

South Australia

# **Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009**

An Act to amend the *Reproductive Technology (Clinical Practices) Act 1988* and to make related amendments to the *Family Relationships Act 1975*.

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## 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) (Miscellaneous) Amendment Act 2009*.

#### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Reproductive Technology (Clinical Practices) Act 1988*

#### 4—Amendment of long title

Long title—delete "the use of reproductive technology and research involving experimentation with human reproductive material" and substitute:

assisted reproductive treatment

#### 5—Amendment of section 1—Short title

Section 1—delete "*Reproductive Technology (Clinical Practices) Act 1988*" and substitute:

*Assisted Reproductive Treatment Act 1988*

#### 6—Amendment of section 3—Interpretation

- (1) Section 3, definition of *artificial fertilisation procedure*—delete the definition

- (2) Section 3, definition of *artificial insemination*—delete the definition and substitute:

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

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

- (3) Section 3, definition of *the code of ethical practice*—delete the definition and substitute:

*donor conception register*—see section 15;

- (4) Section 3, definition of *reproductive technology*—delete the definition

## 7—Insertion of section 4A

After section 4 insert:

### 4A—Welfare of child paramount

The welfare of any child to be born as a consequence of the provision of assisted reproductive treatment in accordance with this Act must be treated as being of paramount importance, and accepted as a fundamental principle, in respect of the operation of this Act.

## 8—Repeal of Parts 2 and 3

Parts 2 and 3—delete the Parts and substitute:

## Part 2—Registration

### 5—Authorisation and registration required to provide assisted reproductive treatment

- (1) A person must not provide assisted reproductive treatment unless the person is authorised to do so in accordance with the regulations and registered under this Part.  
Maximum penalty: \$120 000.
- (2) Subsection (1) does not apply in relation to assisted reproductive treatment consisting of—
- (a) assisted insemination provided by a health professional approved by the Minister for the purposes of this subsection; or
  - (b) assisted insemination provided other than for fee or reward.
- (3) An approval under subsection (2)(a) may be conditional or unconditional.
- (4) The Minister may, by notice in writing given to a health professional approved under subsection (2)(a), vary or cancel the approval on any grounds the Minister thinks fit.

- (5) A health professional who is approved under subsection (2)(a) and who contravenes or fails to comply with a condition of the approval is guilty of an offence.

Maximum penalty: \$120 000.

- (6) In this section—

*health professional* means—

- (a) a medical practitioner; or
- (b) any other person who belongs to a profession, or who has an occupation, declared by the regulations to be a profession or occupation within the ambit of this definition.

## **6—Eligibility for registration**

A person is eligible for registration under this Part if the person, on application to the Minister, satisfies the Minister that he or she—

- (a) is a fit and proper person to be registered; and
- (b) holds any licence, accreditation or other qualification required by the regulations for the purposes of registration; and
- (c) satisfies any other requirements prescribed by the regulations.

## **7—Application for registration**

- (1) An application for registration under this Part must—
  - (a) be made to the Minister in the manner and form approved by the Minister; and
  - (b) be accompanied by the prescribed fee.
- (2) An applicant for registration must, if the Minister so requires, provide the Minister with specified information to enable the Minister to determine the application.

## **8—Registration**

- (1) The Minister must keep a register of persons authorised to provide assisted reproductive treatment under this Act (the *Register*).
- (2) The Register must include, in relation to each person on the Register—
  - (a) the person's full name or business name and business address; and
  - (b) details of any condition of registration; and
  - (c) any other information prescribed by the regulations, and may include such other information as the Minister thinks fit.

## 9—Conditions of registration

- (1) The Minister must, by notice in writing given to a person registered under this Part, impose conditions of the following kinds on the person's registration:
  - (a) a condition requiring the person to hold, while the person is registered under this Part, a specified licence, accreditation or other qualification that is in force;
  - (b) a condition setting out the kinds of assisted reproductive treatment the person may provide and any requirements that must be complied with in the provision of such treatment;
  - (c) a condition preventing the provision of assisted reproductive treatment except in the following circumstances:
    - (i) if a woman who would be the mother of any child born as a consequence of the assisted reproductive treatment is, or appears to be, infertile;
    - (ii) if a man who is living with a woman (on a genuine domestic basis as her husband) who would be the mother of any child born as a consequence of the assisted reproductive treatment is, or appears to be, infertile;
    - (iii) if there appears to be a risk that a serious genetic defect, serious disease or serious illness would be transmitted to a child conceived naturally;
    - (iv) if—
      - (A) the donor of the relevant human semen has died; and
      - (B) before the donor died—
        - the donor's semen was collected; or
        - a human ovum (being the ovum of a woman who, immediately before the death of the deceased, was living with the donor on a genuine domestic basis) was fertilised by means of assisted reproductive treatment using the donor's semen; or
        - an embryo had been created as a consequence of such assisted reproductive treatment; and

- (C) before the donor died, the donor consented to the use of the semen, fertilised ovum or embryo (as the case requires) after his death in the provision of the proposed assisted reproductive treatment; and
  - (D) if the donor gave any directions in relation to the use of the semen, ovum or embryo (as the case requires)—the directions have, as far as is reasonably practicable, been complied with; and
  - (E) the assisted reproductive treatment is provided for the benefit of a woman who, immediately before the death of the donor, was living with the donor on a genuine domestic basis;
- (v) in any other circumstances prescribed by the regulations;
- (d) a condition requiring the person to ensure that the regulations are complied with;
  - (e) any other condition required by the regulations, and may impose any other condition the Minister thinks fit.
- (2) The Minister may, by notice in writing given to a person registered under this Part, vary the conditions of the person's registration by the addition, substitution or deletion of 1 or more conditions.
- (3) A person who is registered under this Part and who contravenes or fails to comply with a condition of the person's registration is guilty of an offence.
- Maximum penalty: \$120 000.

### **10—Suspension or cancellation of registration**

- (1) The Minister may suspend or cancel a person's registration under this Part if the Minister is satisfied that the person has contravened, or failed to comply with, a condition of that registration.
- (2) A person must be given a reasonable opportunity to make submissions in relation to the matter before action is taken under subsection (1).

### **11—Removal from Register**

- (1) The Minister must, on application by a person registered under this Part, remove the person from the Register.
- (2) The Minister must remove from the Register a person—
  - (a) who ceases to hold a licence, accreditation or other qualification required for registration under this Part; or

- (b) who ceases for any other reason to be entitled to be registered; or
  - (c) whose registration has been suspended or cancelled under this Act.
- (3) The Minister may act under subsection (2) without giving prior notice to the person.

## **12—Reinstatement on register**

- (1) A person who has been removed from the Register under this Act—
- (a) on the person's application; or
  - (b) under section 11 (other than a person whose registration has been suspended under this Act),

may apply to the Minister at any time for reinstatement on the Register.

- (2) A person whose registration under this Part has been suspended may apply to the Minister for reinstatement on the Register (but not, in the case where the person's registration has been suspended for a specified period, until after the expiration of that period).
- (3) An application for reinstatement must—
- (a) be made to the Minister in the manner and form determined by the Minister; and
  - (b) be accompanied by the prescribed reinstatement fee.
- (4) An applicant for reinstatement must, if the Minister so requires, provide the Minister with specified information to enable the Minister to determine the application.
- (5) The Minister may refuse to reinstate the applicant on the Register until any proceedings in relation to the applicant under this Act, or a law of another State or a Territory of the Commonwealth providing for the registration or some other form of accreditation of persons who provide assisted reproductive treatment, have been finally disposed of.

## **13—Appeals**

- (1) An appeal lies to the Supreme Court against the following decisions:
- (a) a refusal by the Minister to approve a health professional for the purposes of section 5(2);
  - (b) a decision by the Minister to vary or cancel the approval of a health professional under section 5(4);
  - (c) a refusal by the Minister to register a person under this Part;
  - (d) a decision by the Minister to impose, substitute or delete a condition of registration under this Part;
  - (e) a decision by the Minister to suspend or cancel the registration of a person;

- (f) a refusal by the Minister to reinstate a person on the Register.
- (2) Subject to any contrary order of the Supreme Court, an appeal cannot be commenced after 1 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 the Supreme Court thinks fit.

#### **14—Related matters**

- (1) The Register must be kept available for inspection by any person during ordinary office hours at a place or places determined by the Minister and the Register, or extracts of the Register, may be made available to the public by electronic means.
- (2) A person may, on payment of the prescribed fee, obtain a copy of any part of the Register.
- (3) A certificate stating that a person was, or was not, registered on the Register at a particular date, or during a particular period, and purporting to be signed by the Minister will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration, or of the fact that the person was not so registered, on the date, or during the period, stated in the certificate.

### **Part 3—Donor conception register**

#### **15—Donor conception register**

- (1) The Minister may keep a register of donors of human reproductive material used in, or in relation to, assisted reproductive treatment provided in accordance with this Act and resulting in the birth of a child (the *donor conception register*).
- (2) If the Minister does keep the donor conception register, the register must contain, in relation to each donor on the register—
  - (a) the donor's full name and nominated contact address; and
  - (b) the full name and nominated contact address of the person to whom assisted reproductive treatment using the donor's human reproductive material was provided; and
  - (c) the full name of any child born as a consequence of such assisted reproductive treatment (if known); and
  - (d) any other information required by the regulations,and may include any other information that the Minister thinks fit.
- (3) The Minister must correct an entry in the donor conception register that is not correct.



- (4) The donor conception register may only be inspected in accordance with the regulations.
- (5) A certificate stating that a donor was, or was not, registered on the donor conception register in relation to the birth of a specified child, and purporting to be signed by the Minister will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration, or of the fact that the person was not so registered.
- (6) The Minister may, by notice in writing, for the purpose of preparing and maintaining the donor conception register, require a person to provide the Minister with such information as the Minister may require.
- (7) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (6).  
Maximum penalty: \$10 000.
- (8) This section does not apply in relation to assisted reproductive treatment provided before the commencement of this section.

## **9—Insertion of section 16**

Before section 17 insert:

### **16—Record keeping**

- (1) A person who is registered under Part 2 must make such records, and keep such documents, as may be required by the regulations in relation to the provision of assisted reproductive treatment by the person.  
Maximum penalty: \$50 000.
- (2) A health professional who is approved under section 5(2)(a) to provide assisted insemination must make such records, and keep such documents, as may be required by the regulations in relation to assisted insemination provided in pursuance of the approval.  
Maximum penalty: \$50 000.
- (3) A person who is required to make a record or keep a document under this section must retain the record or document in accordance with any requirement set out in the regulations.  
Maximum penalty: \$50 000.

## **10—Amendment of section 17—Powers of authorised persons**

- (1) Section 17(1)(a)—delete "artificial fertilisation procedures are carried out" and substitute:  
assisted reproductive treatment is provided
- (2) Section 17(1)(d)—delete "artificial fertilisation procedures" and substitute:  
assisted reproductive treatment
- (3) Section 17(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$10 000.

## **11—Amendment of section 18—Confidentiality**

- (1) Section 18(1)—before paragraph (a) insert:
  - (aa) as required or authorised by or under this or any other Act; or
- (2) Section 18(1)(b)—delete "carry out an artificial fertilisation procedure" and substitute:  
provide assisted reproductive treatment
- (3) Section 18(1)(c)—delete "(given in the prescribed manner)"
- (4) Section 18(1), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$10 000 or imprisonment for 6 months.
- (5) Section 18(2)—delete "carrying out an artificial fertilisation procedure" and substitute:  
providing assisted reproductive treatment
- (6) Section 18(2)—before paragraph (a) insert:
  - (aa) as required or authorised by or under this or any other Act; or
- (7) Section 18(2)(a)—delete "carry out that procedure" and substitute:  
provide that treatment
- (8) Section 18(2)(b)—delete "the code of ethical practice" and substitute:  
or under this Act
- (9) Section 18(2)—after paragraph (b) insert:  
or
  - (c) with the consent of the person to whom the information relates.
- (10) Section 18(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$10 000 or imprisonment for 6 months.
- (11) Section 18—after subsection (2) insert:
  - (3) Nothing in this section prevents information (being information that does not disclose the identity of a person) being used to enable the Minister to accumulate statistical information and to enable the Minister to authorise use of the statistical information for the purposes of research or education.

## **12—Amendment of section 20—Regulations**

- (1) Section 20(2)(b)—delete "licensees" and substitute:  
persons registered under Part 2 of this Act
- (2) Section 20(2)(c)—delete "\$2 000" and substitute:  
\$10 000
- (3) Section 20(2)—after paragraph (c) insert:
  - (d) require a person to provide information to the Minister for purposes related to the preparation and maintenance of the donor conception register;

- (e) confer a discretionary power on the Minister or any other person or body.

- (4) Section 20(4)—delete subsection (4)

### **13—Insertion of section 21**

After section 20 insert:

#### **21—Review of operation of Act**

- (1) The Minister must, as soon as practicable after the fifth anniversary of the commencement of this section, conduct a review of the operation and effectiveness of this Act as amended by the *Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009*.
- (2) The Minister, or any person conducting the review on behalf of the Minister, must maintain the confidentiality of information provided to the Minister in the course of the review (but nothing in this section prevents information (being information that does not disclose the identity of a person) being used to enable the Minister to accumulate and publish statistical information for the purposes of a report under this section).
- (3) The Minister must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

### **14—Repeal of Schedule**

Schedule—delete the Schedule

## **Schedule 1—Related amendments and transitional provisions**

### **Part 1—Related amendments to *Family Relationships Act 1975***

#### **1—Amendment of heading to Part 2A**

Heading to Part 2A—delete "medical" and substitute:

fertilisation

#### **2—Amendment of section 10A—Interpretation**

Section 10A(1), definition of *fertilisation procedure*—delete the definition and substitute:

*fertilisation procedure* means—

- (a) assisted insemination (within the meaning of the *Assisted Reproductive Treatment Act 1988*); or
- (b) assisted reproductive treatment (within the meaning of the *Assisted Reproductive Treatment Act 1988*).

### **3—Amendment of section 10B—Application of Part**

Section 10B(1)—delete subsection (1) and substitute:

- (1) Subject to this section, this Part applies—
  - (a) in respect of a fertilisation procedure carried out before or after the commencement of the *Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009* either within or outside the State; and
  - (b) in respect of a child born before or after commencement of the *Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Act 2009* either within or outside the State.

### **4—Amendment of section 10D—Rule relating to paternity**

Section 10D—after subsection (2) insert:

- (3) Subject to this Act, if a woman undergoes, in accordance with this or any other Act, a fertilisation procedure in consequence of which she becomes pregnant using the semen of a man—
  - (a) who has died; and
  - (b) who, immediately before his death, was living with the woman on a genuine domestic basis as her husband; and
  - (c) who had consented to the use of the semen for the purposes of the fertilisation procedure,  
the man—
    - (d) will be conclusively presumed to have caused the pregnancy; and
    - (e) will be taken to be the father of any child born as a result of the pregnancy.

### **5—Insertion of section 10EA**

After section 10E insert:

#### **10EA—Court order relating to paternity**

- (1) This section applies to a child if—
  - (a) the child is domiciled in this State; and
  - (b) the child was conceived as a result of a fertilisation procedure carried out in this State; and
  - (c) 1 or more of the following applies:
    - (i) the paternity of the child is not able to be determined by the operation of section 10D;

- (ii) the operation of section 10E(2) does not reflect the wishes of both the provider of the sperm used for the purposes of the fertility procedure (the *sperm provider*) and the mother of the child;
  - (iii) the fertility procedure was carried out in any other circumstances brought within the ambit of this paragraph by the regulations.
- (2) The Court may, in relation to a child to which this section applies and on the application of the sperm provider in respect of the child, make an order under this section.
- (3) However, the Court must not make an order under this section unless satisfied that both the mother and the sperm provider freely, and with a full understanding of what is involved, agree to the making of the order.
- (4) The Court must, in deciding whether to make an order under this section, regard the welfare of the child as the paramount consideration.
- (5) In deciding whether to make an order under this section, the Court may take into account anything it considers relevant.
- (6) If the Court makes an order under this section, the effect of the order will be as follows:
  - (a) for the purposes of the law of the State—
    - (i) will be conclusively presumed to have caused the pregnancy; and
    - (ii) will be taken to be the father of any child born as a result of the pregnancy;
  - (b) the relationships of all other persons to the child will be determined according to the operation and effect of paragraph (a).
- (7) If the Court makes an order under this section, the Court may make any other ancillary order the Court thinks fit.
- (8) In this section—

*Court* means the *Youth Court of South Australia* constituted of a Judge.

## Part 2—Transitional provisions

### 1—Existing licensees

- (1) A person who, immediately before the commencement of this clause, held a licence under Part 3 of the *Reproductive Technology (Clinical Practices) Act 1988* (as in force immediately before the commencement of this clause) will be taken to be registered under Part 2 of that Act (as enacted by this Act).

- (2) Any licence condition to which the licence was subject under section 13(3)(a) and (e) of the *Reproductive Technology (Clinical Practices) Act 1988* (as in force immediately before the commencement of this clause) will be taken to continue to apply as a condition of registration under Part 2 of that Act (as enacted by this Act).

## **2—Record keeping**

A person who held a licence under Part 3 of the *Reproductive Technology (Clinical Practices) Act 1988* (as in force immediately before the commencement of this clause) must keep any record required to have been made or kept as a condition to which the licence was subject under section 13(3)(d) of that Act (as in force immediately before the commencement of this clause) as if the record were a record required to be made or kept under that Act after the commencement of Part 2 of this Act.