The Hon. SARAH MITCHELL (Parliamentary Secretary) [6.04 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

I am pleased to bring before the House the Assisted Reproductive Technology Amendment Bill 2016. The bill makes a number of amendments to the Assisted Reproductive Technology Act 2007 and the Births, Deaths and Marriages Registration Act 1995, following on from the statutory review of the Assisted Reproductive Technology Act and two parliamentary inquiries into donor conception. The Assisted Reproductive Technology Act regulates assisted reproductive technology [ART] services in New South Wales. The Act aims to prevent the commercialisation of human reproduction and protect the interests of persons born from ART treatment, persons who provide gametes—ova and sperm—and women undergoing ART treatment. On occasion the interests of these different groups are not in harmony, which means that the regulation of ART treatment can become emotionally fraught and controversial.

One area where controversy does arise is in relation to the rights of persons conceived from ART treatment undertaken prior to the commencement of the Assisted Reproductive Technology Act on 1 January 2010 to receive information about their biological origins. Following the commencement of the Assisted Reproductive Technology Act, ART providers must collect a range of identifying and non-identifying information from donors, such as their name and medical history, before providing treatment. Once a child is born as a result of ART treatment that used donated gametes, the information about the donor is stored on the central register maintained by the Ministry of Health. The information will be accessible by persons conceived from ART treatment using donated gametes once they turn 18. However, these provisions in the Assisted Reproductive Technology Act only operate prospectively in respect of any child donor conceived after 1 January 2010. For pre-2010 donor-conceived persons, the ministry operates a voluntary register and any information on the donor can only be provided if the donor consents.

The fact that the Assisted Reproductive Technology Act does not operate retrospectively can and does cause great upset to donor-conceived individuals. However, the needs of pre-2010 donor-conceived individuals have always needed to be balanced against the rights and interests of donors, many of whom donated under assurances of anonymity. Changing the goalposts many years after the donation has the potential to create great difficulties for donors who were generally assured confidentiality and their families who may not know the donor once donated gametes. As I said earlier, ART treatment can become emotionally fraught and controversial and it can be difficult to reconcile the different interests of various groups.

In 2013 the New South Wales parliamentary Committee on Law and Safety completed an inquiry into managing donor conception information and made a number of recommendations relating to ART treatment. Importantly the committee recommended that pre-2010 donor-conceived individuals have a right to access de-identified information on their donor but that identified information should be disclosed only with consent. The Government supports this approach. Preserving confidentiality of donors while ensuring that donor-conceived individuals can access important medical and genetic information, where available, maintains an appropriate balance between the rights and interests of donor-conceived people and past donors who donated on the condition of anonymity. The committee also recommended that a new agency be established to maintain the central register and that all pre-2010 records be provided to the new agency. While the Government did not support the creation of a new agency, it did give in-principle support to the central collection of pre-2010 records but noted that further consultation was required.

The ministry carried out further consultation with ART providers, donor conception groups and medical groups. ART providers had strong objections to the central collation of records due to privacy concerns, the costs involved, a strong view that it was their professional responsibility to facilitate any

exchange of information between donors and donor-conceived individuals, and concerns that the central collation of records may make donors less likely to update information. Donor conception groups on the other hand were strongly in favour of the central collation of records. This was because some donor-conceived individuals had had personal experience of records being destroyed or falsified and there was concern that some individuals would not want to contact ART providers to access records.

The Government has considered all of these different points of view and the bill before the House aims to reconcile the differences and achieve a balance between the varying interests. Accordingly, the bill before the House will amend the Assisted Reproductive Technology Act to create a new part 3A that will create a right for pre-2010 donor-conceived individuals to make an application for the release of non-identifying information. The application will be able to be made to an ART provider or to the Secretary of the Ministry of Health. Where an application is made to an ART provider, the Act will require the ART provider to provide the non-identifying information to the donor-conceived individual. In addition, the ART provider will be required to provide the information to the ministry where it will be stored on the register and will be available if another donor-conceived individual of the donor makes an application.

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For donor-conceived individuals who do not wish to interact with an ART provider or do not know which ART provider holds records about the donor, the bill also allows the individual to make an application directly to the secretary. If such an application is made, the secretary will be able to obtain the information about the donor from the ART provider and will then provide the information to the donor-conceived individual. I recognise that this is not the process that the committee recommended and it is not necessarily a process with which all donor-conceived individuals will be happy. Nevertheless, the amendments in the bill seek to strike a balance between the different interests and will ensure that donor-conceived individuals have a right to seek non-identifying information about their donor.

As a central collection of records will not be undertaken, it is important to ensure that pre-2010 records are appropriately maintained. As such, the bill also includes a number of provisions that strengthen the record-keeping requirements in relation to ART records. Under the bill ART providers will be required to keep pre-2010 records for 75 years and provision is included to allow a non-ART provider to transfer pre-2010 records to an ART provider. While these are important amendments that seek to give donor-conceived individuals a right to access non-identifying information, it is necessary to recognise that creating a legislative right will be of assistance only where there are pre-2010 records in existence.

In many cases pre-2010 records of donors may not be available. There are a number of reasons for this. In some cases, little or no information on the donor was ever recorded. In others, due to the passage of time, and with no previous legal obligation to keep the records for extended periods, the records may have already been destroyed. Unfortunately, in some cases pre-2010 records have been deliberately tampered with or destroyed. The destruction of records is not acceptable and will not be permitted going forward.

As such, the bill includes a new offence at section 61A which will make it an offence for a person to destroy or falsify ART records. Further, the bill amends section 63 to increase the time limit for bringing proceedings for breaches of the Act from six months to two years. While the bill cannot recreate records that do not exist or have been destroyed, it can help ensure that existing pre-2010 donor conception records are preserved going forward. The bill will also amend the Assisted Reproductive Technology Act to allow details about private ART arrangements to be included on the register, which was a recommendation of the 2012 parliamentary inquiry into the inclusion of donor details on the register of births.

In addition, the bill includes a new section 22A of the Births, Deaths and Marriages Registration Act that will ensure that if a birth registration statement specifies that a person was donor conceived the Registrar of the Registry of Births, Deaths and Marriages must note that information on the register. The changes will mean that, while the birth certificate will not contain any information to indicate that a person is donor conceived, when a donor-conceived person over 18 years of age applies for his or her birth

certificate the registrar must attach an addendum to the birth certificate noting that further information may be available from the ART Central Register. This amendment implements a recommendation made by the 2012 parliamentary inquiry.

I will turn to other amendments contained in the bill, which, in the main, follow on from the statutory review into the Assisted Reproductive Technology Act conducted in 2013 and the subsequent report tabled in Parliament in May 2014. Overall, the report of the review found that the objectives of the Assisted Reproductive Technology Act remained valid and that the provisions of the Act generally operated effectively. However, it made a number of recommendations for legislative amendments, which this bill seeks to implement. These are generally minor amendments such as amendments to sections 25 and 26 to increase the time limits on the use and storage of gametes to a maximum of 15 years, up from the current 10 years, or further periods approved by the secretary.

The amendments also include moving provisions that are currently found in the Assisted Reproductive Technology regulation to the Act, which will give certainty and assurances about what information is collected, stored and disclosed about participants in ART treatment. The transitional provisions, which are currently set out in the regulation, are also being moved to the Act. Those provisions apply to women who started their family using donated gametes before 1 January 2010 and who seek to complete their family after that date using the same donated gametes. This change will provide ongoing certainty to such women who wish to complete their family.

In addition, and following on from the review of the Assisted Reproductive Technology Act, the bill amends section 27 of the Act. Section 27 prohibits an ART provider from providing ART treatment if the treatment will result in more than five women giving birth to children conceived using the same donor's gametes. Section 27, also known as "the five women limit", was included in the Assisted Reproductive Technology Act to allow women to use a donor's gametes to have several children and complete their families while at the same time limiting the number of women who can have offspring using the donor's gametes.

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This limit was considered necessary to reduce the risk of donor offspring entering into a relationship with an unknown blood relative in the future.

However, section 27 can have unintended consequences on certain family groups—for example, female same sex couples where both women seek to conceive a child using the same donor's gametes or an infertile male who uses donated gametes with his first wife and then, following a relationship breakdown or the death of his wife, seeks to use the same donor's gametes with a second partner. Currently in such circumstances both women are counted for the purposes of the five-women limit, notwithstanding the fact that any children conceived will grow up as part of one family unit.

Due to the difficulties associated with section 27, the report on the review recommended that section 27 be amended to a five-family limit. The bill implements this recommendation by including a new section 27(1A). The new provision makes it clear that section 27 does not apply to a woman where the woman or her spouse is already the parent of a child born as a result of Assisted Reproductive Technology [ART] treatment using donated gametes from the same donor. This will ensure that same sex couples and men who seek to use the gametes from the same donor with a former and current spouse are not adversely impacted by section 27. ART can be a contentious area and I realise that not all stakeholders will be satisfied with all the changes in the bill. However, the bill aims to strike a fair balance between the different, and sometimes competing, interests of donor conceived individuals, women undergoing ART treatment and donors. I commend the bill to the House.

The Hon. WALT SECORD (Deputy Leader of the Opposition) [6.15 p.m.]: As the Deputy Leader of the Opposition and shadow health Minister I lead for Labor on the Assisted Reproductive Technology Amendment Bill 2016. On 6 March the Minister for Health introduced the bill into the Legislative Assembly and on 16 March my colleague Ms Kate Washington, the member for Port Stephens, who represents