



Australian Capital Territory

Assisted Reproductive Technology Act 2024

A2024-7

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Australian Capital Territory

Assisted Reproductive Technology Act 2024

A2024-7

An Act to regulate assisted reproductive technology services, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Assisted Reproductive Technology Act 2024*.

2 Commencement

- (1) The following provisions commence on the day after this Act's notification day:

- (a) part 1 (Preliminary);
- (b) part 2 (Objects and important concepts);
- (c) division 4.5 (Record keeping requirements);
- (d) division 6.1 (Preliminary);
- (e) division 6.2 (Retention of pre-commencement records);
- (f) part 11 (Miscellaneous);
- (g) part 12 (Transitional);
- (h) the dictionary.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

- (3) However—
- (a) the [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to part 5 (Donor register); and
 - (b) if part 5 has not commenced within 12 months beginning on the notification day, it automatically commences on the first day after that period.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*child*—see the [Children and Young People Act 2008](#), section 11.’ means that the term ‘child’ is defined in that Act and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Application of Act

This Act does not limit or otherwise affect—

- (a) the regulation of a public health risk activity under the [Public Health Act 1997](#); or
- (b) the operation of the following:
 - (i) the [Human Cloning and Embryo Research Act 2004](#);
 - (ii) the [Mutual Recognition Act 1992](#) (Cwlth);
 - (iii) the [Parentage Act 2004](#);
 - (iv) the [Trans-Tasman Mutual Recognition Act 1997](#) (Cwlth).

Part 2 Objects and important concepts

7 **Objects of Act**

The objects of this Act are to regulate—

- (a) the provision of assisted reproductive technology services; and
- (b) access to information in relation to assisted reproductive technology services.

8 **Principles of Act**

The following principles must be given effect in administering this Act, or in carrying out an activity regulated by this Act:

- (a) the welfare and interests of people born, or to be born, as a result of assisted reproductive technology treatment must be protected;
- (b) assisted reproductive technology treatment must never be used to exploit, in trade or otherwise—
 - (i) the reproductive capabilities of individuals; or
 - (ii) children born as a result of assisted reproductive technology treatment;
- (c) donor conceived people have a right to information about their donors;
- (d) the health and wellbeing of people undergoing assisted reproductive technology treatment must be protected.

9 **Meaning of *ART treatment***

In this Act:

ART treatment (or ***assisted reproductive technology treatment***)—

- (a) means medical treatment or a procedure that procures, or attempts to procure, pregnancy in a person other than by sexual intercourse; and

(b) includes a related treatment or procedure prescribed by regulation; but

(c) does not include self-insemination.

Examples

- artificial insemination (other than self-insemination)
- in-vitro fertilisation
- gamete intrafallopian transfer

10 *Meaning of ART service*

In this Act:

ART service means any of the following provided for fee or reward, or in carrying on a business (whether or not for profit):

- (a) ART treatment;
- (b) storage of gametes and embryos for use in ART treatment;
- (c) a procedure to obtain a gamete from a gamete provider for use in ART treatment or for research in relation to ART treatment.

11 *Meaning of ART provider*

In this Act:

ART provider—

- (a) means a person who provides an ART service; but
- (b) does not include a person who provides an ART service on behalf of a registered ART provider under a contract of employment or contract for services.

Part 3 Registration of ART providers

12 Eligibility for registration

- (1) A person is eligible to be registered as an ART provider if—
 - (a) the person holds ART accreditation; and
 - (b) the person has not been convicted or found guilty of an offence against ART legislation; and
 - (c) the person is not currently prohibited; and
 - (d) for a person that is a corporation—no executive officer of the corporation—
 - (i) is an executive officer of another corporation that is currently prohibited; or
 - (ii) was an executive officer of another corporation that is currently prohibited when the prohibition took effect; or
 - (iii) has been convicted or found guilty of an offence because of section 118 (Criminal liability of executive officer).

- (2) In this section:

prohibited means prohibited under division 7.3 from carrying on a business that provides ART services.

13 Application for registration

- (1) A person may apply to the director-general for registration as an ART provider.
- (2) An application for registration must include the following:
 - (a) the applicant's name;
 - (b) the address of each premises at which the applicant proposes to provide ART services;

- (c) the name of each doctor who is to perform or supervise ART services provided by the applicant;
- (d) the name of each person who is to provide counselling services in relation to ART services provided by the applicant;
- (e) evidence that the applicant holds ART accreditation;
- (f) any other information or document prescribed by regulation.

14 Application for renewal

- (1) A person may apply to the director-general for renewal of their registration as an ART provider within 3 months before, and 3 months after, the registration ends.

Note If a person applies for renewal before the registration ends, it continues in force until the application is decided (see s 17 (2)).

- (2) An application for renewal must include the following:
- (a) information and documents mentioned in section 13 (2) that have changed since last given to the director-general;
 - (b) evidence that the applicant holds ART accreditation;
 - (c) any other information or document prescribed by regulation.

15 Deciding applications

- (1) The director-general must approve an application for registration as an ART provider if satisfied—
- (a) the applicant is eligible to be registered; and
 - (b) the application is made in accordance with section 13.
- (2) The director-general must approve an application for renewal of registration as an ART provider if satisfied—
- (a) the applicant is eligible to be registered; and
 - (b) the application is made in accordance with section 14.

- (3) The director-general must give written notice of their decision to approve or refuse an application to the applicant.

16 Conditions on registration

- (1) A person's registration as an ART provider is subject to any conditions the director-general considers appropriate.
- (2) However, before imposing a condition under subsection (1), the director-general must—
 - (a) give the person a written notice—
 - (i) stating the proposed condition; and
 - (ii) stating the reason for the proposed condition; and
 - (iii) telling the person that the person may give a written response to the director-general about the matters stated in the notice not later than 28 days after the person receives the notice; and
 - (b) consider any response given to the director-general in accordance with paragraph (a) (iii).
- (3) A condition imposed under this section must not be inconsistent with a condition imposed on the person's ART accreditation and, to the extent of any inconsistency, is invalid.

17 Term of registration

- (1) A person's registration as an ART provider—
 - (a) begins—
 - (i) on the day the director-general gives the person notice of their decision to approve the person's application for registration under section 15; or

- (ii) for a renewed registration—on the day the director-general approves the person’s application for renewal under section 15; and
- (b) ends on the earliest of—
 - (i) 5 years after the day the registration begins; or
 - (ii) the day the registration is cancelled under section 18.
- (2) However, if a person applies for renewal of their registration in accordance with section 14 before the registration ends, it continues in force until the application is decided.

18 Cancellation of registration

The director-general must cancel a person’s registration as an ART provider if the person—

- (a) gives notice of the person ceasing to provide ART services under section 19; or
- (b) stops holding ART accreditation; or
- (c) is prohibited under division 7.3 from carrying on a business that provides ART services for 12 months or longer.

19 Requirement to notify director-general about certain events

- (1) A registered ART provider must give the director-general written notice of the following events within 7 days after the event happens:
 - (a) the ART provider ceasing to provide ART services;
 - (b) a change of premises at which the ART provider provides ART services;
 - (c) a change to the doctors who perform or supervise ART services provided by the ART provider;
 - (d) a change to the ART provider’s ART accreditation;

- (e) the ART provider contravening any ART legislation;
 - (f) if the ART provider is a corporation—a change to the address of its registered office or principal place of business;
 - (g) a change to the people who provide counselling services in relation to ART services provided by the ART provider;
 - (h) any other event prescribed by regulation.
- (2) A registered ART provider commits an offence if it fails to comply with subsection (1).

Maximum penalty: 30 penalty units.

20 Register of ART providers

- (1) The director-general must keep a register of registered ART providers.
- (2) The register must contain the following information for each registered ART provider:
- (a) the ART provider's name;
 - (b) the address of each premises at which the ART provider provides ART services;
 - (c) the name of each doctor who performs or supervises ART services provided by the ART provider;
 - (d) the name of each person who provides counselling services in relation to ART services provided by the ART provider.
- (3) The register may contain any other information the director-general considers appropriate.
- (4) The director-general must make the information in subsection (2) available to the public.

- (5) However, the director-general must not make information about a person available to the public if—
- (a) the person applies, in writing, for the information not to be made available to the public; and
 - (b) the director-general is satisfied that the publication of the information would, or could reasonably be expected to, endanger anyone's life or physical safety.

Part 4 **Provision of ART services**

Division 4.1 **General requirements**

21 **Requirement to be registered**

- (1) An ART provider commits an offence if it—
- (a) provides an ART service; and
 - (b) is not a registered ART provider.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) A person commits an offence if the person—
- (a) advertises or holds out that the person is a registered ART provider; and
 - (b) is not a registered ART provider.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

22 **Performance and supervision of ART services**

An ART provider commits an offence if—

- (a) it provides ART services; and
- (b) the ART services are not performed or supervised by a doctor.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

23 Requirement to offer counselling before providing ART service

- (1) An ART provider must offer counselling services—
 - (a) before providing ART treatment—
 - (i) to a person seeking to undergo the treatment; and
 - (ii) to a domestic partner of the person seeking to undergo the treatment; and
 - (b) before obtaining a gamete—to a person proposing to provide the gamete to the ART provider; and
 - (c) before using a gamete, or an embryo created from the gamete—to the gamete provider if—
 - (i) the gamete was not originally obtained as a donated gamete; and
 - (ii) the gamete provider proposes to donate the gamete or embryo for use by someone other than the gamete provider or the gamete provider’s domestic partner.
- (2) The counselling services must be available in the ACT, either in person or remotely.
- (3) A regulation may prescribe a qualification a person must hold to provide counselling services.
- (4) An ART provider commits an offence if it fails to offer counselling services in accordance with this section.
Maximum penalty: 15 penalty units.
- (5) Nothing in this section—
 - (a) prevents a person providing counselling services from charging a reasonable fee for the services; or
 - (b) requires a person to use counselling services.

24 Requirement to give certain information before providing ART service

- (1) An ART provider must—
- (a) tell a person mentioned in an item in table 24, column 2, about the matters mentioned in the item, column 3, before providing an ART service mentioned in the item, column 4; and
 - (b) confirm that the person understands the matters.

Table 24

column 1 item	column 2 person	column 3 matters	column 4 ART service
1	person seeking to undergo ART treatment not using donated gametes	basic matters	ART treatment to the person
2	person seeking to undergo ART treatment using donated gametes	extended matters	ART treatment to the person
3	person proposing to provide a gamete (other than as a donated gamete)	basic matters	obtaining the gamete from the person
4	person proposing to provide a donated gamete	extended matters	obtaining the gamete from the person
5	a gamete provider from whom the gamete was not originally obtained as a donated gamete	extended matters	using the gamete, or an embryo created from the gamete, in providing ART treatment to a person other than the gamete provider or the gamete provider's domestic partner

- (2) An ART provider commits an offence if—
- (a) it fails to comply with a requirement under subsection (1) to tell a person about a matter or confirm that a person understands a matter; and
 - (b) the matter is not prescribed by regulation.

Maximum penalty: 200 penalty units.

- (3) An ART provider commits an offence if—
- (a) it fails to comply with a requirement under subsection (1) to tell a person about a matter or confirm that a person understands a matter; and
 - (b) the matter is prescribed by regulation under the definition of *basic matters*, paragraph (c) or *extended matters*, paragraph (h).

Maximum penalty: 30 penalty units.

- (4) In this section:

basic matters means—

- (a) the availability of counselling services under section 23; and
- (b) the effect of a gamete provider's consent under section 29, including how and when consent may be modified or withdrawn under section 30; and
- (c) any other matter prescribed by regulation.

extended matters means—

- (a) basic matters; and
- (b) the ART provider's obligations in relation to collecting information about the person and their donor conceived offspring; and

- (c) the application of the [Criminal Code](#), part 3.4 (False or misleading statements, information and documents) to the person, including in relation to information given to the ART provider by the person; and
- (d) the existence of the donor register and the information to be kept in the register about the person and their donor conceived offspring; and
- (e) the person's right to obtain information in the donor register about themselves; and
- (f) the person's right, and the right of their donor conceived offspring, to obtain information in the donor register about other people; and
- (g) the right of other people to obtain information in the donor register about the person and their donor conceived offspring; and
- (h) any other matter prescribed by regulation.

25 Disclosure of personal health information by ART provider

- (1) An ART provider may disclose personal health information in accordance with this section if a doctor certifies that the disclosure is necessary to—
 - (a) prevent or reduce a serious and imminent risk to anyone's life or physical, mental or emotional health; or
 - (b) warn the person to whom the information is disclosed about the existence of a medical condition that may be harmful to the person or the person's children (including future children).

- (2) The ART provider may disclose personal health information about a donor to the following people:
 - (a) a person born as a result of ART treatment using the donor's donated gamete if—
 - (i) the person is at least 16 years old; or
 - (ii) the ART provider is satisfied the person is sufficiently mature to access the information;
 - (b) a parent of a child or young person born as a result of ART treatment using the donor's donated gamete;
 - (c) a person who is pregnant as a result of ART treatment using the donor's donated gamete.
- (3) The ART provider may disclose personal health information about a donor conceived person to their donor or donor sibling.
- (4) The disclosure—
 - (a) must be made by a doctor on the ART provider's behalf; and
 - (b) may also be made to a doctor treating the person to whom it is made.
- (5) Nothing in this section requires an ART provider to disclose information to any person.
- (6) In this section:

personal health information—see the [Health Records \(Privacy and Access\) Act 1997](#), dictionary.

26 Provision of ART treatment to child or young person

- (1) An ART provider commits an offence if it—
 - (a) provides ART treatment to a child or young person; or
 - (b) obtains a gamete from a child or young person for use in ART treatment or for research in relation to ART treatment.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) Subsection (1) does not apply to an ART provider that obtains a gamete from a child or young person if—
 - (a) a doctor has certified there is a reasonable risk of the child or young person becoming infertile before becoming an adult; and
 - (b) the ART provider obtains the gamete for the purpose of storing it for the child or young person's future benefit.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) An ART provider that has obtained a gamete from a child or young person in accordance with subsection (2) must—
 - (a) despite anything else in this Act, store the gamete until the person becomes an adult and provides instructions in relation to the gamete; and
 - (b) when the person becomes an adult, take reasonable steps to obtain the person's consent to storage of the gamete unless the person gives consent sooner.

27 Infection control standards

- (1) A regulation may prescribe requirements for controlling infection in the provision of ART services (*infection control standards*).
- (2) An ART provider must comply with infection control standards.

Division 4.2 Consent of gamete providers

28 Requirement to obtain consent of gamete provider

A gamete may be used in the provision of ART treatment only in accordance with the consent of the gamete provider or a court order under section 37 (Authorisation of posthumous use).

29 Form and content of consent

- (1) A gamete provider's consent to the use of their gametes must be in writing and state—
 - (a) the number of families in relation to which the gametes may be used in the provision of ART treatment; and
 - (b) the kinds of ART treatment for which the gametes may be used; and
 - (c) the period for which the gametes may be stored.
- (2) A gamete provider must give their consent to the ART provider obtaining or proposing to obtain their gamete.
- (3) A gamete provider's consent must not limit use of a gamete in the provision of ART treatment to a person because of any protected attribute of the person.

Example

A gamete provider must not state that their gamete may be used only in the provision of ART treatment to a married person as relationship status is a protected attribute.

- (4) A regulation may prescribe other requirements in relation to consent of gamete providers.
- (5) In this section:

family—see section 40 (3).

protected attribute—see the *Discrimination Act 1991*, section 7.

30 Modification or withdrawal of consent

- (1) A gamete provider's consent may be modified or withdrawn at any time until—
 - (a) for a donated gamete—the gamete is placed in a person's body or an embryo is created from the gamete; or
 - (b) for a gamete used to create a donated embryo—the embryo is implanted in a person's body; or
 - (c) in any other case—the gamete, or an embryo created from the gamete, is placed or implanted in a person's body.
- (2) A gamete provider may modify or withdraw consent by written notice given to an ART provider that is, or has been, in possession of the gamete or embryo to which the consent relates.
- (3) If an ART provider receives notice of modification or withdrawal of consent in relation to a gamete or embryo it has supplied to another ART provider, it must give the other ART provider written notice of the modification or withdrawal as soon as practicable.
- (4) Modification or withdrawal of consent takes effect in relation to an ART provider as soon as the ART provider is given written notice of the modification or withdrawal in accordance with this section.
- (5) A regulation may prescribe other requirements in relation to modification or withdrawal of consent.
- (6) In this section:
donated gamete does not include a gamete that becomes a donated gamete only after being used to create an embryo.

31 Requirement to verify identity of gamete provider

- (1) A regulation may prescribe the steps an ART provider must take to verify the identity of a person purportedly giving, modifying or withdrawing consent as a gamete provider.

- (2) An ART provider commits an offence if it—
- (a) receives a document under section 29 or section 30 purporting to give, modify or withdraw a person’s consent as a gamete provider; and
 - (b) fails to take the steps prescribed by regulation to verify the person’s identity.

Maximum penalty: 30 penalty units.

32 Requirement to confirm consent in certain cases

- (1) An ART provider commits an offence if—
- (a) it carries out any of the following activities in relation to a gamete or embryo (other than a donated gamete or donated embryo):
 - (i) using the gamete to create an embryo outside a person’s body;
 - (ii) providing ART treatment to a person using the gamete or embryo;
 - (iii) supplying the gamete or embryo to another person (including an ART provider);
 - (iv) exporting the gamete or embryo, or causing the gamete or embryo to be exported, from the ACT; and
 - (b) the activity is carried out more than 12 months after the latest of the following:
 - (i) the gamete provider giving consent to the activity;
 - (ii) the ART provider confirming the gamete provider’s consent to the activity.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) does not apply to an ART provider if it knows or believes on reasonable grounds that the gamete provider is deceased.

Note 1 The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

Note 2 It is an offence to use a gamete or embryo of a deceased gamete provider without authorisation (see s 36).

Division 4.3 Use of gametes and embryos

33 Use of gamete to create embryo outside body

- (1) An ART provider commits an offence if—
- (a) it uses a gamete to create an embryo outside a person's body; and
 - (b) the gamete is used without the gamete provider's consent, or in a way that is inconsistent with the gamete provider's consent.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) does not apply if the ART provider uses the gamete in accordance with a court order under section 37 (Authorisation of posthumous use).

Note 1 The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

Note 2 It is an offence to intentionally develop a human embryo outside the body of a person for a period of more than 14 days, excluding any period when development is suspended (see [Human Cloning and Embryo Research Act 2004](#), s 12).

34 Use of gametes or embryos in ART treatment

- (1) An ART provider commits an offence if—
- (a) it provides ART treatment to a person using a gamete; and
 - (b) the gamete is used without the gamete provider’s consent, or in a way that is inconsistent with the gamete provider’s consent.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) does not apply if the ART provider uses the gamete in accordance with a court order under section 37 (Authorisation of posthumous use).

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

35 Use of gametes or embryos for research

An ART provider commits an offence if—

- (a) it uses a gamete or embryo for research; and
- (b) the gamete or embryo is used without the gamete provider’s consent, or in a way that is inconsistent with the gamete provider’s consent.

Maximum penalty: 200 penalty units.

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

36 Posthumous use of gametes or embryos

- (1) An ART provider commits an offence if it—
- (a) provides ART treatment to a person using a gamete; and
 - (b) knows or reasonably ought to have known that the gamete provider is deceased.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the gamete provider had consented to the use of the gamete in the circumstances and the person undergoing the treatment has, having been notified of the gamete provider's death and date of death (if known), consented to the treatment in writing; or
 - (b) the ART provider provides the treatment to the gamete provider's domestic partner in accordance with a court order under section 37.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

37 Authorisation of posthumous use

- (1) The domestic partner of a deceased gamete provider may apply to the Supreme Court for an order to authorise the following in relation to the gamete provider's gametes:
- (a) use of the gametes in the provision of ART treatment to the partner;
 - (b) storage of the gametes for the authorised use.
- (2) In deciding whether to authorise the use or storage of a deceased gamete provider's gametes, the court must consider the following:
- (a) whether the domestic partner has capacity to consent to the provision of the treatment;
 - (b) whether the domestic partner has undergone appropriate counselling;
 - (c) the best interests of any children to be born as a result of the treatment, including—
 - (i) whether the domestic partner has capacity to provide for the child's emotional, intellectual and other needs; and
 - (ii) whether the child is likely to have safe and stable living arrangements;

- (d) whether the gamete provider expressly objected to posthumous use of their gametes;
- (e) whether the gamete provider is likely to have supported posthumous use of their gametes in the provision of ART treatment to their domestic partner;
- (f) any other matter the court considers appropriate.

38 Use of gametes obtained more than 5 years ago

- (1) An ART provider commits an offence if—
 - (a) it provides ART treatment using a gamete; and
 - (b) the gamete was obtained from a gamete provider more than 5 years before the provision of the ART treatment; and
 - (c) it fails to take reasonable steps to find out whether the gamete provider is alive.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply to an ART provider if—
 - (a) it, or another ART provider that supplied the gamete or embryo, has been contacted by the gamete provider within 5 years before the provision of the treatment; or
 - (b) it knows or believes on reasonable grounds that the gamete provider is deceased.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) The registrar-general must not refuse an application made under the *Births, Deaths and Marriages Registration Act 1997*, section 43 (Search of register) if the application is—
 - (a) made for the purposes of this section in a suitable form; and
 - (b) accompanied by any fee determined under that Act.

(4) In this section:

reasonable steps include—

- (a) obtaining a certificate under the *Births, Deaths and Marriages Registration Act 1997*, section 45 (Issue of certificates) about whether the gamete provider's death has been recorded in the register; and
- (b) completing any other inquiries prescribed by regulation for finding out whether the gamete provider is alive.

register means the register maintained under the *Births, Deaths and Marriages Registration Act 1997*, section 39.

39 Donated gametes or embryos—time limits on use

- (1) An ART provider commits an offence if—
 - (a) it provides ART treatment—
 - (i) using a donated gamete that was obtained more than 15 years before the treatment is provided; or
 - (ii) using an embryo created from a donated gamete, or a donated embryo, that was created more than 15 years before the treatment is provided; and
 - (b) the treatment is provided without the written authorisation of the director-general.

Maximum penalty: 100 penalty units.

- (2) The director-general may authorise ART treatment for subsection (1)
 - (b) only if satisfied there are reasonable grounds for doing so.
- (3) The director-general may make guidelines in relation to the giving of an authorisation under subsection (2).
- (4) A guideline is a notifiable instrument.

- (5) For this section, a *gamete* used in the provision of ART treatment does not include an embryo created from the gamete.

40 Donated gametes or embryos—limits on number of families

- (1) An ART provider commits an offence if—
- (a) it provides ART treatment using a donated gamete; and
 - (b) the donor has donated gametes used in ART treatment previously; and
 - (c) either of the following apply:
 - (i) 5 or more families include a child born as a result of ART treatment provided in the ACT using a donated gamete or embryo of the donor;
 - (ii) 10 or more families include a child born as a result of ART treatment provided in Australia using a donated gamete or embryo of the donor.

Maximum penalty: 200 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the ART provider proves that it exercised due diligence to prevent the contravention, which must include—
- (a) searching its records; and
 - (b) making reasonable inquiries of the donor; and
 - (c) if it has reason to believe another ART provider (including an interstate ART provider) has obtained or been supplied with a gamete or embryo of the donor—requesting information from the other ART provider under section 41.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 59).

(3) In this section:

family means a parent, their domestic partner (if any) and their children.

41 Requirement to give information about number of families

(1) If a registered ART provider requests information in relation to a donor from another ART provider under section 40 (2) (c), the other ART provider must give the registered ART provider—

(a) the number of families to which 1 or more of the following applies:

- (i) the family includes a child born as a result of ART treatment provided by the other ART provider using a donated gamete or embryo of the donor;
- (ii) the family includes a person who is pregnant as a result of ART treatment provided by the other ART provider using a donated gamete or embryo of the donor;
- (iii) the family includes a person for whom an embryo has been created by the other ART provider using a donated gamete of the donor and placed in storage; and

(b) the number of people who are not parents and to whom 1 or both of the following apply:

- (i) the person is pregnant as a result of ART treatment provided by the other ART provider using a donated gamete or embryo of the donor;
- (ii) an embryo has been created by the other ART provider using a donated gamete of the donor and placed in storage for the person; and

- (c) details of any other ART providers that have been supplied with a donated gamete, or an embryo created from a donated gamete, of the donor; and
 - (d) any other information prescribed by regulation.
- (2) An ART provider commits an offence if it—
- (a) receives a request for information from a registered ART provider under section 40 (2) (c); and
 - (b) fails to give the information required under subsection (1).
- Maximum penalty: 30 penalty units.
- (3) In this section:
family—see section 40 (3).

42 Use of gametes to create embryo with close family member

- (1) An ART provider commits an offence if it—
- (a) uses a gamete to create an embryo (whether inside or outside the body of a person); and
 - (b) knows that the gamete provider is a close family member of the other person whose gamete is used to create the embryo.
- Maximum penalty: 200 penalty units, imprisonment for 2 years or both.
- (2) In this section:
close family member, of a person, means a parent, child, sibling (including a half-sibling), grandparent or grandchild of the person from birth.

Division 4.4 Storage and transfer of gametes and embryos

43 Storage of gametes or embryos

- (1) An ART provider commits an offence if—
- (a) it stores a gamete or embryo; and
 - (b) the gamete or embryo is stored—
 - (i) without the gamete provider’s consent; or
 - (ii) in a way that is inconsistent with the gamete provider’s consent.

Maximum penalty: 200 penalty units.

- (2) An ART provider commits an offence if—
- (a) it stores a gamete or embryo; and
 - (b) the gamete or embryo is stored for longer than the shortest of the following periods:
 - (i) a storage period the ART provider has proposed by written notice to the gamete provider (whether before or after the gamete was obtained);
 - (ii) the storage period stated in the gamete provider’s consent or, for an embryo, the shortest storage period stated in the gamete providers’ consents;
 - (iii) for a donated gamete—15 years after the day the gamete was obtained from the donor plus any additional period authorised by the director-general under section 39 (2);

- (iv) for an embryo created from a donated gamete, or a donated embryo—15 years after the day the embryo was created plus any additional period authorised by the director-general under section 39 (2).

Maximum penalty: 30 penalty units.

- (3) Subsection (1) and (2) do not apply to an ART provider if—
 - (a) it is required to store the gamete under section 26 (Provision of ART treatment to child or young person); or
 - (b) it has a reasonable excuse for contravening a storage requirement under subsection (1) or (2); or
 - (c) a gamete provider is deceased and the ART provider stores their gamete or embryo for the purpose of its authorised use (including use authorised by a court order under section 37) or to allow a person to apply for a court order under section 37.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

44 Supply of gametes or embryos to another person

- (1) An ART provider commits an offence if—
 - (a) it supplies a gamete or an embryo to another person (including another ART provider); and
 - (b) the gamete or embryo is supplied without the gamete provider's consent, or in a way that is inconsistent with the gamete provider's consent.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) does not apply if the gamete provider is deceased and the ART provider supplies the gamete or embryo for the purpose of its authorised use (including use authorised by a court order under section 37).

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

45 Export of gametes or embryos from ACT

- (1) An ART provider commits an offence if—
- (a) it exports a gamete or embryo, or causes a gamete or embryo to be exported, from the ACT; and
 - (b) the gamete or embryo is exported or caused to be exported without the gamete provider’s consent, or in a way that is inconsistent with the gamete provider’s consent.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply if the gamete provider is deceased and the ART provider exports the gamete or embryo for the purpose of its authorised use (including use authorised by a court order under section 37).

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

Division 4.5 Record keeping requirements

46 Requirement to collect information about gamete provider

- (1) An ART provider must collect the following information before obtaining a gamete, whether from the gamete provider or anyone else:
- (a) for all gametes—
 - (i) the gamete provider’s full name; and
 - (ii) the gamete provider’s home address; and

- (iii) the gamete provider's date of birth;
- (b) for donated gametes—
 - (i) the donor's place of birth; and
 - (ii) the donor's ethnicity and physical characteristics; and
 - (iii) the donor's relevant medical history; and
 - (iv) the sex and year of birth of each donor conceived offspring of the donor; and
 - (v) the name of each ART provider that has previously obtained a donated gamete from the donor and the date on which the gamete was obtained.
- (2) An ART provider must collect the information mentioned in subsection (1) in relation to a gamete before using the gamete, or an embryo created from the gamete, for any purpose.
- (3) An ART provider commits an offence if it fails to comply with this section.

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.

47 Requirement to collect information about person undergoing ART treatment

- (1) An ART provider must collect a person's full name, home address and date of birth before using a gamete in the provision of ART treatment to the person.
- (2) An ART provider commits an offence if it fails to comply with subsection (1).

Maximum penalty: 50 penalty units.

- (3) If a donated gamete is used in the provision of ART treatment to a person, an ART provider must take reasonable steps to find out—
- (a) within 1 to 4 months after providing the treatment—whether the person is pregnant as a result of the treatment; and
 - (b) within 10 to 15 months after providing the treatment—whether a child was born as a result of the treatment, and if so, the child’s full name, sex and date of birth.
- (4) An ART provider commits an offence if it fails to comply with subsection (3).

Maximum penalty: 50 penalty units.

- (5) Subsection (4) does not apply to an ART provider that fails to comply with subsection (3) (b) if—
- (a) within 10 months after providing the treatment, the person who underwent the treatment tells the ART provider that a child was born as a result of the treatment, and the child’s full name, sex and date of birth; or
 - (b) it knows that no child was born as a result of the treatment.

Note The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](#), s 58).

- (6) An offence against subsection (2) is a strict liability offence.

48 Requirement to keep records

- (1) An ART provider must keep a record of the following:
- (a) in relation to each gamete or embryo in its possession—
 - (i) information collected under section 46 (1); and
 - (ii) information about each other ART provider that has had possession of the gamete or embryo (including the gametes used to create the embryo); and
 - (iii) each gamete provider’s consent; and

- (iv) any use, supply or export of the gamete or embryo; and
 - (v) the period during which the gamete or embryo has been in storage;
 - (b) in relation to each person to whom it provides ART treatment—
 - (i) information collected under section 47 (1); and
 - (ii) if a donated gamete was used in the provision of the treatment—information collected under section 47 (3) (a);
 - (c) in relation to each child it knows was born as a result of ART treatment it provided—
 - (i) the child’s full name, sex and date of birth; and
 - (ii) the full name of the person who gave birth to the child; and
 - (iii) if a donated gamete was used in the provision of the treatment—the donor’s full name and date and place of birth;
 - (d) if it does not know whether a child was born, or knows a child was not born, as a result of ART treatment it provided at least 15 months earlier—information to that effect;
 - (e) any other information prescribed by regulation.
- (2) An ART provider commits an offence if it fails to comply with subsection (1).
- Maximum penalty: 30 penalty units.
- (3) An ART provider must keep a record mentioned in subsection (1) for 50 years.
- Maximum penalty: 100 penalty units.

49 Information sharing between ART providers

An ART provider that supplies a gamete or embryo to another ART provider—

- (a) must give the other ART provider a copy of the gamete provider's consent in relation to the gamete or embryo; and
- (b) may give the other ART provider a copy of any other information required to be collected under this Act in relation to the gamete or embryo.

Part 5 Donor register

Division 5.1 Preliminary

50 Definitions—pt 5

In this part:

commencement day means the day this section commences.

donor, in relation to a donor conceived person, includes the gamete provider of a donated gamete used in self-insemination resulting in the person's birth.

donor code means a reference number used by an ART provider to identify a donor.

donor conceived, in relation to a person, includes a person born as a result of self-insemination using a donated gamete.

donor sibling, in relation to a donor conceived person, includes the person's sibling born as a result of self-insemination using a gamete donated by the person's donor.

informal donor arrangement means—

- (a) ART treatment using a donated gamete if the treatment is not provided for fee or reward, or in carrying on a business; or
- (b) self-insemination using a donated gamete.

mature donor conceived person—see section 51.

51 Meaning of *mature donor conceived person*—pt 5

(1) In this part:

mature donor conceived person means a donor conceived person who—

- (a) is at least 16 years old; or

- (b) has received appropriate counselling services from a suitably qualified and experienced counsellor who is satisfied the person is able to—
 - (i) understand and comply with the donor’s contact preferences under section 58; and
 - (ii) understand that the donor has no parental rights or responsibilities (including financial rights and responsibilities).
- (2) A regulation may prescribe a qualification a person must hold to be suitably qualified and experienced to provide the counselling services.

52 Donor register

- (1) The director-general must keep a donor register.
- (2) The register may be kept in any form the director-general decides.
- (3) The director-general may correct any mistake, error or omission in the register.

Division 5.2 Information in donor register

53 Mandatory information

- (1) This section applies to an ART provider that provides ART treatment using a donated gamete.
- (2) The ART provider must, within 2 months after becoming aware that a child has been born alive as a result of the treatment, give the director-general—
 - (a) the following information about the donor:
 - (i) their full name;
 - (ii) their home address;

- (iii) their date and place of birth;
 - (iv) their ethnicity and physical characteristics;
 - (v) their relevant medical history;
 - (vi) the sex and year of birth of each of their donor conceived offspring;
 - (vii) the name of each ART provider that has previously obtained a donated gamete from the donor and the date on which the gamete was obtained;
 - (viii) their consent; and
- (b) the full name, sex and date of birth of the child; and
 - (c) the full name of the person who gave birth to the child.
- (3) If the ART provider does not know whether a child was born alive as a result of the treatment, it must, within 15 to 16 months after providing the treatment—
- (a) tell the director-general it does not know whether a child was born alive as a result of the treatment; and
 - (b) give the director-general—
 - (i) information about the donor mentioned in subsection (2) (a); and
 - (ii) the full name of the person who underwent the treatment.
- (4) An ART provider commits an offence if it fails to comply with this section.
- Maximum penalty: 100 penalty units.
- (5) The director-general must enter in the donor register any information given to the director-general under this section.

54 Voluntary information about donors

- (1) This section applies to—
 - (a) a donor who donated a gamete before the commencement day;
or
 - (b) a donor who donated a gamete for use in an informal donor arrangement; or
 - (c) an ART provider acting on behalf of a donor mentioned in paragraph (a) or (b) with the donor’s consent.
- (2) The donor or ART provider may, by written notice, give the director-general any of the following information about the donor for inclusion in the donor register:
 - (a) their full name;
 - (b) their home address;
 - (c) their date and place of birth;
 - (d) their donor code;
 - (e) their relevant medical history;
 - (f) the sex and year of birth of each of their donor conceived offspring;
 - (g) the name of each ART provider that has obtained a donated gamete from the donor and the date on which the gamete was obtained.
- (3) The notice may state restrictions on the disclosure of the information.
- (4) The director-general may require that the notice be accompanied by evidence—
 - (a) that the information contained in the notice is accurate; and
 - (b) if the information is given on a donor’s behalf—that the donor has consented to the information being given.

- (5) The director-general may enter in the donor register any information given to the director-general under this section.

55 Voluntary information about donor conceived people

- (1) A mature donor conceived person may, by written notice, give the director-general any of the following information for inclusion in the donor register:
- (a) their full name;
 - (b) their sex;
 - (c) their home address;
 - (d) their date and place of birth;
 - (e) their donor's donor code;
 - (f) the full name of the person who gave birth to them.
- (2) A parent of a donor conceived child or young person may, by written notice, give the director-general any of the following information about the child or young person for inclusion in the donor register:
- (a) their full name;
 - (b) their sex;
 - (c) their date of birth;
 - (d) their donor's donor code;
 - (e) the full name of the person who gave birth to the child or young person.
- (3) The notice may state restrictions on the disclosure of the information.
- (4) The director-general may—
- (a) require that the notice be accompanied by evidence that the information contained in the notice is accurate; and

- (b) enter in the donor register any information given to the director-general under this section.

56 Voluntary information about informal donor arrangements

- (1) A parent of a donor conceived person born as a result of an informal donor arrangement may, by written notice, give the director-general any of the following information for inclusion in the donor register:
 - (a) the parent's full name;
 - (b) the donor conceived person's full name, sex and date of birth;
 - (c) if the donor consents in writing—the donor's full name and date of birth;
 - (d) whether the donor conceived person was born as a result of ART treatment or self-insemination.
- (2) The notice may state restrictions on the disclosure of the information.
- (3) The director-general may require that the notice be accompanied by evidence—
 - (a) that the information contained in the notice is accurate; and
 - (b) if the information is given on a donor's behalf—that the donor has consented to the information being given.
- (4) The director-general may enter in the donor register any information given to the director-general under this section.

57 Voluntary information about personal characteristics

- (1) A donor or mature donor conceived person may, by written notice, give the director-general information about their personal characteristics for inclusion in the donor register.
- (2) The notice may state restrictions on the disclosure of the information.

- (3) The director-general may enter in the donor register any information given to the director-general under this section.

58 Voluntary information about contact preferences

- (1) A donor or mature donor conceived person may, by written notice, give the director-general the following information for inclusion in the donor register:
 - (a) their contact details and preferred way to be contacted about matters in relation to the donor register; or
 - (b) that they do not wish to be contacted about matters in relation to the donor register.
- (2) The director-general must enter in the donor register any information given to the director-general under this section.

59 Information entered on director-general's own initiative

- (1) The director-general may, on their own initiative, enter the following information in the donor register:
 - (a) mandatory information given by an ART provider other than in accordance with section 53;
 - (b) mandatory information given to the director-general under section 61 (Direction to give information about donor conceived person);
 - (c) mandatory information given to the director-general under section 62 (Information sharing between director-general and registrar-general).

- (2) Also, the director-general may, on their own initiative, enter information in the donor register if—
- (a) the director-general is satisfied on reasonable grounds the information is about—
 - (i) a donor conceived person born as a result of ART treatment provided on or after the commencement day; or
 - (ii) a donor of a person mentioned in paragraph (i); and
 - (b) the information is mandatory information given—
 - (i) other than in accordance with section 53; and
 - (ii) by the subject of the information or, if the subject is a donor conceived child or young person, by their parent.
- (3) The director-general must include the source of the information when entering the information in the donor register.

Note This section does not allow the director-general to include in the donor register information provided unlawfully.

Division 5.3 **Measures to ensure accuracy of information**

60 **Requirement to ensure accuracy**

- (1) The director-general must ensure, as far as is practicable, that information in the donor register is accurate and not misleading.
- (2) For subsection (1), the director-general may do any of the following:
- (a) refuse to enter information;
 - (b) revise or remove information;
 - (c) retain historical information;

Example

a person's former name

- (d) add any notes the director-general considers appropriate;
 - (e) ask an ART provider to give information to verify information given voluntarily by a person under division 5.2.
- (3) A person may ask the director-general to revise incorrect or outdated information about the person in the donor register.
- (4) The director-general must remove information given voluntarily by a person under division 5.2 if—
- (a) the person asks the director-general to remove the information; and
 - (b) the director-general is satisfied the information is not required to be on the donor register.

61 Direction to give information about donor conceived person

- (1) This section applies if the director-general believes on reasonable grounds that a health service provider has mandatory information—
- (a) in relation to a donor conceived person born as a result of ART treatment provided on or after the commencement day; and
 - (b) that has not been provided in accordance with section 53.
- (2) The director-general may give the health service provider a written direction requiring the provider to answer stated questions, or give stated information to—
- (a) determine whether a donor conceived person was born alive as a result of ART treatment provided on or after the commencement day; or
 - (b) determine whether any mandatory information in relation to the donor conceived person has been correctly entered in the donor register; or

- (c) obtain any mandatory information in relation to the donor conceived person.
- (3) The direction may include requirements about how the answers or information must be given.
- (4) The health service provider commits an offence if the provider contravenes the direction.

Maximum penalty: 30 penalty units.

- (5) The health service provider is not excused from complying with a direction on the ground that doing so may—
 - (a) tend to incriminate the provider; or
 - (b) expose the provider to a penalty.
- (6) However, any information or document obtained, directly or indirectly, because of the health service provider's compliance with the direction is not admissible in evidence against the provider in a civil or criminal proceeding, other than a proceeding for an offence arising out of the false or misleading nature of the information or document.
- (7) In this section:
health service provider—see the [Health Act 1993](#), section 7.

62 Information sharing between director-general and registrar-general

- (1) The director-general and the registrar-general may share information in relation to the following to assist the director-general to meet the requirements of section 60:
 - (a) a donor conceived person;
 - (b) a donor;
 - (c) a person who gave birth to a donor conceived person;

- (d) a domestic partner of a person mentioned in paragraph (c).
- (2) Subsection (1) has effect despite anything elsewhere in this Act or another territory law.

Division 5.4 Disclosure of information in donor register

63 Disclosure of information in donor register generally

- (1) The director-general may disclose information kept in the donor register only in accordance with this part.
- (2) For disclosure of information under this part, the director-general is entitled to assume that information given to the director-general and kept in the donor register is accurate.
- (3) Nothing in this section limits section 60 (Requirement to ensure accuracy).

64 Disclosure to subject of information

- (1) The director-general must, on application by any of the following people, give the person a copy of any information about the person kept in the donor register:
 - (a) a donor;
 - (b) a mature donor conceived person;
 - (c) a person who has undergone ART treatment or self-insemination using a donated gamete.
- (2) The director-general must, on application by a parent of a donor conceived child or young person, give the parent a copy of any information about the child or young person kept in the donor register.
- (3) This section does not authorise disclosure of information about—
 - (a) anyone other than the applicant, or for an application under subsection (2), anyone other than the child or young person; or

- (b) the applicant's relationship with other people, or for an application under subsection (2), the child or young person's relationship with other people, unless the information was originally provided by the applicant.

65 Disclosure to donor

The director-general must, on application by a donor, give the donor a copy of the following information kept in the donor register in relation to a person born as a result of ART treatment or self-insemination using the donor's donated gamete:

- (a) the person's sex and year of birth;
- (b) information the person gave voluntarily under division 5.2, subject to any restrictions on disclosure stated by the person.

66 Disclosure to donor conceived person

The director-general must, on application by a mature donor conceived person, give the person a copy of the following information kept in the donor register:

- (a) if the person was born as a result of ART treatment provided on or after the commencement day—mandatory information about the person's donor;
- (b) information the person's donor gave voluntarily under division 5.2, subject to any restrictions on disclosure stated by the donor;
- (c) information the person's donor sibling gave voluntarily under division 5.2, subject to any restrictions on disclosure stated by the sibling;
- (d) the sex and year of birth of the person's donor siblings.

67 Disclosure to parent of donor conceived child or young person

- (1) The director-general must, on application by a parent of a donor conceived child or young person, give the parent a copy of the information the child or young person would be entitled to be given as a mature donor conceived person under section 66.
- (2) However, the director-general must not give the parent mandatory information about the child or young person's donor if—
 - (a) the child or young person was born as a result of ART treatment or self-insemination using a gamete donated before the commencement day; and
 - (b) the donor has not otherwise given the mandatory information voluntarily under division 5.2.
- (3) The director-general must, on application by a suitable person, give the person a copy of the information that may be given to a parent under this section if—
 - (a) the parent is unwilling or unable to seek the information on the child or young person's behalf; and
 - (b) the information cannot reasonably be obtained by the person in any other way.
- (4) In this section:
suitable person, in relation to a child or young person, means a person the director-general considers is a representative of the child or young person with a genuine interest in their welfare.

68 Disclosure of information on director-general's initiative

- (1) The director-general may, on their own initiative, disclose information kept in the donor register that has been entered or revised under section 59 or section 60 to a person who would otherwise be entitled to be given the information under this part.

- (2) The director-general may, on their own initiative, disclose personal health information kept in the donor register—
- (a) only if the director-general believes on reasonable grounds that the disclosure is necessary to—
 - (i) prevent or reduce a serious and imminent risk to anyone’s life or physical, mental or emotional health; or
 - (ii) warn the person to whom the information is disclosed about the existence of a medical condition that may be harmful to the person or the person’s children (including future children); and
 - (b) to the following people:
 - (i) a mature donor conceived person if the information is about their donor;
 - (ii) a parent of a donor conceived child or young person if the information is about the child or young person’s donor;
 - (iii) a person who is pregnant as a result of ART treatment or self-insemination using a donor’s donated gamete if the information is about the donor;
 - (iv) a donor if the information is about a person born as a result of ART treatment or self-insemination using the donor’s donated gamete;
 - (v) a donor conceived person if the information is about their donor sibling.
- (3) The director-general may, on their own initiative, disclose information kept in the donor register—
- (a) if the director-general believes on reasonable grounds that—
 - (i) a donor or donor conceived person is involved in a consanguineous relationship; or

- (ii) another serious risk to the safety or welfare of a donor or donor conceived person exists; and
- (b) only to the extent that the disclosure is necessary to allow the affected person, or their parent, to understand the risk; and
- (c) to the following people:
 - (i) a donor, or donor conceived person, to whom subsection (3) applies (an *affected person*);
 - (ii) a parent of an affected child or young person.
- (4) Nothing in this section requires the director-general to disclose information to any person.
- (5) In this section:
personal health information—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

69 Contacting donor conceived person for consent to disclosure

- (1) The director-general may contact a mature donor conceived person to ask whether the person wishes to consent to the disclosure of information under this division.
- (2) The director-general may contact a person under subsection (1)—
 - (a) at the request of the person’s donor; or
 - (b) at the request of the person’s donor sibling; or
 - (c) on the director-general’s own initiative.
- (3) The director-general may contact a person under subsection (1) only if, in their opinion, the contact is justified to promote the safety or welfare of at least 1 of the people concerned.

- (4) The director-general may—
 - (a) consult any entity the director-general believes may assist in the exercise of their functions under this section; and
 - (b) arrange for any of the people concerned to be provided with counselling the director-general believes is necessary to assist the person and the director-general in the matter.
- (5) A regulation may prescribe guidelines in accordance with which the director-general must exercise the director-general's functions under this section.

70 Consent to disclosure generally

- (1) A person whose information is kept in the donor register may consent to the disclosure of the information in circumstances not otherwise allowed under this part.
- (2) The consent must be given by written notice to the director-general.
- (3) The director-general may require the person to provide proof of identity with the consent.
- (4) The consent may be withdrawn or modified by written notice to the director-general.
- (5) Nothing in this part prevents the director-general from disclosing information about a person kept in the donor register if—
 - (a) the person has consented to the disclosure under this section; and
 - (b) the disclosure is consistent with the consent.

Part 6 Pre-commencement records

Division 6.1 Preliminary

71 Definitions—pt 6

In this part:

ART provider includes a former ART provider.

commencement day means the day this section commences.

pre-commencement record means a record made by an ART provider about an ART service provided before the commencement day.

retention period, in relation to a pre-commencement record, means 75 years after—

- (a) the day on which the ART service to which the record relates was provided; or
- (b) if the record relates to more than 1 ART service—the day on which the last of those services was provided.

Division 6.2 Retention of pre-commencement records

72 Requirement to retain records

- (1) An ART provider commits an offence if—
 - (a) it has control of a pre-commencement record; and
 - (b) the record's retention period has not ended; and
 - (c) it fails to retain the record in a readily accessible form.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the ART provider fails to retain the record only because it transfers the record in accordance with section 73.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

73 Transfer of records

- (1) A person may transfer any pre-commencement record within the person's control to a registered ART provider.
- (2) The person must give the director-general written notice of the transfer as soon as practicable after transferring the record.
- (3) The registered ART provider must give the director-general written notice confirming the transfer as soon as practicable after receiving the record.
- (4) A person commits an offence if the person fails to comply with subsection (2) or (3).

Maximum penalty: 30 penalty units.

- (5) A regulation may prescribe additional procedures or requirements for the transfer of records, including—
- (a) providing for the transfer of pre-commencement records if an ART provider dies, is wound up or otherwise lacks capacity to retain the records in accordance with this part; and
- (b) matters required to be included in a notice given to the director-general under this section.

74 Director-general may authorise destruction of records

- (1) Despite anything else in this part, a person may destroy a pre-commencement record during the retention period if authorised in writing by the director-general.

- (2) The director-general may authorise the destruction of a pre-commencement record only if satisfied that no person would be adversely affected by the destruction of the record.

Example

The director-general authorises destruction of pre-commencement records because the records relate to gametes that no longer exist and the director-general is satisfied that no person was born as a result of ART treatment using the gametes.

Division 6.3 Access to pre-commencement records

Note This division deals with access to information about ART services provided before the commencement day that may not be kept in the donor register.

75 Meaning of *accessible information*—div 6.3

- (1) In this division:

accessible information, about a donor, means—

- (a) non-identifying information about—
- (i) the donor's ethnicity and physical characteristics; and
 - (ii) the donor's relevant medical history; and
 - (iii) the sex and year of birth of each person born as a result of ART treatment using a donated gamete of the donor; and
- (b) any other information about the donor (including identifying information) if the donor has consented to its disclosure.
- (2) However, *accessible information* does not include information that can be obtained under section 66 (Disclosure to donor conceived person) or section 67 (Disclosure to parent of donor conceived child or young person).

(3) In this section:

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

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

76 Application for accessible information about donor

(1) The following people may apply for accessible information about a donor:

- (a) a person born as a result of ART treatment using the donor's donated gamete if—
 - (i) the person is at least 16 years old; or
 - (ii) the ART provider to whom the application is made is satisfied the person is sufficiently mature to access information under this Act;
- (b) a parent of a child or young person born as a result of ART treatment using the donor's donated gamete.

(2) An application for accessible information may be made to—

- (a) the ART provider who provided the ART treatment resulting in the person's birth; or
- (b) an ART provider the applicant suspects on reasonable grounds may have accessible information about the donor.

77 Disclosure of accessible information by ART provider

(1) Within 28 days after receiving an application under section 76, an ART provider must give the applicant—

- (a) a copy of all accessible information about the donor held by the ART provider; and

- (b) if the ART provider has no accessible information about the donor—a statement to that effect; and
 - (c) if the ART provider has reason to believe another ART provider may have any accessible information about the donor—details of the other ART provider.
- (2) An ART provider commits an offence if it fails to comply with this section.

Maximum penalty: 50 penalty units.

Part 7 **Regulatory action**

Division 7.1 **Preliminary**

78 **Definitions—pt 7**

In this part:

associated entity, of a corporation, means—

- (a) a related corporation; or
- (b) an executive officer of the corporation or related corporation; or
- (c) a person with a significant interest in the corporation or related corporation.

recipient, in relation to an improvement notice or prohibition notice, means the person to whom the notice is given under this part.

related corporation means a related body corporate under the [Corporations Act](#).

Division 7.2 **Improvement notices**

79 **Giving improvement notice**

- (1) This section applies if the director-general is satisfied on reasonable grounds that—
 - (a) a person has contravened, is contravening, or is likely to contravene ART legislation; or
 - (b) it is otherwise necessary to require a person to rectify a matter or activity to prevent or minimise a risk to another person's health, safety or welfare or to public health or safety.
- (2) The director-general may give a notice (an *improvement notice*) to the person requiring the person to rectify the matter or activity to which the notice relates.

- (3) If the person is a corporation, the director-general may also give an improvement notice to an associated entity of the corporation.

80 Content of improvement notice

- (1) An improvement notice must state the following:
 - (a) that it is an improvement notice under this Act;
 - (b) the name of the recipient;
 - (c) the grounds on which the notice is given;
 - (d) the period within which the recipient must rectify the matter or activity to which the notice relates;
 - (e) that the notice continues in force until it is revoked;
 - (f) the period after which the recipient may apply to have the notice revoked.
- (2) An improvement notice may state the action the recipient must take to comply with the notice.

81 Extension of compliance period

- (1) The director-general may, on application by the recipient or on the director-general's own initiative, extend the compliance period before it ends.
- (2) The director-general must give written notice of their decision under subsection (1) to the recipient.
- (3) If an application for extension is refused, the written notice must state the reasons for the refusal.
- (4) In this section:

compliance period means the period mentioned in section 80 (1) (d), and includes that period as extended under this section.

82 Revoking improvement notice

- (1) An improvement notice remains in force until the day it is revoked.
- (2) The director-general may, on application by the recipient made in accordance with the notice or on the director-general's own initiative, revoke the notice if satisfied it has been complied with.
- (3) The director-general must give written notice of their decision under subsection (2) to the recipient.
- (4) If an application for revocation is refused, the written notice must—
 - (a) state the reasons for the refusal; and
 - (b) set a further period after which an application can be made under subsection (2).

83 Contravention of improvement notice

- (1) A person commits an offence if the person—
 - (a) is given an improvement notice under section 79; and
 - (b) contravenes the notice.

Maximum penalty:

 - (a) for a 1st offence—150 penalty units; or
 - (b) for a 2nd or subsequent offence—300 penalty units.
- (2) A person who contravenes subsection (1) commits a separate offence for each day (after the first day of the contravention) during any part of which the contravention continues.

Maximum penalty (for each day): 20 penalty units.

Division 7.3 Prohibition notices

84 Giving prohibition notice

- (1) This section applies if the director-general is satisfied on reasonable grounds that—
 - (a) a person has contravened, is contravening, or is likely to contravene ART legislation; or
 - (b) a person has been refused ART accreditation or had their accreditation suspended, cancelled or revoked; or
 - (c) it is otherwise necessary to prohibit a person from carrying on a business, or part of a business, that provides ART services to prevent or minimise a serious risk to another person's health, safety or welfare or to public health or safety.
- (2) The director-general may give a notice (a *prohibition notice*) to the person prohibiting the person from—
 - (a) carrying on a business, or part of a business, that provides ART services; and
 - (b) offering to provide ART services.
- (3) If the person is a corporation, the director-general may also give a prohibition notice to an associated entity of the corporation.

85 Content of prohibition notice

A prohibition notice must state the following:

- (a) that it is a prohibition notice under this Act;
- (b) the name of the recipient;
- (c) the grounds on which the notice is given;

- (d) any conditions on the prohibition the director-general considers appropriate;

Examples

- the prohibition applies only to stated premises
 - the prohibition applies only to premises in a stated area
- (e) the day the prohibition ends or that the notice continues in force until it is revoked;
- (f) the period after which the recipient may apply to have the notice revoked.

86 Ending prohibition

- (1) A prohibition notice remains in force until the earliest of the following:
- (a) the day the prohibition ends as stated in the notice;
 - (b) the day the notice is revoked.
- (2) The director-general may, on application by the recipient made in accordance with the notice or on the director-general's own initiative, revoke the notice if satisfied the grounds on which it was given no longer apply.
- (3) The director-general must give written notice of their decision under subsection (2) to the recipient.
- (4) If an application for revocation is refused, the written notice must—
- (a) state the reasons for the refusal; and
 - (b) set a further period after which an application can be made under subsection (2).

87 Contravention of prohibition notice

- (1) A person commits an offence if the person—
- (a) is given a prohibition notice under section 84; and
 - (b) contravenes the notice.

Maximum penalty:

- (a) for a 1st offence—250 penalty units; or
 - (b) for a 2nd or subsequent offence—500 penalty units.
- (2) A person who contravenes subsection (1) commits a separate offence for each day (after the first day of the contravention) during any part of which the contravention continues.

Maximum penalty (for each day): 30 penalty units.

Division 7.4 Miscellaneous

88 Direction to give information about potential notice recipients

- (1) This section applies to a corporation to whom an improvement or prohibition notice is given.
- (2) The director-general may give the corporation a written direction to give information—
- (a) reasonably required by the director-general to determine if the corporation has any associated entities to whom a notice may be given; and
 - (b) within a stated reasonable period.

- (3) A person commits an offence if the person fails to comply with a direction under subsection (2).

Maximum penalty:

- (a) for a 1st offence—100 penalty units; or
(b) for a 2nd or subsequent offence—200 penalty units.
- (4) Subsection (3) does not apply if the person has a reasonable excuse for failing to comply with the direction.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

Part 8 Enforcement

Division 8.1 Preliminary

89 Definitions—pt 8

In this part:

authorised person means a person appointed as an authorised person under section 90.

connected—an activity or thing is connected with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

- (a) a person an authorised person believes on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

premises includes the following:

- (a) land (whether or not vacant);
- (b) any part of a building, tent, stall or other structure (whether of a permanent or temporary nature).

warrant means a warrant issued under division 8.5.

90 Appointment of authorised people

The director-general may appoint a public servant as an authorised person for this Act.

Note For laws about appointments, see the [Legislation Act](#), pt 19.3.

91 Identity cards

- (1) The director-general must give an authorised person an identity card that—
- (a) states the authorised person’s name; and
 - (b) states that the person is an authorised person; and
 - (c) includes a recent photograph of the person; and
 - (d) states the card’s date of issue and expiry; and
 - (e) includes anything else prescribed by regulation.

- (2) A person must return their identity card to the director-general within 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (3) Subsection (2) does not apply to a person if their identity card is—
- (a) lost or stolen; or
 - (b) destroyed by someone else.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) An offence against this section is a strict liability offence.

Division 8.2 Exercise of powers generally

92 Requirements before certain powers can be exercised

- (1) This section applies if an authorised person intends to exercise any of the following powers:
- (a) giving a direction under section 94 (1) (Direction to give information);
 - (b) giving a direction under section 95 (1) or (2) (Direction to give name and address);
 - (c) entering premises under section 96 (1) (b) or (c) (Powers of authorised person to enter premises);
 - (d) giving a direction under section 98 (1) (e) (General powers on entry to premises).
- (2) Before exercising the power, the authorised person must—
- (a) either—
 - (i) show their identity card to the affected person; or
 - (ii) if the authorised person intends to exercise the power other than in person—provide other evidence of the authorised person’s identity to the affected person; and
 - (b) tell the affected person the reason for exercising the power; and
 - (c) tell the affected person about any relevant offence in relation to the power.

Examples—exercise of powers other than in person

- 1 an authorised person emails a person giving them a direction to give information
- 2 an authorised person emails a person asking for consent to enter and search the person’s premises using a remote-controlled surveillance device

(3) The authorised person must ensure the matters mentioned in subsection (2) are communicated in a way that the authorised person believes the affected person is likely to understand.

(4) In this section:

affected person, in relation to the exercise of a power under this part, means—

- (a) the individual affected by the exercise of the power; or
- (b) if the person is not an individual—an employee, officer or agent of the person affected by the exercise of the power.

relevant offence means an offence against—

- (a) for a direction under section 94 (1)—section 94 (2); or
- (b) for a direction under section 95 (1) or (2)—section 95 (3); or
- (c) for a direction under section 98 (1) (e)—section 98 (2).

93 Privilege against self-incrimination does not apply

(1) If an authorised person gives a person a direction to give information, a document or other thing under this part, the person is not excused from complying with the direction on the ground that doing so may—

- (a) tend to incriminate the person; or
- (b) expose the person to a penalty.

(2) However, any information, document or thing obtained, directly or indirectly, because of the person's compliance with the direction is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence arising out of the false or misleading nature of the information, document or thing.

Division 8.3 Power to obtain information

94 Direction to give information

- (1) An authorised person may, in writing, direct a person to give the authorised person information, a document or other thing within a stated reasonable period if the information, document or thing is reasonably required by the authorised person for this Act.

Note The [Legislation Act](#), s 171 deals with the application of client legal privilege.

- (2) The person must take reasonable steps to comply with the direction.
Maximum penalty: 50 penalty units.
- (3) Subsection (2) does not apply unless the authorised person—
 - (a) complies with section 92 (Requirements before certain powers can be exercised); and
 - (b) explains the effect of section 93 (Privilege against self-incrimination does not apply).

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

95 Direction to give name and address

- (1) An authorised person may direct a person to state the person's name and home address if the authorised person believes on reasonable grounds that the person—
 - (a) is involved in the commission of an offence against this Act; or
 - (b) may be able to assist in the investigation of an offence against this Act.

- (2) If the authorised person believes on reasonable grounds that information given in response to a direction under subsection (1) is false or misleading, the authorised person may direct the person to produce evidence of the correctness of the information within a stated reasonable period.
- (3) A person must comply with a direction given to the person under this section.

Maximum penalty: 5 penalty units.

Note It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

- (4) An offence against this section is a strict liability offence.
- (5) Subsection (3) does not apply to a person unless the authorised person complies with section 92 (Requirements before certain powers can be exercised).

Note The defendant has an evidential burden in relation to the matter mentioned in s (5) (see [Criminal Code](#), s 58).

Division 8.4 Power to enter premises

96 Powers of authorised person to enter premises

- (1) For this Act, an authorised person may—
- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (b) at any time, enter premises with the occupier’s consent; or
 - (c) at any time, enter premises if the authorised person believes on reasonable grounds that—
 - (i) an offence against this Act is being, or is likely to be, or has just been, committed at the premises; and

- (ii) the risk to a person, the environment or public health resulting from the offence is so serious and urgent that immediate entry to the premises without the authority of a warrant is necessary; or
- (d) enter premises in accordance with a warrant.
- (2) However, subsection (1) (a) or (c) do not authorise entry into a part of the premises that is being used only for residential purposes.
- (3) If an authorised person wants to ask for consent to enter a building or other structure on the premises, the authorised person may, without the occupier's consent, enter any land that forms part of the premises to ask for the consent.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) An authorised person may—
 - (a) enter the premises with 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist the authorised person to carry out their functions; and
 - (b) if entering the premises in accordance with a warrant—also enter the premises with necessary force.

97 Obtaining consent to entry

- (1) For section 96 (1) (b), an authorised person must—
 - (a) before asking the occupier for consent—tell the occupier—
 - (i) the purpose of the proposed entry; and
 - (ii) the reason for, and identity of, any other person accompanying the authorised person; and
 - (iii) that anything found and seized under this part may be used in evidence in court; and
 - (iv) that consent may be refused; and

- (b) if the occupier consents to the entry—give the occupier a written record confirming—
 - (i) the matters mentioned in paragraph (a); and
 - (ii) that the occupier was told about those matters; and
 - (iii) the time and date when the consent was given.
- (2) A court must find that the occupier did not consent if—
 - (a) a question arises, in a proceeding before the court, whether the occupier consented to the authorised person entering the premises under this part; and
 - (b) a record mentioned in subsection (1) (b) is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

98 General powers on entry to premises

- (1) An authorised person who enters premises under this division may do 1 or more of the following in relation to the premises or anything at the premises:
 - (a) examine anything;
 - (b) take a measurement or conduct a test;
 - (c) take a sample;
 - (d) take images, make audio or video recordings or any other kind of record;
 - (e) if reasonably required for an authorised person to exercise a power under this division, direct the occupier of the premises, or anyone at the premises, to do 1 or more of the following:
 - (i) give information, a document or other thing (including information, a document or thing that is not at the premises);

- (ii) produce a document or other thing (including a document or other thing that is not at the premises);
- (iii) answer a question;
- (iv) give the authorised person reasonable help to exercise a power under this part.

Note The [Legislation Act](#), s 171 deals with the application of client legal privilege.

- (2) A person must take all reasonable steps to comply with a direction given under subsection (1) (e).

Maximum penalty: 50 penalty units.

- (3) Subsection (2) does not apply in relation to a direction given to a person under subsection (1) (e) (i), (ii) and (iii) unless, before giving the direction, the authorised person—

- (a) complies with section 92 (Requirements before certain powers can be exercised); and
- (b) explains the effect of section 93 (Privilege against self-incrimination does not apply) to the person.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

Division 8.5 Warrants

99 Definitions—div 8.5

In this division:

remote application—see section 100 (3).

warrant form—see section 103 (2).

warrant terms—see section 102 (2).

100 Application for warrant

- (1) An authorised person may apply to a magistrate for a warrant to enter the premises and exercise the authorised person's powers under this part.
- (2) The application must—
 - (a) be sworn; and
 - (b) state the grounds on which the warrant is sought.
- (3) However, if the authorised person considers it necessary because of urgent or other special circumstances, the authorised person may make an application (a *remote application*) by—
 - (a) preparing a written application stating the grounds on which a warrant is sought; and
 - (b) applying to the magistrate for the warrant other than in person before the written application is sworn.

101 Magistrate may refuse to consider application for warrant until authorised person gives relevant information

The magistrate may refuse to consider an application for a warrant made under section 100 until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

102 Decision on application for warrant

- (1) If an application for a warrant is made under section 100, the magistrate may issue the warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and

- (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (2) The warrant must include the following information (the *warrant terms*):
 - (a) a statement that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person’s powers under this part;
 - (b) details of the offence for which the warrant is issued;
 - (c) the things that may be seized under the warrant;
 - (d) the hours when the premises may be entered;
 - (e) the date, within 14 days after the day of the warrant’s issue, when the warrant ends.

103 Warrant issued on remote application

- (1) A magistrate may issue a warrant on a remote application by—
 - (a) immediately giving a written copy of the warrant to the authorised person if it is practicable to do so; or
 - (b) if it is not practicable to do so—tell the authorised person the following:
 - (i) the warrant terms;
 - (ii) the date and time the warrant is issued.
- (2) If the magistrate issues a warrant under subsection (1) (b), the authorised person must complete a form of warrant (the *warrant form*) stating—
 - (a) the magistrate’s name; and

- (b) the date and time the magistrate issued the warrant; and
 - (c) the warrant terms.
- (3) The written copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.
- (4) The authorised person must, as soon as is reasonably practicable—
- (a) swear the remote application; and
 - (b) give the magistrate—
 - (i) the sworn application; and
 - (ii) if the authorised person completed a warrant form—the warrant form.
- (5) On receiving the documents mentioned in subsection (4) (b), the magistrate must attach them to the warrant.
- (6) A court must find that a power exercised by an authorised person was not authorised by a warrant under this section if—
- (a) a question arises in a proceeding before the court whether the exercise of the power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of the power was authorised by a warrant under this section.

104 Announcement before entry under warrant

- (1) Before anyone enters premises under a warrant, an authorised person must—
- (a) announce that they are authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and

- (c) if the occupier of the premises is present at the premises—
identify themselves to the person.
- (2) The authorised person is not required to comply with subsection (1) if they believe on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone (including themselves or any person assisting them); or
 - (b) that the effective execution of the warrant is not frustrated.

105 Warrant etc to be given to occupier

If the occupier of premises is present at the premises while a warrant is being executed, the authorised person must give to the occupier—

- (a) a copy of—
 - (i) the warrant; or
 - (ii) if section 103 (1) (b) applies—the warrant form; and
- (b) a document setting out the occupier’s rights and obligations.

106 Occupier entitled to watch search etc

- (1) If the occupier of premises is present at the premises while a warrant is being executed, the occupier is entitled to watch the authorised person, and any person assisting the authorised person, conduct any search and exercise any other power authorised by the warrant.
- (2) However, the occupier is not entitled to watch the authorised person or a person assisting the authorised person, exercise their powers if—
 - (a) to do so would interfere with the powers being exercised; or
 - (b) the occupier is under arrest, and allowing them to watch the powers being exercised would interfere with the objective of the warrant.

- (3) This section does not prevent an authorised officer exercising powers under this part in 2 or more areas of the premises at the same time.

Division 8.6 Power to seize things

107 Authorised person may seize things at premises

- (1) An authorised person who enters premises under this part—
- (a) may seize anything at the premises if satisfied on reasonable grounds that—
 - (i) the thing is connected with an offence against this Act; and
 - (ii) the seizure is necessary to prevent the thing from being—
 - (A) concealed, lost or destroyed; or
 - (B) used to commit, continue or repeat the offence; and
 - (b) if the premises were entered with the occupier’s consent—may also seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier’s consent; and
 - (c) if the premises were entered under a warrant—may also seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (2) Having seized a thing, the authorised person may—
- (a) remove the thing from the premises where it was seized to another place; or
 - (b) leave the thing at the premises where it is seized and restrict access to it.

Note If an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized (see s 111).

- (3) If access to a seized thing is restricted under subsection (2) (b), the authorised person must secure, in a conspicuous place at the premises, a notice identifying that the thing is seized.

108 Moving things to another place for examination or processing under warrant

- (1) A thing found at premises entered under a warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
- (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so taking into account the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if they believe on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
- (a) tell the person from whom the thing was seized the address of the place where, and time when, the examination or processing will be carried out; and

- (b) allow the person from whom the thing was seized or their representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of warrants apply, with any necessary changes, to the giving of an extension under subsection (3).

109 Owner etc may access seized things

A person who would, apart from the seizure, be entitled to inspect a thing seized under this division may—

- (a) inspect the thing; and
- (b) make a visual recording of the thing; and
- (c) if the thing is a document—take extracts from, or make copies of, the thing.

110 Person must not interfere with seized things

- (1) A person commits an offence if—
 - (a) a thing has been seized under this division; and
 - (b) the person interferes with the thing, or anything containing the thing; and
 - (c) the person does not have the approval of an authorised person to interfere with the thing.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

111 Authorised person must give receipt for seized things

- (1) If an authorised person seizes a thing under this division, they must—
 - (a) as soon as practicable after seizing the thing, give the person from whom the thing was seized a receipt for the thing; or

- (b) if complying with paragraph (a) is not practicable—secure a receipt for the thing in a conspicuous place at the premises where the thing was seized.
- (2) A receipt must include the following information:
- (a) a description of the thing seized;
 - (b) the reasons why the thing was seized;
 - (c) the authorised person’s name, and how they can be contacted;
 - (d) if the thing is moved from the premises where it was seized—where the thing will be taken.

112 Return of seized things

- (1) Unless subsection (2) applies, a thing seized under this division must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing.
- (2) The thing is not required to be returned and reasonable compensation is not required to be paid for it if—
- (a) both of the following apply:
 - (i) a prosecution for an offence connected with the thing (a **relevant offence**) is started against the owner within the 1-year period;
 - (ii) the proceeding (including any appeal) is finalised and the owner is convicted or found guilty of the offence; or
 - (b) an infringement notice for a relevant offence is served on the owner within the 1-year period and—
 - (i) the owner gives notice disputing liability for the offence (a **disputed liability notice**) in accordance with the [Magistrates Court Act 1930](#), section 132; and

- (ii) an information is laid in the Magistrates Court against the owner for the offence within 60 days after the day the disputed liability notice is given; and
 - (iii) the proceeding (including any appeal) is finalised and the owner is convicted or found guilty of the offence; or
 - (c) an infringement notice for a relevant offence is served on the owner within the 1-year period and—
 - (i) the infringement notice penalty for the offence is paid; and
 - (ii) the notice is not withdrawn; or
 - (d) a court makes an order under a territory law that the thing is forfeited to the Territory or must be otherwise dealt with.
- (3) If subsection (2) applies—
- (a) the thing is forfeited to the Territory; and
 - (b) the registrar may direct that the thing be sold, destroyed or otherwise disposed of.
- (4) In this section:

1-year period, in relation to a seized thing, means 12 months after the day the thing was seized.

113 Order disallowing seizure

- (1) If a thing is seized under this division, a person claiming to be entitled to the thing may apply to the Magistrates Court for an order disallowing the seizure.
- (2) The application—
 - (a) must be made not later than 10 days after the day the thing is seized; and
 - (b) must not be heard unless the applicant has served a copy of the application on the director-general.

- (3) The director-general is entitled to appear as a respondent at the hearing of the application.
- (4) The court must make an order disallowing the seizure of the thing if satisfied—
 - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
 - (b) the thing is not connected with an offence against this Act; and
 - (c) possession of the thing by the person would not be an offence.
- (5) The court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (6) If the court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
 - (a) an order directing the director-general to return the thing to the applicant or to someone else who appears to be entitled to it;
 - (b) if the thing cannot be returned or has depreciated in value because of the disallowed seizure—an order directing the Territory to pay reasonable compensation;
 - (c) an order about costs in relation to the application.

Division 8.7 Miscellaneous

114 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take reasonable steps to ensure that they, and any person assisting them, cause as little inconvenience, detriment and damage as is practicable.

- (2) If an authorised person, or a person assisting them, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the details of the damage to the person who they believe on reasonable grounds is the owner of the thing.
- (3) If the damage occurs on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place at the premises.

115 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by—
 - (a) an authorised person; or
 - (b) a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Part 9 Procedural and evidentiary provisions

116 Court to notify director-general of offence

If a person is convicted or found guilty of an offence against this Act, the registrar or other proper officer of the court must notify the director-general in writing.

117 Destruction or falsification of records

- (1) A person commits an offence if—
- (a) the person knowingly falsifies or destroys a record; and
 - (b) the record is a pre-commencement record or another record required to be kept under this Act.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply to the destruction of a record if—
- (a) the destruction is authorised by the director-general; or
 - (b) the record is a hard copy version that has been converted to electronic format.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) In this section:
pre-commencement record—see section 71.

118 Criminal liability of executive officer

- (1) An executive officer of a corporation is taken to commit an offence if—
- (a) the corporation commits an offence against this Act (a *relevant offence*); and

- (b) the officer was reckless about whether the relevant offence would be committed; and
- (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
- (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the offence by an individual.

- (2) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
 - (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;
 - (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the offence relates;
 - (d) any action the officer took when the officer became aware that the offence was, or might be, about to be committed.
- (4) Subsection (3) does not limit the matters the court may consider.

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.

119 Evidentiary certificates

In a proceeding for an offence against this Act, a certificate that appears to be signed by the director-general or another person prescribed by regulation, and that states a matter relating to any of the following, is evidence of the matter:

- (a) the registration of an ART provider under part 3;
- (b) the prohibition of a person from carrying on a business, or part of a business, that provides ART services under division 7.3;
- (c) any other matter prescribed by regulation relating to the administration of this Act.

120 Disclosure of information by ART providers and others

- (1) A requirement to disclose information under this Act has effect despite any duty of confidentiality or other restriction on disclosure (including under the *Health Records (Privacy and Access) Act 1997*).
- (2) If a person discloses information in accordance with this Act—
 - (a) the disclosure is not—
 - (i) a breach of confidence; or
 - (ii) a breach of professional etiquette or ethics; or
 - (iii) a breach of a rule of professional conduct; and
 - (b) the person does not incur civil or criminal liability only because of the disclosure.

121 Protection of public officials from liability

- (1) A public official is not civilly liable for conduct engaged in honestly and without recklessness—
 - (a) in the exercise of a function under this Act or another territory law; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act or another territory law.
- (2) Any liability that would, apart from this section, attach to the public official attaches instead to the Territory.

Part 10 Notification and review of decisions

122 Meaning of *reviewable decision*—pt 10

In this part:

reviewable decision means a decision of the director-general to—

- (a) impose conditions on registration under section 16; or
- (b) give an improvement notice under section 79; or
- (c) refuse to revoke an improvement notice under section 82; or
- (d) give a prohibition notice under section 84; or
- (e) refuse to revoke a prohibition notice under section 86.

123 Reviewable decision notices

If the director-general makes a reviewable decision in relation to an ART provider, the director-general must give a reviewable decision notice to the ART provider.

Note The director-general must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

124 Applications for review

The following people may apply to the ACAT for review of a reviewable decision:

- (a) the ART provider in relation to which the decision has been made;
- (b) any other person whose interests are affected by the decision.

Part 11 Miscellaneous

125 Determination of fees

- (1) The Minister may determine fees for this Act.
- (2) A determination is a disallowable instrument.

126 Incorporating, applying or adopting documents in regulations

- (1) A regulation may incorporate, apply or adopt (with or without change or modification)—
 - (a) a law as in force from time to time; or
 - (b) another instrument as in force from time to time.

- (2) The [Legislation Act](#), section 47 (6) does not apply to an instrument incorporated, applied or adopted under subsection (1).

Note An instrument under s (1) does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)).

- (3) The director-general must ensure that an instrument incorporated, applied or adopted under subsection (1) is—
 - (a) on the ACT legislation register; or
 - (b) available for inspection by anyone without charge during ordinary business hours at an ACT government office; or
 - (c) accessible on an ACT government website, or by a link on an ACT government website.

- (4) An instrument that is incorporated, applied or adopted under subsection (1) is not enforceable by or against the Territory or anyone else unless it is made accessible in accordance with subsection (3).

- (5) In this section:

ACT legislation register—see the [Legislation Act](#), section 18 (1).

127 Regulation-making power

- (1) The Executive may make regulations for this Act.
- (2) A regulation may create offences and fix maximum penalties of not more than 30 penalty units for the offences.

Part 12 Transitional

128 Meaning of *transitional period*—pt 12

In this part:

transitional period means the period starting on the day this section commences and ending on the day section 12 commences.

129 Use, supply and export of gametes and embryos

A provision relating to the use, supply or export of a gamete or embryo applies to a gamete obtained, or an embryo created, before the end of the transitional period.

130 Storage of gametes and embryos

Section 43 (Storage of gametes or embryos) does not apply to a gamete obtained, or an embryo created, before the end of the transitional period.

131 Completion of family—gametes donated before end of transitional period

- (1) This section applies to a donated gamete if, before the end of the transitional period—
 - (a) the gamete is donated; and
 - (b) a child is conceived as a result of ART treatment using another donated gamete of the donor.
- (2) An ART provider may use the gamete—
 - (a) in the provision of ART treatment to the person who gave birth to the child, or their domestic partner; or
 - (b) to create an embryo for use in the provision of ART treatment to the person who gave birth to the child, or their domestic partner.

- (3) For a gamete used in accordance with this section—
- (a) the donor is taken to have consented to the use and may modify or withdraw consent in accordance with section 30; and
 - (b) if the child mentioned in subsection (1) (b) was conceived before the transitional period—the following provisions do not apply to the ART provider in relation to the gamete, or an embryo created from the gamete:
 - (i) section 39 (Donated gametes or embryos—time limits on use);
 - (ii) section 40 (Donated gametes or embryos—limits on number of families);
 - (iii) section 46 (Requirement to collect information about gamete provider);
 - (iv) section 47 (Requirement to collect information about person undergoing ART treatment);
 - (v) section 48 (Requirement to keep records);
 - (vi) section 53 (Mandatory information); and
 - (c) if the child mentioned in subsection (1) (b) is conceived during the transitional period—the following provisions do not apply to the ART provider in relation to the gamete, or an embryo created from the gamete:
 - (i) section 39 (Donated gametes or embryos—time limits on use);
 - (ii) section 40 (1) (Donated gametes or embryos—limits on number of families);
 - (iii) section 53 (Mandatory information).

132 Completion of family—embryos created before end of transitional period

- (1) This section applies to an embryo created from a donated gamete before the end of the transitional period, for use in the provision of ART treatment to a particular person.
- (2) An ART provider may use the embryo to provide ART treatment to the person or their domestic partner.
- (3) For an embryo used in accordance with this section—
 - (a) each gamete provider is taken to have consented to the use and may modify or withdraw consent in accordance with section 30; and
 - (b) if the embryo is created before the transitional period—the following provisions do not apply to the ART provider in relation to the embryo:
 - (i) section 39 (Donated gametes or embryos—time limits on use);
 - (ii) section 40 (Donated gametes or embryos—limits on number of families);
 - (iii) section 46 (Requirement to collect information about gamete provider);
 - (iv) section 47 (Requirement to collect information about person undergoing ART treatment);
 - (v) section 48 (Requirement to keep records);
 - (vi) section 53 (Mandatory information); and
 - (c) if the embryo is created during the transitional period—the following provisions do not apply to the ART provider in relation to the embryo:
 - (i) section 39 (Donated gametes or embryos—time limits on use);

(ii) section 40 (1) (Donated gametes or embryos—limits on number of families);

(iii) section 53 (Mandatory information).

133 Expiry—pt 12

This part expires 15 years after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Part 13 Consequential amendments

134 Freedom of Information Act 2016 New section 11A

insert

11A Relationship with Assisted Reproductive Technology Act 2024

This Act does not apply to information kept in the donor register under the *Assisted Reproductive Technology Act 2024*.

135 Human Cloning and Embryo Research Act 2004 New section 49A

in part 5, insert

49A Court to notify director-general of offence

If a person is convicted or found guilty of an offence against this Act, the registrar or other proper officer of the court must notify the director-general in writing.

Dictionary

(see s 3)

Note The [Legislation Act](#) contains definitions relevant to this Act. For example:

- ACT
- adult
- director-general (see s 163)
- disallowable instrument (see s 9)
- doctor
- domestic partner (see s 169 (1))
- Executive
- exercise
- fail
- found guilty
- function
- home address
- individual
- in relation to
- Minister (see s 162)
- notifiable instrument (see s 10)
- parent
- penalty unit (see s 133)
- the Territory.

accessible information, about a donor, for division 6.3 (Access to pre-commencement records)—see section 75.

ART accreditation means accreditation by any of the following:

- (a) the Reproductive Technology Accreditation Committee of the Fertility Society of Australia and New Zealand (ACN 006 214 115);
- (b) a body prescribed for the [Research Involving Human Embryos Act 2002](#) (Cwth), section 8, definition of ***accredited ART centre***, paragraph (b);

(c) another body prescribed by regulation.

artificial insemination means a procedure of transferring sperm without also transferring an oocyte into the vagina, cervical canal or uterus of a person.

ART legislation means this Act and the following:

- (a) the [Human Cloning and Embryo Research Act 2004](#);
- (b) the [Prohibition of Human Cloning for Reproduction Act 2002](#) (Cwlth);
- (c) the [Research Involving Human Embryos Act 2002](#) (Cwlth).

ART provider—

- (a) for this Act generally—see section 11; and
- (b) for part 6 (Pre-commencement records)—see section 71.

ART service—see section 10.

ART treatment (or **assisted reproductive technology treatment**)—see section 9.

associated entity, of a corporation, for part 7 (Regulatory action)—see section 78.

authorised person, for part 8 (Enforcement)—see section 89.

child—see the [Children and Young People Act 2008](#), section 11.

commencement day means—

- (a) for part 5 (Donor register)—see section 50; and
- (b) for part 6 (Pre-commencement records)—see section 71.

connected, for part 8 (Enforcement)—see section 89.

consent, of a gamete provider, means consent given by the gamete provider under section 29.

donated embryo means an embryo donated after its creation for use by someone other than—

- (a) the gamete providers from whom the gametes used to create the embryo were obtained; or
- (b) a domestic partner of the gamete providers.

donated gamete—

- (a) means a gamete donated by a gamete provider for use by someone other than the gamete provider or their domestic partner, and
- (b) includes a gamete used to create a donated embryo, whether or not the gamete was originally obtained from the gamete provider as a donated gamete and whether or not the embryo was originally created for use as a donated embryo.

donor—

- (a) means a gamete provider from whom a donated gamete is obtained; and
- (b) in relation to a donor conceived person—
 - (i) means the gamete provider of a donated gamete used in ART treatment resulting in the person's birth; and
 - (ii) for part 5 (Donor register)—see section 50.

donor code, for part 5 (Donor register)—see section 50.

donor conceived, in relation to a person—

- (a) means a person born as a result of ART treatment using a donated gamete; and
- (b) for part 5 (Donor register)—see section 50.

donor register means the register established under section 52.

donor sibling, in relation to a donor conceived person—

- (a) means the person's sibling born as a result of ART treatment using a gamete donated by the person's donor; and
- (b) for part 5 (Donor register)—see section 50.

embryo means a discrete entity that—

- (a) has arisen from either—
 - (i) the first mitotic division when fertilisation of a human oocyte by a human sperm is complete; or
 - (ii) any other process that initiates organised development of a biological entity with a human nuclear genome or altered human nuclear genome that has the potential to develop up to, or beyond, the stage at which the primitive streak appears; and
- (b) has not yet reached 8 weeks of development since the first mitotic division.

executive officer, of a corporation, means a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

full name, in relation to a donor, means each full name ever used by the donor.

gamete—

- (a) means a human sperm or a human oocyte; and
- (b) for a gamete used in the provision of ART treatment—includes an embryo created from the gamete.

gamete provider—

- (a) in relation to a gamete—means the person from whom the gamete has been obtained; and
- (b) in relation to an embryo—means a person from whom a gamete used to create the embryo was obtained.

improvement notice—see section 79 (2).

informal donor arrangement, for part 5 (Donor register)—see section 51.

mandatory information means information of a kind given under section 53.

mature donor conceived person, for part 5 (Donor register)—see section 51.

obtain, a gamete, includes receive a gamete.

occupier, of premises, for part 8 (Enforcement)—see section 89.

offence, for part 8 (Enforcement)—see section 89.

pre-commencement record, for part 6 (Pre-commencement records)—see section 71.

premises—

- (a) for this Act generally—includes any land or building and part of any land or building; and
- (b) for part 8 (Enforcement)—see section 89.

prohibition notice—see section 84 (2).

recipient, in relation to an improvement notice or prohibition notice, for part 7 (Regulatory action)—see section 78.

registered ART provider means a person registered as an ART provider under part 3.

related corporation, for part 7 (Regulatory action)—see section 78.

relevant medical history, of a donor, means any medical history or genetic test results of the donor or their family that are relevant to the future health of—

- (a) a person undergoing ART treatment using the donor’s donated gamete; or
- (b) the donor’s donor conceived offspring; or
- (c) a child of the donor’s donor conceived offspring.

remote application, for division 8.5 (Warrants)—see section 100 (3).

retention period, in relation to a pre-commencement record, for part 6 (Pre-commencement records)—see section 71.

reviewable decision, for part 10 (Notification and review of decisions)—see section 122.

self-insemination means artificial insemination not performed or supervised by a doctor on behalf of a registered ART provider.

warrant, for part 8 (Enforcement)—see section 89.

warrant form, for division 8.5 (Warrants)—see section 103(2).

warrant terms, for division 8.5 (Warrants)—see section 102(2).

young person—see the *Children and Young People Act 2008*, section 12.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 28 November 2023.

2 Notification

Notified under the [Legislation Act](#) on 28 March 2024.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Assisted Reproductive Technology Bill 2024, which originated in the Legislative Assembly as the Assisted Reproductive Technology Bill 2023 and was passed by the Assembly on 21 March 2024.

Clerk of the Legislative Assembly

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