

South Australia

Reproductive Technology (Code of Ethical Clinical Practice) Variation Regulations 2003

under the *Reproductive Technology (Clinical Practices) Act 1988*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Reproductive Technology (Code of Ethical Clinical Practice) Variation Regulations 2003*.

2—Commencement

These regulations will come into operation in accordance with section 20(4) of the *Reproductive Technology (Clinical Practices) Act 1988*.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Reproductive Technology (Code of Ethical Clinical Practice) Regulations 1995*

4—Substitution of regulation 3

Regulation 3—delete the regulation and substitute:

3—Code of ethical (clinical) practice

For the purposes of the *Reproductive Technology (Clinical Practices) Act 1988*, the code of ethical practice set out in the Schedule is prescribed.

5—Variation of Schedule

- (1) Schedule, clause 2, definition of *the Act*—delete the definition and substitute:

Act means the *Reproductive Technology (Clinical Practices) Act 1988*;
- (2) Schedule, clause 2, definition of *embryo*—delete the definition and substitute:

embryo means a human embryo within the meaning of the *Prohibition of Human Cloning Act 2003*;
- (3) Schedule, clause 2—after the definition of *medical practitioner* insert:

NHMRC means the National Health and Medical Research Council established by the *National Health and Medical Research Council Act 1992* of the Commonwealth;
- (4) Schedule, after clause 2—insert:

2A—Compliance with NHMRC guidelines

Any clinical practice involving human reproductive material must be undertaken in compliance with the relevant requirements of the *Ethical Guidelines on the Use of Reproductive Technology in Clinical Practice and Research* published by the NHMRC.

- (5) Schedule, clause 3—delete the clause
- (6) Schedule, clause 4(a)—delete paragraph (a)
- (7) Schedule, clause 10—delete the clause
- (8) Schedule, clause 11—after subclause (1) insert:
 - (1a) If a statutory declaration under subclause (1)(c) reveals that either spouse—
 - (a) is subject to a term of imprisonment in this State or elsewhere or to outstanding charges (whether in this State or elsewhere) for an offence for which imprisonment may be imposed on conviction; or
 - (b) has been found guilty, in this State or elsewhere, of a sexual offence involving a child,the licensee must not give infertility treatment to the person (or to the other spouse).
 - (1b) If a statutory declaration under subclause (1)(c) reveals that either spouse has been found guilty, in this State or elsewhere, of an offence involving violence (other than an offence within the ambit of subclause (1a)), the licensee must not give infertility treatment to the person (or to the other spouse) unless or until the review panel approves the provision of the treatment.

- (1c) If a statutory declaration under subclause (1)(c) reveals that either spouse has had a child permanently removed from his or her guardianship under any Act or law of this State or any other place (other than by adoption), the licensee must refer the matter to the Child Protection Services unit of the Women's and Children's Hospital or the Flinders Medical Centre and must not give infertility treatment to the person (or to the other spouse) unless or until a clinician within the unit approves the provision of the treatment.
- (9) Schedule 1, clause 11(2)(b)—after subparagraph (iv) insert:
- (v) either spouse has been found guilty, in this State or elsewhere, of an offence involving violence; or
 - (vi) either spouse has had a child permanently removed from his or her guardianship under any Act or law of this State or any other place (other than by adoption).
- (10) Schedule 1, clause 11(3)—delete subclause (3) and insert:
- (3) In a case where subclause (2)(b)(v) applies (and the relevant offence does not fall within the ambit of subclause (2)(b)(ii), (iii) or (iv)), the licensee must not give or continue to give infertility treatment to the relevant couple without the approval of the review panel.
 - (3a) In a case where subclause (2)(b)(vi) applies, the licensee must not give or continue to give infertility treatment to the relevant couple without the approval of a clinician within the Child Protection Services unit of the Women's and Children's Hospital or the Flinders Medical Centre.
 - (3b) If a matter is referred under subclause (1c) or (3a), a clinician within the relevant unit must undertake an assessment of the couple's parenting skills and an approval must not be given under the relevant subclause unless the clinician is satisfied that there is a reasonable likelihood of the couple being able to care properly for, and nurture, a child throughout childhood.
- (11) Schedule 1, clause 11(6)—delete subclause (6) and substitute:
- (6) A licensee who refuses to give or to continue to give infertility treatment to a married couple must—
 - (a) on request by the couple, give the couple written reasons for the refusal; and
 - (b) where relevant, give the couple written information about the processes associated with the initiation of proceedings before the review panel.
- (12) Schedule 1, clause 14B—delete the clause and substitute:

14B—Initiation of proceedings

- (1) Proceedings before the review panel for the purposes of this Part must be initiated in a manner and form determined by the review panel.

- (2) The purpose of any proceedings is to review the circumstances surrounding the offence or offences that have given rise to the proceedings before the review panel, and for the review panel to assess whether the welfare of any child born as a result of infertility treatment might be compromised on account of the commission of the offence or offences, and whether a licensee should be able to consider offering infertility treatment despite the offence or offences.
- (13) Schedule 1, clause 14C(1)—delete "In conducting a review" and substitute:

For the purposes of this Part
- (14) Schedule 1, clause 14C(4)—delete subclause (4)
- (15) Schedule 1, clause 14C(5)—delete "on a review" and substitute:

under this Part
- (16) Schedule 1, clause 14D(1)—delete "on a review"
- (17) Schedule 1, clause 14E—delete "on a review or appeal" and substitute:

under this Part
- (18) Schedule 1, clause 46—delete the clause and substitute:

46—Annual report to Council

- (1) A licensee must, not later than 28 February in each year, furnish to the Council a report relating to such matters as the Council may determine by written notice given to the licensee.
- (2) In making a determination for the purposes of subclause (1), the Council must take into account any relevant requirements or guidelines imposed or published by the NHMRC with respect to the regulation of reproductive technology, and may take into account such other matters as the Council thinks fit.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 18 December 2003

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