



New South Wales

# Assisted Reproductive Technology Amendment Act 2016 No 11

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New South Wales

# **Assisted Reproductive Technology Amendment Act 2016 No 11**

Act No 11, 2016

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An Act to amend the *Assisted Reproductive Technology Act 2007* with respect to the keeping of records and the provision of information about donors of gametes and their offspring; to amend the *Births, Deaths and Marriages Registration Act 1995* to provide for donor conception information to be recorded on the Births, Deaths and Marriages Register; and for other purposes. [Assented to 6 April 2016]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Assisted Reproductive Technology Amendment Act 2016*.

**2 Commencement**

- (1) This Act commences 28 days after the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 [1], [2], [6]–[8], [18] and [21] commence on the date of assent to this Act.

## **Schedule 1      Amendment of Assisted Reproductive Technology Act 2007 No 69**

**[1] Whole Act (except Schedule 1 and where otherwise amended by this Schedule)**

Omit “Director-General” and “Director-General’s” wherever occurring.

Insert instead “Secretary” and “Secretary’s” respectively.

**[2] Section 4 Definitions**

Omit the definitions of *Department* and *Director-General* from section 4 (1).

Insert in alphabetical order:

*Department* means the Ministry of Health.

*Secretary* means the Secretary of the Department.

**[3] Section 4 (1)**

Insert in alphabetical order:

*full name*, in relation to a gamete provider who is a donor, includes each name by which the gamete provider is or has been known.

*identifying information* means information that identifies the individual to whom the information relates.

*relevant medical history* of a donor means any medical history or genetic test results of the donor or the donor’s family that are relevant to the future health of any of the following:

- (a) persons undergoing ART treatment using the donated gamete,
- (b) offspring born as a result of the treatment,
- (c) descendants of such offspring.

**[4] Section 25 Storage of gametes or embryos**

Omit section 25 (3) (c). Insert instead:

- (c) in the case of a donated gamete, the period of 15 years from the date the gamete was obtained from the donor plus any additional period that may be authorised by the Secretary under section 26,
- (d) in the case of an embryo created using a donated gamete, the period of 15 years from the date the embryo was created plus any additional period that may be authorised by the Secretary under section 26.

**[5] Section 26 Donated gametes or embryos—time limit on use**

Omit section 26 (1). Insert instead:

- (1) An ART provider must not provide the following ART treatment without the written authorisation of the Secretary:
  - (a) ART treatment using a donated gamete (but not ART treatment using an embryo created from a donated gamete) if the gamete was obtained from the donor more than 15 years before the provision of the ART treatment,

- (b) ART treatment using an embryo created from a donated gamete if the embryo was created more than 15 years before the provision of the ART treatment.

Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.

**[6] Section 27 Donated gametes or embryos—maximum number of families**

Insert after section 27 (1):

- (1A) This section does not prevent the provision of ART treatment using a donated gamete to a woman if:
  - (a) 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, or
  - (b) the woman belongs to a class of women prescribed by the regulations for the purposes of this section.

**[7] Section 27 (4) (a1)–(a3)**

Insert after section 27 (4) (a):

- (a1) the number of women who are pregnant as a result of ART treatment provided by the ART provider using a gamete of the donor, but not including women referred to in paragraph (a),
- (a2) the number of women for whom an embryo has been created as a result of ART treatment provided by the ART provider using a gamete of the donor and placed in storage, but not including women referred to in paragraph (a) or (a1),
- (a3) the number of women of whom the ART provider is aware who have given birth to offspring of the donor other than as a result of ART treatment, but not including women referred to in paragraph (a), (a1) or (a2),

**[8] Section 27 (5) and (6)**

Insert after section 27 (4):

- (5) The Secretary is to provide to an ART provider information referred to in subsection (4) that is on the central register if:
  - (a) the ART provider makes an application in an approved form for the information, or
  - (b) the Secretary is of the opinion that provision of the information to the ART provider may be necessary to prevent offspring of a donor being born to more than 5 women.
- (6) Section 41 (Fees) applies to an application under subsection (5) in the same way as it applies to an application under Division 2 of Part 3.

**[9] Section 30 Collection of information**

Omit section 30 (1). Insert instead:

- (1) An ART provider must not obtain a gamete from a gamete provider unless the ART provider has obtained the following information:
  - (a) the full name of the gamete provider,
  - (b) the residential address of the gamete provider,
  - (c) the date of birth of the gamete provider,

- (d) the place of birth of the gamete provider,
- (e) the ethnicity and physical characteristics of the gamete provider,
- (f) the relevant medical history of the gamete provider,
- (g) the sex and year of birth of each offspring of the gamete provider,
- (h) the name of each ART provider who has previously obtained a donated gamete from the gamete provider and the date on which the gamete was obtained.

(1A) An ART provider is only required to obtain the information specified in subsection (1) (d)–(h) if the gamete is a donated gamete.

**[10] Section 31 Records to be kept by ART provider**

Omit section 31 (1) (a) (i). Insert instead:

- (i) the information required to be obtained under section 30 (1), and

**[11] Section 31 (1) (c)**

Omit the paragraph. Insert instead:

- (c) for each offspring born as a result of ART treatment provided by the ART provider:
  - (i) the full name, sex and date of birth of the offspring, and
  - (ii) the name of the woman who gave birth to the offspring, and
  - (iii) if the offspring was born as a result of ART treatment using a donated gamete, the full name and date and place of birth of the donor of the gamete,

**[12] Sections 33–33D**

Omit section 33. Insert instead:

**33 Mandatory giving of information by ART providers**

- (1) An ART provider that provides ART treatment using a donated gamete must give the Secretary, within 2 months after the birth of a live offspring born as a result of the ART treatment:
  - (a) the records that the ART provider is required to keep under section 31 (1) (a) (i) and (iii) in relation to the gamete, and
  - (b) the records about the offspring that the ART provider is required to keep under section 31 (1) (c).Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.
- (2) The Secretary must enter in the central register any information given to the Secretary under this section.

**33A Voluntary giving of information about private ART arrangements**

- (1) In this section:  
*private ART arrangement* means ART treatment using a donated gamete that:
  - (a) resulted in the birth of a live offspring, and
  - (b) was not carried out for fee or reward or in the course of a business.
- (2) The parties to a private ART arrangement, being the donor of the gamete, the woman undergoing ART treatment and any spouse of the woman may, by notice in writing, give the Secretary information about the parties and about

the offspring, being information of a kind that an ART provider would be required to give the Secretary under section 33.

- (3) The notice may be given at any time and must be given in an approved form.
- (4) The Secretary may require that the notice be accompanied by any documents or other evidence that demonstrates the accuracy of the information contained in the notice.
- (5) The Secretary may enter in the central register any information given to the Secretary under this section.

**33B Voluntary giving of information about personal characteristics of donor**

- (1) The donor of a gamete may, by notice in writing, give the Secretary information about the personal characteristics of the donor for inclusion on the central register.
- (2) The notice may be given at any time and must be given in an approved form.
- (3) The notice may specify restrictions on the disclosure of the information.
- (4) The Secretary may enter in the central register any information given to the Secretary under this section.

**33C Voluntary giving of information by adult offspring of donor**

- (1) An adult offspring of a donor of a gamete may, by notice in writing, give the Secretary the following information about the offspring for inclusion on the central register:
  - (a) the full name, sex and date of birth of the offspring,
  - (b) the residential address of the offspring.
- (2) The notice may be given at any time and must be given in an approved form.
- (3) The notice may specify restrictions on the disclosure of the information.
- (4) The Secretary may enter in the central register any information given to the Secretary under this section.

**33D Secretary to ensure accuracy of central register**

- (1) The Secretary is to ensure that, as far as is practicable, the information in the central register is accurate and not misleading and is consistent with the objectives of the register and for these purposes the Secretary may do any one or more of the following:
  - (a) refuse to enter information, revise information or omit information,
  - (b) retain superseded information (such as a person's former name),
  - (c) add any notes or annotations that the Secretary considers to be appropriate.
- (2) The Secretary must remove information from the register that has been provided voluntarily by a person if the person applies, in an approved form, to have the information removed and the Secretary is satisfied that the information is not information that is otherwise required to be on the register.

**[13] Section 37**

Omit the section. Insert instead:

**37 Disclosure to offspring**

- (1) The Secretary must, if an application in an approved form is made by a person who is an adult and who was born as a result of ART treatment using a donated gamete, disclose to the person the following information held on the central register:
  - (a) the information referred to in section 30 (1) (a)–(g) about the donor of the donated gamete,
  - (b) any information about the donor that the donor has voluntarily given under section 33B (subject to any restrictions on the disclosure of the information specified by the donor under that section).
- (2) The Secretary must, if an application in an approved form is made by an adult offspring of a donor, disclose to the offspring the following information held on the central register:
  - (a) the sex and year of birth of each other offspring of the donor,
  - (b) any information about any other offspring of the donor that the other offspring has voluntarily given under section 33C (subject to any restrictions on the disclosure of the information specified by the offspring under that section).

**[14] Section 38 Disclosure to parent of offspring**

Omit section 38 (1) (a) and (b). Insert instead:

- (a) the ethnicity and physical characteristics of the donor of the donated gamete,
  - (a1) the relevant medical history of the donor,
  - (a2) the sex and year of birth of each offspring of the donor,
  - (a3) any information about the donor that the donor has voluntarily given under section 33B (subject to any restrictions on the disclosure of the information specified by the donor under that section),
- (b) any information about any other offspring of the donor that the other offspring has voluntarily given under section 33C (subject to any restrictions on the disclosure of the information specified by the offspring under that section),

**[15] Section 39**

Omit the section. Insert instead:

**39 Disclosure to donor**

The Secretary must, if an application in an approved form is made by the donor of a gamete, disclose to the donor the following information held on the central register:

- (a) the sex and year of birth of each offspring of the donor who was born as a result of ART treatment using the donated gamete,
- (b) any information about each such offspring that the offspring has voluntarily given under section 33C (subject to any restrictions on the disclosure of the information specified by the offspring under that section).



**[16] Sections 40A and 40B**

Insert after section 40:

**40A Disclosure of information about offspring without consent**

- (1) The Secretary may, if an application in an approved form is made by any of the following, disclose to the applicant information (including identifying information) held on the central register about a person who was born as a result of ART treatment using a donated gamete:
  - (a) any sibling of the person,
  - (b) the donor of the gamete.
- (2) The Secretary may disclose identifying information under this section only if the Secretary is of the opinion that contact is justified to protect the welfare and best interests of the applicant and the person whose information is proposed to be disclosed.
- (3) In forming an opinion under this section, the Secretary must take into account any matters that may be prescribed by the regulations.

**40B Disclosure permitted with consent**

- (1) 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 this Part.
- (2) Consent is to be given by notice in writing to the Secretary.
- (3) Consent given under this section may be revoked or varied at any time by giving further written notice to the Secretary.
- (4) Written notice under this section must be given in an approved form and must be accompanied by such proof as the Secretary may require of the person's identity.
- (5) Nothing in this Part prevents the Secretary from disclosing information about a person that is held on the central register if the person has consented to the disclosure under this section and the disclosure is in accordance with that consent.

**[17] Part 3A**

Insert after Part 3:

**Part 3A Information generally not on central register**

**Division 1 Preliminary**

**41N Definitions**

In this Part:

*ART provider* includes a person who was formerly an ART provider.

*pre 2010 record* means a record made by an ART provider about an ART service provided before 1 January 2010.

*retention period* in relation to a pre 2010 record means the period of 75 years after:

- (a) the day on which the ART service to which the record relates was provided, or

- (b) if the record relates to more than one ART service—the day on which the last of those services was provided.

## **Division 2 Retention of records**

### **41O ART providers must retain records**

An ART provider must ensure that any pre 2010 record within the ART provider's control is retained by the ART provider in a readily accessible form during the retention period for the record.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

### **41P Transfer of records**

- (1) A person (including an ART provider) may transfer any pre 2010 record within the person's control to a registered ART provider.
- (2) A person (including an ART provider) who transfers a pre 2010 record under this section, must, as soon as practicable after transferring the record, notify the Secretary in writing that the record has been transferred to the registered ART provider.
- (3) A registered ART provider to whom a pre 2010 record is transferred under this section must, as soon as practicable after the transfer, notify the Secretary in writing that the record has been transferred to the registered ART provider.
- (4) The transfer of a pre 2010 record under this section does not constitute a breach of section 41O or a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.
- (5) The regulations may make further provision for or with respect to the transfer of pre 2010 records under this section including:
  - (a) making provision for the transfer of pre 2010 records if an ART provider dies, is wound up or otherwise lacks capacity to retain the records in accordance with this Part, and
  - (b) specifying the matters that are required to be included in any notice given to the Secretary under this section.
- (6) An ART provider must comply with this section.

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

### **41Q Secretary may authorise destruction of records**

- (1) Despite any other provision of this Part, a person may destroy a pre 2010 record during the retention period if authorised in writing to do so by the Secretary.
- (2) The Secretary must not authorise the destruction of a pre 2010 record unless satisfied that no person would be adversely affected by the destruction of the record.

**Note.** For example, the Secretary may authorise destruction of pre 2010 records if the records relate to gametes that no longer exist and the Secretary is satisfied that no person was born as a result of ART treatment using those gametes.

### **Division 3 Access to information**

#### **41R Objects of Division**

The objects of this Division are:

- (a) to enable a person 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 make an application for certain non-identifying information about the donor of the gamete in circumstances where that information may not be held in the central register, and
- (b) to ensure that as far as possible the information, if still available, will be provided to the applicant.

**Note.** Information about ART treatment provided before 1 January 2010 will generally not be in the central register. Adequate records in respect of ART services provided before this date may not exist.

#### **41S Meaning of “accessible information” about a donor**

In this Division, *accessible information* about the donor of a gamete means the following information about the donor but only to the extent that it is non-identifying information:

- (a) the ethnicity and physical characteristics of the donor,
- (b) the relevant medical history of the donor,
- (c) the sex and year of birth of each offspring of the donor.

#### **41T Application by or on behalf of persons born as a result of ART treatment**

- (1) 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) may apply for accessible information about the donor of the gamete.
- (2) An application may be made to the ART provider who provided the treatment, to any other ART provider that the applicant reasonably suspects may have accessible information about the donor or to the Secretary.
- (3) An application is not to be made under this section if the applicant could obtain the information under section 37 or 38.
- (4) An application must be in an approved form and be accompanied by the fee (if any) prescribed by the regulations unless the ART provider or Secretary waives the fee in a particular case.

#### **41U Disclosure of information by ART provider**

- (1) An ART provider who receives an application under this Division must, within the time prescribed by the regulations (or if no time is prescribed, a reasonable time) after receiving the application, give written notice to the applicant containing:
  - (a) all accessible information about the donor that is held by the ART provider, and
  - (b) if the ART provider has no accessible information about the donor—a statement to that effect, and
  - (c) if the ART provider has reason to believe that another ART provider may have any additional accessible information about the donor—details of that other ART provider.
- (2) The ART provider must give a copy of the written notice to the Secretary.

- (3) The ART provider must, when giving the written notice to the Secretary, also give the Secretary:
  - (a) any information that the ART provider has about the identity of the donor including any donor code used by the ART provider, and
  - (b) any information in relation to ART services as may be prescribed by the regulations.
- (4) The Secretary may require information given under this section to be in an approved form.
- (5) An ART provider must comply with this section.  
Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

**41V Direction to provide information**

- (1) The Secretary may give a person (including an ART provider) a written direction requiring the person to give the Secretary such of the following information as may be specified in the direction:
  - (a) all accessible information about a donor that is held by the person (but only if the information has been obtained by the person in relation to the provision of ART services),
  - (b) any information that the person has about the identity of the donor including any donor code,
  - (c) any other information the person has that may assist in determining the identity of other persons who may hold accessible information about the donor,
  - (d) any information in relation to ART services as may be prescribed by the regulations.
- (2) A direction is not to be given unless it is for the purposes of enabling the Secretary to provide information to an applicant under this Division.
- (3) A direction may require the information to be given by a particular time and in a particular form.
- (4) A person who is given a direction must not fail to comply with the direction.  
Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

**41W Entry of information provided under Part in central register**

The Secretary must (subject to section 33D) enter any information about a donor that is given to the Secretary under this Division in the central register.

**41X Disclosure of information by Secretary**

The Secretary must disclose to an applicant under this Division any relevant accessible information about a donor that is held in the central register.

**[18] Section 61A**

Insert in Part 7 before section 62:

**61A Destruction or falsification of ART records**

- (1) A person must not knowingly falsify or destroy an ART record.  
Maximum penalty: 400 penalty units in the case of a corporation or 200 penalty units in any other case.

- (2) A person who destroys an ART record does not commit an offence under this section if the destruction of the record is authorised by the Secretary.
- (3) In this section:  
*ART record* means:
  - (a) a pre 2010 record within the meaning of Part 3A, or
  - (b) any other record that is required to be kept or retained under this Act.

**[19] Section 63 Summary proceedings for offences**

Insert after section 63 (2):

- (3) Proceedings for an offence against this Act or the regulations must be commenced not later than 2 years from when the offence was alleged to have been committed.

**[20] Section 74**

Omit the section. Insert instead:

**74 Review of Part 3A**

- (1) The Minister is to review Part 3A to determine whether that Part achieves the objects set out in section 41R.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the commencement of that Part.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 12 months.

**[21] Schedule 1 Savings, transitional and other provisions**

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any other Act that amends this Act.

**[22] Schedule 1, clause 2**

Omit “the commencement of section 17”. Insert instead “1 January 2010”.

**[23] Schedule 1, clauses 3 and 3A**

Omit clause 3. Insert instead:

**3 Storage of gametes obtained before 1 January 2010**

- (1) Section 25 does not apply to a gamete obtained by an ART provider before 1 January 2010.
- (2) However, if the gamete is a donated gamete, an ART provider must not store the gamete for longer than 15 years after the date the gamete was obtained from the donor or such longer period as may be authorised by the Secretary under this clause.
- (3) The Secretary may give written authorisation for the gamete to be stored for a period longer than 15 years, if satisfied that there are reasonable grounds for doing so having regard to any relevant guidelines issued by the Secretary from time to time.

**3A Storage of embryos created before 1 January 2010**

- (1) Section 25 does not apply to an embryo created before 1 January 2010.
- (2) However, if the embryo was created using a donated gamete, an ART provider must not store the embryo for longer than 15 years after the date the embryo was created or such longer period as may be authorised by the Secretary under this clause.
- (3) The Secretary may give written authorisation for the embryo to be stored for a period longer than 15 years, if satisfied that there are reasonable grounds for doing so having regard to any relevant guidelines issued by the Secretary from time to time.

**[24] Schedule 1, clause 4 (1) and (2)**

Omit “the commencement of that section” wherever occurring.

Insert instead “1 January 2010”.

**[25] Schedule 1, clause 4 (4)**

Omit “the commencement of section 33”. Insert instead “1 January 2010”.

**[26] Schedule 1, clauses 4A and 4B**

Insert after clause 4:

**4A Completion of family—gametes donated before 1 January 2010**

- (1) This clause applies to a gamete that was obtained from a donor before 1 January 2010 that is to be used to provide ART treatment to a woman who, before that date, conceived an offspring using a donated gamete from the donor.
- (2) The gamete may be used by an ART provider to provide ART treatment to the woman, or to create an embryo outside the body of a woman for use in ART treatment to the woman, and in such a case:
  - (a) the consent of the donor of the gamete is taken to have been provided for the use, and
  - (b) the ART provider is not required to do any of the following with respect to any such gamete or embryo:
    - (i) obtain any information under section 30,
    - (ii) keep a record of information under section 31,
    - (iii) provide information to the Secretary under section 33, and
  - (c) the ART treatment may be provided despite section 26 (1) or 27 (1), and
  - (d) the gamete or embryo may be stored for the purposes of that ART treatment despite clause 3 (or section 25).
- (3) Consent of a gamete provider that is taken to have been provided under this clause may be modified or revoked in accordance with section 17.

**4B Completion of family—embryos created before 1 January 2010**

- (1) This clause applies to an embryo created using a donated gamete before 1 January 2010 for the purposes of providing ART treatment to a particular woman.

- (2) The embryo may be used by an ART provider to provide ART treatment to the woman and in such a case:
  - (a) the consent of each gamete provider is taken to have been provided for the use, and
  - (b) the ART provider is not required to do any of the following with respect to any such embryo:
    - (i) obtain any information under section 30,
    - (ii) keep a record of information under section 31,
    - (iii) provide information to the Secretary under section 33, and
  - (c) the ART treatment may be provided despite section 26 (1) or 27 (1), and
  - (d) the embryo may be stored for the purposes of that ART treatment despite clause 3 (or section 25).

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

### **Part 3 Registration of births**

Insert after Division 5:

### **Division 6      Donor conception information**

#### **22A    Child conceived using a donated gamete**

- (1) A birth registration statement for a child may include a declaration that the child was conceived using a donated gamete and in such a case the Registrar must note in the Register that the statement included that declaration.
- (2) The Registrar must, when issuing a birth certificate to a person who is 18 years of age or more and to whom a declaration under subsection (1) relates, attach an addendum to the birth certificate noting that declaration and stating that further information may be available from the central register established under the *Assisted Reproductive Technology Act 2007*.
- (3) A birth certificate for a person must not include any information that indicates that the person may be a person who was conceived using a donated gamete.



## **Schedule 3      Amendment of Assisted Reproductive Technology Regulation 2014**

**[1] Clause 3 Definitions**

Omit the definitions of *full name*, *pre-Act gamete* and *Secretary* from clause 3 (1).

**[2] Part 3 Information and records**

Omit the Part.

**[3] Part 4, heading**

Insert “—surrogacy information” after “register”.

**[4] Part 4, Division 1 and heading to Division 2**

Omit the Division and heading.

**[5] Clauses 22 and 23**

Omit the clauses.

[Second reading speech made in—  
Legislative Assembly on 9 March 2016  
Legislative Council on 22 March 2016]