

South Australia

Reproductive Technology (Clinical Practices) Act 1988

An Act to regulate the use of reproductive technology and research involving experimentation with human reproductive material.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Reproductive Technology (Clinical Practices) Act 1988*.

3—Interpretation

In this Act, unless the contrary intention appears—

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

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

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

the code of ethical practice means the code of ethical practice formulated by the Council under Part 2;

human reproductive material means—

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

in vitro fertilisation procedure means any of the following procedures—

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

reproductive technology means the branch of medical science concerned with artificial fertilisation.

4—Act binds Crown

This Act binds the Crown.

Part 2—The South Australian Council on Reproductive Technology

Division 1—The Council

5—Establishment of the Council

- (1) The *South Australian Council on Reproductive Technology* is established.
- (2) The Council consists of 11 members appointed by the Governor and of these—
 - (a) one will be nominated by the Council of the University of Adelaide; and
 - (b) one will be nominated by the Council of the Flinders University of South Australia; and
 - (c) one will be nominated by the Royal Australian College of Obstetricians and Gynaecologists; and
 - (d) one will be nominated by the Royal Australian College of General Practitioners; and
 - (e) one will be nominated by the Heads of Churches in South Australia; and
 - (f) one will be nominated by the Law Society of South Australia; and
 - (g) five will be nominated by the Minister.
- (3) When nominating a person for membership of the Council a person or body referred to in subsection (2) must recognise that the Council should, as far as practicable, be constituted of equal numbers of men and women.
- (4) In selecting nominees for appointment to the Council the Minister will endeavour to ensure—
 - (a) that the Council has available to it from its own membership expertise in the various facets of reproductive technology; and
 - (b) that other relevant disciplines and backgrounds are adequately reflected in the Council's membership; and
 - (c) that the Council's membership is sufficiently representative of the general community; and
 - (d) that, as far as practicable, the Council is constituted of an equal number of men and women.
- (5) The Governor may, on the nomination of the body or person by whom a member was nominated, appoint a deputy to that member and the deputy may, in the absence of that member, act as a member of the Council.
- (6) The Council will elect (for a term fixed by the Council) one of its members to preside at meetings of the Council.

6—Terms of appointment

- (1) A member of the Council will be appointed for a term not exceeding three years and will, on the expiration of a term of appointment, be eligible for reappointment.

- (2) The Governor may remove a member of the Council for—
 - (a) misconduct; or
 - (b) neglect of duty; or
 - (c) incompetence; or
 - (d) mental or physical incapacity to carry out official duties satisfactorily.
- (3) The office of a member of the Council becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is removed from office under subsection (2).
- (4) When the office of a member becomes vacant, a person must be appointed in accordance with this Act to the vacant office.

7—Allowances and expenses

A member of the Council will be entitled to such fees, allowances and expenses as the Governor may determine.

8—Procedure at meetings

- (1) A meeting of the Council will be chaired by the member elected to preside or in the absence of that member by a member chosen by the members present from amongst their own number.
- (2) Subject to subsection (3), the Council may act notwithstanding vacancies in its membership.
- (3) Six members constitute a quorum of the Council.
- (4) Each member present at a meeting of the Council is entitled to one vote on a matter arising for decision at the meeting and, in the event of an equality of votes, the member chairing the meeting will be entitled to a second or casting vote.
- (5) Subject to this Act, the proceedings of the Council may be conducted as it thinks fit.

9—Disclosure of interest

- (1) A member of the Council who has a direct or indirect personal or pecuniary interest in any matter before the Council must disclose the nature of the interest to the Council before, or as soon as practicable after, the matter arises for consideration.
Penalty: \$2 000.
- (2) A disclosure under this section must be recorded in the minutes of the Council.
- (3) If a matter arising before the Council (other than a question of general principle) affects a member's personal or pecuniary interests directly or indirectly, the member must abstain from voting on that matter.
Penalty: \$2 000.

Division 2—The Council's functions

10—Functions of the Council

- (1) The functions of the Council are as follows:
 - (a) to formulate, and keep under review, a code of ethical practice to govern—
 - (i) the use of artificial fertilisation procedures;
 - (b) —
 - (i) to advise the Minister on the conditions to be included in licences authorising artificial fertilisation procedures;
 - (c) to carry out research into the social consequences of reproductive technology;
 - (d) to promote research into the causes of human infertility (and, in doing so, to attempt to ensure that adequate attention is given to research into the causes of both female and male infertility);
 - (da) to keep under review research involving human embryos;
 - (e) to advise the Minister on any questions arising out of, or in relation to, reproductive technology;
 - (f) to promote (by the dissemination of information and in other ways) informed public debate on the ethical and social issues that arise from reproductive technology;
 - (g) to collaborate with other bodies carrying out similar functions in Australia.
- (2) The welfare of any child to be born in consequence of an artificial fertilisation procedure must be treated as of paramount importance, and accepted as a fundamental principle, in the formulation of the code of ethical practice.
- (3) The code of ethical practice must contain provisions to the following effect—
 - (a) the practice known as embryo flushing must be prohibited;
 - (b) any persons on whose behalf a human embryo is stored outside the human body must have the right to decide how the embryo is to be dealt with or disposed of and a person who has made such a decision must have (while the embryo remains in storage) the right to review the decision at intervals of no more than 12 months;
 - (c) a human embryo must not be maintained outside the human body for a period exceeding 10 years;
 - (d) the culture of a human embryo outside the human body must be prohibited beyond the stage of development at which implantation would normally occur.
- (4) For the purpose of formulating the code of ethical practice, the Council may adopt (with or without modification) codes or standards of practice adopted elsewhere.
- (5) The code of ethical practice (and any amendments to it) will be promulgated in the form of regulations.

11—Officers and employees

- (1) The Council may, with the Minister's approval, employ such staff as it needs for the purposes of this Act.
- (2) The Council's staff are not members of the Public Service.
- (3) The Council may, with the approval of the Minister administering an administrative unit of the Public Service, on terms and conditions mutually arranged, make use of the services of any officer, or use any facilities or equipment, of that unit.

12—Annual report

- (1) The Council must, by 31 March in each year, present a report to the Minister on—
 - (a) the use of reproductive technology in the State during the previous year;
 - (b) any significant developments in the techniques of reproductive technology over that period;
 - (c) any discernible social trends that became apparent over that period attributable to the use of reproductive technology;
 - (d) any other matters of importance within the sphere of the Council's responsibilities.
- (2) The Minister must, within six sitting days after receipt of a report under this section, cause copies of the report to be laid before both Houses of Parliament.

Part 3—Licensing

Division 1—Requirement for licence

13—Licence required for artificial fertilisation procedures

- (1) Subject to subsection (7), a person must not carry out an artificial fertilisation procedure except in pursuance of a licence granted by the Minister.
Penalty: \$10 000.
- (2) The Minister must not grant a licence unless satisfied—
 - (a) that the licence is necessary to fulfil a genuine and substantial social need that cannot be adequately met by existing licensees; and
 - (b) that—
 - (i) the applicant is a fit and proper person to hold the licence; and
 - (ii) the applicant has appropriate staff and facilities for carrying out the artificial fertilisation procedures for which the licence is sought.
- (3) A licence will be subject to—
 - (a) a condition defining the kinds of artificial fertilisation procedures authorised by the licence;
 - (b) a condition preventing the application of artificial fertilisation procedures except for the benefit of married couples in the following circumstances—
 - (i) the husband or wife (or both) appear to be infertile; or

- (ii) there appears to be a risk that a genetic defect would be transmitted to a child conceived naturally;
 - (c) a condition requiring the licensee to ensure that the code of ethical practice is observed;
 - (d) a condition requiring the licensee to keep specified records in relation to—
 - (i) artificial fertilisation procedures conducted in pursuance of the licence; and
 - (ii) the source of human reproductive material used in the procedures;
 - (e) such other conditions as the Minister may, on the advice of the Council determine.
- (4) In subsection (3)—

married couple includes two people who are not married but who are cohabiting as husband and wife and who—

 - (a) have cohabited continuously as husband and wife for the immediately preceding five years; or
 - (b) have, during the immediately preceding six years, cohabited as husband and wife, for periods aggregating at least five years.
- (5) Licence conditions—
 - (a) —
 - (i) if determined at the time of grant of the licence—will be included in the licence itself;
 - (ii) if determined subsequently—will be imposed by notice in writing given personally or by post to the licensee; and
 - (b) may be varied or revoked by notice in writing given personally or by post to the licensee.
- (6) If contravention of, or non-compliance with, a condition of a licence occurs, the licensee is guilty of an offence.
Penalty: \$10 000.
- (7) A licence is not required under this section in respect of artificial insemination if—
 - (a) it is carried out by a registered medical practitioner who—
 - (i) has submitted his or her name for registration by the Minister under this section; and
 - (ii) has made an undertaking to the Minister to observe the code of ethical practice; or
 - (b) it is carried out gratuitously,

(but this exemption does not extend to any person from whom it has been withdrawn under subsection (8)).

- (8) If the Minister suspects on reasonable grounds a breach of the code of ethical practice by a person who is exempt from the requirement to hold a licence by virtue of subsection (7), the Minister may, by notice in writing, withdraw the exemption from that person.

Division 2—Suspension or cancellation of licence

15—Suspension or cancellation of licence

- (1) The Minister may, if satisfied that contravention of, or non-compliance with, a condition of a licence granted by the Minister has occurred, suspend or cancel the licence.
- (2) A licensee must be given a reasonable opportunity to make submissions in relation to the matter before action is taken under subsection (1).

Division 3—Appeal

16—Appeals

- (1) An appeal lies to the Supreme Court against—
- (a) a refusal by the Minister to grant a licence authorising artificial fertilisation procedures;
 - (b) a decision by the Minister to impose a particular licence condition;
 - (c) a decision by the Minister to suspend or cancel a licence;
 - (d) a decision by the Minister to withdraw an exemption permitting artificial insemination without a licence.
- (2) Subject to any contrary order of the Supreme Court, an appeal cannot be commenced after one month from the day on which the appellant receives notice of the decision against which the appeal lies.
- (3) On an appeal, the Supreme Court may—
- (a) annul, vary or reverse the decision subject to the appeal; and
 - (b) make any consequential or ancillary orders.

Part 4—Miscellaneous

17—Powers of authorised persons

- (1) An authorised person may at any reasonable time—
- (a) enter and inspect any premises on which artificial fertilisation procedures are carried out; and
 - (b) inspect any equipment on the premises; and
 - (c) put questions to any person on the premises; and
 - (d) require any person who is apparently in a position to do so, to produce records relating to artificial fertilisation procedures; and
 - (e) examine those records and take extracts from, or make copies of, any of them.

- (2) A person who—
- (a) obstructs an authorised person acting in the exercise of a power conferred by this section; or
 - (b) fails to answer an authorised person's questions to the best of his or her information and belief; or
 - (c) being in a position to produce records fails to do so when required by an authorised person,
- is guilty of an offence.
Penalty: \$2 000.
- (3) Confidential information may be disclosed to an authorised person under this section without breach of any principle of professional ethics.

18—Confidentiality

- (1) A person must not disclose the identity of a donor of human reproductive material except—
- (a) in the administration of this Act; or
 - (b) in order to carry out an artificial fertilisation procedure; or
 - (c) with the consent (given in the prescribed manner) of the donor of the material.
- Penalty: \$5 000 or imprisonment for six months.
- (2) A person must not divulge any other confidential information obtained (whether by that person or some other person) in the administration of this Act or for the purpose, or in the course, of carrying out an artificial fertilisation procedure except—
- (a) in the administration of this Act or in order to carry out that procedure; or
 - (b) as may be permitted or required by the code of ethical practice.
- Penalty: \$5 000 or imprisonment for six months.

19—Delegation

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

20—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), those regulations may—
 - (a) prescribe forms of consent for the purposes of this Act;
 - (b) require licensees to furnish periodic returns of information;
 - (c) impose penalties (not exceeding \$2 000) for breach of, or non-compliance with, a regulation.
- (3) A regulation may incorporate, or operate by reference to, any code or standard (as in force at the date of the regulation, or as in force from time to time) prepared or approved by a body or authority referred to in the regulation.
- (4) Regulations under this Act (including a regulation promulgating the code of ethical practice or any amendments to it) will take effect as follows—
 - (a) if the regulation has lain before both Houses of Parliament for 14 sitting days and a notice of disallowance has not been given in either House during that period the regulation will take effect at the expiration of that period;
 - (b) if notice of disallowance has been given in either House during that period but the regulation has not been disallowed, the regulation will take effect when the motion for disallowance is defeated or lapses or, if such a notice has been given in both Houses, when both motions have been defeated or have lapsed or one motion has been defeated and the other motion has lapsed.

Schedule—Transitional provision

- (1) On the commencement of this Act a licence to carry out in vitro fertilisation procedures must be granted—
 - (a) to the University of Adelaide and the Queen Elizabeth Hospital in relation to the in vitro fertilisation programme conducted at the Queen Elizabeth Hospital;
 - (b) to the Flinders University of South Australia and the Flinders Medical Centre in relation to the in vitro fertilisation programme conducted at the Flinders Medical Centre;
 - (c) to Repromed Pty. Ltd. in relation to the in vitro fertilisation programme conducted at the Wakefield Memorial Hospital.
- (2) The Minister may impose conditions in relation to a licence granted under subclause (1).
- (3) A condition may be imposed under subclause (2) by giving the licensee written notice of the condition.

Legislative history

Notes

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

Formerly

Reproductive Technology Act 1988

Principal Act and amendments

New entries appear in bold.

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

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
s 1	substituted by 18/2003 Sch cl 2	18.12.2003
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>18.12.2003</i>
s 3		

Reproductive Technology (Clinical Practices) Act 1988—18.12.2003 to 31.8.2010

Legislative history

authorised person	amended by 34/2000 Sch 1 cl 15(a)	6.7.2000
<i>the Commission</i>	<i>deleted by 34/2000 Sch 1 cl 15(b)</i>	6.7.2000
Pt 2		
s 10		
s 10(1)	amended by 34/2000 Sch 1 cl 15(c)	6.7.2000
	(a)(ii) deleted by 18/2003 Sch cl 3(1)	18.12.2003
	(b)(ii) deleted by 18/2003 Sch cl 3(2)	18.12.2003
	amended by 18/2003 Sch cl 3(3)	18.12.2003
s 11		
s 11(3)	substituted by 34/2000 Sch 1 cl 15(d)	6.7.2000
Pt 3		
s 13		
s 13(1)	amended by 34/2000 Sch 1 cl 15(e)	6.7.2000
s 13(2)	amended by 34/2000 Sch 1 cl 15(f)	6.7.2000
s 13(3)	amended by 34/2000 Sch 1 cl 15(g)	6.7.2000
s 13(7)	amended by 34/2000 Sch 1 cl 15(h)	6.7.2000
s 13(8)	amended by 34/2000 Sch 1 cl 15(i), (j)	6.7.2000
<i>s 14</i>	<i>deleted by 18/2003 Sch cl 4</i>	18.12.2003
s 15	substituted by 34/2000 Sch 1 cl 15(k)	6.7.2000
s 15(1)	substituted by 18/2003 Sch cl 5	18.12.2003
s 16		
s 16(1)	amended by 34/2000 Sch 1 cl 15(l)	6.7.2000
<i>s 16(4)</i>	<i>deleted 18/2003 Sch cl 6</i>	18.12.2003
Pt 4		
s 17		
s 17(1)	amended by 18/2003 Sch cl 7(1), (2)	18.12.2003
s 18		
s 18(2)	amended by 18/2003 Sch cl 8(1), (2)	18.12.2003
s 19	substituted by 34/2000 Sch 1 cl 15(m)	6.7.2000
Sch		
scl (2)	substituted by 34/2000 Sch 1 cl 15(n)	6.7.2000

Historical versions

Reprint No 1—6.7.2000