **reportable event**) within the period required by subsection (2) —

- (a) the death of an ART participant if an ART procedure is a direct cause of, or contributing factor for, the death;
- (b) a prescribed event that may cause significant harm to an ART participant, a person born as a result of an ART procedure, an embryo or reproductive material.

Penalty for this subsection: a fine of \$10 000.

- (2) The notice of the reportable event must be made —

- (a) in the case of the death of an ART participant — within 48 hours after the death; or
- (b) in the case of a prescribed event — within the prescribed period for the event.

202. Notice of changes affecting person with management or control

- (1) This section applies if a licensee becomes aware of a change in circumstance that may affect whether a person with management or control of the licensee is a fit and proper person.
- (2) The licensee must, in the approved form, notify the CEO of the change as soon as practicable after becoming aware of the change.

Penalty for this subsection: a fine of \$10 000.

203. False or misleading information in licensing application

A person must not provide information in an application made under this Part knowing it to be false or misleading in a material particular.

Penalty: a fine of \$25 000.

204. Advertising

A licensee must not engage in false or misleading advertising in relation to an ART service provided by the licensee.

Penalty: a fine of \$25 000.

205. Embryo unviable due to failure to follow policies and procedures

A licensee commits an offence if an embryo stored by the licensee becomes unviable because the licensee, or any staff or contractor of the licensee, fails to comply with the licensee's policies and procedures.

Penalty: imprisonment for 2 years and a fine of \$25 000.

206. CEO may require licensee to publish or provide information

- (1) The CEO may direct a licensee to publish information in accordance with subsection (2) on the following matters —
 - (a) the ART procedures performed as part of ART services provided by the licensee and the outcomes arising from the procedures;
 - (b) any enforcement action taken against the licensee by the Department under Part 9;
 - (c) where and how to lodge complaints against the licensee;
 - (d) any prescribed matter.

- (2) The CEO may specify the following requirements regarding how the licensee is to publish the information —
 - (a) the content and format of the information;
 - (b) places where the information must be made available;
 - (c) the period for which the information must be made available;
 - (d) other prescribed requirements.
- (3) The CEO may direct a licensee to provide information directly to a specific person or group of persons.
- (4) A licensee must comply with a direction given to the licensee under this section.
Penalty for this subsection: a fine of \$5 000.

207. Licensee to provide certain information if directed by CEO

- (1) The CEO may direct a licensee to provide information to the CEO for any of the following purposes —
 - (a) ensuring compliance with this Act;
 - (b) ensuring the health, safety and wellbeing of the following persons —
 - (i) a person born as a result of an ART procedure;
 - (ii) an ART participant;
 - (iii) a contributing parent of reproductive material;
 - (iv) an intended parent of an embryo or in relation to an ART procedure;
 - (v) a donor of reproductive material or an embryo;
 - (c) a prescribed purpose.
- (2) A licensee must provide information in accordance with a direction under subsection (1) within the period specified by the CEO.
Penalty for this subsection: a fine of \$10 000.

Part 8 — Investigation

Division 1 — Preliminary

208. Terms used

In this Part —

entry warrant means an entry warrant issued under section 222(1);

place means any land, building, structure, tent or vehicle;

vehicle means any thing capable of transporting people or things by air, road, rail or water, irrespective of whether the thing is permanently or semi-permanently stationary.

Division 2 — Authorised officers

209. Appointment of authorised officers

- (1) The CEO may, by instrument in writing, appoint an employee in the Department as an authorised officer for the purposes of this Act.
- (2) A person may be appointed as an authorised officer for a fixed or indefinite period.
- (3) The CEO may, by instrument in writing, revoke an appointment at any time.

210. CEO has functions of authorised officer

The CEO —

- (a) has and may perform all of the functions of an authorised officer; and
- (b) when performing those functions, has all the powers and immunities of an authorised officer.

211. Identity cards

- (1) The CEO must give each authorised officer an identity card.
- (2) An identity card must —
 - (a) identify the person as an authorised officer; and
 - (b) contain a recent photograph of the person.
- (3) An authorised officer must carry the authorised officer's identity card at all times when exercising powers or performing functions as an authorised officer.
- (4) A person who, without a reasonable excuse, fails to return the person's identity card to the CEO within 14 days after ceasing to be an authorised officer commits an offence.
Penalty for this subsection: a fine of \$1 000.

212. Production and display of identity card

- (1) An authorised officer may exercise a power in relation to a person only if —
 - (a) the authorised officer first produces the authorised officer's identity card for the person's inspection; or
 - (b) the authorised officer has the identity card displayed so it is clearly visible to the person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised officer may exercise the power and then produce the identity card for inspection by the person at the first reasonable opportunity.

213. Limitation on powers of authorised officers

- (1) The powers of an authorised officer may be limited in 1 or more of the following ways —
 - (a) under a regulation;

- (b) under a limitation or condition specified in the person's instrument of appointment as an authorised officer;
 - (c) by written notice given by the CEO to the authorised officer.
- (2) The CEO may revoke or vary a limitation or condition referred to in subsection (1)(b) or a notice referred to in subsection (1)(c).

Division 3 — Investigations

214. Investigations: purpose and procedure

An investigation may be carried out for either or both of the following purposes —

- (a) monitoring whether this Act is being complied with;
- (b) investigating a suspected contravention of this Act.

215. Entry powers

- (1) For the purposes of carrying out an investigation, an authorised officer may at any reasonable time enter and remain in or on any of the following —
 - (a) a place in or on which the authorised officer has reasonable grounds to believe that there are records relevant to an investigation;
 - (b) premises stated on a licence;
 - (c) premises specified in an authorisation given under section 29(1);
 - (d) a place in or on which the authorised officer has reasonable grounds to believe that a contravention of this Act has happened, is happening or is likely to happen.

- (2) An authorised officer is not entitled under this section to enter any part of a place that is used for residential purposes unless —
 - (a) the occupier of the premises consents; or
 - (b) the authorised officer has the authority of an entry warrant.
- (3) An authorised officer is not entitled under this section to enter any part of a place in which a person is currently undergoing an ART procedure unless the occupier of the premises and the person consent.

216. Powers after entry for investigation

- (1) An authorised officer who enters a place under section 215(1) or under the authority of an entry warrant may, for the purposes of an investigation, do any of the following —
 - (a) inspect the place and any thing at the place;
 - (b) search the place and any thing at the place;
 - (c) examine, measure, test, photograph or film the place and any thing at the place;
 - (d) operate a computer or other thing at the place;
 - (e) take any thing, or sample of or from a thing, at the place for analysis or testing;
 - (f) make a copy of, take an extract from, or download or print out, any record that the authorised officer suspects on reasonable grounds is relevant to the investigation;
 - (g) seize any thing that is or may afford evidence of a contravention of this Act;
 - (h) secure against interference a thing found in or on the place that cannot be conveniently removed;
 - (i) seize a record that the authorised officer suspects on reasonable grounds is relevant to the investigation and retain it for as long as is necessary for the purposes of this Act;

- (j) direct a person who is at the place to do any of the following —
 - (i) state the person's full name, date of birth, the address of where the person is living and the address of where the person usually lives;
 - (ii) answer (orally or in writing) questions asked by the authorised officer;
 - (iii) produce records that are relevant to the investigation and are in the person's custody or under the person's control;
 - (iv) operate a computer or other thing at the place;
 - (v) provide access (free of charge) to photocopying equipment at the place to enable the copying of documents;
 - (vi) give the authorised officer a translation, code, password or other information necessary to gain access to or interpret and understand a record;
 - (vii) give other assistance the authorised officer reasonably requires.
- (2) An authorised officer who enters a place under section 215(1) or under the authorisation of an entry warrant is entitled under this section to seize any records or other information relating to any of the following —
 - (a) a person born as a result of an ART procedure;
 - (b) an ART participant;
 - (c) a contributing parent of reproductive material;
 - (d) an intended parent of an embryo or in relation to an ART procedure;
 - (e) a donor of reproductive material or an embryo.
- (3) If an authorised officer takes any thing away from the place, the authorised officer must give the occupier of the place a receipt for the thing.

217. Obtaining information and documents

- (1) An authorised officer may, for the purposes of an investigation, do any of the following —
 - (a) direct a person to give such information as the authorised officer requires in relation to any matter the subject of the investigation;
 - (b) direct a person to answer a question put to the person in relation to any matter the subject of the investigation;
 - (c) direct a person to produce a record that is relevant to the investigation and is in the person's custody or under the person's control;
 - (d) examine and make a copy of a record produced in response to a direction under paragraph (c).
- (2) A direction under subsection (1)(a) or (b) —
 - (a) must specify the time at, or period within which, the information or answer is to be given; and
 - (b) may require the information or answer —
 - (i) to be given orally or in writing; or
 - (ii) to be given at or delivered to a place specified in the direction; or
 - (iii) in the case of written information or a written answer — to be delivered by means specified in the direction; or
 - (iv) to be verified by statutory declaration.
- (3) A direction under subsection (1)(c) —
 - (a) must be in writing given to the person required to produce the record; and
 - (b) must specify the time at, or period within which, the record is to be produced; and

- (c) may require that the record be produced —
 - (i) at a place specified in the direction; and
 - (ii) by any means specified in the direction.

218. Use of force and assistance

- (1) An authorised officer may use assistance and force that is reasonably necessary in the circumstances when exercising a power under this Act.
- (2) An authorised officer may request a police officer or other person to assist the authorised officer in exercising powers under this Act.
- (3) A person, while assisting an authorised officer at the request of the authorised officer and in accordance with this Act —
 - (a) has the same powers as those conferred on an authorised officer, other than the power in subsection (2); and
 - (b) is subject to the same responsibilities as an authorised officer; and
 - (c) has the same protection from liability as an authorised officer.
- (4) Section 213 applies in relation to a person assisting an authorised officer as if the person were an authorised officer.
- (5) Nothing in this section derogates from the powers of a police officer.

219. Obstruction

- (1) A person who hinders or obstructs the CEO, an authorised officer or a person assisting an authorised officer commits an offence.

Penalty for this subsection: a fine of \$15 000.

- (2) It is a defence to a charge of an offence against subsection (1) in relation to an authorised officer to prove —
- (a) that the authorised officer did not show the authorised officer's identity card to the person or did not otherwise identify themselves to the person as an authorised officer; and
 - (b) that the person did not otherwise know that the authorised officer was an authorised officer.

220. Directions generally

- (1) Except as otherwise stated in this Division, a direction under this Division may be given orally or in writing.
- (2) A person given a direction under this Division who, without reasonable excuse, fails to comply with the direction commits an offence.

Penalty for this subsection: a fine of \$15 000.

Division 4 — Entry warrants

221. Warrant to enter place

- (1) An authorised officer may apply to a magistrate for an entry warrant authorising the authorised officer to enter a place for the purposes of an investigation.
- (2) An authorised officer may apply for an entry warrant for a place even if, under this Act, the authorised officer may enter the place without an entry warrant.
- (3) The application must be made in accordance with the *Criminal Investigation Act 2006* section 13, and section 13(8) of that Act applies in relation to the entry warrant.
- (4) An application for an entry warrant must —
- (a) describe with reasonable particularity the place to be entered; and

- (b) state that the authorised officer has reasonable grounds for believing that entry to the place is necessary for the purposes of an investigation; and
- (c) state the purposes for which entry to the place is required; and
- (d) include any prescribed information.

222. Issue of entry warrant

- (1) A magistrate to whom an application is made under section 221 may issue an entry warrant if satisfied that there are reasonable grounds for believing that entry and inspection of the place are necessary for the purposes of an investigation.
- (2) An entry warrant must contain the following information —
 - (a) a reasonably particular description of the place to which it relates;
 - (b) a reasonably particular description of the purposes for which entry to the place is required;
 - (c) the period, not exceeding 7 days, in which it may be executed;
 - (d) the name of the magistrate who issued it;
 - (e) the date and time when it was issued.

223. Effect of entry warrant

- (1) An entry warrant has effect according to its content and this section.
- (2) An entry warrant comes into force when it is issued by a magistrate.
- (3) An entry warrant authorises the authorised officer executing the warrant to, during the period of the warrant —
 - (a) enter the place described in the warrant; and
 - (b) exercise the powers referred to in section 216.

224. Execution of entry warrant

- (1) An entry warrant may be executed by the authorised officer to whom it is issued or by any other authorised officer.
- (2) An authorised officer executing an entry warrant must, at the reasonable request of a person apparently in charge of the place, produce the warrant.

Division 5 — Seized things and forfeiture

225. Forfeiture on conviction

- (1) On the conviction of a person for an offence under this Act, the court may order the forfeiture to the State of any thing that was the subject of, used in or otherwise involved in, the commission of the offence.
- (2) The court may make the order —
 - (a) whether or not the thing was seized in the course of the investigation of the offence; and
 - (b) if the thing was seized, whether or not it has been returned to its owner.
- (3) The court may make any order it considers appropriate to enforce the forfeiture.

226. Disposal of seized and forfeited property

The Department, when assisting the Minister in the administration of this Act, is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2006*.

Part 9 — Enforcement

Division 1 — Compliance notices

227. CEO may give compliance notice for contravention of Act

- (1) This section applies if the CEO believes on reasonable grounds that a licensee —
 - (a) is contravening a provision of this Act; or
 - (b) has contravened a provision of this Act in circumstances that make it likely the contravention will be repeated.
- (2) The CEO may, by giving the licensee a notice (a **compliance notice**), require the licensee to remedy the contravention or to prevent a further contravention.
- (3) The compliance notice must —
 - (a) be in writing; and
 - (b) specify the provision of this Act (the **relevant provision**) that the CEO believes is being, or has been, contravened; and
 - (c) state, briefly, how it is believed the relevant provision is being, or has been, contravened; and
 - (d) specify the measures (the **remedial action**) that must be taken to remedy the contravention, or to prevent a further contravention, of the relevant provision; and
 - (e) specify the date by which the remedial action must be taken; and
 - (f) state that a failure to comply with the compliance notice is an offence under this Act and grounds for taking disciplinary action under Part 7 Division 8; and
 - (g) state that the licensee can, under section 195(1), request the CEO to reconsider the decision to give the compliance notice.

- (4) The date specified under subsection (3)(e) must not be earlier than 7 days after the day on which the compliance notice is given to the licensee.
- (5) The CEO may, by written notice given to the licensee, amend or cancel the compliance notice.

228. Failure to comply with compliance notice

- (1) In this section —
remedial action has the meaning given in section 227(3)(d).
- (2) A licensee given a compliance notice must not, without reasonable excuse, fail to take the remedial action stated in the compliance notice by the date by which the remedial action must be taken.

Penalty for this subsection: a fine of \$50 000.

Division 2 — Liability of certain persons

229. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 19(1)	s. 24(1) and (2)
s. 25(1)	s. 26(1) and (4)
s. 66	s. 92(2)
s. 93(2)	s. 94(2)
s. 95	s. 112

s. 113(3)	s. 115
s. 152	s. 205

230. Liability of members of partnership for acts of other members of partnership

- (1) If a member of a partnership is alleged to have committed an offence under this Act, every person who was a member of the partnership at the time of the alleged offence may be charged with the offence whether or not the person who is alleged to have committed the offence is charged with the offence.
- (2) Subject to subsection (3), a member of a partnership is taken to have committed an offence if —
 - (a) the member of a partnership is charged with the offence as permitted under subsection (1); and
 - (b) it is proved that another member of the partnership committed the offence.
- (3) If a member of a partnership is charged as permitted under subsection (1), it is a defence for the member to prove that —
 - (a) the offence was committed without the member's knowledge, authority or consent; and
 - (b) the member took all the measures to prevent the commission of the offence that the member could reasonably be expected to have taken, having regard to all the circumstances.

Division 3 — Legal proceedings

231. Who may commence proceedings for simple offence

A prosecution for a simple offence under this Act may be commenced only by the CEO or a person authorised by the CEO to do so.

232. Time limit for prosecution of simple offence

- (1) A prosecution for a simple offence under this Act must be commenced within 2 years after the day on which the offence is alleged to have been committed.
- (2) However, if a prosecution notice alleging an offence specifies the day on which evidence of the alleged offence first came to the attention of a person authorised under section 231 to commence the prosecution —
 - (a) the prosecution may be commenced within 2 years after that day; and
 - (b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.
- (3) The day on which evidence first came to the attention of a person authorised under section 231 to commence a prosecution is, in the absence of evidence to the contrary, the day specified in the prosecution notice.

233. Averments in prosecution documents

In a prosecution for an offence under this Act, an averment as to any of the following matters in the prosecution notice or indictment is evidence of the matters averred —

- (a) that a substance referred to in the prosecution notice or indictment was or contained reproductive material or an embryo as specified;
- (b) that a person named in the prosecution notice or indictment was or was not, on a specified date —
 - (i) a licensee; or
 - (ii) a person with management or control of a licensee; or
 - (iii) a person who is licensed to provide any specified ART service; or

- (iv) the holder of an authorisation given under section 192(3); or
- (v) an employee of a specified licensee; or
- (vi) an authorised officer appointed for the purpose of this Act;
- (c) that specified premises named in the prosecution notice or indictment were or were not, on a specified date, premises to which a specified licence relates;
- (d) that a licence referred to in the prosecution notice or indictment was, on a specified date —
 - (i) subject to specified conditions; or
 - (ii) suspended or cancelled.

234. Court to notify CEO of conviction of offence under Act

If any court convicts a person of an offence under this Act, the registrar of the court must notify the CEO of the conviction and the penalty imposed.

Part 10 — Assisted Reproductive Technology Advisory and Review Board

Division 1 — Establishment

235. Board established

A body called the Assisted Reproductive Technology Advisory and Review Board is established.

236. Status

The Board is an agent of the Crown and has the status, immunities and privileges of the Crown.

Division 2 — Functions and powers

237. Functions of Board

The Board has the following functions —

- (a) to provide to the Minister or the CEO, on its own initiative or on request —
 - (i) information about the regulation of ART procedures; and
 - (ii) advice about the medical, social, scientific, legal and ethical issues associated with ART procedures;
- (b) to provide guidance to licensees, if requested, on any of the following —
 - (i) matters relating to potential surrogacy arrangements;
 - (ii) matters relating to the provision of ART services;
 - (iii) matters of concern raised by an employee of a licensee;

- (c) to provide to the CEO recommendations about genetic conditions, diseases or abnormalities that can be added to the list approved under section 65;
- (d) to consider and decide applications made to the Board under this Act;
- (e) to perform any other function given to the Board under this Act.

238. Powers of Board

The Board has all the powers it needs to perform its functions.

Division 3 — Staff and assistance

239. Staff and services

The CEO must ensure that the Board is provided with the staff, resources and support that are reasonably necessary to enable it to perform its functions.

240. Assistance

- (1) The Board may, with the approval of the Minister, invite any person with special knowledge, experience or skills to assist the Board in a particular matter.
- (2) A person who has been invited to assist the Board may attend meetings of the Board and participate in its deliberations but cannot vote at a meeting.

Division 4 — Accountability

241. Minister may give directions

- (1) The Minister may give written directions to the Board with respect to the performance of its functions, and the Board must give effect to any such direction.

- (2) However, a direction under subsection (1) cannot be about the performance of a function in relation to a particular person or matter.

242. Minister to have access to information

- (1) In this section —

document includes any tape, disk or other device or medium on which information is recorded or stored;

information means information specified, or of a description specified, by the Minister that relates to the functions of the Board.

- (2) The Minister is entitled —

- (a) to have information in the possession of the Board; and
- (b) if the information is in or on a document, to have, and make and retain copies of, that document.

- (3) However, the Minister is not entitled to have personal information about a person (the **relevant person**) unless written consent to the disclosure of the information is given by —

- (a) the relevant person; or
- (b) a person authorised by the regulations to give consent on behalf of the relevant person.

- (4) For the purposes of subsection (2), the Minister may —

- (a) request the Board to give information to the Minister; and
- (b) request the Board to give the Minister access to information; and
- (c) request the use of a staff member to obtain the information and give it to the Minister.

- (5) The Board must comply with a request under subsection (4).

Division 5 — Membership

243. Membership of Board

- (1) The Board consists of 5 to 7 members appointed by the Minister.
- (2) Of the Board members —
 - (a) 2 must be suitably qualified medical practitioners, at least 1 of whom has what the Minister considers to be extensive experience in relation to ART procedures; and
 - (b) at least 1 must be a lawyer that the Minister considers has knowledge or experience with family law or the law as it relates to ART services; and
 - (c) 1 must be a government lawyer (as defined in the *Legal Profession Uniform Law (WA)* section 6(1)) employed in the State Solicitor's Office; and
 - (d) 1 must be a person who is either —
 - (i) a person who has personal experience of an ART service; or
 - (ii) a person who was born as a result of an ART procedure.
- (3) The Minister must ensure that, taken together, the members have what the Minister considers to be a suitable level of knowledge and experience in the following areas within the field of health —
 - (a) counselling (for example, infertility counselling or genetic counselling);
 - (b) ethics;
 - (c) policy;
 - (d) research.
- (4) No more than 1 person with management or control of a licensee may be on the Board at any one time.

244. Chairperson and deputy chairperson

- (1) The Minister must designate 1 member to be the chairperson of the Board and another member to be the deputy chairperson of the Board.
- (2) If the chairperson is unable to act because of illness, absence or other cause or if there is no chairperson, the deputy chairperson must act in the chairperson's place.
- (3) An act or omission of the deputy chairperson acting in the chairperson's place cannot be questioned on the ground that the occasion to act in the chairperson's place had not arisen or had ceased.

245. Term of office

- (1) A member holds office for the term, not exceeding 3 years, that is specified in the member's instrument of appointment.
- (2) A member is eligible for reappointment.

246. Casual vacancies, resignation and removal from office

- (1) In this section —
misconduct includes conduct that renders the member unfit to hold office as a member even though the conduct does not relate to a duty of the office.
- (2) The office of a member becomes vacant if the member —
 - (a) dies, resigns or is removed from office under this section; or
 - (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (c) is convicted of an offence punishable by imprisonment for more than 12 months.

- (3) A member may at any time resign from office by written notice given to the Minister.
- (4) The Minister may remove a member from office on the grounds of —
 - (a) neglect of duty; or
 - (b) misconduct or incompetence; or
 - (c) mental or physical incapacity, other than temporary illness, impairing the performance of the member's duties; or
 - (d) absence, without leave, from 3 consecutive meetings of the Board of which the member has had notice.

247. Extension of term of office during vacancy

- (1) If the office of a member becomes vacant because the member's term of office expires, the member continues to be a member during that vacancy until the day on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) Subsection (1) does not apply if the office of a member becomes vacant under section 246.
- (3) The maximum period for which a member continues to be a member under this section after the member's term of office expires is 3 months.

248. Remuneration of members

A member is entitled to be paid the remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

Division 6 — Board meetings

249. Holding meetings

- (1) The first meeting of the Board must be convened by the chairperson, and subsequent meetings must be held at times and places determined by the Board.
- (2) The Board must meet at least once a year.
- (3) A special meeting of the Board may at any time be convened by the chairperson.

250. Quorum

A quorum for a meeting of the Board is 4 members.

251. Presiding member

- (1) The chairperson, if present, must preside at a meeting of the Board.
- (2) If neither the chairperson, nor the deputy chairperson acting in the chairperson's place, is presiding at a meeting of the Board, the members present at the meeting must elect 1 of their number to preside.

252. CEO or nominated representative may attend meetings

The CEO, or a nominated representative of the CEO, may attend a meeting of the Board, but cannot vote at the meeting.

253. Procedure at meetings

The Board may determine its own meeting procedures to the extent that they are not fixed by this Act.

254. Voting

- (1) At a meeting of the Board, each member present has a deliberative vote unless section 259 prevents the member from voting.

(2) In the case of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.

(3) A question is resolved by a majority of the votes cast.

255. Holding meetings remotely

The presence of a person at a meeting of the Board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

256. Resolution without meeting

A resolution provided in writing to each member and assented to by a majority of members has the same effect as if it had been passed at a meeting of the Board.

257. Minutes

The Board must cause accurate minutes to be kept of the proceedings at each of its meetings.

Division 7 — Disclosure of interests

258. Disclosure of material personal interest

(1) A member who has a material personal interest in a matter being considered or about to be considered by the Board must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

Penalty for this subsection: a fine of \$10 000.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting.

259. Voting by member with material personal interest

- (1) A member who has a material personal interest in a matter that is being considered by the Board —
 - (a) must not vote, whether at a meeting or otherwise, on the matter; and
 - (b) must not be present while the matter is being considered at a meeting.
- (2) A reference in subsection (1) to a matter includes a reference to a proposed resolution under section 260 in respect of the matter, whether relating to that member or a different member.
- (3) The fact that a member is a licensee or an employee of a licensee does not, of itself, constitute a material personal interest for the purpose of subsection (1).

260. Section 259 may be declared inapplicable

Section 259 does not apply if —

- (a) a member has disclosed under section 258 an interest in a matter; and
- (b) the Board has at any time passed a resolution that —
 - (i) specifies the member, the interest and the matter; and
 - (ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

261. Quorum in circumstances where member is disqualified due to material personal interest

- (1) Despite section 250, if a member is disqualified under section 259 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 members who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present.
- (2) The Minister may deal with a matter to the extent that the Board cannot deal with it because of subsection (1).

Division 8 — Committees

262. Establishment of committees

- (1) The Board may establish committees to assist it in the performance of its functions.
- (2) The Board may discharge, alter or reconstitute a committee.
- (3) The Board may —
 - (a) determine the functions, membership and constitution of a committee; and
 - (b) appoint any members of the Board or other persons as it thinks fit to be members of a committee.

263. Directions to committee

- (1) The Board may give directions to a committee with respect to the committee's functions and procedures.
- (2) A committee must comply with a direction given to it by the Board.

264. Committee to determine own procedures

Subject to any directions of the Board, a committee may determine its own procedures.

265. Remuneration of committee members

A member of a committee is entitled to be paid any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

Division 9 — Review by State Administrative Tribunal of Board's decision

266. Review of decision by Board

- (1) If the Board makes a decision on an application made by a licensee under this Act, the licensee may apply to the State Administrative Tribunal for a review of the decision.
- (2) The application must be made within 28 days after the day on which the Board gives the licensee notice of the decision.

Division 10 — Miscellaneous

267. Execution of documents by Board

- (1) A document is duly executed by the Board if it is signed on behalf of the Board by 2 members authorised to do so under subsection (2).
- (2) The Board may authorise any of its members to sign documents on behalf of the Board, either generally or subject to the conditions that are specified in the authorisation.
- (3) A document purporting to be executed in accordance with this section is taken to be duly executed until the contrary is shown.

268. Board to give annual report to CEO regarding activities of Board in previous financial year

- (1) The Board must, not later than 31 August in each year, prepare and give to the CEO a report for the previous financial year that

includes details of the activities of the Board during that year, including —

- (a) any approvals granted by the Board; and
 - (b) any advice provided by the Board.
- (2) As soon as practicable after receiving the report, but not later than 30 September in the year that the report is received, the CEO must provide a copy of the report to the Minister.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is received by the Minister, but not later than 1 December of the year in which it is received.
- (4) The report must not include —
 - (a) personal information about any of the following persons —
 - (i) a person born as the result of an ART procedure;
 - (ii) a person who underwent an ART procedure or another person who is an intended parent in relation to the procedure;
 - (iii) a donor of reproductive material or an embryo;
 - (iv) a contributing parent of reproductive material;
 - (v) an intended parent under a surrogacy arrangement;
 - (vi) a person who performs or supervises an ART procedure;
 - or
 - (b) information that may prejudice any criminal or civil proceeding.

269. Protection from personal liability for torts

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Division.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

Part 11 — Administration

270. Confidentiality

- (1) If a person obtains information because of the person's office, position, employment or engagement for the purposes of this Act, the person must not collect, use or disclose the information, directly or indirectly, unless the collection, use or disclosure is authorised under subsection (2).

Penalty for this subsection: a fine of \$25 000.

- (2) The collection, use or disclosure of information to which subsection (1) applies is authorised if the information is collected, used or disclosed in good faith —
- (a) for the purpose of, or in connection with, performing a function under this Act or another written law; or
 - (b) as required or allowed under this Act or another written law; or
 - (c) for the purposes of any legal proceedings arising under this Act or another written law; or
 - (d) under an order of a court or other person or body acting judicially; or
 - (e) with the written consent of the person to whom the information relates; or
 - (f) in prescribed circumstances.
- (3) Subsection (1) does not prevent the recording, use or disclosure of statistical or other de-identified information.
- (4) The CEO may disclose, or authorise the disclosure of, de-identified information to —
- (a) a public service officer; or
 - (b) an employee as defined in the *Health Services Act 2016* section 6; or

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- (c) an authority in another jurisdiction that administers a corresponding law; or
 - (d) a prescribed entity.
- (5) In subsections (3) and (4) —
de-identified information means information that relates to an individual if the individual's identity is not apparent, and cannot reasonably be ascertained, from the information.

271. Delegation by CEO

- (1) The CEO may delegate any power or duty of the CEO under another provision of this Act, other than the power to appoint authorised officers, to any of the following persons —
 - (a) an employee in the Department;
 - (b) an employee of a health service provider;
 - (c) a prescribed class of person.
- (2) The delegation must be in writing and signed by the CEO.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising a power or performing a duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the CEO to perform a function through an officer or agent.

272. Approved forms

- (1) The CEO may approve forms for use under this Act.
- (2) The CEO must make approved forms available on a website maintained by or on behalf of the Department.

273. Annual report on operation of Act

- (1) The CEO must, no later than 28 September in each year, prepare and give to the Minister a report on the operation of this Act during the preceding financial year.
- (2) The report must include the following —
 - (a) an overview of the businesses that provide ART services, including the number of licensees;
 - (b) an overview of any enforcement action taken under Part 9;
 - (c) the prescribed information.
- (3) The Minister may direct the CEO to include information about specified matters in the report.
- (4) The report may include any matters that the CEO considers appropriate.
- (5) The report must not include —
 - (a) personal information about any of the following persons —
 - (i) a person born as the result of an ART procedure;
 - (ii) a person who underwent an ART procedure or another person who is an intended parent in relation to the procedure;
 - (iii) a donor of reproductive material or an embryo;
 - (iv) a contributing parent of reproductive material;
 - (v) an intended parent under a surrogacy arrangement;
 - (vi) a person who performs or supervises an ART procedure;
 - or
 - (b) information that may prejudice any criminal or civil proceeding.

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- (6) The report must be —
- (a) combined with another annual report of the Department required to be submitted to the Minister under the *Financial Management Act 2006* Part 5; or
 - (b) published on a website maintained by or on behalf of the Department and laid before each House of Parliament no later than 1 December of the year in which it is prepared.

Part 12 — Miscellaneous

274. Regulations

- (1) The Governor may make regulations prescribing matters —
 - (a) required or permitted by this Act to be prescribed: or
 - (b) necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide for the following —
 - (a) fees and charges payable in relation to any matter under this Act and the recovery of those fees and charges;
 - (b) the information to be set out in licences;
 - (c) requirements for the performance or supervision of ART procedures;
 - (d) matters relating to —
 - (i) the authorisation of health practitioners to perform ART procedures; and
 - (ii) authorised practitioners performing ART procedures;
 - (e) requirements and obligations of licensees when obtaining consent for ART services;
 - (f) requirements for storing reproductive material and embryos;
 - (g) reporting requirements for a licensee given a compliance notice;
 - (h) reporting requirements for licensees given a notice requiring the licensee to do stated things under section 175(4), 183(4), 185(4) or 190(4);
 - (i) requirements for licensees to report to the CEO;

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- (j) requirements for applications made to the Board for approvals under this Act, including, for example, any fees for the applications.
- (3) The regulations may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of \$25 000.

275. Regulations may adopt medical codes

- (1) In this section —
medical code means a code, code of practice, quality assurance scheme, standard or specification, published in or outside Australia, that —
 - (a) does not by itself have legislative effect in the State; and
 - (b) relates to ART services, the use of medical products or the provision of health services.
- (2) The regulations may adopt, either wholly or in part, any medical code.
- (3) The adoption may be by incorporating the medical code in the regulations or by reference.
- (4) If the regulations adopt a medical code by reference —
 - (a) the medical code is adopted as existing or in force when the regulations are made; and
 - (b) any amendments made to the medical code after the regulations are made have no legal effect as part of the regulations unless they are specifically adopted by later regulations or a later amendment to the regulations.
- (5) If the regulations adopt a medical code by reference, the CEO must ensure that —
 - (a) a copy of the medical code, as adopted in the regulations, is available, without charge, for public inspection; and

- (b) if any part of the medical code is in a language other than English — an accurate English translation is also available, without charge, for public inspection; and
- (c) details of where a document mentioned in paragraph (a) or (b) may be inspected or obtained are published on a website maintained by or on behalf of the Department.

276. Interaction with *Human Reproductive Technology Act 1991*

- (1) In sections 209(1), 214(a) and (b), 215(1)(d), 216(1)(g) and (i), 231, 232(1) and 233, a reference to this Act includes the *Human Reproductive Technology Act 1991*.
- (2) Without limiting section 270, that section applies if a person obtains information under Part 8 when acting for the purposes of the *Human Reproductive Technology Act 1991*.

277. Refusals not prevented by Act

- (1) Nothing in this Act prevents any of the following —
 - (a) a licensee refusing to give a person access to an ART procedure performed, or to be performed, as part of an ART service provided by the licensee;
 - (b) a health practitioner refusing to provide a service for which the health practitioner is registered —
 - (i) that involves the performance or supervision of an ART procedure; or
 - (ii) that otherwise relates to a person undergoing, or potentially undergoing, an ART procedure;
 - (c) a health practitioner refusing to provide a service for which the health practitioner is registered to a person who —
 - (i) is a party (as defined in section 105) to a surrogacy arrangement; or
 - (ii) is considering entering into a surrogacy arrangement.

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- (2) For the purposes of subsection (1)(b) and (c), a health practitioner is **registered** for a service if the service falls within the practice of the health profession (as defined in the *Health Practitioner Regulation National Law (Western Australia)* section 5) in which the health practitioner is registered to practise under the *Health Practitioner Regulation National Law (Western Australia)*.
- (3) Subsection (1) does not affect a person's duty under section 5(2) to have regard to the principles in section 5(2) in performing a function or providing a service.
- (4) To avoid doubt, subsection (1) does not authorise anything that, apart from subsection (1), would be unlawful discrimination, including, for example, discrimination based on sexual orientation, relationship status, gender identity, disability, race or religion.

278. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act and prepare a report based on the review —
 - (a) as soon as practicable after the 3rd anniversary of the day on which this section comes into operation; and
 - (b) after that, at intervals of not more than 5 years.
- (2) A review must address whether this Act remains contemporary having regard to the effect of changes in science, technology, medical practice and societal views on the subject matter of this Act.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the expiry of the period in which the report is to be prepared under subsection (1)(a) or (b).

Part 13 — Repeals

279. Written laws repealed

- (1) These written laws are repealed —
 - (a) the *Artificial Conception Act 1985*;
 - (b) the *Surrogacy Act 2008*;
 - (c) the *Human Reproductive Technology Regulations 1993*;
 - (d) the *Surrogacy Regulations 2009*.
- (2) The *Human Reproductive Technology Directions 2021* and the *Surrogacy Directions 2022* are revoked.

Part 14 — Transitional provisions

Division 1 — Preliminary

280. Terms used

- (1) In this Part —

commencement day means the day on which this section comes into operation;

former Human Reproductive Technology Act 1991 means the *Human Reproductive Technology Act 1991* as in force immediately before commencement day;

repealed, in relation to a written law, means the written law as in force immediately before its repeal by section 279.

- (2) A term used in this Part that is defined in a repealed written law has the same meaning in this Part as it has in that law.

281. Interpretation Act 1984 not affected

This Part is in addition to the *Interpretation Act 1984* and does not limit or otherwise affect the operation of the provisions of that Act.

282. Application to reproductive material collected, and embryos created, before commencement

This Act applies in relation to reproductive material collected, or an embryo created, in an ART procedure performed before commencement day.

**Division 2 — Parentage of children of pregnancies resulting
from ART procedures**

283. Recognition of parentage under repealed *Artificial Conception Act 1985* continues

- (1) Part 3 Division 3 applies in relation to the parentage of a child regardless of whether a pregnancy mentioned in that Division was achieved, or an ART procedure mentioned in that Division was performed, before, on or after commencement day.
- (2) This section does not affect the application of the *Interpretation Act 1984* section 37 in relation to the repeal of the *Artificial Conception Act 1985* and the operation of the repealed Act in relation to the parentage of a child.

**Division 3 — Matters related to assisted reproductive
technology procedures**

284. Existing consents

- (1) If a person gave effective consent for something to be done in relation to human gametes under the former *Human Reproductive Technology Act 1991* —
 - (a) the human gametes the subject of the consent are taken to be reproductive material as defined in section 9(1); and
 - (b) the consent is taken to be effective for the thing to be done in relation to the reproductive material for the purposes of section 50(2).
- (2) If a person gave effective consent for something to be done in relation to a human egg undergoing fertilisation, or a human embryo brought about by an in vitro fertilisation procedure, under the former *Human Reproductive Technology Act 1991* —
 - (a) the human egg or human embryo the subject of the consent is taken to be an embryo as defined in section 9(2) and (3); and

- (b) the consent is taken to be effective for the thing to be done in relation to the embryo for the purposes of section 50(2).
- (3) If a consent to which subsection (1) or (2) applies is for reproductive material or an embryo to be stored and the consent does not specify a period for which the material or embryo may be stored, the consent is taken to specify that the material or embryo are to be stored for a period of 10 years after the day on which the consent was signed.

285. Previous counselling

Counselling undertaken before commencement day pursuant to requirements under the *Human Reproductive Technology Act 1991* or the *Human Reproductive Technology Directions 2021* clause 5.8 is taken to be sufficient compliance with a requirement under this Act for counselling to have been received or to be provided or made available.

286. Information provided before commencement day

- (1) This section applies if —
 - (a) a licensee is required to provide a person with information under section 51(2)(c) before the person gives consent for something to be done as part of an ART service provided by the licensee; and
 - (b) the information was provided to the person under the *Human Reproductive Technology Directions 2021* Part 4 or the *Surrogacy Directions 2022* clause 10 before commencement day.
- (2) The licensee is taken to have complied with section 51(2)(c) in relation to the person giving the consent.

287. Existing approval of Council

If the Council gave approval for a matter under the *Human Reproductive Technology Act 1991*, and the approval is in force immediately before commencement day, the approval is taken to be approval given by the Board for the same matter under this Act.

288. Pending applications for approval of Council

- (1) This section applies to an application made to the Council for approval of a matter under the *Human Reproductive Technology Act 1991* but not decided or withdrawn before commencement day.
- (2) If the matter is a matter that the Board can approve under this Act, the application is taken to be an application made to the Board under this Act.
- (3) The Board may decide the application under this Act.

Division 4 — Licensing of assisted reproductive technology services

289. Pending licence applications

- (1) This section applies to an application for a licence made under the *Human Reproductive Technology Act 1991* section 29 but not decided or withdrawn before commencement day.
- (2) The application is taken to —
 - (a) be an application for a licence made under section 156; and
 - (b) comply with section 157(1).
- (3) The CEO may deal with the application under Part 7.

290. Existing licences

- (1) This section applies to a licence issued under the *Human Reproductive Technology Act 1991* and in force immediately before commencement day, regardless of whether the licence is —
 - (a) a storage licence; or
 - (b) a practice licence; or
 - (c) both a storage licence and a practice licence.
- (2) The licence continues in force as a licence under this Act —
 - (a) issued on the same terms and in relation to the same premises; and
 - (b) subject to the same conditions imposed on the licence by the CEO.
- (3) A condition of the licence mentioned in subsection (2)(b) is taken to be a discretionary condition of the licence.
- (4) A condition imposed on the licence by a provision of the *Human Reproductive Technology Act 1991* has no effect.
- (5) Nothing in this section prevents the licence being suspended or cancelled under Part 7 Division 8.

291. Existing exemptions for certain procedures

- (1) This section applies to an exemption deemed to have been issued, or specifically issued, under the *Human Reproductive Technology Act 1991* section 28(1) and in force immediately before commencement day.
- (2) Section 19(1) does not apply to the medical practitioner who is subject to the exemption.
- (3) The CEO may take disciplinary action against the medical practitioner.

- (4) For the purpose of the CEO taking disciplinary action against the medical practitioner, the exemption is taken to be a licence and the medical practitioner is taken to be a licensee.

292. Existing interim authorisations

- (1) An authorisation issued under the *Human Reproductive Technology Act 1991* section 30 and in force immediately before commencement day is taken to be an authorisation by the CEO under section 192(3).
- (2) A direction applying in relation to the authorisation under the *Human Reproductive Technology Act 1991* section 30(4) continues to apply to the authorisation.

293. Pending reviews

- (1) This section applies if —
 - (a) before commencement day, the *Human Reproductive Technology Act 1991* section 42 (**deleted section 42**) applied in relation to a decision; and
 - (b) immediately before commencement day, an action that could or was required to have been taken under deleted section 42 had not been taken.
- (2) Despite the amendments made by Part 17 Division 11 —
 - (a) the action may be taken on or after commencement day if taking the action would be consistent with deleted section 42, including, for example, complying with any time limit for taking the action; and
 - (b) the obligation to take particular action under deleted section 42 continues.
- (3) If a person applies for a review under subsection (2)(a), the review is taken to have been started, and must be dealt with and concluded, under Part 7 Division 10.

294. Existing reviews in progress

- (1) A review of a decision by the State Administrative Tribunal that was commenced under the *Human Reproductive Technology Act 1991* section 42, but not concluded before commencement day, may be continued and concluded under that Act as if that Act had not been amended by Part 17 Division 11.
- (2) If a licence, exemption or interim authorisation is granted because of subsection (1), this Division applies to the licence, exemption or interim authorisation as if the licence, exemption or interim authorisation were in effect under the *Human Reproductive Technology Act 1991* immediately before commencement day.

295. Existing and incomplete records

- (1) This section applies if a person had an obligation to make and keep a record under the *Human Reproductive Technology Act 1991*.
- (2) If the person had not made the record before commencement day, the obligation to make the record continues in relation to the record despite the amendments made by Part 17 Division 11.
- (3) If, on commencement day, the person is a licensee under this Act, the record is taken to be a record the licensee is required to keep under section 35.

296. Annual return

- (1) In this section —
annual return means the annual return required under the *Human Reproductive Technology Act 1991* section 47(1);
existing licensee means the licensee for a licence continued under section 290(2).

- (2) Before the prescribed day, an existing licensee must submit an annual return for the period starting on the day after the end of the last financial year before commencement day and ending on the day before commencement day.

297. Summary determinations

- (1) In this section —
former council means the Western Australian Reproductive Technology Council established by the former *Human Reproductive Technology Act 1991* section 8;
summary determination means a determination made by the CEO under the *Human Reproductive Technology Act 1991* section 37(1).
- (2) This section applies if, before commencement day —
- (a) the CEO made a summary determination; and
 - (b) the former council advised the CEO about the summary determination.
- (3) On or after commencement day, all of the following actions may be taken in relation to the summary determination as if the *Human Reproductive Technology Act 1991* section 37 had not been deleted by section 371 —
- (a) the CEO giving a person notice of, or publishing notice of, the summary determination;
 - (b) a person consenting to the summary determination;
 - (c) a person showing cause as to why effect should not be given to the summary determination;
 - (d) the CEO giving effect to the summary determination;
 - (e) the CEO imposing a warning or penalty relating to the summary determination.
- (4) The CEO may make an allegation to the State Administrative Tribunal in respect of the summary determination under the *Human Reproductive Technology Act 1991* section 38.

- (5) For the purposes of making an allegation to the State Administrative Tribunal under subsection (4), the *Human Reproductive Technology Act 1991* section 38(1a) and (1b) do not apply.
- (6) The State Administrative Tribunal may take action under the *Human Reproductive Technology Act 1991* section 40(1a) and (2a) as if those subsections had not been deleted by section 371.
- (7) The ability of the State Administrative Tribunal to take the action referred to in subsection (6) is subject to the limitation in the *Human Reproductive Technology Act 1991* section 40(3) despite the deletion of that subsection by section 371.

Division 5 — Surrogacy arrangements

298. Terms used

- (1) In this Division —
 - commencement day** means the day on which this section comes into operation;
 - overseas surrogacy arrangement** includes a surrogacy arrangement (as defined in the *Surrogacy Act 2008* section 3) entered into before commencement day under which the surrogate lives and the child is to be, or was, born outside Australia;
 - surrogacy arrangement** includes —
 - (a) a surrogacy arrangement as defined in the *Surrogacy Act 2008* section 3; and
 - (b) an overseas surrogacy arrangement.
- (2) The definition of **surrogacy arrangement** in subsection (1) applies despite section 16.

299. Pending parentage orders

- (1) This section applies if, before commencement day —
 - (a) a person applied to the Family Court for a parentage order under the *Surrogacy Act 2008* section 20; and
 - (b) the Family Court has neither made, nor refused to make, the parentage order.
- (2) On or after commencement day, the Family Court may make, or refuse to make, the parentage order under this Act as if the parentage order had been applied for under this Act.

300. Pending applications under *Surrogacy Act 2008*

- (1) This section applies to any of the following applications made under the *Surrogacy Act 2008*, but not decided, before commencement day —
 - (a) an application for an order discharging a parentage order made under section 27(1) of that Act;
 - (b) an application for leave to intervene in an application for an order discharging a parentage order made under section 27(6) of that Act;
 - (c) an application for approval to vary an approved plan made under section 30(1) of that Act;
 - (d) an application for an order excluding a person from having access to information made under section 36(1) of that Act;
 - (e) an application for access to all or part of the record of court proceedings made under section 37(2), 40(4) or 41(4) of that Act.
- (2) The application may be decided under the *Surrogacy Act 2008* as if that Act had not been repealed.

301. Continuing court orders

- (1) This section applies if —
 - (a) the Family Court made an order under the *Surrogacy Act 2008* before commencement day; and
 - (b) the order was in force immediately before commencement day.
- (2) The order continues in force and is taken to have been made under this Act.

302. Application for parentage order for child born before commencement day

- (1) This section applies if a surrogate gave birth to a child before commencement day, regardless of whether the child is under, or has reached, 18 years of age.
- (2) Despite section 122(2)(b), an application for a parentage order for the child may be made under section 122(1) during the period of 6 months after commencement day.

- (3) Subsection (2) does not affect section 122(2)(a).

Note for this subsection:

Section 122(2)(a) provides that an application for a parentage order for a child cannot be lodged during the 28 days after the day on which the child is born.

- (4) Subsection (2) applies regardless of whether —
 - (a) a parentage order, or an application for a parentage order, could be made for the child under the *Surrogacy Act 2008*; or
 - (b) an application for a parentage order for the child made under the *Surrogacy Act 2008* was refused by the Family Court.

303. Making parentage order: child born under local surrogacy arrangement before commencement day

- (1) In this section —
local surrogacy arrangement means a surrogacy arrangement other than an overseas surrogacy arrangement.
- (2) Section 134 applies in relation to a child born under a local surrogacy arrangement before commencement day, regardless of whether the surrogacy is for reward (as defined in section 107).

304. Making parentage order: certain surrogacy arrangements

- (1) This section applies in relation to a child born —
 - (a) under an overseas surrogacy arrangement entered into before commencement day; and
 - (b) before the 2nd anniversary of commencement day (including before or on commencement day).
- (2) In deciding whether to make a parentage order for the child under section 123, the court may dispense with a requirement of section 123, other than a requirement of section 123(1)(a) or (c), if the court is satisfied that doing so is in the best interests of the child.

Division 6 — Other transitional provisions

305. Existing registers

- (1) This section applies in relation to information the CEO was required to keep in a register under the *Human Reproductive Technology Act 1991* section 45(1)(a).
- (2) If, after commencement day, the information would be information the CEO is required to keep in the register of identity, the information is taken to be information contained in the register of identity.

- (3) If, after commencement day, the information would be information the CEO is required to keep in the register of ART procedures, the information is taken to be information contained in the register of ART procedures.

306. Western Australian Reproductive Technology Council abolished

On commencement day, the Western Australian Reproductive Technology Council established under the former *Human Reproductive Technology Act 1991* is abolished and the members of the council go out of office.

307. Transitional regulations

- (1) In this section —
publication day, in relation to transitional regulations, means the day on which the transitional regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a);
repealed law means each written law repealed by section 279 as in force immediately before its repeal;

transitional matter —

- (a) means a matter or issue of a transitional nature that arises as a result of the enactment and coming into operation of this Act, including the repeal of a repealed law or an amendment made by Part 15, 16 or 17; and
(b) includes a matter or issue of a savings or application nature;

transitional regulations means regulations made for the purposes of subsection (2).

- (2) If there is not sufficient provision in this Part for dealing with a transitional matter, regulations may prescribe anything required, necessary or convenient to be prescribed in relation to that matter.

- (3) Without limiting subsection (2), transitional regulations may provide that —
- (a) specified provisions of this Act —
 - (i) do not apply in relation to a specified matter; or
 - (ii) apply with specified modifications to or in relation to a specified matter;
 - and
 - (b) specified provisions of the former *Human Reproductive Technology Act 1991* continue to apply (with or without specified modifications) to, or in relation to, a specified matter as if the amendments made by Part 17 Division 11 had not been made; and
 - (c) specified provisions of a repealed law continue to apply (with or without specified modifications) to, or in relation to, a specified matter as if a repealed law were not repealed.
- (4) Transitional regulations cannot be made after the end of the period of 2 years beginning on commencement day.
- (5) If transitional regulations provide that a state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than publication day, but not earlier than commencement day, the regulations have effect according to their terms.
- (6) If transitional regulations contain a provision referred to in subsection (5), the provision does not operate so as to —
- (a) 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 publication day; or
 - (b) 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 publication day.

Part 15 — *Births, Deaths and Marriages Registration Act 1998* amended

308. Act amended

This Part amends the *Births, Deaths and Marriages Registration Act 1998*.

309. Section 4 amended

- (1) In section 4 delete the definition of ***birth registration statement***.
- (2) In section 4 insert in alphabetical order:

adoption order has the meaning given in the *Adoption Act 1994* section 4(1);

ART procedure has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 8;

birth certificate, in relation to a person, means a certificate issued under section 57(1)(a) certifying particulars contained in an entry about the birth of the person;

birth registration statement has the meaning given in section 14(1);

donor-conceived person has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 6;

parentage order has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 119(2)(a);

surrogacy arrangement has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 16.

- (3) In section 4 in the definition of **registrable event** delete “order as defined in the *Surrogacy Act 2008* section 14;” and insert:

order;

- (4) In section 4 in the definition of **still-born child** delete “birth.” and insert:

birth;

310. Section 13 amended

In section 13(5) delete “the Commonwealth,” and insert:

Australia,

311. Section 14 amended

- (1) In section 14:

(a) delete “A person” and insert:

(1) A person

(b) delete ““birth registration statement”)” and insert:

birth registration statement)

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(2) At the end of section 14 insert:

- (2) The approved form for a birth registration statement must require the person completing the form to indicate whether or not the child whose birth is to be registered is a donor-conceived person.
- (3) If a birth registration statement indicates that the child whose birth is to be registered is a donor-conceived person, the person completing the form must provide evidence to establish to the Registrar's satisfaction that the child is a donor-conceived person.

312. Section 17A inserted

After section 17 insert:

17A. Registration of birth of donor-conceived person

- (1) This section applies if —
 - (a) the Registrar registers a birth under section 17(1); and
 - (b) the relevant birth registration statement indicates that the child whose birth is registered is a donor-conceived person.
- (2) If the Registrar is satisfied that the child whose birth is registered is a donor-conceived person, the Registrar must include, in the entry about the birth in the Register, a note indicating that the child is a donor-conceived person.

313. Section 18A inserted

After section 18 insert:

18A. Registration of deceased parent if child born through posthumous use of reproductive material or embryo

(1) In this section —

embryo has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 9(2);

intended parent has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 14;

reproductive material has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 9(1);

surviving partner has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 6.

(2) This section applies if —

(a) the surviving partner of a deceased person is the birth parent of a child born as the result of an ART procedure that involved the posthumous use of —

- (i) the deceased person's reproductive material; or
- (ii) an embryo created with the deceased person's reproductive material; or
- (iii) an embryo of which the deceased person was an intended parent;

and

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- (b) the surviving partner does either of the following —
 - (i) includes the deceased person as a parent of the child in the birth registration statement lodged under section 14(1);
 - (ii) applies to the Registrar to include the deceased person as a parent of the child as additional registrable information under section 19(1).
- (3) The Registrar must not register the deceased person as the child's parent in the Register unless satisfied that approval for the posthumous use was granted under the *Assisted Reproductive Technology and Surrogacy Act 2025* section 83(4) or a written law of another jurisdiction that regulates the posthumous use.
- (4) Subsection (3) does not apply if the surviving partner satisfies the Registrar that the approval mentioned in that subsection was not required for the posthumous use.
- (5) The Registrar may include, in the entry about the child's birth in the Register, a note indicating that the child is a donor-conceived person if the Registrar is —
 - (a) prevented under this section from registering the deceased person as the child's parent; and
 - (b) satisfied that the child was born as the result of an ART procedure that involved the posthumous use of the deceased person's reproductive material or an embryo created with the deceased person's reproductive material.

314. Section 19 amended

In section 19(1) delete “section 18,” and insert:

sections 18 and 18A,

315. Section 24 amended

In section 24(2) delete “section 32(1) of the *Surrogacy Act 2008*” and insert:

section 143(1) of the *Assisted Reproductive Technology and Surrogacy Act 2025*

316. Section 25 amended

In section 25(2A):

- (a) delete “section 32(1) of the *Surrogacy Act 2008*” and insert:

section 143(1) of the *Assisted Reproductive Technology and Surrogacy Act 2025*

- (b) in paragraph (b) delete “under section 32 of that Act.” and insert:

in the notice.

317. Section 25A inserted

After section 25 insert:

25A. WA order: child born outside Australia

- (1) In this section —
ancillary order means an order made by the Family Court under the *Assisted Reproductive Technology and Surrogacy Act 2025* section 125.
- (2) This section applies if —
 - (a) the Registrar receives a notice under the *Assisted Reproductive Technology and Surrogacy Act 2025* section 143(1) in relation to the making or discharge of a parentage order; and
 - (b) the information provided in the notice states that the child was born in a place outside Australia.
- (3) The Registrar must register the making or discharge of the parentage order in accordance with the information provided in the notice.
- (4) If an ancillary order, made in relation to the parentage order, orders that the birth of the child be registered in this State, the Registrar must register the child's birth in accordance with the information provided in the notice and any other information relevant to the child provided to the Registrar under the *Assisted Reproductive Technology and Surrogacy Act 2025* section 143.

318. Section 26 amended

- (1) In section 26(1)(a) delete “adoption order or parentage order” and insert:

order, substantially similar in effect to an adoption order or a parentage order,

- (2) Delete section 26(2).

319. Section 26A inserted

After section 26 insert:

26A. Notes about surrogacy in Register

- (1) In this section —
corresponding order means an order substantially similar in effect to a parentage order, made under a law in force in another State.
- (2) This section applies if —
- (a) under section 24(2), 25(2A), 25A or 26, the Registrar is required to register information in relation to a child because of the making of a parentage order or a corresponding order; and
 - (b) the child’s birth is registered in this State.
- (3) The Registrar must include, in the entry about the child’s birth in the Register, a note indicating that the child was born under a surrogacy arrangement.
- (4) The Registrar must remove the note from the Register if —
- (a) the Registrar receives a notice under the *Assisted Reproductive Technology and*

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Surrogacy Act 2025 section 143(1) in relation to the discharge of the parentage order; or

- (b) the corresponding order is discharged under a law in force in another State.

320. Section 28 amended

In section 28:

- (a) delete “*Surrogacy Act 2008* section 39” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025 section 148(2)

- (b) in paragraph (b) delete “*Surrogacy Act 2008*,” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025,

321. Section 40 amended

In section 40(5) delete “the Commonwealth” and insert:

Australia

322. Section 52 amended

In section 52 delete “sections 18” and insert:

sections 18, 18A

323. Section 57 amended

After section 57(3) insert:

- (4) A birth certificate must not indicate that a person was born as the result of an ART procedure or through surrogacy.

324. Section 57A inserted

After section 57 insert:

57A. Certain people to be advised about further information relating to their birth

- (1) This section applies if —
 - (a) the Registrar issues a birth certificate to a person who is 16 years of age or older; and
 - (b) the entry about the birth of the person in the Register includes a note indicating that either or both of the following circumstances apply to the person —
 - (i) the person is a donor-conceived person;
 - (ii) the person was born under a surrogacy arrangement.
- (2) The Registrar must give to the person written notice that further information regarding the person's birth may be available from —
 - (a) if the person is a donor-conceived person — the chief executive officer of the department principally assisting in the administration of the *Assisted Reproductive Technology and Surrogacy Act 2025*; or

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- (b) if the person was born under a surrogacy arrangement — the Registrar.
- (3) However, subsection (2)(b) does not apply in relation to a person born under a surrogacy arrangement if the person is a donor-conceived person.

325. Section 66 amended

In section 66(2) delete “An action in tort does not lie against a protected person” and insert:

A protected person does not incur civil liability

326. Section 68 amended

- (1) In section 68(2A) delete “the *Surrogacy Act 2008*” and insert:

a parentage order

- (2) In section 68(2)(b) delete “*Surrogacy Act 2008*” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025

Note : The heading to amended section 68 is to read:

Some effects of adoption and surrogacy

Note : The heading to section 27 is to read:

Manner and form of adoption and parentage information in Register

**Part 16 — *Human Tissue and Transplant Act 1982*
amended**

327. Act amended

This Part amends the *Human Tissue and Transplant Act 1982*.

328. Section 3 amended

- (1) In section 3(1) delete the definitions of:

human egg

human embryo

human sperm

- (2) In section 3(1) insert in alphabetical order:

embryo has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 9(2);

reproductive material has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 9(1);

329. Section 6 amended

- (1) In section 6 delete “a human embryo, human sperm or a human egg.” and insert:

reproductive material or an embryo.

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(2) At the end of section 6 insert:

Note for this section:

The *Assisted Reproductive Technology and Surrogacy Act 2025* regulates the donation of reproductive material and embryos.

330. Section 21A replaced

Delete section 21A and insert:

21A. Application of Part

Nothing in this Part applies to the removal of tissue from the body of a deceased person for the purpose of —

- (a) the practice of anatomy under the *Anatomy Act 1930*; or
- (b) being used to conceive or create an embryo.

331. Part 3A inserted

After section 24A insert:

**Part 3A — Removal of reproductive material
after death**

24B. Purpose

This Part deals with the requirements for the removal of tissue from the body of a deceased person for the purpose of being used to conceive or create an embryo.

24C. Term used: licensee

In this Part —

licensee has the meaning given in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 6.

24D. Designated officer may authorise removal of reproductive material from bodies in hospital

- (1) This section applies if a person dies in a hospital or the body of a deceased person is brought into a hospital.
- (2) Subject to subsection (3), a designated officer for the hospital may authorise the removal of reproductive material from the body of the deceased person if —
 - (a) consent to the removal of the reproductive material is obtained from —
 - (i) the spouse or de facto partner of the deceased person; or
 - (ii) in the case that the deceased person's spouse or de facto partner is not available, the senior available next of kin of the deceased person;
 - and
 - (b) the designated officer is satisfied that the reproductive material is to be transferred to a licensee for storage.
- (3) A designated officer must not authorise the removal of reproductive material from the deceased person if —
 - (a) the deceased person died while under the age of 18 years; or

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- (b) the designated officer has reason to believe that the deceased person had expressed an objection to the removal of reproductive material from their body after death.

24E. Medical practitioners' declaration required in cases of artificial respiration and blood circulation

- (1) This section applies if —
 - (a) a designated officer for a hospital proposes to authorise the removal of reproductive material from the body of a deceased person under section 24D; and
 - (b) the respiration and circulation of the blood of the deceased person are being maintained by artificial means.
- (2) The designated officer must not authorise the removal of reproductive material from the deceased person unless 2 medical practitioners have, after each carrying out a clinical examination of the person, declared that irreversible cessation of all function of the brain of the deceased person has occurred.
- (3) For the purposes of subsection (2) —
 - (a) each medical practitioner must have been a medical practitioner for a period of not less than 5 years; and
 - (b) at least 1 of the medical practitioners must hold specialist qualifications in general medicine, neurology or neurosurgery or such other qualifications as are accepted by the Chief Health Officer.

- (4) For the purposes of subsection (3)(a), any period during which a medical practitioner practised as a medical practitioner, however described, under the law in force in a country outside Australia must be taken into account in calculating the period of 5 years referred to in that subsection.

24F. Coroner's consent to removal of reproductive material in case of reportable death

- (1) If the designated officer for a hospital has reason to believe that the death of a person is or may be a reportable death, the designated officer must not, under section 24D, authorise the removal of reproductive material from the body of the deceased person unless the coroner has given consent to the removal.
- (2) A coroner may give a direction, either before or after the death of a person, that the coroner's consent to the removal of reproductive material from the body of the person after the death of the person is not required and, in that event, subsection (1) does not apply in relation to the removal of tissue from the body of the person.
- (3) A consent or direction by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.
- (4) A consent or direction by a coroner under this section may be given orally by a coroner, and if so given, must be confirmed in writing.

332. Section 29 replaced

Delete section 29 and insert:

**29. Part does not apply to trading regulated under
*Assisted Reproductive Technology and Surrogacy
Act 2025***

This Part does not apply in relation to the sale or supply of reproductive material or an embryo.

Note for this section:

The *Assisted Reproductive Technology and Surrogacy Act 2025* section 92 prohibits the supply, or offer of supply, of reproductive material and embryos for valuable consideration.

333. Section 30A amended

- (1) In section 30A insert in alphabetical order:

excess ART embryo means an embryo that is not required for the reproductive purposes (as defined in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 11) of the person or couple for whom the embryo was created;

- (2) In section 30A in the definition of ***human embryonic stem cell line*** delete “embryo as defined in section 53T of the *Human Reproductive Technology Act 1991*,” and insert:

embryo;

334. Section 33 amended

- (1) After section 33(1)(c) insert:
 - (ca) remove tissue from the body of a deceased person for the purpose of being used to conceive or create an embryo except in pursuance of an authority that is under Part 3A sufficient authority for the person to remove the tissue for that purpose; or
- (2) Delete section 33(3)(ba).
- (3) After section 33(3) insert:
 - (4) Subsection (1)(c) does not apply in relation to the removal of tissue from the body of a deceased person for the purpose of —
 - (a) the practice of anatomy under the *Anatomy Act 1930*; or
 - (b) being used to conceive or create an embryo.

335. Section 34 amended

- (1) In section 34(2)(d) delete “privileged.” and insert:

privileged; or
- (2) After section 34(2)(d) insert:
 - (e) for the purposes of performing a function under Part 3A; or

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- (f) for the purposes of doing any of the following under the *Assisted Reproductive Technology and Surrogacy Act 2025* —
 - (i) providing an ART service as defined in section 7 of that Act;
 - (ii) performing a function under that Act;
 - (iii) maintaining a register under section 97 or 100 of that Act.

Part 17 — Consequential amendments to other Acts

Division 1 — *Administration Act 1903* amended

336. Act amended

This Division amends the *Administration Act 1903*.

337. Section 12A amended

In section 12A(2a) delete “*Artificial Conception Act 1985*.” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025
Part 3 Division 3.

Division 2 — *Adoption Act 1994* amended

338. Act amended

This Division amends the *Adoption Act 1994*.

339. Section 4 amended

In section 4(1) in the definition of **birth parent** paragraph (b) delete “*Artificial Conception Act 1985* section 6A,” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025
section 32(2),

340. Section 4A amended

In section 4A delete “Part 5 Division 11 Subdivision 3 of the *Family Court Act 1997*” and insert:

the *Assisted Reproductive Technology and Surrogacy Act 2025*
Part 3 Division 3 and the *Family Court Act 1997* Part 5
Division 11 Subdivision 3

Note : The heading to amended section 4A is to read:

Presumptions of parentage in *Assisted Reproductive Technology and Surrogacy Act 2025* and *Family Court Act 1997*, when applicable

341. Section 17 amended

Delete section 17(1)(a)(ii) and insert:

- (ii) the child’s father or parent of the child under the *Assisted Reproductive Technology and Surrogacy Act 2025* section 32(2);

342. Section 21 amended

In section 21(2c) delete “has been named as or has claimed to be a child’s parent under section 6A of the *Artificial Conception Act 1985*” and insert:

is or claims to be a child’s parent under the *Assisted Reproductive Technology and Surrogacy Act 2025* section 32(2)

Note: The heading to amended section 21 is to read:

Person who may be prospective adoptee’s parent to be notified of consent

343. Section 26C amended

In section 26C(1)(aa) delete “*Artificial Conception Act 1985*;
or” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025
Part 3 Division 3; or

**Division 3 — *Children and Community Services Act 2004*
amended**

344. Act amended

This Division amends the *Children and Community Services Act 2004*.

345. Section 104 amended

In section 104(2)(fa) delete “*Surrogacy Act 2008*,” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025
section 16,

Division 4 — *Constitution Acts Amendment Act 1899* amended

346. Act amended

This Division amends the *Constitution Acts Amendment Act 1899*.

347. Schedule V amended

- (1) In Schedule V Part 3 after the item for The Arts and Culture Trust insert:

The Assisted Reproductive Technology Advisory and Review Board established under the *Assisted Reproductive Technology and Surrogacy Act 2025* section 235.

- (2) In Schedule V Part 3 delete the item for The Western Australian Reproductive Technology Council.

Division 5 — *Criminal Code Act Compilation Act 1913* amended

348. Act amended

This Division amends the *Criminal Code Act Compilation Act 1913*.

349. Section 343 amended

In section 343 delete “section 6A of the *Artificial Conception Act 1985*.” and insert:

the *Assisted Reproductive Technology and Surrogacy Act 2025* section 32(2).

Division 6 — *Family Court Act 1997* amended

350. Act amended

This Division amends the *Family Court Act 1997*.

351. Section 5 amended

In section 5(1) in the definition of ***child***:

- (a) in paragraph (a) delete “*Surrogacy Act 2008*” and insert:

*Assisted Reproductive Technology and Surrogacy
Act 2025 Part 6 Division 4*

- (b) in paragraph (b) delete “*Surrogacy Act 2008*);” and
insert:

*Assisted Reproductive Technology and Surrogacy
Act 2025 Part 6 Division 4*);

352. Section 36 amended

In section 36(2) delete “*Surrogacy Act 2008*” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025

353. Section 39 amended

In section 39 delete “*Surrogacy Act 2008*” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025

354. Section 133 amended

Delete section 133(a) and insert:

- (a) the liability of a father, or a person who is the parent of a child under the *Assisted Reproductive Technology and Surrogacy Act 2025* section 32(2), to contribute towards child bearing expenses if the father or parent is not married to the child's mother (Subdivision 2); and

355. Section 135 amended

In section 135 delete “section 6A of the *Artificial Conception Act 1985*,” and insert:

the *Assisted Reproductive Technology and Surrogacy Act 2025* section 32(2),

356. Section 136 amended

In section 136(1):

- (a) delete “section 6A of the *Artificial Conception Act 1985*,” and insert:

the *Assisted Reproductive Technology and Surrogacy Act 2025* section 32(2),

- (b) in paragraph (a)(ii) delete “section 6A of the *Artificial Conception Act 1985*,” and insert:

the *Assisted Reproductive Technology and Surrogacy Act 2025* section 32(2);

357. Section 141 amended

In section 141(1):

- (a) in paragraph (a) delete “section 6A of the *Artificial Conception Act 1985*; or” and insert:

the *Assisted Reproductive Technology and Surrogacy Act 2025* section 32(2); or

- (b) in paragraph (b) delete “section 6A of the *Artificial Conception Act 1985*,” and insert:

the *Assisted Reproductive Technology and Surrogacy Act 2025* section 32(2),

358. Section 205T amended

In section 205T in the definition of **child** paragraph (ca) delete “*Surrogacy Act 2008*” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025
Part 6 Division 4

Division 7 — *Family Provision Act 1972* amended

359. Act amended

This Division amends the *Family Provision Act 1972*.

360. Section 4 amended

In section 4(4a) delete “*Artificial Conception Act 1985.*” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025
Part 3 Division 3.

Division 8 — *Fatal Accidents Act 1959* amended

361. Act amended

This Division amends the *Fatal Accidents Act 1959*.

362. Section 6 amended

In section 6(3a) delete “*Artificial Conception Act 1985.*” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025
Part 3 Division 3.

Division 9 — *Freedom of Information Act 1992* amended

363. Act amended

This Division amends the *Freedom of Information Act 1992*.

364. Schedule 1 clause 13 amended

In Schedule 1 clause 13(b) delete “artificial fertilization procedure as defined in the *Human Reproductive Technology Act 1991*” and insert:

ART procedure as defined in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 8

Division 10 — *Guardianship and Administration Act 1990* amended

365. Act amended

This Division amends the *Guardianship and Administration Act 1990*.

366. Section 45 amended

In section 45(3)(da) delete “section 21(2)(d) of the *Surrogacy Act 2008*,” and insert:

section 123(1)(d) of the *Assisted Reproductive Technology and Surrogacy Act 2025*,

**Division 11 — *Human Reproductive Technology Act 1991*
amended**

367. Act amended

This Division amends the *Human Reproductive Technology Act 1991*.

368. Sections 4 and 5 deleted

Delete sections 4 and 5.

369. Part 1 Division 2 deleted

Delete Part 1 Division 2.

370. Parts 2 and 3 deleted

Delete Parts 2 and 3.

371. Part 4 Divisions 1 to 5 deleted

Delete Part 4 Divisions 1 to 5.

372. Sections 51 and 52 deleted

Delete sections 51 and 52.

373. Section 53 amended

Delete section 53(5).

374. Section 53A deleted

Delete section 53A.

375. Section 53C deleted

Delete section 53C.

376. Section 53H deleted

Delete section 53H.

377. Section 53Q deleted

Delete section 53Q.

378. Part 4A Division 4 deleted

Delete Part 4A Division 4.

379. Parts 4B to 6 deleted

Delete Parts 4B to 6.

380. Schedule deleted

Delete the Schedule.

Division 12 — *Interpretation Act 1984* amended

381. Act amended

This Division amends the *Interpretation Act 1984*.

382. Section 5 amended

In section 5 in the definition of ***parent***:

(a) delete paragraph (a) and insert:

(a) a person who is a parent as provided for under the *Assisted Reproductive Technology and Surrogacy Act 2025* Part 3 Division 3;

(b) delete paragraph (c) and insert:

- (c) a person who is a parent in a relationship of parent and child that arises because of a parentage order —
 - (i) made under the *Assisted Reproductive Technology and Surrogacy Act 2025*; or
 - (ii) made under the *Surrogacy Act 2008* before the repeal of that Act;

Division 13 — *Privacy and Responsible Information Sharing Act 2024* amended

383. Act amended

This Division amends the *Privacy and Responsible Information Sharing Act 2024*.

384. Section 158 amended

Delete section 158(1)(j)(ii) and insert:

- (ii) the participation of a person in an ART procedure (as defined in the *Assisted Reproductive Technology and Surrogacy Act 2025* section 8) or a person born as a result of an ART procedure;

Division 14 — *Property Law Act 1969* amended

385. Act amended

This Division amends the *Property Law Act 1969*.

386. Section 31A amended

In section 31A(5a) delete “*Artificial Conception Act 1985.*” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025
Part 3 Division 3.

Division 15 — *Wills Act 1970* amended

387. Act amended

This Division amends the *Wills Act 1970*.

388. Section 31 amended

In section 31(3) delete “*Artificial Conception Act 1985.*” and insert:

Assisted Reproductive Technology and Surrogacy Act 2025
Part 3 Division 3.

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Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

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