



New South Wales

Assisted Reproductive Technology Amendment Bill 2016

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to establish a scheme where persons who were born as a result of ART treatment provided before 1 January 2010 using a donated gamete are able to obtain certain non-identifying information about the donor of the gamete and to require ART providers to retain records for this purpose for up to 75 years,
- (b) to make it an offence to knowingly falsify or destroy records required to be kept or retained under the *Assisted Reproductive Technology Act 2007* (the **principal Act**),
- (c) to extend to 15 years the maximum period for which donated gametes and embryos created using donated gametes may be stored and used,
- (d) to provide an exception to the 5 woman limit (which prevents ART treatment using a donated gamete being provided to a woman if there are already 5 other women who have given birth to offspring of the donor) if the woman or spouse of the woman is the parent of a child born as a result of ART treatment using a gamete from the same donor,
- (e) to permit information about a person born as a result of ART treatment using a donated gamete to be disclosed to the person's siblings and to the donor of the gamete if the Secretary of the Ministry of Health considers the information should be disclosed,
- (f) to permit donors of gametes and offspring of donors and parties to private ART arrangements to voluntarily provide information for inclusion in the central register,
- (g) to provide for the voluntary inclusion of information about donor conception in a birth registration statement and for the recording of that information in the Births, Deaths and

Marriages Register and for the person to whom the statement relates to be notified about the information if the person is older than 18 years of age and applies for a birth certificate,

- (h) to move a number of key provisions of the *Assisted Reproductive Technology Regulation 2014* into the principal Act.

Outline of provisions

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 28 days after the date of assent to the proposed Act except the following provisions which commence on the date of assent:

- (a) provisions updating references to the Ministry of Health and the Secretary of the Ministry,
- (b) provisions amending section 27 (Donated gametes or embryos—maximum number of families) of the principal Act,
- (c) proposed section 61A (Destruction or falsification of ART records) of the principal Act.

Schedule 1 Amendment of Assisted Reproductive Technology Act 2007 No 69

Schedule 1 [1] and [2] update terminology and references in the principal Act as a consequence of the commencement of the *Government Sector Employment Act 2013*.

Schedule 1 [3] also inserts definitions of *full name*, *identifying information* and *relevant medical history* to be used in the principal Act.

Schedule 1 [4] increases the maximum period that a donated gamete, or an embryo created using a donated gamete, may be stored from 10 years to 15 years. **Schedule 1 [5]** makes it an offence for an ART provider to use any such gamete or embryo in ART treatment after that 15 year period without the written authorisation of the Secretary of the Ministry of Health (the *Secretary*) with a maximum penalty of \$44,000 if the ART provider is a corporation or \$22,000 in any other case.

Schedule 1 [6] provides an exception to the 5 woman limit and permits the regulations under the principal Act to prescribe other exceptions. The *5 woman limit* is set out in section 27 of the principal Act and prevents ART treatment using a donated gamete being provided to a woman if there are already 5 other women who have given birth to offspring of the donor. ART treatment using a gamete of a donor may now be provided to a woman if the woman or the spouse of the woman is the parent of a child born as a result of ART treatment using a donated gamete from the same donor.

Schedule 1 [7] provides for additional information about a donor that must be provided by an ART provider if requested to do so by a registered ART provider for the purposes of complying with the 5 woman limit. The regulations made under the principal Act currently require this information to be provided and the proposed amendment moves this requirement into the principal Act.

Schedule 1 [8] permits the Secretary to provide information on the central register to an ART provider if the Secretary is of the opinion that provision of the information may be necessary to ensure that the ART provider does not fail to comply with the 5 woman limit.

Schedule 1 [9] sets out the information that an ART provider must obtain from a gamete provider before the ART provider obtains a gamete. The regulations made under the principal Act currently require this information to be obtained and the proposed amendment moves this requirement into the principal Act.

Schedule 1 [10] and [11] set out additional information that must be recorded by an ART provider in relation to any gamete or embryo in the ART provider's possession. The regulations made under the principal Act currently require records of this information to be kept about any such

gametes or embryos and the proposed amendments move these requirements into the principal Act.

Schedule 1 [12] omits section 33 (Information about ART treatment to be entered in central register) from the principal Act and instead inserts proposed sections 33–33D.

Proposed section 33 sets out the information that an ART provider must give the Secretary if a child is born as a result of ART treatment provided by the ART provider. Failure to provide the information is an offence with a maximum penalty of \$44,000 if the ART provider is a corporation or \$22,000 in any other case. The regulations made under the principal Act currently require this information to be provided to the Secretary and the proposed amendments move these requirements into the principal Act. The Secretary must enter information given under the proposed section in the central register.

Proposed section 33A provides for the parties to private ART arrangements (being the donor, the woman undergoing ART treatment and any spouse of the woman) to voluntarily provide information to the Secretary for inclusion on the central register. The Secretary may require the provision of evidence that demonstrates the accuracy of any such information.

Proposed section 33B provides for a donor of a gamete to voluntarily provide information about the personal characteristics of the donor to the Secretary for inclusion on the central register.

Proposed section 33C provides for an adult offspring of a donor of a gamete to voluntarily provide identifying information about the offspring to the Secretary for inclusion on the central register.

Proposed section 33D requires the Secretary to ensure that information on the central register is accurate and not misleading and consistent with the objectives of the register. The Secretary is also required to remove any information that was provided voluntarily if the person who provided the information seeks its removal.

Schedule 1 [13] sets out the information that the Secretary is to disclose to an adult offspring of the donor of a gamete about the donor of the gamete and about other offspring of the donor. The information that is required to be disclosed about the donor is information that is currently required to be disclosed by the regulations made under the principal Act and information about the personal characteristics of the donor that have been voluntarily given by the donor under proposed section 33B. The information that is required to be disclosed about other offspring is information that is currently required to be disclosed by the regulations made under the principal Act and other identifying information about the offspring that has been voluntarily given by the offspring under proposed section 33C.

Schedule 1 [14] sets out the information that the Secretary is to disclose to a parent of a child born as a result of ART treatment using a donated gamete about the donor of the gamete and other offspring of the donor. The information that is required to be disclosed is information that is currently required to be disclosed by the regulations made under the principal Act and information about the personal characteristics of the donor that have been voluntarily given by the donor under proposed section 33B and identifying information about the offspring that has been voluntarily given by the offspring under proposed section 33C.

Schedule 1 [15] sets out the information that the Secretary is to disclose to a donor about any person born as a result of ART treatment using a gamete donated by the donor. The information that is required to be disclosed is information that is currently required to be disclosed by the regulations made under the principal Act and identifying information about the offspring that has been voluntarily given by the offspring under proposed section 33C.

Schedule 1 [16] inserts proposed sections 40A and 40B into the principal Act.

Proposed section 40A permits the Secretary to disclose information held on the central register about a person who was born as a result of ART treatment using a donated gamete. The information may be disclosed to any sibling of the person or to the donor of the gamete. Identifying information may be disclosed only if the Secretary is of the opinion that contact is

justified to protect the welfare and best interests of the person seeking the information and the person whose information is proposed to be disclosed.

Proposed section 40B provides that a person whose information is held on the central register may consent to the disclosure of the information in circumstances that are not otherwise permitted under Part 3 of the principal Act.

Schedule 1 [17] inserts proposed Part 3A into the principal Act which deals with information that is not on the central register (which includes records about ART services provided before 1 January 2010 (*pre 2010 records*)).

Proposed Division 1 of Part 3A sets out definitions to be used in the proposed Part.

Proposed Division 2 of Part 3A provides for the retention of records and contains 3 sections. Proposed section 41O provides that an ART provider (which in the proposed Part includes a former ART provider) must retain a pre 2010 record during the *retention period* for the record (which is 75 years after the provision of the ART service to which the record relates). Failure to do so is an offence with a maximum penalty of \$22,000 if the ART provider is a corporation or \$11,000 in any other case. Proposed section 41P provides that a person (including an ART provider) who has a pre 2010 record in the person's control may transfer the record to a registered ART provider. A person who transfers a record under the proposed section and the registered ART provider to whom the record is transferred must both notify the Secretary of the transfer. An ART provider who fails to comply with the proposed section is guilty of an offence with a maximum penalty of \$11,000 if the ART provider is a corporation or \$5,500 in any other case. Proposed section 41Q permits a person to destroy a pre 2010 record with the written authorisation of the Secretary. The Secretary must not give any such authorisation unless satisfied that no person will be adversely affected by the destruction of the record.

Proposed Division 3 of Part 3A deals with access to information that may not be on the central register. Proposed section 41R sets out the objects of the proposed Division. Proposed section 41S sets out the meaning of *accessible information* about a donor (being the information that can be disclosed under the proposed Division) which is certain non-identifiable information about the donor. Proposed section 41T permits a person who was born as a result of ART treatment provided by an ART provider using a donated gamete (or if the person is a child, the parent of the person) to apply for accessible information about the donor of the gamete. The application may be made to an ART provider or to the Secretary. Proposed section 41U requires an ART provider who receives an application to give any accessible information that the ART provider has about the donor to the applicant and to the Secretary. The ART provider must also give the Secretary identifying information about the donor. Any failure of an ART provider to comply with the proposed section is an offence with a maximum penalty of \$22,000 if the ART provider is a corporation or \$11,000 in any other case. Proposed section 41V permits the Secretary to direct a person (including an ART provider) to give the Secretary information for the purposes of enabling the Secretary to give information to an applicant under the proposed Division. Failure to comply with a direction is an offence with a maximum penalty of \$22,000 if the person is a corporation or \$11,000 in any other case. Proposed section 41W requires information that is provided to the Secretary under the proposed Division to be entered in the central register. Proposed section 41X requires the Secretary to disclose to an applicant under the proposed Division any relevant accessible information about a donor that is held in the central register.

Schedule 1 [18] creates an offence (maximum penalty of \$44,000 if the person is a corporation or \$22,000 in any other case) if a person knowingly falsifies or destroys a pre 2010 record or any other record that is required to be kept or retained under the principal Act.

Schedule 1 [19] permits proceedings for an offence against the principal Act or the regulations made under that Act to be commenced up to 2 years after the offence was alleged to have been committed.

Schedule 1 [20] permits regulations to be made that contain provisions of a savings or transitional nature consequent on the enactment of any Act that amends the principal Act including the proposed Act.

Schedule 1 [22] re-enacts a provision that provided that section 25 (Storage of gametes or embryos) of the principal Act does not apply to gametes obtained before 1 January 2010 and provides that if the gamete is a donated gamete it may be stored by an ART provider for no longer than 15 years after it was obtained from the donor unless the Secretary authorises a longer period. The regulations made under the principal Act currently contain a similar provision. Schedule 1 [22] also inserts a similar provision in relation to embryos created before 1 January 2010. If any such embryo was created using a donated gamete, an ART provider cannot store the embryo for more than 15 years after it was created unless the Secretary authorises a longer period.

Schedule 1 [25] inserts a provision that permits a woman who conceived a child before 1 January 2010 using a donated gamete to receive ART treatment using a donated gamete from the same donor despite other provisions of the principal Act. The proposed amendment also permits a woman to receive ART treatment using an embryo created using a donated gamete before 1 January 2010 despite other provisions of the principal Act if the embryo was created before that day for that particular woman. The regulations made under the principal Act currently contain similar provisions.

Schedule 1 [21], [23] and [24] substitute references to the commencement of provisions with the day on which those provisions commenced for ease of reading and to provide consistency with the amendments made by Schedule 1 [22] and [25].

Schedule 2 Amendment of Births, Deaths and Marriages Registration Act 1995 No 62

Schedule 2 amends the *Births, Deaths and Marriages Registration Act 1995* to provide for the voluntary inclusion of information about donor conception in a birth registration statement and for the recording of that information in the Births, Deaths and Marriages Register and for the person to whom the statement relates to be notified about the information if the person is older than 18 years of age and applies for a birth certificate.

Schedule 3 Amendment of Assisted Reproductive Technology Regulation 2014

Schedule 3 amends the *Assisted Reproductive Technology Regulation 2014* to omit provisions that have been placed in the principal Act by Schedule 1 and to make other consequential amendments.