Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to prevent the commercialisation of human reproduction, and to protect the interests of certain persons affected by assisted reproductive technology (***ART***) treatment. In order to do this, the Bill:

(a) requires ART providers to be registered by the Director-General of the Department of Health, and

(b) makes certain requirements in relation to the provision of ART services, including requirements that ART services be undertaken by, or under the supervision of, a registered medical practitioner and that counselling services be made available, and

(c) places a number of restrictions on the use of gametes and embryos, and

(d) requires ART providers to collect information from persons involved in ART treatment and from donors, and

(e) requires the Director-General to establish a central ART donor register that permits persons involved in ART treatment and donors to obtain certain information about other persons, including permitting a person born as a result of ART treatment using a donated gamete to obtain information about the donor of the gamete, and

(f) prohibits commercial surrogacy and makes surrogacy agreements void, and

(g) provides for enforcement of the proposed Act.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act which are to prevent the commercialisation of human reproduction and to protect the interests of persons born as a result of ART treatment, persons providing a gamete for use in ART treatment or for research in connection with ART treatment and women undergoing ART treatment.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 provides that the proposed Act does not limit or otherwise affect the operation of the *Status of Children Act 1996*, the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

Part 2 ART providers

Division 1 Registration

Clause 6 provides that an ART provider must not provide ART services unless the ART provider is a registered ART provider and a person must not advertise or hold out that the person is a registered ART provider unless the person is a registered ART provider.

Clause 7 provides that the Director-General must grant a person's registration as an ART provider if an application for registration is duly made. However, the Director-General must refuse registration or cancel the registration of a person if the person is prohibited under proposed Part 6 from carrying on a business that provides ART services.

Clause 8 provides that a registered ART provider must notify the Director-General of certain changes to the ART provider's registered particulars.

Clause 9 requires the Director-General to keep a register of all registered ART providers and to make the register available to the public for inspection.

Division 2 Provision of ART services

Clause 10 permits regulations made under the proposed Act to require an ART

provider to meet prescribed infection control standards.

Clause 11 requires an ART provider to ensure that any ART services provided by the ART provider are undertaken by, or under the supervision of, a registered medical practitioner.

Clause 12 requires an ART provider to ensure that counselling services in relation to the provision of ART treatment are available to a woman seeking ART treatment from the ART provider, any spouse of such a woman and any person proposing to provide a gamete to the ART provider.

Clause 13 provides that an ART provider must inform a woman of certain matters before providing ART treatment to the woman if the treatment does not involve the use of a donated gamete or an embryo created using a donated gamete.

Clause 14 provides that an ART provider must inform a woman of certain matters before providing ART treatment to the woman if the treatment involves the use of a donated gamete or an embryo created using a donated gamete. A donor of a gamete must be informed of the same matters.

Clause 15 permits an ART provider to disclose medical information about a donor and offspring of a donor in certain circumstances if a registered medical practitioner has certified that the disclosure is necessary to save a person's life or to warn the person to whom the information is disclosed about the existence of a medical condition that may be harmful to that person or to that person's offspring (including future offspring).

Division 3 Use of gametes

Clause 16 defines certain words and expressions used in the proposed Division.

Clause 17 provides for the giving, modification and revocation of a gamete provider's consent.

Clause 18 provides that an ART provider must not use a gamete to create an embryo outside the body of a woman except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent.

Clause 19 provides that an ART provider must not provide ART treatment to a woman using a gamete except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent in relation to the ART treatment for which the gamete may be used and the women who may receive ART treatment using the gamete.

Clause 20 provides that an ART provider must not use a gamete or an embryo for research except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent.

Clause 21 provides that an ART provider must not supply a gamete or an embryo to another person (including another ART provider) except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent.

Clause 22 provides that an ART provider must not export a gamete or an embryo from this State except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent.

Clause 23 provides that an ART provider may only use the gamete of a deceased person in ART treatment if such use is consistent with the consent of the gamete provider and with the consent of the woman receiving the ART treatment.

Clause 24 provides that an ART provider must not provide ART treatment using a gamete provided by a gamete provider more than 5 years before the provision of the ART treatment, unless the ART provider has taken reasonable steps to establish whether the gamete provider is alive.

Clause 25 provides that an ART provider must not store a gamete or an embryo except with the consent of the gamete provider and in a manner that is consistent with the gamete provider's consent. The proposed section also provides for the maximum period that such a gamete or an embryo may be stored.

Clause 26 provides that an ART provider must not provide ART treatment using a donated gamete if the gamete was obtained from the donor more than 10 years before the provision of the ART treatment unless the Director-General has given written authorisation.
Clause 27 provides that an ART provider must ensure that ART treatment using a donated gamete does not result in offspring of the gamete provider being born, whether or not as a result of ART treatment, to more than 5 women (including the donor and any current or former spouse of the donor).
Clause 28 provides that an ART provider must not use a gamete to create an embryo if the ART provider knows that the gamete provider is a close family member of the other person whose gamete is to be used to create the embryo.
Clause 29 provides that an ART provider must not provide ART treatment to a child and must not obtain a gamete from a child for use in ART treatment or research unless the ART provider obtains a gamete from a child in circumstances where there is a reasonable risk of the child becoming infertile before becoming an adult and the gamete is obtained for the child's future benefit.
Division 4 Records
Clause 30 requires an ART provider to obtain certain prescribed information about persons involved in ART treatment.
Clause 31 requires an ART provider to keep (and retain for 50 years after the record is made or such other period as may be prescribed by the regulations) certain records.
Clause 32 provides that an ART provider that supplies a gamete or an embryo to another ART provider must give the second ART provider a copy of the gamete provider's consent, and may give the second ART provider a copy of any other information required to be obtained by or under the proposed Act, in relation to the gamete or embryo.
Part 3 Central ART donor register
Clause 33 provides that the Director-General is to establish and maintain a central ART donor register relating to donors of gametes, women undergoing ART treatment using donated gametes and offspring of donors.
Clause 34 sets out the objectives of the central ART donor register.
Clause 35 provides that the Director-General may disclose information held on the central ART donor register only in accordance with the proposed Part.
Clause 36 requires the Director-General, if requested, to provide a person whose details are held on the central ART donor register with a copy of any information about that person held on the register.
Clause 37 provides that the Director-General must, if requested, disclose to an adult who was born as a result of ART treatment using a donated gamete, certain information relating to the donor of the gamete including information that identifies the donor and the Director-General must, if requested, disclose to an adult offspring of a donor information relating to other offspring of the donor including information that identifies that other offspring if that other offspring consents to such disclosure.
Clause 38 provides that the Director-General must, if requested, disclose to a parent of a child who was born as a result of ART treatment using a donated gamete, prescribed non-identifying information relating to the donor of the gamete and other offspring of the donor. The Director-General must also disclose information that identifies the donor, but only if the disclosure of that information is reasonably necessary to save the life of the child or to prevent serious damage to the child's health and the information cannot reasonably be obtained by the parent in any other way. A person who is a representative of the child and who has a genuine interest in the welfare of the child may also make an application for the disclosure of information that identifies the donor in the above circumstances if the parent of the child is unwilling or unable to seek the information on the child's behalf.
Clause 39 provides that the Director-General must, if requested, disclose to a donor

of a gamete, prescribed non-identifying information relating to a person born as a result of ART treatment using the donated gamete and such other information relating to that person (including information that identifies the person) if the person consents to such disclosure.

Clause 40 permits the Director-General to contact a person who is an offspring of a donor and ask the person whether he or she wishes to consent to disclose information to the donor of the gamete or to other offspring of the donor. The Director-General is not to contact the person unless the person is an adult and the Director-General is of the opinion that the contact is justified in order to promote the welfare and best interests of one or more of the persons concerned.

Clause 41 permits the regulations to prescribe fees in relation to any application or notice under the proposed Part.

Part 4 Surrogacy

Clause 42 defines ***commercial surrogacy agreement*** and ***surrogacy agreement*** for the purposes of the proposed Part.

Clause 43 prohibits a person from entering into a commercial surrogacy agreement, arranging a commercial surrogacy agreement or accepting any benefit under a commercial surrogacy agreement.

Clause 44 prohibits a person from publishing, or causing to be published, any publication that solicits commercial surrogacy.

Clause 45 provides that a surrogacy agreement is void, whether made before, on or after the commencement of the proposed section.

Part 5 Inspectors and enforcement

Clause 46 provides that the Director-General may appoint any member of staff of the Department of Health, or any person who the Director-General considers is suitably qualified, to be an inspector for the purposes of the proposed Act.

Clause 47 provides that an inspector may enter and inspect any premises for the purpose of ascertaining whether or not a contravention of the proposed Act or the regulations has occurred.

Clause 48 makes a number of requirements in relation to the exercise of the power of an inspector to enter premises.

Clause 49 provides that an inspector may, by written notice given to a person, require the person to furnish to the inspector such information or records (or both) as the inspector requires by the notice.

Clause 50 provides that an inspector may require a person who the inspector suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of the proposed Act to answer questions in relation to those matters.

Clause 51 provides that a person who is required under the proposed Part to answer a question or to produce a thing is not excused from answering the question or producing that thing on the ground that it might tend to incriminate the person or make the person liable to a penalty.

Clause 52 permits an inspector to apply for a search warrant for premises if the inspector believes on reasonable grounds that a provision of the proposed Act or the regulations has been or is being contravened on the premises.

Clause 53 prohibits a person, without reasonable excuse, from neglecting or failing to comply with a requirement made of the person by an inspector, or from hindering or obstructing an inspector.

Clause 54 provides that any person claiming to be entitled to any seized item may make an application to a Local Court for an order disallowing the seizure.

Clause 55 provides for the disposal of items seized under the proposed Part.

Part 6 ART provider—enforcement provisions

Clause 56 provides the circumstances in which a person is taken to be carrying on a business that provides ART services for the purposes of the proposed Part.

Clause 57 provides that the Director-General may prohibit a person from carrying on a business that provides ART services if the Director-General is satisfied that there are reasonable grounds to do so. The Director-General is also able to prohibit certain related persons from carrying on such a business if the person the subject of the prohibition is a corporation or the trustee of a trust.

Clause 58 creates an offence for carrying on a business that provides ART services, or offering to provide ART services, while prohibited under the proposed Part.

Clause 59 provides that the Director-General may require certain persons to provide specified information if a corporation or trustee of a trust is the subject of a prohibition under the proposed Part.

Clause 60 requires a court to notify the Director-General if it convicts a person of an offence under the proposed Act or the *Human Cloning for Reproduction and Other Prohibited Practices Act 2003*.

Clause 61 provides that for the purposes of the proposed Part, the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of an offence is taken to be a conviction for the offence.

Part 7 Miscellaneous

Clause 62 provides that a person must not make a representation that is false or misleading in a material particular in an application or notice under the proposed Act or in relation to certain requests for information.

Clause 63 provides that proceedings for an offence under the proposed Act or the regulations may be dealt with summarily before a Local Court or before the Supreme Court in its summary jurisdiction.

Clause 64 provides that an inspector or other prescribed person (an ***authorised officer***) may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under the proposed Act or the regulations, being an offence prescribed by the regulations.

Clause 65 identifies the circumstances in which, if a corporation contravenes a provision of the proposed Act or the regulations, each officer of the corporation is taken to have contravened the same provision.

Clause 66 provides that in a prosecution for an offence against the proposed Act or the regulations, a statement, purporting to be signed by the Director-General or other prescribed person, relating to certain matters is admissible in any proceedings and is evidence of the matters contained in the statement without proof of the signature of the person by whom the statement purports to have been signed.

Clause 67 provides for the giving of notice to persons.

Clause 68 provides that in any proceedings for an offence against a provision of the proposed Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant.

Clause 69 provides that a requirement made by or under the proposed Act has effect despite any duty of confidentiality or other restriction on disclosure and a disclosure made in accordance with the proposed Act or the regulations by or on behalf of an ART provider does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

Clause 70 provides that the Director-General may delegate his or her functions under the proposed Act or the regulations.

Clause 71 provides that the Governor may make regulations under the proposed Act. The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

Clause 72 is a formal provision giving effect to the savings, transitional and other provisions in Schedule 1.

Clause 73 is a formal provision giving effect to the amendments to the Acts specified in Schedule 2.

Clause 74 provides that the Minister is to review the proposed Act as soon as

possible after the period of 5 years from the date of assent to the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains provisions of a savings and transitional nature.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Fines Act 1996* to permit penalty notices to be issued under the proposed Act.

Schedule 2.2 amends the *Human Tissue Act 1983* to prevent that Act from continuing to regulate the supply of semen.

Schedule 2.3 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to permit a search warrant to be issued under the proposed Act.