

South Australia

# Assisted Reproductive Treatment Act 1988

An Act to regulate assisted reproductive treatment.

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### Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Assisted Reproductive Treatment Act 1988*.

### **3—Interpretation**

In this Act, unless the contrary intention appears—

***assisted insemination*** means assisted reproductive treatment (not being an in vitro fertilisation procedure or a surgical procedure) in which human sperm are introduced, by artificial means, into the human female reproductive system;

***assisted reproductive treatment*** means any medical procedure directed at fertilisation of a human ovum by artificial means and includes an in vitro fertilisation procedure;

***authorised person*** means a person authorised by the Minister to exercise the powers of an authorised person under this Act;

***donor conception register***—see section 15;

***human reproductive material*** means—

- (a) a human embryo;
- (b) human semen;
- (c) a human ovum;

***in vitro fertilisation procedure*** means any of the following procedures—

- (a) the removal of a human ovum for the purpose of fertilisation within or outside the body;
- (b) the storage of any such ovum prior to fertilisation;
- (c) the fertilisation by artificial means of any such ovum within or outside the body;
- (d) the culture or storage of a fertilised ovum outside the body;
- (e) the transference of a fertilised or unfertilised ovum into the human body;

***recognised surrogacy agreement*** means a recognised surrogacy agreement under Part 2B of the *Family Relationships Act 1975*.

### **4—Act binds Crown**

This Act binds the Crown.

### **4A—Welfare of child paramount**

The welfare of any child to be born as a consequence of the provision of assisted reproductive treatment in accordance with this Act must be treated as being of paramount importance, and accepted as a fundamental principle, in respect of the operation of this Act.

## Part 2—Registration

### 5—Authorisation and registration required to provide assisted reproductive treatment

- (1) A person must not provide assisted reproductive treatment unless the person is authorised to do so in accordance with the regulations and registered under this Part.  
Maximum penalty: \$120 000.
- (2) Subsection (1) does not apply in relation to assisted reproductive treatment consisting of—
  - (a) assisted insemination provided by a health professional approved by the Minister for the purposes of this subsection; or
  - (b) assisted insemination provided other than for fee or reward.
- (3) An approval under subsection (2)(a) may be conditional or unconditional.
- (4) The Minister may, by notice in writing given to a health professional approved under subsection (2)(a), vary or cancel the approval on any grounds the Minister thinks fit.
- (5) A health professional who is approved under subsection (2)(a) and who contravenes or fails to comply with a condition of the approval is guilty of an offence.  
Maximum penalty: \$120 000.
- (6) In this section—

*health professional* means—

  - (a) a medical practitioner; or
  - (b) any other person who belongs to a profession, or who has an occupation, declared by the regulations to be a profession or occupation within the ambit of this definition.

### 6—Eligibility for registration

A person is eligible for registration under this Part if the person, on application to the Minister, satisfies the Minister that he or she—

- (a) is a fit and proper person to be registered; and
- (b) holds any licence, accreditation or other qualification required by the regulations for the purposes of registration; and
- (c) satisfies any other requirements prescribed by the regulations.

### 7—Application for registration

- (1) An application for registration under this Part must—
  - (a) be made to the Minister in the manner and form approved by the Minister; and
  - (b) be accompanied by the prescribed fee.
- (2) An applicant for registration must, if the Minister so requires, provide the Minister with specified information to enable the Minister to determine the application.

## 8—Registration

- (1) The Minister must keep a register of persons authorised to provide assisted reproductive treatment under this Act (the *Register*).
- (2) The Register must include, in relation to each person on the Register—
  - (a) the person's full name or business name and business address; and
  - (b) details of any condition of registration; and
  - (c) any other information prescribed by the regulations,and may include such other information as the Minister thinks fit.

## 9—Conditions of registration

- (1) The Minister must, by notice in writing given to a person registered under this Part, impose conditions of the following kinds on the person's registration:
  - (a) a condition requiring the person to hold, while the person is registered under this Part, a specified licence, accreditation or other qualification that is in force;
  - (b) a condition setting out the kinds of assisted reproductive treatment the person may provide and any requirements that must be complied with in the provision of such treatment;
  - (c) a condition preventing the provision of assisted reproductive treatment except in the following circumstances:
    - (i) if a woman who would be the mother of any child born as a consequence of the assisted reproductive treatment is, or appears to be, infertile;
    - (ii) if a man who is living with a woman (on a genuine domestic basis as her husband) who would be the mother of any child born as a consequence of the assisted reproductive treatment is, or appears to be, infertile;
    - (iii) if there appears to be a risk that a serious genetic defect, serious disease or serious illness would be transmitted to a child conceived naturally;
    - (iv) if—
      - (A) the donor of the relevant human semen has died; and
      - (B) before the donor died—
        - the donor's semen was collected; or
        - a human ovum (being the ovum of a woman who, immediately before the death of the deceased, was living with the donor on a genuine domestic basis) was fertilised by means of assisted reproductive treatment using the donor's semen; or
        - an embryo had been created as a consequence of such assisted reproductive treatment; and

- (C) before the donor died, the donor consented to the use of the semen, fertilised ovum or embryo (as the case requires) after his death in the provision of the proposed assisted reproductive treatment; and
  - (D) if the donor gave any directions in relation to the use of the semen, ovum or embryo (as the case requires)—the directions have, as far as is reasonably practicable, been complied with; and
  - (E) the assisted reproductive treatment is provided for the benefit of a woman who, immediately before the death of the donor, was living with the donor on a genuine domestic basis;
    - (iva) for the purposes of a recognised surrogacy agreement;
    - (v) in any other circumstances prescribed by the regulations;
- (d) a condition requiring the person to ensure that the regulations are complied with;
- (e) any other condition required by the regulations,
- and may impose any other condition the Minister thinks fit.
- (2) The Minister may, by notice in writing given to a person registered under this Part, vary the conditions of the person's registration by the addition, substitution or deletion of 1 or more conditions.
- (3) A person who is registered under this Part and who contravenes or fails to comply with a condition of the person's registration is guilty of an offence.
- Maximum penalty: \$120 000.

## 10—Suspension or cancellation of registration

- (1) The Minister may suspend or cancel a person's registration under this Part if the Minister is satisfied that the person has contravened, or failed to comply with, a condition of that registration.
- (2) A person must be given a reasonable opportunity to make submissions in relation to the matter before action is taken under subsection (1).

## 11—Removal from Register

- (1) The Minister must, on application by a person registered under this Part, remove the person from the Register.
- (2) The Minister must remove from the Register a person—
- (a) who ceases to hold a licence, accreditation or other qualification required for registration under this Part; or
  - (b) who ceases for any other reason to be entitled to be registered; or
  - (c) whose registration has been suspended or cancelled under this Act.
- (3) The Minister may act under subsection (2) without giving prior notice to the person.

## 12—Reinstatement on Register

- (1) A person who has been removed from the Register under this Act—
  - (a) on the person's application; or
  - (b) under section 11 (other than a person whose registration has been suspended under this Act),may apply to the Minister at any time for reinstatement on the Register.
- (2) A person whose registration under this Part has been suspended may apply to the Minister for reinstatement on the Register (but not, in the case where the person's registration has been suspended for a specified period, until after the expiration of that period).
- (3) An application for reinstatement must—
  - (a) be made to the Minister in the manner and form determined by the Minister; and
  - (b) be accompanied by the prescribed reinstatement fee.
- (4) An applicant for reinstatement must, if the Minister so requires, provide the Minister with specified information to enable the Minister to determine the application.
- (5) The Minister may refuse to reinstate the applicant on the Register until any proceedings in relation to the applicant under this Act, or a law of another State or a Territory of the Commonwealth providing for the registration or some other form of accreditation of persons who provide assisted reproductive treatment, have been finally disposed of.

## 13—Appeals

- (1) An appeal lies to the Supreme Court against the following decisions:
  - (a) a refusal by the Minister to approve a health professional for the purposes of section 5(2);
  - (b) a decision by the Minister to vary or cancel the approval of a health professional under section 5(4);
  - (c) a refusal by the Minister to register a person under this Part;
  - (d) a decision by the Minister to impose, substitute or delete a condition of registration under this Part;
  - (e) a decision by the Minister to suspend or cancel the registration of a person;
  - (f) a refusal by the Minister to reinstate a person on the Register.
- (2) Subject to any contrary order of the Supreme Court, an appeal cannot be commenced after 1 month from the day on which the appellant receives notice of the decision against which the appeal lies.
- (3) On an appeal, the Supreme Court may—
  - (a) annul, vary or reverse the decision subject to the appeal; and
  - (b) make any consequential or ancillary orders the Supreme Court thinks fit.

## 14—Related matters

- (1) The Register must be kept available for inspection by any person during ordinary office hours at a place or places determined by the Minister and the Register, or extracts of the Register, may be made available to the public by electronic means.
- (2) A person may, on payment of the prescribed fee, obtain a copy of any part of the Register.
- (3) A certificate stating that a person was, or was not, registered on the Register at a particular date, or during a particular period, and purporting to be signed by the Minister will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration, or of the fact that the person was not so registered, on the date, or during the period, stated in the certificate.

## Part 3—Donor conception register

### 15—Donor conception register

- (1) The Minister may keep a register of donors of human reproductive material used in, or in relation to, assisted reproductive treatment provided in accordance with this Act and resulting in the birth of a child (the *donor conception register*).
- (2) If the Minister does keep the donor conception register, the register must contain, in relation to each donor on the register—
  - (a) the donor's full name and nominated contact address; and
  - (b) the full name and nominated contact address of the person to whom assisted reproductive treatment using the donor's human reproductive material was provided; and
  - (c) the full name of any child born as a consequence of such assisted reproductive treatment (if known); and
  - (d) any other information required by the regulations,and may include any other information that the Minister thinks fit.
- (3) The Minister must correct an entry in the donor conception register that is not correct.
- (4) The donor conception register may only be inspected in accordance with the regulations.
- (5) A certificate stating that a donor was, or was not, registered on the donor conception register in relation to the birth of a specified child, and purporting to be signed by the Minister will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration, or of the fact that the person was not so registered.
- (6) The Minister may, by notice in writing, for the purpose of preparing and maintaining the donor conception register, require a person to provide the Minister with such information as the Minister may require.
- (7) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (6).

Maximum penalty: \$10 000.

- (8) This section does not apply in relation to assisted reproductive treatment provided before the commencement of this section.

## Part 4—Miscellaneous

### 16—Record keeping

- (1) A person who is registered under Part 2 must make such records, and keep such documents, as may be required by the regulations in relation to the provision of assisted reproductive treatment by the person.  
Maximum penalty: \$50 000.
- (2) A health professional who is approved under section 5(2)(a) to provide assisted insemination must make such records, and keep such documents, as may be required by the regulations in relation to assisted insemination provided in pursuance of the approval.  
Maximum penalty: \$50 000.
- (3) A person who is required to make a record or keep a document under this section must retain the record or document in accordance with any requirement set out in the regulations.  
Maximum penalty: \$50 000.

### 17—Powers of authorised persons

- (1) An authorised person may at any reasonable time—
- (a) enter and inspect any premises on which assisted reproductive treatment is provided; and
  - (b) inspect any equipment on the premises; and
  - (c) put questions to any person on the premises; and
  - (d) require any person who is apparently in a position to do so, to produce records relating to assisted reproductive treatment; and
  - (e) examine those records and take extracts from, or make copies of, any of them.
- (2) A person who—
- (a) obstructs an authorised person acting in the exercise of a power conferred by this section; or
  - (b) fails to answer an authorised person's questions to the best of his or her information and belief; or
  - (c) being in a position to produce records fails to do so when required by an authorised person,
- is guilty of an offence.  
Maximum penalty: \$10 000.
- (3) Confidential information may be disclosed to an authorised person under this section without breach of any principle of professional ethics.



## 18—Confidentiality

- (1) A person must not disclose the identity of a donor of human reproductive material except—
  - (aa) as required or authorised by or under this or any other Act; or
  - (a) in the administration of this Act; or
  - (b) in order to provide assisted reproductive treatment; or
  - (c) with the consent of the donor of the material.

Maximum penalty: \$10 000 or imprisonment for 6 months.

- (2) A person must not divulge any other confidential information obtained (whether by that person or some other person) in the administration of this Act or for the purpose, or in the course, of providing assisted reproductive treatment except—
  - (aa) as required or authorised by or under this or any other Act; or
  - (a) in the administration of this Act or in order to provide that treatment; or
  - (b) as may be permitted or required by or under this Act; or
  - (c) with the consent of the person to whom the information relates.

Maximum penalty: \$10 000 or imprisonment for 6 months.

- (3) Nothing in this section prevents information (being information that does not disclose the identity of a person) being used to enable the Minister to accumulate statistical information and to enable the Minister to authorise use of the statistical information for the purposes of research or education.

## 19—Delegation

- (1) The Minister may delegate a power or function vested in or conferred on the Minister by or under this Act—
  - (a) to a particular person or body; or
  - (b) to the person for the time being holding or acting in a particular office or position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.

## 20—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), those regulations may—
  - (a) prescribe forms of consent for the purposes of this Act;

- (b) require persons registered under Part 2 of this Act to furnish periodic returns of information;
  - (c) impose penalties (not exceeding \$10 000) for breach of, or non-compliance with, a regulation;
  - (d) require a person to provide information to the Minister for purposes related to the preparation and maintenance of the donor conception register;
  - (e) confer a discretionary power on the Minister or any other person or body.
- (3) A regulation may incorporate, or operate by reference to, any code or standard (as in force at the date of the regulation, or as in force from time to time) prepared or approved by a body or authority referred to in the regulation.

## 21—Review of operation of Act

- (1) The Minister must, as soon as practicable after the fifth anniversary of the commencement of this section, conduct a review of the operation and effectiveness of this Act as amended by the *Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009*.
- (2) The Minister, or any person conducting the review on behalf of the Minister, must maintain the confidentiality of information provided to the Minister in the course of the review (but nothing in this section prevents information (being information that does not disclose the identity of a person) being used to enable the Minister to accumulate and publish statistical information for the purposes of a report under this section).
- (3) The Minister must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Formerly

*Reproductive Technology Act 1988*

*Reproductive Technology (Clinical Practices) Act 1988*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1988	10	<i>Reproductive Technology Act 1988</i>	10.3.1988	1.4.1988 ( <i>Gazette 31.3.1988 p765</i> ) except ss 14(1), 14(2)(a), (b) & (d), 14(3) & 14(4)—31.7.1989 ( <i>Gazette 20.7.1989 p116</i> ) and except s 14(2)(c)—1.8.1996 ( <i>Gazette 1.8.1996 p223</i> )
2000	34	<i>South Australian Health Commission (Administrative Arrangements) Amendment Act 2000</i>	6.7.2000	Sch 1 (cl 15)—6.7.2000 ( <i>Gazette 6.7.2000 p5</i> )
2003	18	<i>Research Involving Human Embryos Act 2003</i>	19.6.2003	Sch (cll 2—8)—18.12.2003 ( <i>Gazette 18.12.2003 p4526</i> )
2009	43	<i>Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009</i>	1.10.2009	Pt 2 (ss 4—14) & Sch 1 (Pt 2)—1.9.2010 ( <i>Gazette 1.7.2010 p3338</i> )
2009	64	<i>Statutes Amendment (Surrogacy) Act 2009</i>	26.11.2009	Pt 4 (ss 19 & 20)—26.11.2010: s 2
<b>2015</b>	<b>15</b>	<b><i>Family Relationships (Surrogacy) Amendment Act 2015</i></b>	<b>16.7.2015</b>	<b>Sch 1 (cl 1)—16.7.2015</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 43/2009 s 4	1.9.2010
Pt 1		
s 1	substituted by 18/2003 Sch cl 2	18.12.2003

## Assisted Reproductive Treatment Act 1988—16.7.2015

### Legislative history

	amended by 43/2009 s 5	1.9.2010
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	18.12.2003
s 3		
<i>artificial fertilisation procedure</i>	<i>deleted by 43/2009 s 6(1)</i>	1.9.2010
<i>artificial insemination</i>	<i>deleted by 43/2009 s 6(2)</i>	1.9.2010
assisted insemination	inserted by 43/2009 s 6(2)	1.9.2010
assisted reproductive treatment	inserted by 43/2009 s 6(2)	1.9.2010
authorised person	amended by 34/2000 Sch 1 cl 15(a)	6.7.2000
<i>the code of ethical practice</i>	<i>deleted by 43/2009 s 6(3)</i>	1.9.2010
<i>the Commission</i>	<i>deleted by 34/2000 Sch 1 cl 15(b)</i>	6.7.2000
donor conception register	inserted by 43/2009 s 6(3)	1.9.2010
recognised surrogacy agreement	inserted by 64/2009 s 19	26.11.2010
	<b>amended by 15/2015 Sch 1 cl 1</b>	<b>16.7.2015</b>
<i>reproductive technology</i>	<i>deleted by 43/2009 s 6(4)</i>	1.9.2010
s 4A	inserted by 43/2009 s 7	1.9.2010
<i>Pt 2 before substitution by 43/2009</i>		
s 10		
s 10(1)	<i>amended by 34/2000 Sch 1 cl 15(c)</i>	6.7.2000
	<i>(a)(ii) deleted by 18/2003 Sch cl 3(1)</i>	18.12.2003
	<i>(b)(ii) deleted by 18/2003 Sch cl 3(2)</i>	18.12.2003
	<i>amended by 18/2003 Sch cl 3(3)</i>	18.12.2003
s 11		
s 11(3)	<i>substituted by 34/2000 Sch 1 cl 15(d)</i>	6.7.2000
Pt 2	substituted by 43/2009 s 8	1.9.2010
s 9		
s 9(1)	amended by 64/2009 s 20	26.11.2010
<i>Pt 3 before substitution by 43/2009</i>		
s 13		
s 13(1)	<i>amended by 34/2000 Sch 1 cl 15(e)</i>	6.7.2000
s 13(2)	<i>amended by 34/2000 Sch 1 cl 15(f)</i>	6.7.2000
s 13(3)	<i>amended by 34/2000 Sch 1 cl 15(g)</i>	6.7.2000
s 13(7)	<i>amended by 34/2000 Sch 1 cl 15(h)</i>	6.7.2000

s 13(8)	amended by 34/2000 Sch 1 cl 15(i), (j)	6.7.2000
s 14	deleted by 18/2003 Sch cl 4	18.12.2003
s 15	substituted by 34/2000 Sch 1 cl 15(k)	6.7.2000
s 15(1)	substituted by 18/2003 Sch cl 5	18.12.2003
s 16		
s 16(1)	amended by 34/2000 Sch 1 cl 15(l)	6.7.2000
s 16(4)	deleted 18/2003 Sch cl 6	18.12.2003
Pt 3	substituted by 43/2009 s 8	1.9.2010
Pt 4		
s 16	inserted by 43/2009 s 9	1.9.2010
s 17		
s 17(1)	amended by 18/2003 Sch cl 7(1), (2)	18.12.2003
	amended by 43/2009 s 10(1), (2)	1.9.2010
s 17(2)	amended by 43/2009 s 10(3)	1.9.2010
s 18		
s 18(1)	amended by 43/2009 s 11(1)—(4)	1.9.2010
s 18(2)	amended by 18/2003 Sch cl 8(1), (2)	18.12.2003
	amended by 43/2009 s 11(5)—(10)	1.9.2010
s 18(3)	inserted by 43/2009 s 11(11)	1.9.2010
s 19	substituted by 34/2000 Sch 1 cl 15(m)	6.7.2000
s 20		
s 20(2)	amended by 43/2009 s 12(1)—(3)	1.9.2010
s 20(4)	deleted by 43/2009 s 12(4)	1.9.2010
s 21	inserted by 43/2009 s 13	1.9.2010
Sch before deletion by 43/2009		
scl (2)	substituted by 34/2000 Sch 1 cl 15(n)	6.7.2000
Sch	deleted by 43/2009 s 14	1.9.2010

## Transitional etc provisions associated with Act or amendments

### *Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009, Sch 1*

#### 1—Existing licensees

- (1) A person who, immediately before the commencement of this clause, held a licence under Part 3 of the *Reproductive Technology (Clinical Practices) Act 1988* (as in force immediately before the commencement of this clause) will be taken to be registered under Part 2 of that Act (as enacted by this Act).
- (2) Any licence condition to which the licence was subject under section 13(3)(a) and (e) of the *Reproductive Technology (Clinical Practices) Act 1988* (as in force immediately before the commencement of this clause) will be taken to continue to apply as a condition of registration under Part 2 of that Act (as enacted by this Act).

## 2—Record keeping

A person who held a licence under Part 3 of the *Reproductive Technology (Clinical Practices) Act 1988* (as in force immediately before the commencement of this clause) must keep any record required to have been made or kept as a condition to which the licence was subject under section 13(3)(d) of that Act (as in force immediately before the commencement of this clause) as if the record were a record required to be made or kept under that Act after the commencement of Part 2 of this Act.

## Historical versions

Reprint No 1—6.7.2000

18.12.2003

1.9.2010

26.11.2010