



Assisted Reproductive Technology Act 2024

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Queensland

Assisted Reproductive Technology Act 2024

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Assisted Reproductive Technology Act 2024

An Act to provide for the regulation of the use of technology to assist human reproduction and for a donor conception information register

Part 1 Preliminary

1 Short title

This Act may be cited as the *Assisted Reproductive Technology Act 2024*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) part 2, divisions 1 to 3;
- (b) sections 25 to 27 and 31;
- (c) part 3;
- (d) part 4;
- (e) part 6, divisions 1 to 4;
- (f) sections 145 to 149 and 151;
- (g) part 10, division 3.

3 Main objects of Act

- (1) The main objects of this Act are as follows—
 - (a) to protect the welfare and interests of—

- (i) people who use assisted reproductive technology;
and
 - (ii) people who are born as a result of assisted reproductive technology;
 - (b) to regulate the use of assisted reproductive technology;
 - (c) to provide and regulate access to information relating to people born as a result of assisted reproductive technology.
- (2) The welfare and interests of people who are born as a result of assisted reproductive technology are, throughout their lives, of paramount importance in the administration and operation of this Act.

4 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

5 Meaning of **ART procedure** and **undergoing ART procedure**

- (1) An **ART procedure** is—
- (a) any medical treatment or other procedure that procures, or attempts to procure, pregnancy in a person other than by sexual intercourse; or
 - (b) a related treatment or other procedure prescribed by regulation.

Examples of ART procedures—

artificial insemination, in-vitro fertilisation, gamete intrafallopian transfer

- (2) However, an **ART procedure** does not include self-insemination.

Note—

The provisions of part 3 relating to the donor conception information register extend to self-insemination.

- (3) The person who *undergoes* an ART procedure is the person who becomes or seeks to become pregnant as a result of the procedure.

6 Meaning of *ART service*

An *ART service* is any of the following provided for fee or reward, or in carrying on a business (whether or not for profit)—

- (a) an ART procedure;
- (b) the storage of gametes or embryos for use in an ART procedure;
- (c) obtaining a gamete from a gamete provider for use in an ART procedure.

7 Meaning of *ART provider*

- (1) An *ART provider* is a person who provides an ART service.
- (2) However, an *ART provider* does not include a person who provides an ART service on behalf of a licensed ART provider under a contract of employment or a contract for services.

8 Meaning of *gamete* and *embryo*

- (1) A *gamete* is a human sperm or human egg, and includes—
 - (a) any human cell that has resulted from a process of meiosis; and
 - (b) any tissue containing the cell.
- (2) An *embryo* is a discrete entity that—
 - (a) has arisen from either—
 - (i) the first mitotic division when fertilisation of a human egg by a human sperm is complete; or
 - (ii) any other process that initiates organised development of a biological entity with a human

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nuclear genome or an altered human nuclear genome that has the potential to develop up to, or beyond, the stage at which the primitive streak appears; and

- (b) has not yet reached 8 weeks of development since the first mitotic division.
- (3) In working out the length of the period of development of an embryo for subsection (2)(b), any period when the development of the embryo is suspended is to be disregarded.

9 Meaning of *donated gamete* and *donated embryo*

- (1) A *donated gamete* is—
 - (a) a gamete donated by a gamete provider for use by someone other than—
 - (i) the gamete provider; or
 - (ii) any spouse of the gamete provider; or
 - (b) a gamete used to create a donated embryo, whether or not—
 - (i) the gamete was originally obtained from the gamete provider as a donated gamete; or
 - (ii) the embryo was originally created for use as a donated embryo.
- (2) A *donated embryo* is an embryo donated after its creation for use by someone other than—
 - (a) a gamete provider from whom a gamete used to create the embryo was obtained; or
 - (b) any spouse of the gamete provider.
- (3) A donated gamete used in an ART procedure includes a donated gamete used to create an embryo that is used in the procedure.

Note—

Under the above definitions, a gamete that was not obtained as a donated gamete and is used to create an embryo becomes a donated

gamete if the embryo is an excess embryo that later becomes a donated embryo.

10 Application of other legislation

This Act does not limit or otherwise affect the operation of any of the following—

- (a) the *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003*;
- (b) the *Surrogacy Act 2010*;
- (c) the *Status of Children Act 1978*;
- (d) the *Public Health Act 2005*.

11 Act binds all persons

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the State, the Commonwealth or another State can not be prosecuted for an offence against this Act.

Part 2 Regulation of assisted reproductive technology

Division 1 ART providers to be licensed

12 Requirement to be licensed

- (1) A person must not provide an ART service unless the person is a licensed ART provider.

Maximum penalty—200 penalty units or 2 years imprisonment.

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- (2) A person must not advertise or hold out that the person is a licensed ART provider unless the person is a licensed ART provider.
- Maximum penalty—200 penalty units or 2 years imprisonment.

13 Services to be performed or supervised by medical practitioners

An ART provider must ensure that any ART services provided by the provider are performed by, or under the supervision of, a medical practitioner.

Maximum penalty—400 penalty units or 2 years imprisonment.

Division 2 Information and counselling

14 Information for persons provided with ART services

- (1) An ART provider must—
- (a) inform a person referred to in column 1 of the following table about the matters stated opposite in column 2 before providing the person with an ART service stated opposite in column 3; and
- (b) confirm that the person understands those matters before providing the service.

Maximum penalty—200 penalty units.

Column 1 Person	Column 2 Matters	Column 3 Service
person undergoing ART procedure that does not use donated gametes or donated embryo	basic matters	the ART procedure

Column 1 Person	Column 2 Matters	Column 3 Service
person undergoing ART procedure that uses donated gametes or donated embryo	extended matters	the ART procedure
intended parent if a surrogate undergoes ART procedure that uses donated gametes or donated embryo	extended matters	the ART procedure
person providing their gametes other than as donated gametes	basic matters	obtaining the gametes from the person for an ART procedure
person providing their donated gametes or donated embryo	extended matters	obtaining the gametes or embryo from the person for an ART procedure
person who has already provided their gametes, other than as donated gametes	extended matters	using the gametes, or an embryo created using the gametes, in an ART procedure as donated gametes or donated embryo

(2) In this section—

basic matters, for a person, means—

- (a) the availability of counselling services for the person under section 15; and
- (b) the effect of a gamete provider's consent under division 3, including how and when consent may be modified or withdrawn under that division; and
- (c) any other matter prescribed by regulation.

extended matters, for a person, means—

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- (a) the provision of counselling services for the person under section 15; and
- (b) the effect of a gamete provider's consent under division 3, including how and when consent may be modified or withdrawn under that division; and
- (c) the ART provider's obligations in relation to collecting information about the person and their donor-conceived offspring; and
- (d) the ART provider's obligations to keep and disclose information about the person and their donor-conceived offspring; and
- (e) the person's rights to obtain information from the donor conception information register about themselves, the donor-conceived offspring or other persons; and
- (f) the rights of the donor-conceived offspring and other persons to obtain information about themselves from the donor conception information register; and
- (g) any other matter prescribed by regulation.

15 Counselling services for persons provided with ART services

- (1) An ART provider must provide counselling services under this section to a person who proposes to donate a gamete or an embryo for an ART procedure (including a person proposing to donate a gamete that was not originally obtained as a donated gamete).

Maximum penalty—50 penalty units.

- (2) An ART provider must provide counselling services under this section—
 - (a) to a person proposing to undergo an ART procedure that uses donated gametes or a donated embryo; and
 - (b) to a spouse of the person, other than a spouse from whom the person is separated and is living separately and apart; and

- (c) if a surrogate proposes to undergo an ART procedure that uses donated gametes or a donated embryo—to the intended parents.

Maximum penalty—50 penalty units.

- (3) An ART provider must make counselling services available under this section to—
 - (a) a person who proposes to undergo an ART procedure that does not use donated gametes or a donated embryo; and
 - (b) a spouse of the person, other than a spouse from whom the person is separated and is living separately and apart.

Maximum penalty—25 penalty units.

- (4) The counselling services are to be provided or made available before the gamete or embryo is donated or before the ART procedure is carried out (as the case requires).
- (5) A regulation may prescribe the matters about which counselling is to be provided, the required qualifications for counsellors, the charging of fees for counselling services or other requirements relating to counselling services.

Division 3 Consent

16 ART provider to obtain consent

An ART provider must not do anything for which the consent of a person is required under this division unless it is done—

- (a) with the prior written consent of the person; and
- (b) in a way that is consistent with that consent.

Maximum penalty—200 penalty units.

Note—

See also section 26 for consent for use of gamete where gamete provider has died.

16A Consent required for obtaining, or attempting to obtain, gamete

- (1) The consent of a gamete provider is required for obtaining, or attempting to obtain, a gamete from the gamete provider for use in an ART procedure or for storage for use in an ART procedure.
- (2) The consent of a gamete provider is not required for anything authorised under division 5.
- (3) The consent of a child includes the consent of a parent of the child or a person with parental responsibility for the child.
- (4) A reference in this section to a gamete provider includes, in relation to an attempt to obtain a gamete, a reference to the individual who would have been the gamete provider had the attempt been successful.

17 Consent of gamete provider except in case of donated gametes or donated embryos

- (1) The following require the consent of a gamete provider, except in the case of a donated gamete or donated embryo—
 - (a) the use in an ART procedure of a gamete obtained from the gamete provider;
 - (b) the period for which an ART provider may store for use—
 - (i) a gamete obtained from the gamete provider; or
 - (ii) an embryo created with a gamete obtained from the gamete provider;
 - (c) the supply to another person (including to another ART provider) of—
 - (i) a gamete obtained from the gamete provider; or
 - (ii) an embryo created with a gamete obtained from the gamete provider;
 - (d) the export from Queensland of—
 - (i) a gamete obtained from the gamete provider; or

- (ii) an embryo created with a gamete obtained from the gamete provider.
- (2) The consent of a gamete provider is not required for anything authorised under division 5.
- (3) The consent of a gamete provider expires if—
 - (a) 5 years have passed since the consent was given or was last confirmed under this section; and
 - (b) an ART provider has not confirmed the consent.
- (4) However, the consent of a gamete provider to the use of a gamete after their death does not expire after the death of the gamete provider.
- (5) The consent of a gamete provider is confirmed by an ART provider if—
 - (a) the ART provider receives a notice of confirmation from the gamete provider; or
 - (b) the ART provider has taken reasonable steps to confirm the consent.
- (6) The consent of a gamete provider is not required to be confirmed by an ART provider—
 - (a) if the ART provider knows or reasonably believes that the gamete provider has died; or
 - (b) in any other circumstances prescribed by regulation.
- (7) The consent, or the confirmation of consent, of a child includes the consent, or confirmation of consent, of a parent of the child or a person with parental responsibility for the child.

18 Consent of gamete provider in case of donated gametes or donated embryos

- (1) The consent of a gamete provider is required for the use in an ART procedure of—
 - (a) a donated gamete obtained from the gamete provider; or

- (b) a donated embryo created with a gamete obtained from the gamete provider.
- (2) The consent of the gamete provider must include—
 - (a) the maximum number of families that may use the donated gametes or donated embryos, within the limit imposed by section 25; and
 - (b) the maximum period, within the limit imposed by section 27, during which the donated gametes or donated embryos may be used in an ART procedure; and
 - (c) any other matter prescribed by regulation.
- (3) The consent of the gamete provider can not limit the use of the donated gamete or donated embryo in an ART procedure on the basis of a protected attribute of the persons who are provided with ART services.
- (4) Subsection (1) does not apply to the extent a donated gamete or donated embryo is used in an ART procedure under an approval of the chief executive given, for the purpose of section 25(2) or 27(1), under section 39B.
- (5) In this section—

protected attribute means an attribute on the basis of which the *Anti-Discrimination Act 1991* prohibits discrimination.

Example—

A gamete provider can not limit the use of donated gametes to an ART procedure for a married person or for a person of a particular ethnicity.

19 Consent of person undergoing ART procedure

- (1) The consent of a person is required for an ART procedure that the person undergoes.
- (2) A regulation may require consent for different cycles or other stages of an ART procedure.

20 Withdrawal or variation of consent

- (1) The consent of a gamete provider under this division may be modified or withdrawn at any time until—
 - (a) for a donated gamete, other than a gamete that becomes a donated gamete only after being used to create an embryo—the gamete is placed in a person’s body or an embryo is created from the gamete; or
 - (b) for a gamete used to create a donated embryo—the embryo is implanted in a person’s body; or
 - (c) in any other case—the gamete, or an embryo created from the gamete, is placed or implanted in a person’s body.
- (2) A gamete provider may modify or withdraw consent by notice given to an ART provider who is, or has been, in possession of the gamete or embryo to which the consent relates.
- (3) If an ART provider receives notice of the modification or withdrawal of a gamete provider’s consent in relation to a gamete or an embryo it has supplied to another provider, it must give the other provider notice of the modification or withdrawal as soon as practicable.
Maximum penalty—200 penalty units.
- (4) The consent of a person to an ART procedure may be modified or withdrawn at any time before the procedure is carried out.

21 Verification of identity of gamete provider

The requirements relating to the giving, modifying or withdrawing of consent under this division by a gamete provider include the ART provider concerned taking reasonable steps to verify the identity of the person purportedly giving, modifying or withdrawing consent as a gamete provider.

Division 4 Use of gametes and embryos

22 Use of gametes from close family members prohibited

- (1) An ART provider must not use a gamete to create an embryo if the ART provider knows that the gamete provider is a close family member of the other person whose gamete is used to create the embryo.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (2) In this section—

close family member, of a person, means a parent, child, sibling (including half-sibling), grandparent or grandchild of the person from birth.

23 ART services for children prohibited

- (1) An ART provider must not—

- (a) carry out an ART procedure if the person undergoing the procedure is a child; or
- (b) obtain a gamete from a child for use in an ART procedure.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to an ART provider who obtains a gamete from a child if—

- (a) a medical practitioner has certified that there is a reasonable risk of the child becoming infertile before becoming an adult; and
- (b) the provider obtains the gamete for the purpose of storing it for the child's future use.

24 Sex selection prohibited

- (1) An ART provider must not use a particular gamete or embryo, or carry out an ART procedure in a particular way, for the purpose of producing or attempting to produce a child of a particular sex.

Maximum penalty—240 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply if it is necessary for a child to be of a particular sex so as to reduce the risk of the transmission of a genetic abnormality or genetic disease to the child.

25 Limit on number of donor-related Australian families

- (1) An ART provider must not use a donated gamete or donated embryo in an ART procedure if—

- (a) it would result in more than 10 donor-related Australian families; and
- (b) the provider knew that it would have that result or did not exercise due diligence to determine whether it would have that result.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply if the ART provider has the approval of the chief executive given, for the purpose of this subsection, under section 39B to use the donated gamete or donated embryo in the ART procedure.

- (3) For subsection (1)(a), *donor-related Australian families* are—

- (a) families that include a person born as a result of an ART procedure carried out in Australia using a gamete obtained from the same donor or using an embryo created from a gamete obtained from the same donor; and

- (b) the family of the donor if the donor has a child who was born in Australia but was not donor-conceived.
- (4) For subsection (1)(b), *due diligence* by an ART provider includes—
 - (a) searching the provider’s records; and
 - (b) making reasonable inquiries of the donor; and
 - (c) if the provider has reason to believe that another ART provider in Australia has obtained a gamete or an embryo from the donor—requesting information from that other provider.
- (5) An ART provider must, at the request of another ART provider who is undertaking due diligence for subsection (1)(b) in relation to a stated donor, give the other provider information it has about ART procedures, and donated gametes or donated embryos, that would be relevant to determining the number of donor-related Australian families in relation to the stated donor.

Maximum penalty—200 penalty units.

- (6) For this section, a *family* comprises a parent, their spouse (if any) and their children.
- (7) To remove any doubt, it is declared that—
 - (a) if a person has a former spouse—the person, the former spouse and the children of both the person and the former spouse comprise a separate family; and
 - (b) if a person has more than 1 spouse—the person, any other spouse and the children of the person and the other spouse comprise a separate family.

26 Use of gametes or embryos after death of gamete provider

- (1) An ART provider must not use a gamete or an embryo in an ART procedure if the ART provider knows, or ought reasonably to know, that the gamete provider has died unless—

- (a) the gamete provider has consented to the use of the gamete or embryo after their death; and
- (b) the person who undergoes the ART procedure has consented to the use of the gamete or embryo after being notified that the gamete provider has died.

Maximum penalty—200 penalty units.

- (2) If a surrogate undergoes the ART procedure, the consent of the intended parents and not the surrogate is required under subsection (1)(b).
- (3) An ART provider must take reasonable steps to find out whether the gamete provider of any gamete or embryo that is to be used by the ART provider in an ART procedure is still alive if the gamete, or the gamete used to create the embryo, was obtained from the gamete provider more than 5 years before the ART procedure.

Maximum penalty—100 penalty units.

- (4) Subsection (3) does not apply to an ART provider if—
 - (a) the ART provider (or another ART provider who supplied the gamete or embryo) had been contacted by the gamete provider less than 5 years before the ART procedure; or
 - (b) the ART provider knows or reasonably believes that the gamete provider is dead.
- (5) For subsection (3), *reasonable steps* to find out whether a gamete provider is still alive include—
 - (a) making an inquiry as to whether the death of the gamete provider has been officially recorded in the Queensland register of deaths; and
 - (b) making other inquiries prescribed by regulation.
- (6) An ART provider is authorised to make the inquiries referred to in subsection (5).
- (7) This section does not apply to a gamete that was retrieved under division 5 and that is authorised under that division to be used in an ART procedure.

27 Time limit on use of donated gametes or embryos and their disposal

- (1) An ART provider must not, without the approval of the chief executive given, for the purpose of this subsection, under section 39B—
- (a) use a donated gamete in an ART procedure if it was obtained from the gamete provider more than 15 years before the procedure; or
 - (b) use a donated embryo in an ART procedure if a gamete used to create the embryo was obtained more than 15 years before the procedure.

Maximum penalty—100 penalty units.

- (2) The ART provider must dispose of the donated gamete or donated embryo, within the period mentioned in subsection (3), if—
- (a) the chief executive has decided under section 39B(2) to refuse to approve the use of the donated gamete or donated embryo in the ART procedure (the *refusal decision*); and
 - (b) either—
 - (i) the period for applying for internal review of the refusal decision under section 122 has ended and no application for internal review has been made; or
 - (ii) an application for internal review of the refusal decision has been made under section 122 and the chief executive has decided under section 123 to confirm the refusal decision.

Maximum penalty—100 penalty units.

- (3) For subsection (2), the period within which the ART provider must dispose of the donated gamete or donated embryo is as soon as practicable after the end of the period of 90 days starting on—

- (a) if subsection (2)(b)(i) applies—the day the ART provider is given an information notice for the refusal decision under section 39B(3); or
- (b) if subsection (2)(b)(ii) applies—the day the ART provider is given a notice under section 123(1)(c)(i) of the chief executive’s decision on the internal review of the refusal decision.

Division 5 Retrieval and use of gametes from deceased or unresponsive persons

28 Interpretation for division

- (1) A person is *unresponsive* if—
 - (a) the person’s respiration or circulation of blood is being maintained in a hospital by artificial means; and
 - (b) a medical practitioner who is a designated officer for the hospital under the *Transplantation and Anatomy Act 1979*, section 6 has certified in writing that they have carried out a clinical examination of the person and that they are of the opinion that the person would die if the artificial means of respiration or circulation of blood was withdrawn.
- (2) A gamete is used for a person’s spouse if the gamete is used in an ART procedure for the spouse or for a surrogate of the spouse.

29 Retrieval of gametes from deceased or unresponsive persons

- (1) A gamete may be retrieved from a deceased or an unresponsive person by, or under the supervision of, a medical practitioner for use in an ART procedure for the person’s spouse.
- (2) The retrieval of the gamete from the deceased or unresponsive person is authorised only if there is evidence that—

- (a) the person had consented to the retrieval of their gametes for use in an ART procedure for their spouse; or
- (b) the person—
 - (i) had not expressly objected to the posthumous use of their gametes for use in an ART procedure for their spouse; and
 - (ii) is likely to have supported the posthumous use of their gametes for that purpose.
- (3) The gamete of a deceased or an unresponsive person that is retrieved under this division is not a donated gamete at the time of its retrieval.

30 Persons authorised to request retrieval of gamete

- (1) The retrieval of a gamete from a deceased or an unresponsive person is not authorised under this division unless the retrieval is requested by—
 - (a) the spouse of the person; or
 - (b) in the exceptional circumstances described in subsection (2)—any member of the family of the person or spouse acting on behalf of the spouse.
- (2) The exceptional circumstances are that an urgent decision must be made for the gamete to be successfully used in any future ART procedure and the spouse—
 - (a) is incapacitated and can not reasonably make an informed decision about the retrieval of the gamete; or
 - (b) can not be contacted despite reasonable attempts to do so.

31 Use of retrieved gametes

- (1) An ART provider may use a gamete retrieved from a deceased or an unresponsive person under this division in an ART

procedure for the person's spouse if its use has been authorised by an independent review body under this section.

- (2) The independent review body is a body—
 - (a) that is constituted by 1 or more persons who are not engaged by the ART provider in providing ART services; and
 - (b) that complies with any requirement prescribed by regulation.
- (3) The independent review body must consider the following matters when deciding whether to authorise the use of the retrieved gamete in an ART procedure—
 - (a) whether the spouse has the capacity to consent to the procedure;
 - (b) whether the spouse has undertaken appropriate counselling;
 - (c) the best interests of any child born as a result of the procedure, including—
 - (i) whether the spouse has the capacity to provide for the child's emotional, intellectual and other needs; and
 - (ii) whether the child is likely to have safe and stable living arrangements;
 - (d) any other matter the independent review body considers appropriate.
- (4) A gamete that is retrieved from a deceased or an unresponsive person may be stored by the ART provider until the independent review body decides whether to authorise the use of the retrieved gamete.

32 Application of Transplantation and Anatomy Act 1979 and related provisions

- (1) This division has effect despite anything to the contrary in the *Transplantation and Anatomy Act 1979*.

- (2) In particular, the *Transplantation and Anatomy Act 1979*, part 3 does not apply to the retrieval of a gamete under this division.
- (3) A gamete is not authorised to be retrieved from a deceased person under this division if the death is required by law to be reported to a coroner, or a coroner is investigating the death, unless—
 - (a) a coroner has given consent for the retrieval of the gamete; or
 - (b) a coroner has advised that a coroner’s consent is not required.
- (4) A designated officer for a hospital under the *Transplantation and Anatomy Act 1979*, section 6 must ensure that, as soon as practicable after a gamete is retrieved at the hospital from a dead or an unresponsive person under this division, the following is recorded in the person’s hospital record—
 - (a) the retrieval of the gamete;
 - (b) the name of the person who requested the retrieval of the gamete and, if the person was not the spouse, the exceptional circumstances under which the person acted on behalf of the spouse in requesting the retrieval of the gamete.

Division 6 Information collection and record keeping

33 Information to be collected about gamete providers

- (1) An ART provider must collect the following information before obtaining gametes for an ART procedure or for storage for future ART procedures—
 - (a) for all gametes—
 - (i) the gamete provider’s full name; and
 - (ii) the gamete provider’s contact information; and

- (iii) the gamete provider's date and place of birth; and
- (iv) any other information prescribed by regulation;
- (b) for donated gametes—
 - (i) the donor's ethnicity and physical characteristics; and
 - (ii) the donor's relevant medical history; and
 - (iii) the sex and year of birth of each offspring of the donor (whether or not donor-conceived); and
 - (iv) any other information prescribed by regulation.

Maximum penalty—200 penalty units.

- (2) Subsection (1) applies to gametes whether or not they were obtained directly from the gamete provider.
- (3) In the case of information about the offspring of a donor who were not donor-conceived, subsection (1) only requires an ART provider to take reasonable steps to collect that information.
- (4) An ART provider must not use a gamete or an embryo for an ART procedure unless the provider has collected the information mentioned in subsection (1) in relation to the gamete or to any gamete used to create the embryo.

Maximum penalty—200 penalty units.

- (5) Subsection (4) does not apply if the ART provider has the approval of the chief executive given under section 39C to use the gamete or embryo for the ART procedure.
- (6) This section is not limited by, and does not limit, section 34.

Note—

See section 149 for the application of this section in relation to gametes obtained before 19 September 2024.

34 Transfer between ART providers of information about gametes or embryos

- (1) This section applies when an ART provider supplies gametes or embryos to another ART provider or receives gametes or embryos from another ART provider, whether the other provider provides ART services in or outside Queensland.
- (2) The ART provider must—
 - (a) when supplying the gametes or embryos to the other ART provider—transfer to the other provider a copy of the information mentioned in subsection (3) they have collected in relation to the gametes or embryos; and
 - (b) when receiving the gametes or embryos from the other provider—obtain from the other provider a copy of the information mentioned in subsection (3) that the other provider has collected in relation to the gametes or embryos.

Maximum penalty—200 penalty units.

- (3) For subsection (2)(a) and (b), the information is—
 - (a) the information mentioned in section 33(1) in relation to the gametes or gametes used to create the embryos; and
 - (b) any other consents or information in relation to the gametes or embryos.

35 Information to be collected about persons who undergo ART procedures

- (1) An ART provider must collect the following information about a person who undergoes an ART procedure—
 - (a) the person's full name;
 - (b) the person's contact information;
 - (c) the person's date and place of birth;
 - (d) the full name and date of birth of a spouse of the person at the time of the procedure, other than a spouse from

whom, at that time, the person is separated and is living separately and apart.

Maximum penalty—200 penalty units.

- (2) If an ART provider uses a donated gamete or donated embryo in an ART procedure, the provider must take reasonable steps to collect the following information—
 - (a) whether a person became pregnant as a result of the procedure within 4 months after the procedure;
 - (b) whether a child was born as a result of the procedure within 15 months after the procedure and, if so, the child's full name, sex and date and place of birth.

Maximum penalty—200 penalty units.

36 Keeping of records

- (1) An ART provider must keep the records required by this section for at least 99 years.

Maximum penalty—200 penalty units.

- (2) An ART provider must keep a record of the following information about each gamete or embryo that is, or has been, in the provider's possession—
 - (a) the information the ART provider is required under this division to collect about the gamete or embryo before it was obtained, including a copy of any information the provider receives from another ART provider under section 34 when the provider receives a gamete or an embryo from the other provider;
 - (b) the name of any other ART provider who has previously been in possession of the gamete or embryo, whether in or outside Queensland;
 - (c) each consent of the gamete provider under division 3 in relation to the gamete or embryo, including a copy of any consent the ART provider receives from another ART provider under section 34 when the provider receives a gamete or an embryo from the other provider;

- (d) the uses to which the gamete or embryo has been put by the ART provider, including any supply of the gamete or embryo to another ART provider or other person, whether in or outside Queensland;
 - (e) the period during which the gamete or embryo has been in storage by the ART provider.
- (3) An ART provider must keep a record of—
 - (a) each consent of a person under section 16A for attempting to obtain a gamete from the person; and
 - (b) a notice given to the ART provider by a gamete provider under section 20(2) modifying or withdrawing a consent of the gamete provider under division 3.
- (4) An ART provider must keep a record of the following information about its ART procedures—
 - (a) the information the ART provider is required under this division to collect about the persons who undergo those procedures;
 - (b) for a procedure using a donated gamete or donated embryo—the place where the procedure was carried out;
 - (c) each consent of a person under division 3 undergoing the ART procedures mentioned in that division.
- (5) An ART provider must keep a record of the following information about each child the provider knows was born as a result of its ART procedures—
 - (a) the child's full name, sex and date and place of birth;
 - (b) the full name and contact information of the person who gave birth to the child;
 - (c) if a donated gamete or donated embryo was used in the ART procedure—the donor's full name and date and place of birth.
- (6) An ART provider must keep a record of any other information prescribed by regulation.

- (7) However, this section does not prevent the destruction of records under section 37(3).
- (8) A reference in this section to an ART provider includes a reference to a person who was an ART provider.

37 Destruction of records prohibited

- (1) An ART provider or other person must not destroy—
 - (a) any record that the provider is required to keep under this division; or
 - (b) any record of information that is required to be provided to the registrar under section 46.

Maximum penalty—400 penalty units.

- (2) Subsection (1) does not apply to any record for which the chief executive gives approval to be destroyed under subsection (3).
- (3) The chief executive may, on application by an ART provider, give approval for the provider to destroy any stated record of a kind referred to in this section if the chief executive is reasonably satisfied that the destruction of the record would not adversely affect any person.
- (4) If the chief executive decides to refuse to approve an application for approval to destroy a record under subsection (3), the chief executive must, as soon as practicable after the decision is made, give the applicant an information notice for the decision.
- (5) A reference in this section to an ART provider includes a reference to a person who was an ART provider.

Division 7 Disclosure of health information

38 Disclosure of health information by ART provider

- (1) An ART provider may disclose health information in accordance with this section if a medical practitioner certifies that the disclosure of the information is necessary—
 - (a) to prevent or reduce a serious risk to someone’s life or health; or
 - (b) to warn a person about the existence of a health condition that may be harmful to the person or to the person’s descendants, including future descendants.
- (2) The ART provider may disclose health information about a donor, or about a relative of a donor, to any of the following—
 - (a) a donor-conceived person born as a result of an ART procedure using a gamete donated by the donor;
 - (b) a descendant of a donor-conceived person born as a result of an ART procedure using a gamete donated by the donor;
 - (c) a parent of, or other person with parental responsibility for, a donor-conceived person born as a result of an ART procedure using a gamete donated by the donor;
 - (d) a person who is pregnant as a result of an ART procedure using a gamete donated by the donor or who is a spouse of the pregnant person;
 - (e) a person who has a gamete donated by the donor in storage with an ART provider;
 - (f) any other person prescribed by regulation.
- (3) The ART provider may disclose health information about a donor-conceived person, or a relative of a donor-conceived person, to any the following—
 - (a) the donor;

- (b) a donor-conceived sibling of the donor-conceived person who was born as a result of an ART procedure using a gamete from the same donor;
 - (c) a parent of, or other person with parental responsibility for, the donor-conceived sibling;
 - (d) a person who is pregnant as a result of an ART procedure using a gamete donated by the same donor or who is the spouse of the pregnant person;
 - (e) a person who has a gamete donated by the same donor in storage with an ART provider;
 - (f) any other person prescribed by regulation.
- (4) A disclosure of health information under this section may also be made to a medical practitioner treating the person to whom the disclosure may be made.
- (5) A disclosure of health information by an ART provider is to be made by a medical practitioner on behalf of the provider.
- (6) This section does not require an ART provider to disclose health information.
- (7) A medical practitioner who discloses health information under this section is to take reasonable steps to ensure that a person does not become aware that they are donor-conceived as a result of the disclosure of the health information.

39 Disclosure of health information by chief executive

- (1) The chief executive may disclose health information to a person that an ART provider is authorised to disclose to the person under section 38 if—
- (a) the ART provider who has the information has not disclosed the information; and
 - (b) a medical practitioner certifies that the disclosure of the information is necessary—
 - (i) to prevent or reduce a serious risk to someone's life or health; or

- (ii) to warn a person about the existence of a health condition that may be harmful to the person or to the person's descendants, including future descendants; and
 - (c) the chief executive is satisfied that the disclosure of the information is reasonably necessary for a purpose referred to in paragraph (b).
- (2) A disclosure of health information by the chief executive is to be made by a medical practitioner on behalf of the chief executive.
- (3) This section does not require the chief executive to disclose health information.

Division 8 Chief executive's approval to use particular gametes or embryos

39A Purpose of division

The purpose of this division is to enable the chief executive to give an ART provider approval to use a gamete or embryo in an ART procedure even though—

- (a) for a donated gamete or donated embryo—
 - (i) the use of the donated gamete or donated embryo would result in more than 10 donor-related Australian families; or
 - (ii) the donated gamete, or a gamete used to create the donated embryo, was obtained from the gamete provider more than 15 years before the ART procedure; or
- (b) for any gamete or embryo—the ART provider has not collected the information mentioned in section 33(1) in relation to the gamete or a gamete used to create the embryo.

39B Chief executive may approve use of particular donated gamete or donated embryo—ss 25 and 27

- (1) This section applies for the purposes of section 25(2) or 27(1).
- (2) The chief executive may, on application by an ART provider, approve the use of a donated gamete or donated embryo in an ART procedure if the chief executive is satisfied—
 - (a) either—
 - (i) the gamete provider, or the gamete provider from whom a gamete used to create the embryo was obtained, has consented to the making of the application by the ART provider; or
 - (ii) the ART provider has been unable to contact the gamete provider mentioned in subparagraph (i) despite taking reasonable steps to do so; and
 - (b) there are reasonable grounds for using the donated gamete or donated embryo in the ART procedure, having regard to—
 - (i) the terms of the consent given by the gamete provider for the use of the gamete, to the extent the consent relates to the provision mentioned in subsection (1) that is the subject of the application; and
 - (ii) whether, in the circumstances, the consequences of giving, or refusing to give, the approval would be unfairly harsh for any person.
- (3) If the chief executive decides to refuse to approve an application under subsection (2), the chief executive must, as soon as practicable after the decision is made, give the applicant an information notice for the decision.

39C Chief executive may approve use of other particular gamete or embryo—s 33

- (1) This section applies for the purposes of section 33(5).

- (2) The chief executive may, on application by an ART provider, approve the use of a gamete or embryo in an ART procedure if the chief executive is satisfied—
 - (a) the ART provider has taken reasonable steps to collect the information mentioned in section 33(1) in relation to the gamete or a gamete used to create the embryo; and
 - (b) there are reasonable grounds for using the gamete or embryo, having regard to—
 - (i) the information the ART provider has collected; and
 - (ii) whether, in the circumstances, the consequences of giving, or refusing to give, the approval would be unfairly harsh for any person.
- (3) If the chief executive decides to approve an application under subsection (2), the applicant and any other ART provider to whom the gamete or embryo is supplied—
 - (a) may use the gamete or embryo despite section 33(4); and
 - (b) is taken to have complied with section 33(1) in relation to the gamete, or a gamete used to create the embryo.
- (4) If the chief executive decides to refuse to approve an application under subsection (2), the chief executive must, as soon as practicable after the decision is made, give the applicant an information notice for the decision.

Part 3 Donor conception information register

Division 1 Preliminary

40 Definitions for part

In this part—

approved way, of making an application or giving a notice, means a way that is—

- (a) approved by the registrar; and
- (b) published on the department's website or www.qld.gov.au.

donor-conceived, in relation to a person, means a person born as a result of a donor conception ART procedure or a private donor conception procedure.

donor-conceived offspring, of a donor, means a donor-conceived person who was born using a donated gamete obtained from the donor.

donor-conceived siblings means any 2 persons—

- (a) who are both donor-conceived persons; and
- (b) who were both born using at least 1 gamete from the same donor.

donor conception ART procedure means an ART procedure carried out by an ART provider that uses a donated gamete or donated embryo.

donor's ID code means any number or other code used by an ART provider to identify the donor.

donor's profile information means any of the following information about a donor that has been collected and kept by an ART provider and that does not identify the name or the date of birth of the donor—

- (a) information about the donor's hobbies or interests;
- (b) information about the family history of the donor;
- (c) information about the education of the donor;
- (d) photos of the donor;
- (e) correspondence of the donor;
- (f) information about the psychological history of the donor that is not relevant medical history.

identifying information means information, other than contact information, that identifies the person to whom the information relates, and includes—

- (a) a name of the person; and
- (b) the date of birth of the person; and
- (c) for information about a donor-conceived person—
 - (i) the place of birth of the person; and
 - (ii) the name of any ART provider who carried out the donor conception ART procedure and the place where the procedure was carried out.

non-identifying information means information, other than contact information, that does not identify the person to whom the information relates, and includes—

- (a) for information about a donor—
 - (i) the donor's ID code; and
 - (ii) the donor's year and place of birth; and
 - (iii) the donor's ethnicity; and
 - (iv) the donor's physical characteristics; and
 - (v) the donor's relevant medical history; and
 - (vi) the place where the donor's gamete was obtained; and
 - (vii) the donor's profile information; and
- (b) for information about a donor-conceived person—
 - (i) the year of birth of the person; and
 - (ii) the sex of the person.

private donor conception procedure means a self-insemination procedure using a donated gamete that was carried out in Queensland.

register means the donor conception information register maintained by the registrar for the purposes of this part.

relevant information see section 44(1).

41 Information to which part applies

This part applies to information in relation to a donor-conceived person.

Division 2 Establishment and maintenance of register

42 Registrar to establish and maintain register

- (1) The registrar must establish and maintain a register (the *donor conception information register*) for the purposes of this part.
- (2) The register—
 - (a) must contain the information required by division 3 to be included in the register; and
 - (b) may contain other information that is prescribed by regulation or that the registrar considers appropriate for inclusion in the register.
- (3) The register may be wholly or partly—
 - (a) in the form of a computer database; or
 - (b) in documentary form; or
 - (c) in another form the registrar considers appropriate.
- (4) The registrar must maintain the information in the register in a way that makes the information reasonably accessible.
- (5) Despite the *Public Records Act 2002*, the registrar is to retain control over access to any information or records maintained under this part.
- (6) The register is not a register under the *Births, Deaths and Marriages Registration Act 2023* and that Act does not authorise or require information that a person is donor-conceived to be recorded as a registrable event under that Act.

Division 3 Information held in register

43 Sources of information included in register

The registrar must include in the register—

- (a) information provided to the registrar by ART providers under section 45; and
- (b) historical information provided to the registrar by ART providers or others under section 46; and
- (c) information voluntarily provided to the registrar by parties to a private donor conception procedure under section 47.

44 Relevant information to be included in register

- (1) The information mentioned in subsection (2) (the *relevant information*), in relation to a donor-conceived person, that is provided to the registrar is the information that is to be included in the register.
- (2) Relevant information is the following—
 - (a) the donor's full name;
 - (b) the donor's contact information;
 - (c) the donor's date and place of birth;
 - (d) the donor's ethnicity and physical characteristics;
 - (e) the donor's relevant medical history;
 - (f) the donor's ID code;
 - (g) the place where the donor's gamete was originally obtained from the donor, if the information has been recorded and kept;
 - (h) any donor's profile information;
 - (i) the full name and date of birth of—
 - (i) the person who gave birth to the donor-conceived person as a result of the procedure; and

- (ii) a spouse of the person at the time of the procedure, other than a spouse from whom, at that time, the person was separated and was living separately and apart;
- (j) in the case of a procedure to which a surrogate was a party—the full name and date of birth of the intended parents;
- (k) the full name, the date and place of birth and sex of the donor-conceived person born as a result of the procedure;
- (l) the number of any donor-conceived siblings of the donor-conceived person, if the information has been recorded and kept;
- (m) if the procedure was carried out by an ART provider—the name of the provider and the place where the procedure was carried out;
- (n) any other information prescribed by regulation.

Note—

Section 42(2)(b) enables the registrar to include additional information in the register.

45 Mandatory provision of information by ART providers

- (1) An ART provider must provide the registrar with all relevant information in relation to a donor-conceived person born after the commencement of this section as a result of a donor conception ART procedure carried out by the provider.

Maximum penalty—100 penalty units.

- (2) The information is required to be provided under subsection (1) within 3 months after the ART provider becomes aware of the birth of the donor-conceived person.

46 Mandatory provision of historical information

- (1) This section applies to information—

- (a) that is information in relation to a donor-conceived person born before the commencement of section 45 as a result of a donor conception ART procedure carried out by an ART provider as part of an ART service; and
 - (b) that is relevant information.
- (2) An ART provider must, within the period specified in subsection (4), provide the registrar with all the information to which this section applies that is in the provider's possession or control on the commencement of this section.

Maximum penalty—100 penalty units.

- (3) If an ART provider had information to which this section applies in the provider's possession or control before the commencement of this section but is not in possession or control of the information on that commencement, the provider must notify the registrar, within the period specified in subsection (4), of the following—
 - (a) the name and contact details of the person to whom the provider gave possession or control of the information;
 - (b) if the information was lost, destroyed or otherwise not available—when, and the circumstances in which, the information was lost, destroyed or otherwise not available.

Maximum penalty—100 penalty units.

- (4) The period specified for complying with subsection (2) or (3) is—
 - (a) the period of 6 months after the commencement of this section; or
 - (b) if the registrar is satisfied there is sufficient reason to extend the period—a longer period determined by the registrar on application or on the registrar's own initiative.
- (5) The registrar may, by notice to any of the following persons, require the person to provide the registrar, within the period specified in the notice, with all the information to which this section applies that is in their possession or control—

- (a) a person named by an ART provider under subsection (3)(a) as a person to whom it gave possession or control of the information;
 - (b) a person whom the registrar otherwise reasonably believes has possession or control of the information.
- (6) A person who is given a notice under subsection (5) must comply with the notice.
- Maximum penalty—100 penalty units.
- (7) To remove any doubt, it is declared that for this section an ART provider includes—
- (a) a person who is no longer an ART provider but who had been an ART provider before the commencement of this section; and
 - (b) a medical practitioner who carried out donor conception ART procedures before the commencement of this section as part of their medical practice.

47 Voluntary provision of information by parties to private donor conception procedures

- (1) The parties to a private donor conception procedure may provide the registrar with all or any relevant information in relation to a donor-conceived person born as a result of the procedure.
- (2) The parties to a private donor conception procedure are the donor of any gamete used in the procedure and the parents of the donor-conceived person.
- (3) The provision of information to the registrar requires—
 - (a) the written consent of all the parties to the procedure; or
 - (b) if any party has since died—the written consent of all the remaining parties to the procedure and evidence of the death of that party.
- (4) Evidence that a party to the procedure has since died is a relevant statutory declaration by the remaining parties or any other evidence authorised by regulation.

Division 4 Disclosure of information in register

48 Persons who may access information in register

- (1) A person referred to in column 1 of the following table may apply to the registrar in the approved way for—
 - (a) all or any of the information in the register stated in column 2 opposite the person; or
 - (b) all or any of the information in the register about themselves.
- (2) The registrar must provide the information requested by the applicant if—
 - (a) the registrar is reasonably satisfied the information is of a kind that can be provided to the applicant under the following table; and
 - (b) the registrar is reasonably satisfied of the identity of the applicant and of the relevant link between the applicant and the person whose information has been requested.
- (3) If column 2 provides that particular information can only be provided with the consent of a person, the information can only be provided by the registrar if consent has been given by the person in accordance with section 49.
- (4) When dealing with an application, the registrar must advise the applicant of available counselling services that are provided by counsellors with experience in dealing with donor conception.

Column 1 Applicant	Column 2 Information that can be provided
Donor-conceived person who is 16 years or older	donor information • identifying or non-identifying information about the donor • contact information about the donor (but only with the consent of the donor) donor-conceived sibling information • identifying information or contact information about a donor-conceived sibling of the applicant (but only with the consent of the sibling) • non-identifying information about a donor-conceived sibling of the applicant (including information about the number of donor-conceived siblings of the applicant)
Donor	donor-conceived offspring information • identifying information or contact information about a donor-conceived offspring of the donor (but only with the consent of the offspring) • non-identifying information about a donor-conceived offspring of the donor

[s 48]

Column 1 Applicant	Column 2 Information that can be provided
Parent of a donor-conceived person of any age or another person with parental responsibility for a donor-conceived person under 16 years	donor information - identifying information or contact information about the donor (but only with the consent of the donor) - non-identifying information about the donor donor-conceived sibling information - identifying information or contact information about a donor-conceived sibling of the donor-conceived person (but only with the consent of the sibling) - non-identifying information about a donor-conceived sibling of the donor-conceived person (including information about the number of donor-conceived siblings of the donor-conceived person)

Column 1 Applicant	Column 2 Information that can be provided
Descendant, who is 16 years or older, of a donor-conceived person	donor information - identifying or non-identifying information about the donor - contact information about the donor (but only with the consent of the donor) donor-conceived sibling information - identifying information or contact information about a donor-conceived sibling of the donor-conceived person (but only with the consent of the sibling) - non-identifying information about a donor-conceived sibling of the donor-conceived person (including information about the number of donor-conceived siblings of the donor-conceived person)
Interstate donor-conceived person who is 16 years or older (being a person born as a result of a donor conception ART procedure, or a private donor conception procedure, carried out in Australia but outside Queensland)	donor-conceived sibling information - identifying information or contact information about a donor-conceived sibling of the person (but only with the consent of the sibling) - non-identifying information about a donor-conceived sibling of the person (including information about the number of donor-conceived siblings of the person)

[s 49]

Column 1 Applicant	Column 2 Information that can be provided
Offspring of a donor who is not a donor-conceived person and who is 16 years or older	donor-conceived sibling information - identifying information or contact information about a donor-conceived sibling of the donor offspring (but only with the consent of the sibling) - non-identifying information about a donor-conceived sibling of the donor offspring (including information about the number of donor-conceived siblings of the donor offspring)

49 Consent to provision of information

- (1) The consent of a person to the provision of information—
- (a) may be given in advance of applications for the provision of the information; and
 - (b) must be given by notice to the registrar in the approved way; and
 - (c) must state the kind of information that may be provided and the category of applicants to whom it may be provided; and
 - (d) in the case of consent to the provision of contact information—may specify how contact is to be made; and
 - (e) must be recorded in the register; and
 - (f) may be varied or revoked by the person by notice to the registrar in the approved way.
- (2) A person whose consent to the provision of information is required may give the registrar notice in the approved way that they do not consent to the provision of the information to any applicant.

- (3) If an application is made for information that requires the consent of a person and that person has not given consent, the registrar must not attempt to contact the person to inquire whether the person consents to the provision of the information to the applicant.
- (4) However, if a donor-conceived person applies for contact information about the donor and the donor has not given consent, the registrar may take reasonable steps to contact the donor to provide the donor with the opportunity to give that consent, unless the donor has given the registrar notice that they do not consent to the provision of their information to any applicant.

50 Notification of provision of information

- (1) If the registrar has provided information that requires the consent of a person, the registrar must take reasonable steps to notify the person that the registrar has provided the information to another person.
- (2) If the registrar has provided identifying information about a donor that does not require the consent of the donor, the registrar must take reasonable steps to notify the donor that the registrar has provided the information to another person.
- (3) The registrar must not, when notifying a person under this section, identify the other person to whom the information has been provided unless the other person has consented to their identity being disclosed.
- (4) This section does not apply if the person concerned has notified the registrar in the approved way that they do not wish to be notified.

51 Provision of statistical and other non-identifying information to authorised entities

- (1) The registrar may, on application by an authorised entity, provide the entity with statistical or other non-identifying information in the register.

- (2) The registrar must maintain and publish a written statement of the policies relating to the provision of information to entities under this section.
- (3) In this section—

authorised entity means an entity that is authorised for this section by regulation or by the policies maintained by the registrar under subsection (2).

Division 5 Miscellaneous provisions relating to register

52 Accuracy of register

- (1) The registrar may correct the register—
 - (a) on application by a person whose information is in the register; or
 - (b) on the registrar's own initiative.
- (2) A person can not make an application for the removal of identifying or other information that is required to be included in the register.
- (3) The registrar must correct the register on the order of a Queensland court or QCAT.
- (4) The registrar is not, despite the *Information Privacy Act 2009* or any other law, required to ensure that the information in the register is accurate and complete.

53 Protection from liability for persons providing historical information and disclosure of information

- (1) A person who, acting honestly and reasonably, provides information under section 46—
 - (a) is not liable, civilly, criminally or under an administrative process, for providing the information; and

- (b) can not, merely because the person provides the information, be held to have—
 - (i) breached any code of professional etiquette or ethics; or
 - (ii) departed from accepted standards of professional conduct.
- (2) Without limiting subsection (1)—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath, or rule of law or practice, the person—
 - (i) does not contravene the Act, oath or rule of law or practice by providing the information; and
 - (ii) is not liable to disciplinary action for providing the information.
- (3) Subsections (1) and (2) do not affect any liability for an offence against this Act or any obligation to provide information under this part.
- (4) Any information that a person is required to provide to the registrar under this part is required to be provided even though—
 - (a) the person to whom the information relates has not consented to the disclosure of the information; or
 - (b) the ART service to which the information relates was provided at a time when an Act or law or any applicable clinical guidelines or codes of practice precluded the disclosure of the information.

54 Inquiries by registrar relating to information in register

- (1) The registrar may conduct an inquiry to find out—
 - (a) whether information provided to the registrar under this part is correct; or

- (b) whether an ART provider or other person has provided all relevant information that the provider or other person is required to provide to the registrar under this part.
- (2) The registrar may, for the purpose of an inquiry, by notice to an ART provider or other person who provided or is required to provide relevant information to the registrar, require the provider or other person to answer specified questions or provide other information within a time and in a way stated in the notice.
- (3) The ART provider or other person must comply with the notice unless the provider or other person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) The registrar may, for the purpose of an inquiry, use information recorded in a register under the *Births, Deaths and Marriages Registration Act 2023*.
- (5) If an application is made to the registrar for information in the register but the register does not contain the information or the information is incomplete, the registrar may share confidential or other information with an ART provider for the purpose of obtaining relevant information for inclusion in the register.

55 Unauthorised access to or interference with register

- (1) A person must not, without lawful authority—
 - (a) access the register or information in the register; or
 - (b) make, alter or delete any information in the register; or
 - (c) interfere with the register in any other way.
- Maximum penalty—100 penalty units.
- (2) Without limiting subsection (1), a person has lawful authority to do something mentioned in that subsection if—
 - (a) the person is doing the thing to carry out a function under this Act or another Act; or

- (b) the registrar has authorised the person to do the thing.
- (3) A person must not use or disclose information that the person knows has been obtained from the register in contravention of subsection (1).

Maximum penalty—100 penalty units.

56 External review of registrar's decisions

- (1) This section applies to a decision of the registrar on an application made by a person under this part—
 - (a) for information in the register on a matter (but only if there is information in the register on that matter); or
 - (b) for the correction of information in the register about the person.
- (2) The person may apply to QCAT for a review of the decision if—
 - (a) the decision is not the decision sought by the person; and
 - (b) the person is dissatisfied with the decision.

Part 4 Licensing of ART providers

56A Meaning of *accreditation standard*

- (1) The *accreditation standard* is a document that—
 - (a) provides for matters in relation to prescribed accreditation; and
 - (b) is approved by regulation for this paragraph, with or without modifications.
- (2) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1) only if the Minister is satisfied the document, including any modifications, provides for the following matters—

- (a) persons who are personnel for sections 57(2)(b)(iv), 61(1) and 65(2)(d);
- (b) events that are serious adverse events for section 61.

57 Application for licence

- (1) A person may apply to the chief executive for a licence if—
 - (a) the person has prescribed accreditation; and
 - (b) the person is not completely prohibited from providing ART services by a prohibition notice under section 63; and
 - (c) the person satisfies any other requirement prescribed by regulation.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) include the following—
 - (i) the applicant's name and how the applicant may be contacted;
 - (ii) the address of each of the premises at or from which the applicant will provide ART services;
 - (iii) the name of each medical practitioner who will perform, or supervise the performance of, ART services provided by the applicant;
 - (iv) the name of each of the personnel, within the meaning of the accreditation standard, who will be engaged in the provision of ART services by the applicant;
 - (v) any other information or document prescribed by regulation; and
 - (c) be accompanied by any fee prescribed by regulation.
- (3) The applicant must provide any further information or document that the chief executive asks the applicant to

provide to enable the chief executive to deal with the application.

- (4) A licensed provider may apply for a further licence not earlier than 3 months before the end of the term of their existing licence.

58 Deciding application for licence

- (1) The chief executive may grant a licence to a person if—
 - (a) an application for the licence is made under section 57; and
 - (b) the person is eligible to make the application under that section.
- (2) The chief executive must refuse to grant a licence if the chief executive is not authorised under subsection (1) to grant the licence to the applicant or if the chief executive is satisfied that the licence should not be granted because of—
 - (a) contraventions of the conditions of any previous licence held by the applicant; or
 - (b) contraventions by the applicant of this Act or any ART related legislation; or
 - (c) the risk to the health, safety or welfare of persons provided with ART services by the applicant or of persons born as a result of the provision of ART services; or
 - (d) any other relevant matter.
- (3) The chief executive must, as soon as practicable after deciding to refuse to grant a licence, give the applicant an information notice about the decision.

59 Conditions of licence

- (1) Licences are subject to the conditions prescribed by regulation.

- (2) A licence is also subject to the specific conditions imposed by the chief executive at the time, or at any time after, the licence is granted.
- (3) The chief executive may, at any time, vary or remove the specific conditions to which a licence is subject under subsection (2).
- (4) If the chief executive decides to impose or vary a specific condition to which a licence is subject, the chief executive must give the licensed provider an information notice about the decision.

60 Term of licence

- (1) A licence comes into effect on the day stated in the licence.
- (2) A licence has effect, subject to this section, for the period (not exceeding 3 years) stated in the licence.
- (3) A licence ceases to have effect if it is cancelled under section 64.
- (4) If a licensed provider applies for a further licence before their licence ceases to have effect, the licence continues in force until the chief executive gives the applicant notice of the chief executive's decision on the application.

61 Chief executive to be notified of certain events

- (1) A licensed provider must give the chief executive notice of an event stated in column 1 of the following table—
 - (a) in the case of a serious adverse event—within the time stated opposite the event in column 2 after the licensed provider becomes aware that the event has happened; or
 - (b) in the case of any other event—within the time stated opposite the event in column 2 after the event happens.

Column 1 Event	Column 2 Time within which notice to be given
1 A serious adverse event related to the ART services provided by the licensed provider	7 days
2 The licensed provider ceases to have prescribed accreditation	14 days
3 A change in the licensed provider's prescribed accreditation	14 days
4 A contravention of any condition of the provider's licence	14 days
5 The licensed provider ceases to provide ART services	14 days
6 A change in the premises at or from which the licensed provider provides ART services	21 days
7 A change in the medical practitioner who performs, or supervises the performance of, ART services by the licensed provider	21 days
8 A change in any of the personnel, within the meaning of the accreditation standard, who are engaged in the provision of ART services by the licensed provider	21 days
9 Any other event prescribed by regulation	The time specified in the regulation for the event

Maximum penalty—

- (a) if the event was a serious adverse event—100 penalty units; or
 - (b) otherwise—50 penalty units.
- (2) The licensed provider is not required to give the chief executive notice of the event if the licensed provider has a reasonable excuse.

- (3) In this section—

serious adverse event, for a licensed provider, means an event that is identified in the accreditation standard, or by the conditions of the provider's licence, as a serious adverse event.

62 Improvement notices

- (1) The chief executive may issue a notice (an *improvement notice*) to a licensed provider if the chief executive reasonably believes that it is necessary for the licensed provider to rectify a particular matter to prevent or minimise a risk to the health, safety or welfare of persons to whom ART services are provided or of persons born as a result of the provision of ART services.
- (2) An improvement notice must state the following—
 - (a) that it is an improvement notice under this Act;
 - (b) the name of the licensed provider to whom it is issued;
 - (c) the matter that is required to be rectified and, if the chief executive considers it appropriate, the action that the licensed provider must take to rectify the matter;
 - (d) the period within which the matter must be rectified;
 - (e) that the improvement notice has effect until it is revoked by the chief executive.
- (3) The chief executive must, when issuing an improvement notice to a licensed provider, give the licensed provider an information notice about the decision to issue the improvement notice, whether in the same or in a separate document.
- (4) The chief executive may, by notice to a licensed provider—
 - (a) extend the period within which the matter stated in an improvement notice issued to the licensed provider must be rectified; or

- (b) revoke an improvement notice issued to the licensed provider.
- (5) A licensed provider may apply to the chief executive for the revocation of an improvement notice issued to the licensed provider because the matter required to be rectified by the notice has been rectified or does not require rectification.
- (6) The chief executive may revoke the improvement notice or refuse the application for the revocation of the improvement notice.
- (7) The chief executive must, as soon as practicable after refusing an application for the revocation of an improvement notice, give the licensed provider an information notice about the decision to refuse the application.
- (8) If a licensed provider is issued with an improvement notice, the requirements of the notice become a condition of the provider's licence.
- (9) In this section—
licensed provider, in the case of a corporation, includes an associated entity of the corporation.

63 Prohibition notices

- (1) The chief executive may issue a notice (a *prohibition notice*) to a person if the chief executive reasonably believes that the person should be prohibited from providing ART services, or stated ART services, because—
 - (a) the person has contravened a condition of the person's licence; or
 - (b) the person has contravened this Act or any ART related legislation; or
 - (c) the provision of ART services, or those stated ART services, by the person is a risk to the health, safety or welfare of persons to whom the ART services are provided or of persons born as a result of the provision of the ART services.

- (2) A prohibition notice may be issued to any person, including to a licensed provider.
- (3) A prohibition notice that is limited to stated ART services may be limited to ART services—
 - (a) of a stated kind; or
 - (b) provided at or from stated premises or premises in a stated area; or
 - (c) provided to or by stated persons.
- (4) A prohibition notice must state the following—
 - (a) that it is a prohibition notice under this Act;
 - (b) the name of the person to whom it is issued;
 - (c) that it applies to ART services of any kind or only stated services;
 - (d) that the prohibition notice has effect until it is revoked by the chief executive.
- (5) The chief executive must, when issuing a prohibition notice to a person, give the person an information notice about the decision to issue the prohibition notice, whether in the same or in a separate document.
- (6) The chief executive may, by notice to a person—
 - (a) limit the ART services provided by the person to which a prohibition notice applies; or
 - (b) revoke a prohibition notice issued to the person.
- (7) A person may apply to the chief executive for the revocation of a prohibition notice issued to the person because the reasons for the issue of the notice do not or no longer justify the prohibition.
- (8) The chief executive may revoke the prohibition notice or refuse the application for the revocation of the prohibition notice.
- (9) The chief executive must, as soon as practicable after refusing an application for the revocation of a prohibition notice, give

the person an information notice about the decision to refuse the application.

- (10) If a licensed provider is prohibited by a prohibition notice from providing stated ART services, the prohibition becomes a condition of the provider's licence.
- (11) The chief executive may issue a prohibition notice to an associated entity of a corporation because of a contravention by, or other conduct of, the corporation or another associated entity of the corporation.
- (12) In this section—
licensed provider, in the case of a corporation, includes an associated entity of the corporation.

64 Cancellation or suspension of licence

- (1) The chief executive must cancel or suspend a person's licence if—
 - (a) the person ceases to have prescribed accreditation; or
 - (b) the person is completely prohibited from providing ART services by a prohibition notice under section 63.
- (2) The chief executive may cancel or suspend a person's licence—
 - (a) if the licence was granted to the person because of information that was false or misleading in a material particular; or
 - (b) if the person notifies the chief executive under section 61 that they have ceased to provide ART services; or
 - (c) in any other circumstances prescribed by regulation.
- (3) The chief executive may suspend a licence for any period not exceeding 12 months.
- (4) If a licence is suspended—
 - (a) the licensed provider may apply to the chief executive for the suspension to be lifted; and

- (b) the chief executive may lift the suspension by notice to the licensed provider.
- (5) The chief executive must, as soon as practicable after deciding to cancel or suspend a licence or to refuse an application to lift a suspension, give the licensed provider an information notice about the decision.

65 Public register of licensed providers

- (1) The chief executive may keep a public register of licensed providers.
- (2) The public register may contain any of the following information for a licensed provider—
 - (a) the name of the licensed provider and how the licensed provider may be contacted;
 - (b) the address of each premises at or from which the licensed provider provides ART services;
 - (c) the name of the medical practitioner who performs, or supervises the performance of, ART services provided by the licensed provider;
 - (d) the name of each of the personnel, within the meaning of the accreditation standard, who are engaged in the provision of ART services by the licensed provider;
 - (e) the date of expiry of the prescribed accreditation of the licensed provider;
 - (f) other information prescribed by regulation.
- (3) The public register may contain any other information the chief executive considers appropriate.
- (4) The chief executive must not make particular information about a person that is on the public register available to the public if—
 - (a) the person asks the chief executive not to make the information available to the public; and

- (b) the chief executive is satisfied the publication of the information might endanger the personal safety of the person or of any other person.

Part 5 Investigation and enforcement

Division 1 Interpretation

66 Definitions for part

In this part—

document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of anything else.

identity card, for a provision about inspectors, means an identity card issued under section 74.

occupier, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

of, a place, includes at or on the place.

offence warning, for a direction or requirement by an inspector, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given, or of whom the requirement is made, not to comply with the direction or requirement.

owner, of a thing that has been seized under this part, includes a person who would be entitled to possession of the thing had it not been seized.

person in control, of a thing, includes any person who reasonably appears to be, claims to be, or acts as if the person is, the person in possession or control of the thing.

place includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

premises includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) a cave or tent; and
- (e) premises held under more than 1 title or by more than 1 owner.

public place means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or
- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

67 References to exercise of powers

A reference in this part to the exercise of a power by an inspector, other than a reference to the exercise of a specific power, is a reference to the exercise of all or any of an inspector's powers under this part or a warrant, to the extent the powers are relevant.

Division 2 General provisions about inspectors

68 Inspectors under part

This part includes provision for the appointment of inspectors, and gives inspectors particular powers.

69 Functions of inspectors

An inspector has the following functions—

- (a) to investigate, monitor and enforce compliance with this Act;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act.

70 Appointment

The chief executive may, by instrument in writing, appoint any of the following persons who are appropriately qualified as inspectors—

- (a) a person appointed as a health service employee under the *Hospitals and Health Boards Act 2011*, section 67;
- (b) a public sector employee under the *Public Sector Act 2022*, section 12;
- (c) any other person prescribed by regulation.

71 Appointment conditions and limit on powers

- (1) An inspector holds office on any conditions stated in—
 - (a) the inspector's instrument of appointment; or
 - (b) a signed notice given to the inspector; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers.
- (3) In this section—
signed notice means a notice signed by the chief executive.

72 When office ends

- (1) The office of a person as an inspector ends if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the office ends;
 - (c) the inspector's resignation under this division takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an inspector ends.
- (3) In this section—
condition of office means a condition under which the inspector holds office.

73 Resignation

An inspector may resign by signed notice given to the chief executive.

74 Issue of identity card

- (1) The chief executive must issue an identity card to each inspector.

- (2) The identity card must—
 - (a) contain a recent photo of the inspector; and
 - (b) contain a copy of the inspector's signature; and
 - (c) identify the person as an inspector under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

75 Production or display of identity card

- (1) In exercising a power in relation to a person in the person's presence, an inspector must—
 - (a) produce the inspector's identity card for the person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 77(1)(b) or (d).

76 Return of identity card

If the office of a person as an inspector ends, the person must return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Division 3 Entry of places by inspectors

Subdivision 1 Power to enter

77 General power to enter places

- (1) An inspector may enter a place if—
 - (a) an occupier at the place consents under subdivision 2 to the entry and section 80 has been complied with for the occupier; or
 - (b) the place is a public place and the entry is made when the place is open to the public; or
 - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 87 has been complied with for the occupier; or
 - (d) the place is the premises used by a licensed ART provider and is open for entry.
- (2) For subsection (1)(d), the premises used by a licensed ART provider does not include a part of the premises where a person resides.
- (3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (4) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

Subdivision 2 Entry by consent

78 Application of subdivision

This subdivision applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 77(1)(a).

79 Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

80 Matters inspector must tell occupier

Before asking for the consent, the inspector must—

- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and
- (b) tell the occupier that—
 - (i) the occupier is not required to consent; and
 - (ii) the consent may be given subject to conditions and may be withdrawn at any time.

81 Consent acknowledgement

- (1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
 - (a) the purpose of the entry, including the powers to be exercised; and
 - (b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and
 - (c) that the occupier has been told—
 - (i) that the occupier is not required to consent; and
 - (ii) that the consent may be given subject to conditions and may be withdrawn at any time; and

- (d) that the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and
 - (e) the day and time the consent was given; and
 - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.
- (4) If—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Subdivision 3 Entry under warrant

82 Application for warrant

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

83 Issue of warrant

- (1) The magistrate may issue a warrant for a place only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated inspector or any inspector may with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the inspector's powers; and
 - (c) particulars of the offence that the magistrate considers appropriate; and
 - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
 - (e) the evidence that may be seized under the warrant; and
 - (f) the hours of the day or night when the place may be entered; and
 - (g) the magistrate's name; and
 - (h) the day and time of the warrant's issue; and
 - (i) the day, within 14 days after the warrant's issue, the warrant ends.

84 Electronic application

- (1) An application under section 82 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) The application—
 - (a) may not be made before the inspector prepares the written application under section 82(2); but
 - (b) may be made before the written application is sworn.

85 Additional procedure if electronic application

- (1) For an application made under section 84, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under section 84; and
 - (b) the way the application was made under section 84 was appropriate.
- (2) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
 - (b) otherwise—
 - (i) the magistrate must tell the inspector the information required to be stated in the warrant under section 83(2); and
 - (ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in subparagraph (i).
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.

- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 82(2) and (3); and
 - (b) if the inspector completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) Despite subsection (3), if—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (6) This section does not limit section 82.

86 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in the warrant or compliance with this subdivision, unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
warrant includes a duplicate warrant mentioned in section 85(3).

87 Entry procedure

- (1) This section applies if an inspector is intending to enter a place under a warrant issued under this subdivision.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
 - (a) identify themselves to a person who is an occupier of the place and is present by producing the inspector's

- identity card or another document evidencing the inspector's appointment;
- (b) give the person a copy of the warrant;
 - (c) tell the person the inspector is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—
warrant includes a duplicate warrant mentioned in section 85(3).

Subdivision 4 General powers of inspectors after entering places

88 Application of subdivision

- (1) The powers under this subdivision may be exercised if an inspector enters a place under section 77(1)(a), (c) or (d).
- (2) However, if the inspector enters a place under section 77(1)(a) or (c), the powers under this subdivision are subject to any conditions of the consent or terms of the warrant.

89 General powers

- (1) The inspector may do any of the following—
 - (a) search any part of the place;
 - (b) inspect, examine or film any part of the place or anything at the place;

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- (c) take for examination a thing, or a sample of or from a thing, at the place;
 - (d) place an identifying mark in or on anything at the place;
 - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
 - (f) produce an image or writing from an electronic document at the place or, to the extent that is not practicable, take either or both of the following to another place to produce an image or writing from an electronic document—
 - (i) a thing containing an electronic document;
 - (ii) a thing that can be used to produce an image or writing from an electronic document;
 - (g) take to, into or onto the place and use any person, equipment and materials the inspector requires for exercising the inspector's powers under this part;
 - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The inspector may do anything necessary to exercise a power under subsection (1).
 - (3) If the inspector takes a document from the place to copy it, the inspector must copy the document and return it to the place as soon as practicable.
 - (4) If the inspector takes a thing from the place to produce an image or writing from an electronic document, the inspector must produce the image or writing from the document and return the thing to the place as soon as practicable.
 - (5) The inspector may not examine, or take for examination, a gamete or an embryo in the exercise of a power under this section.
 - (6) In this section—
examine includes analyse, test, account for, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in another way.

inspect, a thing, includes open the thing and examine its contents.

90 Power to require reasonable help

- (1) The inspector may require an occupier of the place or a person at the place to give the inspector reasonable help to exercise a power under section 89(1), including, for example, to produce a document or to give information.
- (2) When making a requirement under subsection (1), the inspector must give the person an offence warning for the requirement.

91 Offence to contravene help requirement

- (1) A person of whom a requirement is made under section 90(1) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a requirement under section 90(1) if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the requirement under section 90(1) is required to be held or kept by the individual under this Act.

Note—

See, however, section 118.

Division 4 Seizure by inspectors and forfeiture

Subdivision 1 Power to seize

92 Seizing evidence at place that may be entered without consent or warrant

An inspector who enters a place the inspector may enter under this part without the consent of an occupier of the place and without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

93 Seizing evidence at place that may be entered only with consent or warrant

- (1) This section applies if—
 - (a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
 - (b) the inspector enters the place after obtaining the consent or under a warrant.
- (2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place only if—
 - (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the inspector enters the place under a warrant, the inspector may seize the evidence for which the warrant was issued.
- (4) The inspector may also seize anything else at the place if the inspector reasonably believes—
 - (a) the thing is evidence of an offence against this Act; and

- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.
- (5) The inspector may also seize a thing at the place if the inspector reasonably believes the thing has just been used in committing an offence against this Act.

94 Gametes and embryos not subject to seizure

This division does not confer a power on an inspector to seize a gamete or an embryo.

95 Seizure of property subject to security

- (1) An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting under the direction or authority of the inspector.

Subdivision 2 Powers to support seizure

96 Power to secure seized thing

- (1) Having seized a thing under this division, an inspector may—
 - (a) leave the thing at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
 - (b) move the thing from the place of seizure.
- (2) For subsection (1)(a), the inspector may, for example—
 - (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
 - (b) for equipment—make it inoperable; or

Example—

make the equipment inoperable by dismantling it or removing a component without which the equipment can not be used

- (c) require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).

97 Offence to contravene seizure requirement

A person must comply with a requirement made of the person under section 96(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

98 Offence to interfere

- (1) If access to a seized thing is restricted under section 96, a person must not tamper with the thing or with anything used to restrict access to the thing without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If access to a place is restricted under section 96, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

Subdivision 3 Safeguards for seized things

99 Receipt for seized thing

- (1) This section applies if an inspector seizes anything under this division unless—
 - (a) the inspector reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned; or
 - (b) because of the condition, nature and value of the thing it would be unreasonable to require the inspector to comply with this section.
- (2) The inspector must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized a receipt for the thing that generally describes the thing and its condition.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt may be given by leaving it in a conspicuous position and in a reasonably secure way at the place where the thing is seized.
- (4) The receipt may relate to more than 1 seized thing.
- (5) The inspector may delay giving the receipt if the inspector reasonably suspects giving it may frustrate or otherwise hinder an investigation by the inspector under this part.
- (6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place where the thing was seized to keep the thing under observation.

100 Access to seized thing

- (1) Until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—
 - (a) to inspect it at any reasonable time and from time to time; and

- (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

101 Return of seized thing

- (1) This section applies if a seized thing is not forfeited or transferred under subdivision 4 or 5.
- (2) As soon as the chief executive stops being satisfied there are reasonable grounds for retaining the thing, the chief executive must return the thing to its owner.
- (3) If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the chief executive for its return.
- (4) Within 30 days after receiving the application, the chief executive must—
 - (a) if the chief executive is satisfied there are reasonable grounds for retaining the thing and decides to retain the thing—give the owner an information notice about the decision; or
 - (b) otherwise—return the thing to the owner.
- (5) For this section, there are reasonable grounds for retaining a seized thing if—
 - (a) the thing is being, or is likely to be, examined; or
 - (b) the thing is needed, or may be needed, for the purposes of—
 - (i) a proceeding for an offence against this Act that is likely to be started or that has been started but not completed; or
 - (ii) an appeal from a decision in a proceeding for an offence against this Act; or
 - (c) it is not lawful for the owner to possess the thing.

- (6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.
- (7) Nothing in this section affects a lien or other security over the seized thing.
- (8) In this section—
examine includes analyse, test, account for, measure, weigh, grade, gauge and identify.

Subdivision 4 Forfeiture

102 Forfeiture by chief executive decision

- (1) The chief executive may decide a seized thing is forfeited to the State if an inspector—
 - (a) after making reasonable inquiries, can not find an owner; or
 - (b) after making reasonable efforts, can not return the thing to an owner; or
 - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, the inspector is not required to—
 - (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Example for paragraph (b)—

The owner of the thing has migrated to another country.
- (3) Regard must be had to the thing's condition, nature and value in deciding—
 - (a) whether it is reasonable to make inquiries or efforts; and

- (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

103 Information notice about forfeiture decision

- (1) If the chief executive decides under section 102(1) that a thing is forfeited, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture an information notice about the decision.
- (2) If the decision was made under section 102(1)(a) or (b), the information notice may be given by leaving the notice at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) However, subsections (1) and (2) do not apply if—
 - (a) the decision was made under section 102(1)(a) or (b); and
 - (b) the place where the thing was seized is—
 - (i) a public place; or
 - (ii) a place where the notice is unlikely to be read by the person.

Subdivision 5 Dealing with property forfeited or transferred to State

104 When thing becomes property of the State

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 102(1); or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

105 How property may be dealt with

- (1) This section applies if, under section 104, a thing becomes the property of the State.
- (2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying the thing or giving it away.
- (3) The chief executive must not deal with the thing in a way that could prejudice the outcome of a review of the forfeiture under this Act.
- (4) If the chief executive sells the thing, the chief executive must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the person who owned the thing immediately before the thing became the property of the State.

Division 5 Other information-obtaining powers of inspectors

106 Power to require personal details

- (1) This section applies if an inspector—
 - (a) finds a person committing an offence against this Act; or
 - (b) finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or
 - (c) has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act.
- (2) The inspector may require the person to state the person's name and residential address.
- (3) The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—

- (a) be in possession of evidence of the correctness of the stated name or address; or
 - (b) otherwise be able to give the evidence.
- (4) When making a requirement under this section, the inspector must give the person an offence warning for the requirement.

107 Offence to contravene personal details requirement

- (1) A person of whom a requirement is made under section 106 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person may not be convicted of an offence against subsection (1) unless the person is found guilty of the offence in relation to which the requirement under section 106 was made.

108 Power to require production of document or certification of copy

- (1) An inspector may require a person to make available for inspection by an inspector, or to produce to the inspector for inspection, at a reasonable time and place nominated by the inspector—
- (a) a document issued or granted to the person under this Act; or
 - (b) a document required to be kept by the person under this Act; or
 - (c) if a document mentioned in paragraph (a) or (b), or information required to be kept by the person under this Act, is kept, stored or recorded electronically—a document that is a clear written reproduction of the document or information that is kept, stored or recorded electronically.
- (2) The inspector may copy the document or an entry in the document.

- (3) If the inspector copies the document, or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (4) The inspector must not keep the document after copying the document or an entry in the document.
- (5) However, if a requirement is made of a person under subsection (3), the inspector may keep the document until the person complies with the requirement.

109 Offence to contravene production requirement

- (1) A person of whom a production requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

Note—

See, however, section 118.

- (3) The inspector must inform the person, in a way that is reasonable in the circumstances, that—
 - (a) the person must comply with the production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
 - (b) if the person is an individual—there is a limited immunity under section 118 against the future use of the information or document given in compliance with the production requirement.
- (4) If the person fails to comply with the production requirement when the inspector has failed to comply with subsection (3),

the person may not be convicted of the offence against subsection (1).

- (5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the production requirement.

- (6) In this section—

production requirement means a requirement under section 108(1).

110 Offence to contravene certification requirement

- (1) A person of whom a certification requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

Note—

See, however, section 118.

- (3) The inspector must inform the person, in a way that is reasonable in the circumstances, that—
- (a) the person must comply with the certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
- (b) if the person is an individual—there is a limited immunity under section 118 against the future use of the information or document given in compliance with the certification requirement.
- (4) If the person fails to comply with the certification requirement when the inspector has failed to comply with subsection (3),

the person may not be convicted of the offence against subsection (1).

(5) In this section—

certification requirement means a requirement under section 108(3).

111 Power to require information

(1) This section applies if an inspector reasonably believes—

- (a) an offence against this Act has been committed; and
- (b) a person may be able to give information about the offence.

(2) This section also applies if an inspector reasonably believes—

- (a) a person may be able to give information (***compliance information***) about a licensed provider's compliance with this Act; and
- (b) the compliance information is necessary for the inspector to perform the inspector's function mentioned in section 69(a).

(3) The inspector may, by notice given to the person, require the person to give the inspector by a stated reasonable time—

- (a) either—
 - (i) information related to the offence mentioned in subsection (1); or
 - (ii) the compliance information mentioned in subsection (2)(a); or
- (b) if the information mentioned in paragraph (a)(i) or (ii) is kept, stored or recorded electronically—a clear written reproduction of the information.

(4) In this section—

information includes a document.

112 Offence to contravene information requirement

- (1) A person of whom a requirement is made under section 111(3) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

Division 6 Damage, compensation and other provisions

113 Duty to avoid inconvenience and minimise damage

In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

114 Notice of damage

- (1) This section applies if—
 - (a) an inspector damages something when exercising, or purporting to exercise, a power; or
 - (b) a person (the *assistant*) acting under the direction or authority of an inspector damages something.
- (2) However, this section does not apply to damage the inspector considers is trivial or if the inspector reasonably believes—
 - (a) there is no-one apparently in possession of the thing; or
 - (b) the thing has been abandoned.
- (3) The inspector must give notice of the damage to a person who appears to the inspector to be an owner, or person in control, of the thing.

- (4) However, if for any reason it is not practicable to comply with subsection (3), the inspector must—
 - (a) leave the notice at the place where the damage happened; and
 - (b) ensure the notice is left in a conspicuous position and in a reasonably secure way.
- (5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the inspector's functions.
- (6) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the inspector believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the inspector or the assistant, the inspector may state the belief in the notice.
- (8) The notice must state—
 - (a) particulars of the damage; and
 - (b) that the person who suffered the damage may claim compensation under section 115.

115 Compensation

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an inspector including a loss arising from compliance with a requirement made of the person under division 4 or 5.
- (2) The compensation may be claimed and ordered in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

- (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) In considering whether it is just to order compensation, the court must have regard to—
 - (a) any relevant offence committed by the claimant; and
 - (b) whether the loss arose from a lawful seizure or lawful forfeiture.
- (5) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (6) Section 113 does not provide for a statutory right of compensation other than as provided by this section.
- (7) In this section—
loss includes costs and damage.

116 Obstructing inspector

- (1) A person must not obstruct an inspector exercising a power, or someone helping an inspector exercising a power, unless the person has a reasonable excuse.
Maximum penalty—50 penalty units.
- (2) If a person has obstructed an inspector, or someone helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
 - (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
 - (b) the inspector considers the person's conduct an obstruction.
- (3) In this section—

obstruct includes hinder, resist, attempt to obstruct and threaten to obstruct.

117 Impersonating inspector

A person must not impersonate an inspector.

Maximum penalty—50 penalty units.

118 Evidential immunity for individuals complying with particular requirements

- (1) Subsection (2) applies if an individual gives or produces information or a document to an inspector under section 90 or 108.
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent the evidence tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply to—
 - (a) a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence; or
 - (b) a proceeding in relation to an administrative action taken against an individual.
- (4) In this section—

administrative action, taken against an individual, means action—

 - (a) imposing or varying a condition of a licence under this Act; or
 - (b) issuing an improvement notice or a prohibition notice under this Act; or
 - (c) suspending or cancelling a licence under this Act.

Part 6 Review of decisions and appeals

Division 1 Preliminary

119 Definitions for part

In this part—

affected person means—

- (a) for a reviewable decision—a person who must be given an information notice under this Act about the decision; or
- (b) for an internal review decision—a person who must be given a QCAT information notice about the decision.

internal review see section 121(1).

internal review decision means a decision made, or taken to have been made, under division 2 on an application for internal review of a reviewable decision.

part 2 decision means—

- (a) a decision to refuse to approve an application for approval to use a gamete or embryo under section 39B(2) or 39C(2); or
- (b) a decision to refuse to approve an application for approval to destroy a record under section 37(3).

property decision see section 126(1).

QCAT information notice, for a decision, means a notice complying with the QCAT Act, section 157(2).

reviewable decision means any of the following decisions—

- (a) a part 2 decision;
- (b) a decision to refuse to grant a licence under section 58;

- (c) a decision to impose or vary a condition of a licence under section 59(2) or (3);
- (d) a decision to issue an improvement notice, or to refuse to revoke an improvement notice, under section 62;
- (e) a decision to issue a prohibition notice, or to refuse to revoke a prohibition notice, under section 63;
- (f) a decision to cancel or suspend a licence, or to refuse to lift a licence suspension, under section 64.

120 Review process for reviewable decisions

- (1) For a reviewable decision that is a part 2 decision, review under this part is internal review under division 2 only.
- (2) For any other reviewable decision, review under this part is—
 - (a) internal review under division 2; and
 - (b) if a decision on an application for internal review of the reviewable decision has been made, or is taken to have been made, under division 2—external review by QCAT under division 4.

Division 2 Internal review

121 Who may apply for internal review

- (1) An affected person for a reviewable decision may apply to the chief executive for a review of the decision under this division (an *internal review*).
- (2) An application can not be made for a further internal review of an internal review decision.
- (3) If the affected person has not been given an information notice about the reviewable decision, the affected person may ask the chief executive for an information notice about the decision.

- (4) A failure by the chief executive to give the affected person an information notice about the reviewable decision does not limit or otherwise affect the person's right to apply for an internal review of the decision.

122 Requirements for application for internal review

- (1) An application for internal review of a reviewable decision must—
 - (a) be in the approved form; and
 - (b) for a person who has been given an information notice about the decision—include enough information to enable the chief executive to decide the application; and
 - (c) be made to the chief executive within—
 - (i) for a person who has been given an information notice about the decision—20 business days after the day the person is given the notice; or
 - (ii) for a person who has not been given an information notice about the decision—20 business days after the day the person becomes aware of the decision.
- (2) The chief executive may, at any time, extend the period within which the application may be made.
- (3) The application does not affect the operation of the reviewable decision or prevent the decision being implemented.

123 Internal review

- (1) The chief executive must, within 20 business days after receiving an application for internal review of a reviewable decision—
 - (a) review the reviewable decision; and
 - (b) decide to—
 - (i) confirm the reviewable decision; or

- (ii) amend the reviewable decision; or
 - (iii) substitute another decision for the reviewable decision; and
- (c) give the affected person for the reviewable decision—
 - (i) if the reviewable decision is a part 2 decision—notice of the chief executive’s decision under paragraph (b); or
 - (ii) otherwise—a QCAT information notice for the chief executive’s decision under paragraph (b).
- (2) The chief executive and the affected person may, before the period stated in subsection (1) ends, agree to a longer period for the chief executive to comply with that subsection.
- (3) The application may be dealt with only by a person who—
 - (a) did not make the reviewable decision; and
 - (b) holds a more senior office than the person who made the reviewable decision.
- (4) Subsection (3) does not apply if the reviewable decision was made by the chief executive personally.
- (5) If the chief executive does not give the affected person a QCAT information notice within the period required under subsection (1) or a longer period agreed under subsection (2), the chief executive is taken to confirm the reviewable decision.

Division 3 Stays of reviewable decisions

124 QCAT may stay operation of reviewable decision

- (1) This section applies in relation to a reviewable decision, other than a part 2 decision.
- (2) An affected person for the reviewable decision may apply to QCAT, as provided under the QCAT Act, for a stay of the operation of the decision.

- (3) The application may be made at any time within which an application for an internal review of the original decision may be made under division 2.
- (4) QCAT may make an order staying the operation of the reviewable decision to secure the effectiveness of the internal review or any later review by QCAT of the decision.
- (5) A stay by QCAT under this section—
 - (a) may be given on conditions QCAT considers appropriate; and
 - (b) operates for the period fixed by QCAT; and
 - (c) may be amended or revoked by QCAT.
- (6) The period of a stay by QCAT under this section must not extend past the end of the period within which an application for a review of the internal review decision may be made under the QCAT Act.

Note—

The QCAT Act, section 22(3) enables QCAT to stay the operation of the internal review decision, either on application by a person or on its own initiative.

Division 4 External review

125 Applying for QCAT external review

- (1) This section applies if an affected person for a reviewable decision is required to be given a QCAT information notice under section 123(1)(c)(ii) for an internal review decision.
- (2) The affected person may apply to QCAT, as provided under the QCAT Act, for a review of the internal review decision.

Note—

Section 56 also provides for a QCAT external review of certain decisions of the registrar under part 3.

Division 5 Appeals against property decisions

126 Appealing seizure or forfeiture decisions

- (1) This section applies to a person who must be given an information notice about a decision of the chief executive (a *property decision*)—
 - (a) to refuse to return seized property under section 101; or
 - (b) to forfeit seized property under section 103.
- (2) The person may appeal to a Magistrates Court (the *court*) against the property decision by filing a notice of appeal with the registrar of the court.
- (3) The notice of appeal must state fully the grounds of the appeal.
- (4) The person must file the notice of appeal within 28 days after an information notice about the decision is given to the person or the person otherwise becomes aware of the decision.
- (5) However, the court may, on application and at any time, extend the time for filing the notice of appeal.
- (6) The person must serve a copy of the notice of appeal, and any application to extend the time for filing the notice of appeal, on the chief executive.
- (7) The appeal does not affect the operation of the property decision or prevent the property decision being implemented.

127 Staying operation of property decision

- (1) A person who may appeal to the court against a property decision may apply to the court for a stay of the operation of the property decision.
- (2) The court may, by order, stay the operation of the property decision to secure the effectiveness of the appeal.
- (3) The court may stay the operation of the property decision on conditions the court considers appropriate.

- (4) The stay operates for the period decided by the court.
- (5) However, the period of the stay must not extend past the time when the court decides the appeal.

128 Powers of court on appeal

- (1) When deciding the appeal against a property decision, the court—
 - (a) has the same powers as the chief executive in making the property decision; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
 - (a) confirm the property decision; or
 - (b) substitute another decision for the property decision; or
 - (c) set aside the property decision and return the matter to the chief executive with directions the court considers appropriate.

129 Effect of court's decision on appeal

- (1) If the court substitutes another decision for the property decision—
 - (a) the substituted decision is taken to be a decision of the chief executive; and
 - (b) the chief executive may give effect to the substituted decision as if—
 - (i) the substituted decision were the original decision of the chief executive; and
 - (ii) no application for an appeal against the original decision had been made.

- (2) If the court sets aside the property decision and returns the matter to the chief executive with directions, any decision made by the chief executive in accordance with the directions may not be appealed against under this division.

Part 7 Legal proceedings

130 Application of part

This part applies in relation to a proceeding under this Act.

131 Appointments and authority

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the appointment of the chief executive, an inspector or the registrar;
- (b) the authority of the chief executive, an inspector or the registrar to do anything under this Act.

132 Signatures

A signature purporting to be the signature of the chief executive, an inspector or the registrar is evidence of the signature it purports to be.

133 Evidentiary provisions

- (1) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—
- (a) a stated document is any of the following—
 - (i) a licence to provide ART services;
 - (ii) an approval given under this Act;
 - (iii) a notice or direction given under this Act;

- (iv) an approved form;
 - (v) an identity card;
 - (vi) an acknowledgement of consent signed under section 81;
 - (vii) a stated record kept under this Act;
 - (b) a stated document is a copy of, or an extract from or part of, a document mentioned in paragraph (a);
 - (c) on a stated day, or during a stated period, a person's appointment as the chief executive, an inspector or the registrar was, or was not, in effect;
 - (d) on a stated day, or during a stated period, a licence—
 - (i) was or was not in effect; or
 - (ii) was or was not subject to a stated condition;
 - (e) on a stated day, a stated person was given a stated notice or direction under this Act;
 - (f) on a stated day, a stated requirement was made of a stated person;
 - (g) a stated amount is payable under this Act by a stated person and has not been paid.
- (2) The registrar may also sign a certificate under subsection (1) in relation to a matter to which part 3 applies.

134 Summary offence proceedings

A proceeding for an offence under this Act must be heard and decided summarily on complaint of the chief executive or the registrar.

135 Limitation on time for starting offence proceeding

A proceeding for an offence under this Act must start—

- (a) within 1 year after the commission of the offence; or

- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

136 Allegations of false or misleading information

In a proceeding for an offence against section 139, it is enough for a charge to state that the information to which the offence relates was, without specifying which, 'false or misleading'.

137 Conduct of representatives

- (1) If it is relevant to prove a person's state of mind about particular conduct, it is enough to show—
 - (a) the conduct was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (2) Conduct engaged in for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have also been engaged in by the person unless the person proves—
 - (a) the person was not in a position to influence the representative in relation to the conduct; or
 - (b) if the person was in a position to influence the representative in relation to the conduct—the person took reasonable steps to prevent the conduct.
- (3) In this section—

engage, in conduct, includes failing to engage in conduct.

representative means—
 - (a) for a corporation—an agent, employee or executive officer of the corporation; or
 - (b) for an individual—an agent or employee of the individual.

state of mind, of a person, includes the person's—

- (a) belief, intention, knowledge, opinion or purpose; and
- (b) reasons for the belief, intention, knowledge, opinion or purpose.

138 Executive officer may be taken to have committed offence against deemed executive liability provision

- (1) If a corporation commits an offence against a deemed executive liability provision, an executive officer of the corporation is taken to have also committed the offence if—
 - (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
 - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct constituting the offence.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect—
 - (a) the liability of the corporation for the offence against the deemed executive liability provision; or
 - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.
- (4) In this section—

deemed executive liability provision means any of the following provisions—

 - (a) a provision of part 2;
 - (b) a provision of part 3, division 3;
 - (c) section 139(1).

Part 8 Miscellaneous

139 False or misleading information

- (1) A person must not give an official performing a function under this Act information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the information in a document—

- (a) tells the official, to the best of the person's ability, how the document is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

- (3) In this section—

official means—

- (a) the chief executive; or
- (b) a member of the staff of the chief executive or a contractor engaged by the chief executive; or
- (c) an inspector; or
- (d) the registrar; or
- (e) a member of the staff of the registrar or a contractor engaged by the registrar.

140 Disclosure or use of confidential information

- (1) This section applies to a person—

- (a) who is, or has been, any of the following persons—

- (i) the chief executive;
- (ii) a member of the staff of the chief executive or a contractor engaged by the chief executive;
- (iii) the registrar;

- (iv) a member of the staff of the registrar or a contractor engaged by the registrar; and
 - (b) who obtains confidential information in administering, or performing functions under, this Act.
- (2) The person must not disclose the confidential information to anyone, or use the confidential information, other than under this section.

Maximum penalty—50 penalty units.

- (3) The person may disclose or use the confidential information—
- (a) in the performance of a function or exercise of a power under this Act; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) to the extent the disclosure or use is otherwise required or permitted by law.
- (4) The person may disclose the confidential information to—
- (a) a coroner investigating the death of a person under the *Coroners Act 2003*; or
 - (b) a law enforcement agency, for the purposes of detecting, investigating, preventing or prosecuting an offence under this Act or any other law.
- (5) The person may disclose the confidential information to—
- (a) a National Health Practitioner Board, or the Australian Health Practitioner Regulation Agency, established under the Health Practitioner Regulation National Law; or
 - (b) an entity established under the *National Health Act 1953* (Cwlth); or
 - (c) an official under the *Health Ombudsman Act 2013*; or
 - (d) another entity (whether of the Commonwealth, of another State or of another country) that has functions relating to the regulation of ART services.

(6) However, the person may disclose confidential information to an entity under subsection (4) or (5) only if the person is satisfied the disclosure is reasonably necessary for the entity to exercise its functions.

(7) In this section—

confidential information—

(a) means information that—

(i) could identify a person; and

(ii) is about the person or the person's affairs; but

(b) does not include information that is publicly available.

disclose includes give access to.

information includes a document.

141 Chief executive and registrar may share confidential or other information

(1) The chief executive and the registrar may share confidential or other information for the purposes of the administration of this Act, including information obtained by an inspector under part 5 or by the registrar under section 54.

(2) Without limiting subsection (1), the information may be shared—

(a) for the purposes of the exercise of a function of the chief executive or of the registrar under this Act; or

(b) for the purposes of an investigation by an inspector under part 5 or an inquiry by the registrar under section 54.

142 Approved forms

(1) The chief executive may approve forms for use under this Act (except for part 3).

(2) The registrar may approve forms for use under part 3.

143 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) prescribe fees payable under this Act; and
 - (b) provide for a maximum penalty of 20 penalty units for a contravention of the regulation.

Part 9 Transitional provisions

Division 1 Transitional provisions commencing on 19 September 2024

144 Application of Act to existing matters

- (1) This Act extends, subject to this part, to the following—
 - (a) ART services or ART procedures even though they were provided or carried out before the commencement of this Act;
 - (b) gametes or embryos even though they were obtained or created before the commencement of this Act;
 - (c) consents given to ART providers by gamete providers or other persons even though they were given before the commencement of this Act;
 - (d) information provided or recorded in connection with ART services even though the information was provided or recorded before the commencement of this Act.
- (2) However, a person does not commit an offence under this Act for any act or omission that occurred before the commencement of this Act.

144A Time within which information about pregnancies and births to be collected by ART providers

- (1) Section 35 applies to a person becoming pregnant or giving birth as a result of an ART procedure carried out before the commencement of this Act, but only if—
 - (a) in the case of pregnancy—the procedure was carried out within 4 months before that commencement, in which case the ART provider may collect the information about the pregnancy within 6 months after the procedure was carried out; or
 - (b) in the case of the birth of a child—the procedure was carried out within 15 months before that commencement, in which case the ART provider may collect the information about the birth within 18 months after the procedure was carried out.
- (2) The information collected under subsection (1) is, for the purposes of section 36, taken to be information collected under part 2, division 6.

Division 2 Other transitional provisions for Act No. 46 of 2024

Subdivision 1 Preliminary

144B Definitions for division

In this division—

future ART procedure, for a person mentioned in new section 146(1)(a)(i) or 147(1)(a), means an ART procedure carried out after the commencement of this section for any of the following persons—

- (a) the person;
- (b) a person who, at the relevant time, was the person's spouse;

- (c) a surrogate of the person;
- (d) a surrogate of a person who, at the relevant time, was the person's spouse.

new, in relation to a provision of this Act, means the provision as in force from the commencement.

relevant time see section 144C(3).

144C Particular references to spouses

- (1) This section applies in relation to a person mentioned in new section 146(1)(a)(i) or 147(1)(a) if, at the relevant time, the person and the person's spouse were separated and were living separately and apart.
- (2) For this division, the spouse is taken not to have been a spouse of the person at the relevant time.
- (3) For subsection (1), the **relevant time** is—
 - (a) for a person mentioned in new section 146(1)(a)(i)—the time when an ART provider allocated donated gametes for use by the person in ART procedures as mentioned in that section; or
 - (b) for a person mentioned in new section 147(1)(a)—the time when an ART provider allocated a donated embryo for use by the person in ART procedures as mentioned in that section.

Subdivision 2 Licensing

145 Licensing of existing ART providers

- (1) The **initial licensing assessment period** for an ART provider is the period of 3 months immediately after the commencement of section 12, but if the ART provider applies for a licence before the end of that 3-month period, the initial licensing assessment period ends when the chief executive

[s 145A]

gives the ART provider notice of the chief executive's decision on the application.

- (2) Subsection (3) applies to an ART provider if—
 - (a) the ART provider provided ART services immediately before the commencement of section 12; and
 - (b) the ART provider has prescribed accreditation during the initial licensing assessment period.
- (3) During the initial licensing assessment period, the ART provider is taken to be a licensed provider for sections 12, 61, 77 and 145A.

145A Licensed providers' notification of particular events that happened before commencement—new s 61

- (1) This section applies in relation to a licensed provider if—
 - (a) an event happened before the commencement of new section 61; and
 - (b) the event would have been a serious adverse event for the licensed provider had new section 61 been in force when the event happened; and
 - (c) the licensed provider becomes aware of the event after the commencement of new section 61.
- (2) New section 61 applies as if the event were a serious adverse event within the meaning of that section.

Subdivision 3 Provisions for general operation of part 2

145B Donor-related Australian families—new s 25

For working out the number of donor-related Australian families for new section 25, it does not matter whether a person or a child mentioned in that section was born before or after the commencement of this section.

145C Time limits on use of existing donated gametes and embryos—new s 27

- (1) Subject to new sections 146 to 148, new section 27 applies in relation to the use of a donated gamete or donated embryo in an ART procedure carried out after the commencement of this section.
- (2) Subsection (1) applies—
 - (a) whether or not the donated gamete was obtained, or the donated embryo was created, before the commencement of this section; and
 - (b) even if the period mentioned in new section 27(1) during which the donated gamete or donated embryo may be used in an ART procedure ended before the commencement of this section.

145D Record-keeping—s 36

- (1) Subsection (2) applies if, before 19 September 2024, an ART provider collected information of a type mentioned in a provision of part 2, division 6.
- (2) A reference in section 36 to information an ART provider is required to collect under part 2, division 6 includes, and is taken to have always included, a reference to the information mentioned in subsection (1).

145E Disclosure of health information—s 38

- (1) This section applies to a reference in section 38 to—
 - (a) a donor-conceived person born as a result of an ART procedure; or
 - (b) a donor-conceived sibling of a person mentioned in paragraph (a).
- (2) The reference includes, and is taken to have always included, a reference to a donor-conceived person, or donor-conceived sibling, born as a result of an ART procedure that was carried out before the commencement of section 38.

Subdivision 4 Provisions about use of particular gametes and embryos obtained before 19 September 2024

146 Donated gametes previously allocated to person for ART procedures

- (1) This section applies if—
 - (a) before 19 September 2024—
 - (i) an ART provider allocated donated gametes for use by a person in ART procedures; and
 - (ii) the person, or a surrogate of the person, became pregnant as a result of the use of some of those donated gametes in an ART procedure; and
 - (b) after the commencement of this section, an ART provider proposes to use the remaining donated gametes in future ART procedures for the person.
- (2) The ART provider may use the remaining donated gametes in future ART procedures for the person despite the donor's consent to the use of the remaining gametes in an ART procedure—
 - (a) not complying with a requirement for consent mentioned in new section 18(2); or
 - (b) not being in writing.
- (3) However, subsection (2) does not apply in relation to the use of a gamete if—
 - (a) the donor had previously consented to the use of the gamete in an ART procedure; and
 - (b) since giving the consent, the donor has—
 - (i) withdrawn the consent under section 20; or
 - (ii) otherwise clearly communicated the withdrawal of the consent to the ART provider, whether or not in writing.

- (4) The following limitations under part 2 do not apply to the use of the remaining donated gametes in future ART procedures for the person—
 - (a) any limit on the period within which the gametes may be used;
 - (b) any limit on the number of donor-related Australian families who may use the gametes.
- (5) Also, new section 33(4) does not apply in relation to the use of the remaining donated gametes in future ART procedures for the person.

147 Donated embryo previously allocated to a person for ART procedures

- (1) This section applies if—
 - (a) before 19 September 2024, an ART provider allocated a donated embryo for use by a person in an ART procedure; and
 - (b) after the commencement of this section, an ART provider proposes to use the donated embryo in a future ART procedure for the person.
- (2) The ART provider may use the donated embryo in the future ART procedure for the person despite the donor's consent to the use of the embryo in an ART procedure—
 - (a) not complying with a requirement for consent mentioned in new section 18(2); or
 - (b) not being in writing.
- (3) However, subsection (2) does not apply in relation to the use of the donated embryo if—
 - (a) the donor had previously consented to the use of the embryo in an ART procedure; and
 - (b) since giving the consent, the donor has—
 - (i) withdrawn the consent under section 20; or

- (ii) otherwise clearly communicated the withdrawal of the consent to the ART provider, whether or not in writing.
- (4) The following limitations under part 2 do not apply to the use of the donated embryo in the future ART procedure for the person—
 - (a) any limit on the period within which the embryo may be used;
 - (b) any limit on the number of donor-related Australian families who may use the embryo.
- (5) Also, new section 33(4) does not apply in relation to the use of the donated embryo in the future ART procedure for the person.

148 Embryo created with donated gamete not yet used for ART procedure

- (1) This section applies if—
 - (a) before 19 September 2024, an embryo was created with a donated gamete; and
 - (b) after the commencement of this section, an ART provider proposes to use the embryo in an ART procedure for a person.
- (2) The chief executive may, on application by the ART provider, approve the use of the embryo in the ART procedure for the person if satisfied there are reasonable grounds for using the embryo, having regard to the following matters—
 - (a) when the embryo was created;
 - (b) whether, when the embryo was created, there was a reasonable expectation that it would be used in an ART procedure for a person;
 - (c) any other relevant matter.
- (3) If an approval is given under subsection (2) to the ART provider, the ART provider may use the embryo in the ART procedure despite—

- (a) new section 25, 27 or 33; or
- (b) the consent of the donor to the use of the embryo in an ART procedure—
 - (i) not complying with a requirement for consent mentioned in new section 18(2); or
 - (ii) not being in writing.
- (4) However, subsection (3)(b) does not apply in relation to the use of an embryo if—
 - (a) the donor had previously consented to the use of the embryo in an ART procedure; and
 - (b) since giving the consent, the donor has—
 - (i) withdrawn the consent under section 20; or
 - (ii) otherwise clearly communicated the withdrawal of the consent to the ART provider, whether or not in writing.
- (5) If the chief executive decides to refuse to give an approval under subsection (2), the chief executive must, as soon as practicable after the decision is made, give the applicant an information notice for the decision.
- (6) A decision of the chief executive mentioned in subsection (5) is taken to be a part 2 decision within the meaning of section 119.
- (7) New part 2, division 8 does not apply in relation to the use of the embryo in the ART procedure for the person.

149 Use of particular gametes obtained before 19 September 2024—collection of information

- (1) This section applies if—
 - (a) an ART provider obtained a gamete before 19 September 2024 for use in an ART procedure or for storage for use in an ART procedure; and
 - (b) immediately before the commencement of this section, the gamete had not been used in an ART procedure; and

- (c) new sections 146 and 147 do not apply in relation to the use of the gamete in an ART procedure.
- (2) New section 33(4) does not prevent the use of the gamete, or an embryo created using the gamete, in an ART procedure if—
 - (a) the ART provider collected the information mentioned in new section 33(1) in relation to the gamete before the gamete was obtained; or
 - (b) the ART provider collects the information mentioned in new section 33(1) in relation to the gamete before the gamete or embryo is used in the ART procedure; or
 - (c) the chief executive approves the use of the gamete or embryo in the ART procedure under new section 39C.

Subdivision 5 Miscellaneous

151 Information to be provided for donor conception information register for births using existing gametes or embryos

- (1) Section 45 applies to the birth of a donor-conceived person that occurs after the commencement of that section even though the person was born as a result of a procedure using a donated gamete or donated embryo obtained or created before that commencement.
- (2) However, if the person was born after the commencement of section 45 using a donated gamete or donated embryo obtained or created before the commencement of that section, the ART provider is only required under that section to provide relevant information about the donor that the provider recorded and kept at the time the gamete was obtained or the embryo became a donated embryo.

152 Relationship of division with s 144

To the extent of any inconsistency between a provision of this division and section 144(1)(a), (c) or (d), the provision of this division prevails.

153 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which this Act does not provide or sufficiently provide.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire on the day that is 2 years after the day this section commences.

Part 10 Amendment of legislation

Division 3 Amendment of Births, Deaths and Marriages Registration Act 2023

156 Act amended

This division amends the *Births, Deaths and Marriages Registration Act 2023*.

158 Insertion of new s 23A

After section 23—

insert—

23A Addendum to birth certificate—donor conception

- (1) This section applies if—

- (a) a person (the **applicant**)—
 - (i) applies to the registrar, in the form required by the registrar and in an approved way, for requested information or a certificate about an entry for the person in the birth register; and
 - (ii) is at least 16 years at the time of making the application; and
 - (b) the person is recorded in the donor conception information register under the Assisted Reproductive Technology Act 2024, part 3 as a donor-conceived person; and
 - (c) the registrar gives the requested information or issues the certificate to the applicant.
- (2) The registrar must attach an addendum to the information or certificate stating that further information is available in a register kept by the registrar.
 - (3) To remove any doubt, it is declared that the registrar must not issue an addendum to any person other than the applicant.

Schedule 1 Dictionary

section 4

accreditation standard, for part 4, see section 56A.

affected person, for part 6, see section 119.

approved form means a form approved under section 142.

approved way, for part 3, see section 40.

ART procedure see section 5.

ART provider see section 7.

ART related legislation means any of the following—

- (a) any legislation referred to in section 10;
- (b) the *Transplantation and Anatomy Act 1979*;
- (c) any legislation of the Commonwealth or another State that substantially corresponds to this Act or any legislation referred to in paragraph (a) or (b).

ART service see section 6.

associated entity, of a corporation, means—

- (a) a related body corporate under the Corporations Act; or
- (b) an executive officer of the corporation or of a related body corporate; or
- (c) a person with a significant interest in the corporation or a related body corporate.

contact information, for a person, means the person's residential address, phone number or email address or any other way the person may be contacted.

descendant means a direct descendant.

document, for part 5, see section 66.

donate, a gamete or an embryo, means to provide the gamete or embryo for use in an ART procedure by someone other than the donor or their spouse.

donated embryo see section 9(2).

donated gamete see section 9(1).

donor, of a gamete or an embryo, means the person who donates the gamete or embryo.

donor-conceived, in relation to a person, means a person born as the result of an ART procedure using a donated gamete and, for part 3, see section 40.

donor-conceived offspring see section 40.

donor-conceived siblings see section 40.

donor conception ART procedure, for part 3, see section 40.

donor conception information register means the register kept under part 3.

donor-related Australian families see section 25(3).

donor's ID code, for part 3, see section 40.

donor's profile information, for part 3, see section 40.

embryo see section 8(2).

gamete see section 8(1).

gamete provider means—

- (a) in relation to a gamete—the individual from whom the gamete was originally obtained; or
- (b) in relation to an embryo—an individual from whom a gamete used to create the embryo was originally obtained.

identifying information, for part 3, see section 40.

identity card, for part 5, see section 66.

improvement notice see section 62.

information notice, for a decision, means a notice stating the following information—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may ask for a review of the decision, or may appeal against the decision, under this Act;
- (d) how, and the period within which, the review or appeal may be started;
- (e) if the person may apply for a stay of the operation of the decision under this Act—how the person may apply for the stay.

inspector means a person who holds office under part 5, division 2 as an inspector.

internal review, for part 6, see section 119.

internal review decision, for part 6, see section 119.

licence means a licence to provide ART services.

licensed ART provider or **licensed provider** means a person who is licensed under part 4 to provide ART services.

name, of a person, means each name by which the person is or has been known.

non-identifying information, for part 3, see section 40.

notice means a written notice.

obtain, a gamete, includes to receive a gamete.

occupier, for part 5, see section 66.

of a place, for part 5, see section 66.

offence warning, for part 5, see section 66.

offspring, of a person, means someone in respect of whom the person is a biological parent, including as a result of the use of the person's donated gamete or donated embryo.

owner, for part 5, see section 66.

part 2 decision, for part 6, see section 119.

person in control, for part 5, see section 66.

person with parental responsibility, for a child, means—

- (a) a guardian of the child under a child protection order; or
- (b) a guardian of the child under an appointment by will; or
- (c) a person who has parental responsibility to make decisions about major long-term issues for the child under a parenting order made under the *Family Law Act 1975* (Cwlth), part VII.

place, for part 5, see section 66.

premises, for part 5, see section 66.

prescribed accreditation, in relation to a person, means accreditation of the person, or of facilities operated by the person, by an entity prescribed by regulation.

private donor conception procedure, for part 3, see section 40.

prohibition notice see section 63.

property decision, for part 6, see section 119.

public place, for part 5, see section 66.

QCAT information notice, for part 6, see section 119.

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

register, for part 3, see section 40.

registrar means the registrar under the *Births, Deaths and Marriages Registration Act 2023*, section 99.

relevant information, for part 3, see section 40.

reviewable decision, for part 6, see section 119.

relevant medical history, of a donor, means any medical history or genetic test result of the donor or the donor's family that is relevant to the future health of—

- (a) a person who undergoes an ART procedure using the donated gamete of the donor; or

- (b) a donor-conceived offspring of the donor; or
- (c) a descendant of the donor-conceived offspring.

self-insemination means artificial insemination not performed or supervised by an ART provider who is, or is required to be, licensed.

undergo, an ART procedure, see section 5(3).