

South Australia

# Assisted Reproductive Treatment Regulations 2024

under the *Assisted Reproductive Treatment Act 1988*

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### Legislative history

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Assisted Reproductive Treatment Regulations 2024*.

## 2—Commencement

These regulations come into operation on the day on which section 5 of the *Assisted Reproductive Treatment (Posthumous Use of Material and Donor Conception Register) Amendment Act 2024* comes into operation.

## 3—Interpretation

In these regulations—

*Act* means the *Assisted Reproductive Treatment Act 1988*;

*adult* means an individual of or above the age of 18 years;

*guardian*, of a minor, means the legal guardian of the minor (other than a parent);

*minor* means an individual who is under 18 years of age;

*NHMRC* means the National Health and Medical Research Council established under the *National Health and Medical Research Council Act 1992* of the Commonwealth;

*NHMRC guidelines* means the *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research 2017* published by the NHMRC, as in force from time to time;

*registration*, in relation to a person, means registration under Part 2 of the Act;

*RTAC* means the Reproductive Technology Accreditation Committee of the Fertility Society of Australia and New Zealand;

*RTAC licence* means a licence to provide assisted reproductive treatment (however described) issued by RTAC.

## 4—Act does not require provision of assisted reproductive treatment

Nothing in the Act requires a registered person to provide assisted reproductive treatment to another person (whether or not assisted reproductive treatment may, pursuant to section 9(1)(c) of the Act, be provided in the particular circumstances of the person's case).

## Part 2—Registration

### 5—Authorisation to provide assisted reproductive treatment

For the purposes of section 5(1) of the Act, a person is authorised to provide assisted reproductive treatment if the person holds a current RTAC licence.

### 6—Requirements for registration

For the purposes of section 6(1)(b) of the Act, a current RTAC licence is required for the purposes of registration.

### 7—Register

For the purposes of section 8(2)(c) of the Act, the following information is prescribed:

- (a) the address of each premises at which the person provides assisted reproductive treatment;
- (b) the date on which the person's RTAC licence expires;

- (c) the URL of any website maintained by or on behalf of the person in relation to the provision of assisted reproductive treatment;
- (d) the principal business email address used by or on behalf of the person in relation to the provision of assisted reproductive treatment.

## 8—Further conditions of registration

- (1) For the purposes of section 9(1)(c)(v) of the Act, assisted reproductive treatment may be provided in circumstances where—
  - (a) a woman who would be the mother of any child born as a consequence of the assisted reproductive treatment; or
  - (b) a man who is living with a woman (on a genuine domestic basis) who would be the mother of any child born as a consequence of the assisted reproductive treatment,

is suffering from an illness or other medical condition that may result in, or the appropriate treatment of which may result in, the woman or man becoming infertile at a future time.

- (2) For the purposes of section 9(1)(e) of the Act, the Minister must impose the following conditions on the registration of a person:
  - (a) a condition requiring the person to comply with the NHMRC guidelines;
  - (b) a condition requiring the person to provide specified information to the Minister from time to time in a manner and form determined by the Minister.
- (3) In the event of an inconsistency between a provision of the NHMRC guidelines and a condition imposed on the registration of a person (whether under the Act or otherwise), the provision of the NHMRC guidelines is, to the extent of the inconsistency, void and of no effect.
- (4) For the purposes of section 18 of the Act—
  - (a) a condition imposed on the registration of a person (whether under the Act or otherwise); or
  - (b) a provision of the NHMRC guidelines,that requires or authorises a person—
  - (c) to disclose the identity of a donor of human reproductive material; or
  - (d) to divulge personal information obtained (whether by that person or some other person) for the purpose, or in the course, of providing assisted reproductive treatment,

will be taken to be a requirement or authorisation under the Act.

## Part 3—Donor conception register

### 9—Interpretation

- (1) In this Part—

*contact information*, in relation to a person, means any of the following information:

  - (a) the person's telephone number;

- (b) the person's email address;
- (c) any other information by which the person may be contacted (other than the person's address);

*donor* has the same meaning as in section 15 of the Act;

*identifying information*, about a person, means any of the following information:

- (a) the person's name;
- (b) the person's date of birth;
- (c) the person's contact information;
- (d) a photograph of the person;
- (e) any other information from which the person's identity is apparent or can reasonably be ascertained;

*personal biographical information*, in relation to a person, includes the following information:

- (a) a biographical statement about the person, including information about the person's family;
  - (b) photographs and video recordings of the person;
  - (c) personal characteristics (such as height, weight, eye colour, skin colour);
  - (d) medical information about the person.
- (2) A reference in this Part to human reproductive material used in assisted reproductive treatment will be taken to include human reproductive material used in relation to assisted reproductive treatment.

## 10—Information to be included on donor conception register

- (1) Subject to subregulation (2), the donor conception register must contain the following information in relation to each donor:
- (a) any personal biographical information and contact information about, and provided for inclusion on the register by, the donor;
  - (b) any personal biographical information and contact information about, and provided for inclusion on the register by, an adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor;
  - (c) any medical information of a minor who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor provided for inclusion on the register by a parent or guardian of the minor;
  - (d) any contact information of the parent or guardian of a minor who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor provided by the parent or guardian for inclusion on the register.

- (2) Personal biographical information and contact information provided by a person for inclusion on the donor conception register must comply with any requirements of the Minister as to the form and content of the information.

### **11—Access to donor conception register**

- (1) A person is entitled to have access to information held on the donor conception register in accordance with this Part if the Minister is satisfied, in such manner as the Minister may determine, that the person is—
- (a) a donor; or
  - (b) an adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by a donor; or
  - (c) a parent or guardian of a minor who was born as a consequence of assisted reproductive treatment using human reproductive material donated by a donor; or
  - (d) a parent of an adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by a donor.
- (2) A person entitled to have access to information held on the donor conception register under this Part is to be given access to the information in such manner as the Minister may determine (which may vary according to the circumstances in which, or the class of person to whom, access is to be given).
- (3) The following restrictions apply in relation to access to information on the donor conception register under this Part:
- (a) access to identifying information about a person under regulation 12(e), 13(1)(i) or 14(h) may only be given if the person is aged 18 years or older and has provided consent to such access;
  - (b) access to a person's residential address is not to be given.
- (4) For the purposes of this Part, the consent of a person given in relation to access to information on the donor conception register about the person—
- (a) must be provided in a manner and form approved by the Minister; and
  - (b) may relate to specified information or information of a specified class; and
  - (c) may relate to access to information by persons of a specified class; and
  - (d) remains valid unless revoked in a manner and form approved by the Minister; and
  - (e) continues to operate after the death of the person who provided the consent.

### **12—Access to information by donor**

A donor is entitled to have access to the following information held on the donor conception register:

- (a) information about themselves;
- (b) the year of birth and sex at birth of any person born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor;

- (c) personal biographical information about, and provided for inclusion on the register by, an adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor;
- (d) with the consent of an adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor—contact information of the adult;
- (e) subject to this Part, any other information held on the donor conception register relating to a person born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor.

### **13—Access to information by donor-conceived adult**

- (1) An adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by a donor is entitled to have access to the following information held on the donor conception register:
  - (a) information about themselves;
  - (b) the donor's name and date of birth;
  - (c) with the consent of the donor—contact information of the donor;
  - (d) the year of birth and sex at birth of any other person who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor;
  - (e) with the consent of another adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor—contact information of the other adult;
  - (f) personal biographical information about, and provided for inclusion on the register by—
    - (i) the donor; or
    - (ii) another adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor;
  - (g) medical information relating to a minor who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor provided for inclusion on the register by a parent or guardian of the minor;
  - (h) with the consent of a parent or guardian of a minor who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor—contact information of the parent or guardian (as the case requires);
  - (i) subject to this Part, any other information held on the donor conception register relating to the donor or another person born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor.

- (2) Subject to subregulation (3), in a case where human reproductive material was donated by a donor on or before 30 September 2004, the Minister must, before giving access to the donor's name and date of birth to a person under subregulation (1)(b), allow a period of 90 days for the donor to be notified of the entitlement of the person to access the information.
- (3) Subregulation (2) ceases to apply in relation to a donor if—
  - (a) a period of 90 days has elapsed since—
    - (i) the donor has been given access to information on the register; or
    - (ii) any person born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor has sought access to the donor's name and date of birth under subregulation (1)(b); or
  - (b) the donor gives consent for access to the information to be given to the person.
- (4) The Minister may, as the Minister sees fit in the circumstances of a particular case, extend the period referred to in subregulation (2) by a further period of up to 90 days.

#### **14—Access to information by parent or guardian of donor-conceived minor**

A parent or guardian of a minor who was born as a consequence of assisted reproductive treatment using human reproductive material donated by a donor is entitled to have access to the following information held on the donor conception register:

- (a) information about themselves;
- (b) information about the minor;
- (c) with the consent of the donor—the donor's date of birth and contact information;
- (d) the year of birth and sex at birth of any other person who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor;
- (e) with the consent of an adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor—contact information of the adult;
- (f) personal biographical information about, and provided for inclusion on the register by—
  - (i) the donor; or
  - (ii) an adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor;
- (g) with the consent of a parent or guardian of another minor who was born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor—
  - (i) contact information of the parent or guardian (as the case requires);

- (ii) medical information relating to the other minor voluntarily provided for inclusion on the register by a parent or guardian (as the case requires) of the other minor;
- (h) subject to this Part, any other information held on the donor conception register relating to the donor or another person born as a consequence of assisted reproductive treatment using human reproductive material donated by the donor.

### **15—Access to information by parent of donor-conceived adult**

A parent of an adult who was born as a consequence of assisted reproductive treatment using human reproductive material donated by a donor is entitled to have access to the following information held on the donor conception register:

- (a) information about themselves;
- (b) the name, date of birth and sex at birth of the adult who was born as a consequence of assisted reproductive treatment and in relation to whom they are a parent.

### **16—Information of a kind for inclusion on donor conception register**

- (1) For the purposes of section 15(6) of the Act, the following kinds of information are prescribed:
  - (a) information specified in subregulation (2) relating to the provision of assisted reproductive treatment using donated human reproductive material and resulting in the birth of a child where the assisted reproductive treatment—
    - (i) was of a kind referred to in section 5(2) of the Act; or
    - (ii) was provided otherwise than in accordance with the Act;
  - (b) information referred to in section 15(2) of the Act that is required or permitted to be included on the donor conception register but is not on the register.
- (2) The following information is specified for the purposes of subregulation (1)(a):
  - (a) the full name, date of birth and sex at birth of the child;
  - (b) the full name, residential address and date of birth of the person who donated the human reproductive material;
  - (c) the full name of the person who gave birth to the child;
  - (d) the full name of each parent and guardian of the child;
  - (e) any other information of a kind determined by the Minister.

### **17—Functions of authorised entities**

For the purposes of section 15A(1)(d) of the Act, the function of providing information and support to persons who have, or are seeking to have, access to information held on the donor conception register is prescribed.

## 18—Notice to Minister of certain records

- (1) Pursuant to section 20(2)(d) of the Act, a person (other than a person who is registered under Part 2 of the Act) who is in possession of records or other documents related to the provision of assisted reproductive treatment using donated human reproductive material and resulting in the birth of a child must notify the Minister of those records and documents in accordance with the requirements of this regulation.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) A notification to the Minister under subregulation (1) must—
- (a) be made in a manner and form approved by the Minister; and
  - (b) include such information about the records and documents as the Minister may require; and
  - (c) be made within 3 months of—
    - (i) if the person was in possession of the records or documents at the commencement of this regulation—the date of commencement of this regulation; or
    - (ii) in any other case—the date on which the person came into possession of the records or other documents.
- (3) This regulation applies in relation to records and other documents relating to the provision of assisted reproductive treatment whether or not the treatment was provided—
- (a) in accordance with the Act; or
  - (b) before or after the commencement of this regulation.

## Part 4—Miscellaneous

### 19—Record keeping

- (1) For the purposes of section 16(1) of the Act, a person who is registered under Part 2 of the Act must make records and keep documents in accordance with the requirements of Chapter 9 of the NHMRC Guidelines.
- (2) For the purposes of section 16(2a) of the Act, a person (other than a person who is registered under Part 2 of the Act) who is in possession of records or other documents relating to the provision of assisted reproductive treatment using donated human reproductive material and resulting in the birth of a child must keep the records and documents securely stored and protected from—
- (a) misuse, interference and loss; and
  - (b) unauthorised access, modification or disclosure.
- (3) For the purposes of section 16(3) of the Act, a person who is required to make a record or keep a document under section 16 of the Act must retain the records or documents (as the case requires) indefinitely and ensure that they are not removed from the person's possession except as may be authorised by the Minister.

## **Schedule 1—Repeal of *Assisted Reproductive Treatment Regulations 2010***

The *Assisted Reproductive Treatment Regulations 2010* are repealed.

## Legislative history

### Notes

- 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](http://www.legislation.sa.gov.au).

### Principal regulations

Year	No	Reference	Commencement
2024	101	<i>Gazette 28.11.2024 p4278</i>	26.2.2025: r 2