

2023

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health)

# Assisted Reproductive Technology Bill 2023

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2023

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health)

# Assisted Reproductive Technology Bill 2023

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## A Bill for

An Act to regulate assisted reproductive technology services, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Assisted Reproductive Technology Act 2023*.

4 **2 Commencement**

5 (1) The following provisions commence on the day after this Act's  
6 notification day:

- 7 (a) part 1 (Preliminary);  
8 (b) part 2 (Objects and important concepts);  
9 (c) division 4.5 (Record keeping requirements);  
10 (d) division 6.1 (Preliminary);  
11 (e) division 6.2 (Retention of pre-commencement records);  
12 (f) part 11 (Miscellaneous);  
13 (g) part 12 (Transitional);  
14 (h) the dictionary.

15 *Note* The naming and commencement provisions automatically commence on  
16 the notification day (see [Legislation Act](#), s 75 (1)).

17 (2) The remaining provisions commence on a day fixed by the Minister  
18 by written notice.

19 *Note 1* A single day or time may be fixed, or different days or times may be  
20 fixed, for the commencement of different provisions (see [Legislation Act](#),  
21 s 77 (1)).

22 *Note 2* If a provision has not commenced within 6 months beginning on the  
23 notification day, it automatically commences on the first day after that  
24 period (see [Legislation Act](#), s 79).

- 1 (3) However—
- 2 (a) the [Legislation Act](#), section 79 (Automatic commencement of
- 3 postponed law) does not apply to part 5 (Donor register); and
- 4 (b) if part 5 has not commenced within 12 months beginning on the
- 5 notification day, it automatically commences on the first day
- 6 after that period.

### 7 **3 Dictionary**

8 The dictionary at the end of this Act is part of this Act.

9 *Note 1* The dictionary at the end of this Act defines certain terms used in this

10 Act, and includes references (*signpost definitions*) to other terms defined

11 elsewhere.

12 For example, the signpost definition ‘*child*—see the [Children and Young](#)

13 [People Act 2008](#), section 11.’ means that the term ‘child’ is defined in

14 that Act and the definition applies to this Act.

15 *Note 2* A definition in the dictionary (including a signpost definition) applies to

16 the entire Act unless the definition, or another provision of the Act,

17 provides otherwise or the contrary intention otherwise appears (see

18 [Legislation Act](#), s 155 and s 156 (1)).

### 19 **4 Notes**

20 A note included in this Act is explanatory and is not part of this Act.

### 21 **5 Offences against Act—application of Criminal Code etc**

22 Other legislation applies in relation to offences against this Act.

23 *Note 1* *Criminal Code*

24 The [Criminal Code](#), ch 2 applies to all offences against this Act (see

25 Code, pt 2.1).

26 The chapter sets out the general principles of criminal responsibility

27 (including burdens of proof and general defences), and defines terms used

28 for offences to which the Code applies (eg *conduct*, *intention*,

29 *recklessness* and *strict liability*).

1                    *Note 2 Penalty units*  
2                    The [Legislation Act](#), s 133 deals with the meaning of offence penalties  
3                    that are expressed in penalty units.

4                    **6 Application of Act**

5                    This Act does not limit or otherwise affect—

- 6                    (a) the regulation of a public health risk activity under the [Public](#)  
7                    [Health Act 1997](#); or  
8                    (b) the operation of the following:  
9                           (i) the [Human Cloning and Embryo Research Act 2004](#);  
10                           (ii) the [Mutual Recognition Act 1992](#) (Cwlth);  
11                           (iii) the [Parentage Act 2004](#);  
12                           (iv) the [Trans-Tasman Mutual Recognition Act 1997](#) (Cwlth).

1 **Part 2** **Objects and important concepts**

2 **7** **Objects of Act**

3 The objects of this Act are to regulate—

- 4 (a) the provision of assisted reproductive technology services; and  
5 (b) access to information in relation to assisted reproductive  
6 technology services.

7 **8** **Principles of Act**

8 The following principles must be given effect in administering this  
9 Act, or in carrying out an activity regulated by this Act:

- 10 (a) the welfare and interests of people born, or to be born, as a result  
11 of assisted reproductive technology treatment must be protected;
- 12 (b) assisted reproductive technology treatment must never be used  
13 to exploit, in trade or otherwise—
- 14 (i) the reproductive capabilities of individuals; or  
15 (ii) children born as a result of assisted reproductive  
16 technology treatment;
- 17 (c) donor conceived people have a right to information about their  
18 donors;
- 19 (d) the health and wellbeing of people undergoing assisted  
20 reproductive technology treatment must be protected.

21 **9** **Meaning of *ART treatment***

22 In this Act:

23 ***ART treatment*** (or ***assisted reproductive technology treatment***)—

- 24 (a) means medical treatment or a procedure that procures, or  
25 attempts to procure, pregnancy in a person other than by sexual  
26 intercourse; and

1 (b) includes a related treatment or procedure prescribed by  
2 regulation; but

3 (c) does not include self-insemination.

4 **Examples**

- 5 • artificial insemination (other than self-insemination)
- 6 • in-vitro fertilisation
- 7 • gamete intrafallopian transfer

8 **10 Meaning of *ART service***

9 In this Act:

10 *ART service* means any of the following provided for fee or reward,  
11 or in carrying on a business (whether or not for profit):

- 12 (a) ART treatment;
- 13 (b) storage of gametes and embryos for use in ART treatment;
- 14 (c) a procedure to obtain a gamete from a gamete provider for use  
15 in ART treatment or for research in relation to ART treatment.

16 **11 Meaning of *ART provider***

17 In this Act:

18 *ART provider*—

- 19 (a) means a person who provides an ART service; but
- 20 (b) does not include a person who provides an ART service on  
21 behalf of a registered ART provider under a contract of  
22 employment or contract for services.

## 1 Part 3 Registration of ART providers

### 2 12 Eligibility for registration

- 3 (1) A person is eligible to be registered as an ART provider if—
- 4 (a) the person holds ART accreditation; and
- 5 (b) the person has not been convicted or found guilty of an offence
- 6 against ART legislation; and
- 7 (c) the person is not currently prohibited; and
- 8 (d) for a person that is a corporation—no executive officer of the
- 9 corporation—
- 10 (i) is an executive officer of another corporation that is
- 11 currently prohibited; or
- 12 (ii) was an executive officer of another corporation that is
- 13 currently prohibited when the prohibition took effect; or
- 14 (iii) has been convicted or found guilty of an offence because
- 15 of section 118 (Criminal liability of executive officer).

- 16 (2) In this section:

17 *prohibited* means prohibited under division 7.3 from carrying on a

18 business that provides ART services.

### 19 13 Application for registration

- 20 (1) A person may apply to the director-general for registration as an
- 21 ART provider.
- 22 (2) An application for registration must include the following:
- 23 (a) the applicant's name;
- 24 (b) the address of each premises at which the applicant proposes to
- 25 provide ART services;

- 1 (c) the name of each doctor who is to perform or supervise  
2 ART services provided by the applicant;
- 3 (d) the name of each person who is to provide counselling services  
4 in relation to ART services provided by the applicant;
- 5 (e) evidence that the applicant holds ART accreditation;
- 6 (f) any other information or document prescribed by regulation.

7 **14 Application for renewal**

- 8 (1) A person may apply to the director-general for renewal of their  
9 registration as an ART provider within 3 months before, and  
10 3 months after, the registration ends.

11 *Note* If a person applies for renewal before the registration ends, it continues  
12 in force until the application is decided (see s 17 (2)).

- 13 (2) An application for renewal must include the following:
- 14 (a) information and documents mentioned in section 13 (2) that  
15 have changed since last given to the director-general;
- 16 (b) evidence that the applicant holds ART accreditation;
- 17 (c) any other information or document prescribed by regulation.

18 **15 Deciding applications**

- 19 (1) The director-general must approve an application for registration as  
20 an ART provider if satisfied—

- 21 (a) the applicant is eligible to be registered; and  
22 (b) the application is made in accordance with section 13.

- 23 (2) The director-general must approve an application for renewal of  
24 registration as an ART provider if satisfied—

- 25 (a) the applicant is eligible to be registered; and  
26 (b) the application is made in accordance with section 14.



- 1           (3) The director-general must give written notice of their decision to  
2           approve or refuse an application to the applicant.

3   **16           Conditions on registration**

- 4           (1) A person's registration as an ART provider is subject to any  
5           conditions the director-general considers appropriate.
- 6           (2) However, before imposing a condition under subsection (1), the  
7           director-general must—
- 8               (a) give the person a written notice—
- 9                       (i) stating the proposed condition; and
- 10                      (ii) stating the reason for the proposed condition; and
- 11                      (iii) telling the person that the person may give a written  
12                      response to the director-general about the matters stated in  
13                      the notice not later than 28 days after the person receives  
14                      the notice; and
- 15               (b) consider any response given to the director-general in  
16               accordance with paragraph (a) (iii).
- 17           (3) A condition imposed under this section must not be inconsistent with  
18           a condition imposed on the person's ART accreditation and, to the  
19           extent of any inconsistency, is invalid.

20   **17           Term of registration**

- 21           (1) A person's registration as an ART provider—
- 22               (a) begins—
- 23                       (i) on the day the director-general gives the person notice of  
24                       their decision to approve the person's application for  
25                       registration under section 15; or

- 1 (ii) for a renewed registration—on the day the director-general  
2 approves the person’s application for renewal under  
3 section 15; and
- 4 (b) ends on the earliest of—
- 5 (i) 5 years after the day the registration begins; or
- 6 (ii) the day the registration is cancelled under section 18.
- 7 (2) However, if a person applies for renewal of their registration in  
8 accordance with section 14 before the registration ends, it continues  
9 in force until the application is decided.

## 10 **18 Cancellation of registration**

11 The director-general must cancel a person’s registration as an  
12 ART provider if the person—

- 13 (a) gives notice of the person ceasing to provide ART services  
14 under section 19; or
- 15 (b) stops holding ART accreditation; or
- 16 (c) is prohibited under division 7.3 from carrying on a business that  
17 provides ART services for 12 months or longer.

## 18 **19 Requirement to notify director-general about certain events**

- 20 (1) A registered ART provider must give the director-general written  
21 notice of the following events within 7 days after the event happens:
- 22 (a) the ART provider ceasing to provide ART services;
- 23 (b) a change of premises at which the ART provider provides  
24 ART services;
- 25 (c) a change to the doctors who perform or supervise ART services  
26 provided by the ART provider;
- 27 (d) a change to the ART provider’s ART accreditation;

- 1 (e) the ART provider contravening any ART legislation;
- 2 (f) if the ART provider is a corporation—a change to the address of  
3 its registered office or principal place of business;
- 4 (g) a change to the people who provide counselling services in  
5 relation to ART services provided by the ART provider;
- 6 (h) any other event prescribed by regulation.
- 7 (2) A registered ART provider commits an offence if it fails to comply  
8 with subsection (1).
- 9 Maximum penalty: 30 penalty units.

10 **20 Register of ART providers**

- 11 (1) The director-general must keep a register of registered  
12 ART providers.
- 13 (2) The register must contain the following information for each  
14 registered ART provider:
- 15 (a) the ART provider's name;
- 16 (b) the address of each premises at which the ART provider  
17 provides ART services;
- 18 (c) the name of each doctor who performs or supervises  
19 ART services provided by the ART provider;
- 20 (d) the name of each person who provides counselling services in  
21 relation to ART services provided by the ART provider.
- 22 (3) The register may contain any other information the director-general  
23 considers appropriate.
- 24 (4) The director-general must make the information in subsection (2)  
25 available to the public.

- 1           (5) However, the director-general must not make information about a  
2           person available to the public if—
- 3           (a) the person applies, in writing, for the information not to be made  
4           available to the public; and
- 5           (b) the director-general is satisfied that the publication of the  
6           information would, or could reasonably be expected to,  
7           endanger anyone’s life or physical safety.

1 **Part 4** **Provision of ART services**

2 **Division 4.1** **General requirements**

3 **21** **Requirement to be registered**

4 (1) An ART provider commits an offence if it—

5 (a) provides an ART service; and

6 (b) is not a registered ART provider.

7 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
8 both.

9 (2) A person commits an offence if the person—

10 (a) advertises or holds out that the person is a registered ART  
11 provider; and

12 (b) is not a registered ART provider.

13 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
14 both.

15 **22** **Performance and supervision of ART services**

16 An ART provider commits an offence if—

17 (a) it provides ART services; and

18 (b) the ART services are not performed or supervised by a doctor.

19 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
20 both.

- 1     **23**           **Requirement to offer counselling before providing**  
2                   **ART service**
- 3           (1) An ART provider must offer counselling services—
- 4               (a) before providing ART treatment—
- 5                   (i) to a person seeking to undergo the treatment; and
- 6                   (ii) to a domestic partner of the person seeking to undergo the
- 7                         treatment; and
- 8               (b) before obtaining a gamete—to a person proposing to provide the
- 9                   gamete to the ART provider; and
- 10              (c) before using a gamete, or an embryo created from the gamete—
- 11                   to the gamete provider if—
- 12                   (i) the gamete was not originally obtained as a donated
- 13                         gamete; and
- 14                   (ii) the gamete provider proposes to donate the gamete or
- 15                         embryo for use by someone other than the gamete provider
- 16                         or the gamete provider’s domestic partner.
- 17           (2) The counselling services must be available in the ACT, either in
- 18                 person or remotely.
- 19           (3) A regulation may prescribe a qualification a person must hold to
- 20                 provide counselling services.
- 21           (4) An ART provider commits an offence if it fails to offer counselling
- 22                 services in accordance with this section.
- 23                 Maximum penalty: 15 penalty units.
- 24           (5) Nothing in this section—
- 25                 (a) prevents a person providing counselling services from charging
- 26                         a reasonable fee for the services; or
- 27                 (b) requires a person to use counselling services.

1 **24 Requirement to give certain information before providing**  
2 **ART service**

- 3 (1) An ART provider must—
- 4 (a) tell a person mentioned in an item in table 24, column 2, about  
5 the matters mentioned in the item, column 3, before providing  
6 an ART service mentioned in the item, column 4; and
- 7 (b) confirm that the person understands the matters.

8 **Table 24**

<b>column 1 item</b>	<b>column 2 person</b>	<b>column 3 matters</b>	<b>column 4 ART service</b>
1	person seeking to undergo ART treatment not using donated gametes	basic matters	ART treatment to the person
2	person seeking to undergo ART treatment using donated gametes	extended matters	ART treatment to the person
3	person proposing to provide a gamete (other than as a donated gamete)	basic matters	obtaining the gamete from the person
4	person proposing to provide a donated gamete	extended matters	obtaining the gamete from the person
5	a gamete provider from whom the gamete was not originally obtained as a donated gamete	extended matters	using the gamete, or an embryo created from the gamete, in providing ART treatment to a person other than the gamete provider or the gamete provider's domestic partner

- 1           (2) An ART provider commits an offence if—
- 2               (a) it fails to comply with a requirement under subsection (1) to tell
- 3               a person about a matter or confirm that a person understands a
- 4               matter; and
- 5               (b) the matter is not prescribed by regulation.
- 6               Maximum penalty: 200 penalty units.
- 7           (3) An ART provider commits an offence if—
- 8               (a) it fails to comply with a requirement under subsection (1) to tell
- 9               a person about a matter or confirm that a person understands a
- 10              matter; and
- 11              (b) the matter is prescribed by regulation under the definition of
- 12              ***basic matters***, paragraph (c) or ***extended matters***, paragraph (h).
- 13              Maximum penalty: 30 penalty units.
- 14           (4) In this section:
- 15              ***basic matters*** means—
- 16               (a) the availability of counselling services under section 23; and
- 17               (b) the effect of a gamete provider’s consent under section 29,
- 18               including how and when consent may be modified or withdrawn
- 19               under section 30; and
- 20               (c) any other matter prescribed by regulation.
- 21              ***extended matters*** means—
- 22               (a) basic matters; and
- 23               (b) the ART provider’s obligations in relation to collecting
- 24               information about the person and their donor conceived
- 25               offspring; and



- 1 (c) the application of the [Criminal Code](#), part 3.4 (False or  
2 misleading statements, information and documents) to the  
3 person, including in relation to information given to the  
4 ART provider by the person; and
- 5 (d) the existence of the donor register and the information to be kept  
6 in the register about the person and their donor conceived  
7 offspring; and
- 8 (e) the person's right to obtain information in the donor register  
9 about themselves; and
- 10 (f) the person's right, and the right of their donor conceived  
11 offspring, to obtain information in the donor register about other  
12 people; and
- 13 (g) the right of other people to obtain information in the donor  
14 register about the person and their donor conceived offspring;  
15 and
- 16 (h) any other matter prescribed by regulation.

17 **25 Disclosure of personal health information by**  
18 **ART provider**

- 19 (1) An ART provider may disclose personal health information in  
20 accordance with this section if a doctor certifies that the disclosure is  
21 necessary to—
- 22 (a) prevent or reduce a serious and imminent risk to anyone's life  
23 or physical, mental or emotional health; or
- 24 (b) warn the person to whom the information is disclosed about the  
25 existence of a medical condition that may be harmful to the  
26 person or the person's children (including future children).

- 1           (2) The ART provider may disclose personal health information about a  
2           donor to the following people:
- 3           (a) a person born as a result of ART treatment using the donor's  
4           donated gamete if—
- 5           (i) the person is at least 16 years old; or
- 6           (ii) the ART provider is satisfied the person is sufficiently  
7           mature to access the information;
- 8           (b) a parent of a child or young person born as a result of  
9           ART treatment using the donor's donated gamete;
- 10          (c) a person who is pregnant as a result of ART treatment using the  
11          donor's donated gamete.
- 12          (3) The ART provider may disclose personal health information about a  
13          donor conceived person to their donor or donor sibling.
- 14          (4) The disclosure—
- 15          (a) must be made by a doctor on the ART provider's behalf; and
- 16          (b) may also be made to a doctor treating the person to whom it is  
17          made.
- 18          (5) Nothing in this section requires an ART provider to disclose  
19          information to any person.
- 20          (6) In this section:
- 21                *personal health information*—see the *Health Records (Privacy and*  
22                *Access) Act 1997*, dictionary.

1   **26**           **Provision of ART treatment to child or young person**

- 2           (1) An ART provider commits an offence if it—
- 3               (a) provides ART treatment to a child or young person; or
- 4               (b) obtains a gamete from a child or young person for use in
- 5                     ART treatment or for research in relation to ART treatment.

6           Maximum penalty: 200 penalty units, imprisonment for 2 years or

7           both.

- 8           (2) Subsection (1) does not apply to an ART provider that obtains a
- 9           gamete from a child or young person if—

10               (a) a doctor has certified there is a reasonable risk of the child or

11                     young person becoming infertile before becoming an adult; and

12               (b) the ART provider obtains the gamete for the purpose of storing

13                     it for the child or young person’s future benefit.

14           *Note*       The defendant has an evidential burden in relation to the matters

15                     mentioned in s (2) (see [Criminal Code](#), s 58).

- 16           (3) An ART provider that has obtained a gamete from a child or young
- 17           person in accordance with subsection (2) must—

18               (a) despite anything else in this Act, store the gamete until the

19                     person becomes an adult and provides instructions in relation to

20                     the gamete; and

21               (b) when the person becomes an adult, take reasonable steps to

22                     obtain the person’s consent to storage of the gamete unless the

23                     person gives consent sooner.

24   **27**           **Infection control standards**

- 25           (1) A regulation may prescribe requirements for controlling infection in
- 26           the provision of ART services (*infection control standards*).

- 27           (2) An ART provider must comply with infection control standards.

1            **Division 4.2                      Consent of gamete providers**

2            **28                      Requirement to obtain consent of gamete provider**

3                      A gamete may be used in the provision of ART treatment only in  
4                      accordance with the consent of the gamete provider or a court order  
5                      under section 37 (Authorisation of posthumous use).

6            **29                      Form and content of consent**

7                      (1) A gamete provider’s consent to the use of their gametes must be in  
8                      writing and state—

9                              (a) the number of families in relation to which the gametes may be  
10                              used in the provision of ART treatment; and

11                              (b) the kinds of ART treatment for which the gametes may be used;  
12                              and

13                              (c) the period for which the gametes may be stored.

14                      (2) A gamete provider must give their consent to the ART provider  
15                      obtaining or proposing to obtain their gamete.

16                      (3) A gamete provider’s consent must not limit use of a gamete in the  
17                      provision of ART treatment to a person because of any protected  
18                      attribute of the person.

19                      **Example**

20                      A gamete provider must not state that their gamete may be used only in the  
21                      provision of ART treatment to a married person as relationship status is a protected  
22                      attribute.

23                      (4) A regulation may prescribe other requirements in relation to consent  
24                      of gamete providers.

25                      (5) In this section:

26                              *family*—see section 40 (3).

27                              *protected attribute*—see the *Discrimination Act 1991*, section 7.

1     **30           Modification or withdrawal of consent**

- 2           (1) A gamete provider's consent may be modified or withdrawn at any  
3           time until—
- 4                 (a) for a donated gamete—the gamete is placed in a person's body  
5                 or an embryo is created from the gamete; or
- 6                 (b) for a gamete used to create a donated embryo—the embryo is  
7                 implanted in a person's body; or
- 8                 (c) in any other case—the gamete, or an embryo created from the  
9                 gamete, is placed or implanted in a person's body.
- 10          (2) A gamete provider may modify or withdraw consent by written notice  
11          given to an ART provider that is, or has been, in possession of the  
12          gamete or embryo to which the consent relates.
- 13          (3) If an ART provider receives notice of modification or withdrawal of  
14          consent in relation to a gamete or embryo it has supplied to another  
15          ART provider, it must give the other ART provider written notice of  
16          the modification or withdrawal as soon as practicable.
- 17          (4) Modification or withdrawal of consent takes effect in relation to an  
18          ART provider as soon as the ART provider is given written notice of  
19          the modification or withdrawal in accordance with this section.
- 20          (5) A regulation may prescribe other requirements in relation to  
21          modification or withdrawal of consent.
- 22          (6) In this section:
- 23                 *donated gamete* does not include a gamete that becomes a donated  
24                 gamete only after being used to create an embryo.

25     **31           Requirement to verify identity of gamete provider**

- 26           (1) A regulation may prescribe the steps an ART provider must take to  
27           verify the identity of a person purportedly giving, modifying or  
28           withdrawing consent as a gamete provider.

- 1           (2) An ART provider commits an offence if it—
- 2                 (a) receives a document under section 29 or section 30 purporting
- 3                 to give, modify or withdraw a person’s consent as a gamete
- 4                 provider; and
- 5                 (b) fails to take the steps prescribed by regulation to verify the
- 6                 person’s identity.
- 7                 Maximum penalty: 30 penalty units.

8       **32           Requirement to confirm consent in certain cases**

- 9           (1) An ART provider commits an offence if—
- 10                 (a) it carries out any of the following activities in relation to a
- 11                 gamete or embryo (other than a donated gamete or donated
- 12                 embryo):
- 13                         (i) using the gamete to create an embryo outside a person’s
- 14                         body;
- 15                         (ii) providing ART treatment to a person using the gamete or
- 16                         embryo;
- 17                         (iii) supplying the gamete or embryo to another person
- 18                         (including an ART provider);
- 19                         (iv) exporting the gamete or embryo, or causing the gamete or
- 20                         embryo to be exported, from the ACT; and
- 21                 (b) the activity is carried out more than 12 months after the latest of
- 22                 the following:
- 23                         (i) the gamete provider giving consent to the activity;
- 24                         (ii) the ART provider confirming the gamete provider’s
- 25                         consent to the activity.
- 26                 Maximum penalty: 200 penalty units.

1           (2) Subsection (1) does not apply to an ART provider if it knows or  
2           believes on reasonable grounds that the gamete provider is deceased.

3           *Note 1*   The defendant has an evidential burden in relation to the matters  
4           mentioned in s (2) (see [Criminal Code](#), s 58).

5           *Note 2*   It is an offence to use a gamete or embryo of a deceased gamete provider  
6           without authorisation (see s 36).

## 7           **Division 4.3                    Use of gametes and embryos**

### 8           **33                    Use of gamete to create embryo outside body**

9           (1) An ART provider commits an offence if—

10           (a) it uses a gamete to create an embryo outside a person’s body;  
11           and

12           (b) the gamete is used without the gamete provider’s consent, or in  
13           a way that is inconsistent with the gamete provider’s consent.

14           Maximum penalty: 200 penalty units.

15           (2) Subsection (1) does not apply if the ART provider uses the gamete in  
16           accordance with a court order under section 37 (Authorisation of  
17           posthumous use).

18           *Note 1*   The defendant has an evidential burden in relation to the matters  
19           mentioned in s (2) (see [Criminal Code](#), s 58).

20           *Note 2*   It is an offence to intentionally develop a human embryo outside the body  
21           of a person for a period of more than 14 days, excluding any period when  
22           development is suspended (see [Human Cloning and Embryo Research  
23           Act 2004](#), s 12).

1 **34 Use of gametes or embryos in ART treatment**

- 2 (1) An ART provider commits an offence if—
- 3 (a) it provides ART treatment to a person using a gamete; and
- 4 (b) the gamete is used without the gamete provider’s consent, or in
- 5 a way that is inconsistent with the gamete provider’s consent.

6 Maximum penalty: 200 penalty units.

- 7 (2) Subsection (1) does not apply if the ART provider uses the gamete in
- 8 accordance with a court order under section 37 (Authorisation of
- 9 posthumous use).

10 *Note* The defendant has an evidential burden in relation to the matters

11 mentioned in s (2) (see [Criminal Code](#), s 58).

12 **35 Use of gametes or embryos for research**

13 An ART provider commits an offence if—

- 14 (a) it uses a gamete or embryo for research; and
- 15 (b) the gamete or embryo is used without the gamete provider’s
- 16 consent, or in a way that is inconsistent with the gamete
- 17 provider’s consent.

18 Maximum penalty: 200 penalty units.

19 *Note* See also the [Research Involving Human Embryos Act 2002](#) (Cwth) which

20 regulates research in relation to embryos.

21 **36 Posthumous use of gametes or embryos**

- 22 (1) An ART provider commits an offence if it—
- 23 (a) provides ART treatment to a person using a gamete; and
- 24 (b) knows or reasonably ought to have known that the gamete
- 25 provider is deceased.

26 Maximum penalty: 100 penalty units.



- 1           (2) Subsection (1) does not apply if—
- 2               (a) the gamete provider had consented to the use of the gamete in
- 3               the circumstances and the person undergoing the treatment has,
- 4               having been notified of the gamete provider’s death and date of
- 5               death (if known), consented to the treatment in writing; or
- 6               (b) the ART provider provides the treatment to the gamete
- 7               provider’s domestic partner in accordance with a court order
- 8               under section 37.
- 9           *Note*     The defendant has an evidential burden in relation to the matters
- 10               mentioned in s (2) (see [Criminal Code](#), s 58).

11   **37           Authorisation of posthumous use**

- 12           (1) The domestic partner of a deceased gamete provider may apply to the
- 13           Supreme Court for an order to authorise the following in relation to
- 14           the gamete provider’s gametes:
- 15               (a) use of the gametes in the provision of ART treatment to the
- 16               partner;
- 17               (b) storage of the gametes for the authorised use.
- 18           (2) In deciding whether to authorise the use or storage of a deceased
- 19           gamete provider’s gametes, the court must consider the following:
- 20               (a) whether the domestic partner has capacity to consent to the
- 21               provision of the treatment;
- 22               (b) whether the domestic partner has undergone appropriate
- 23               counselling;
- 24               (c) the best interests of any children to be born as a result of the
- 25               treatment, including—
- 26                   (i) whether the domestic partner has capacity to provide for
- 27                   the child’s emotional, intellectual and other needs; and
- 28                   (ii) whether the child is likely to have safe and stable living
- 29                   arrangements;

- 1 (d) whether the gamete provider expressly objected to posthumous  
2 use of their gametes;
- 3 (e) whether the gamete provider is likely to have supported  
4 posthumous use of their gametes in the provision of  
5 ART treatment to their domestic partner;
- 6 (f) any other matter the court considers appropriate.

7 **38 Use of gametes obtained more than 5 years ago**

- 8 (1) An ART provider commits an offence if—
- 9 (a) it provides ART treatment using a gamete; and
- 10 (b) the gamete was obtained from a gamete provider more than  
11 5 years before the provision of the ART treatment; and
- 12 (c) it fails to take reasonable steps to find out whether the gamete  
13 provider is alive.

14 Maximum penalty: 100 penalty units.

- 15 (2) Subsection (1) does not apply to an ART provider if—
- 16 (a) it, or another ART provider that supplied the gamete or embryo,  
17 has been contacted by the gamete provider within 5 years before  
18 the provision of the treatment; or
- 19 (b) it knows or believes on reasonable grounds that the gamete  
20 provider is deceased.

21 *Note* The defendant has an evidential burden in relation to the matters  
22 mentioned in s (2) (see [Criminal Code](#), s 58).

- 23 (3) The registrar-general must not refuse an application made under the  
24 *Births, Deaths and Marriages Registration Act 1997*, section 43  
25 (Search of register) if the application is—
- 26 (a) made for the purposes of this section in a suitable form; and
- 27 (b) accompanied by any fee determined under that Act.

- 1 (4) In this section:  
2 *reasonable steps* include—  
3 (a) obtaining a certificate under the *Births, Deaths and Marriages*  
4 *Registration Act 1997*, section 45 (Issue of certificates) about  
5 whether the gamete provider's death has been recorded in the  
6 register; and  
7 (b) completing any other inquiries prescribed by regulation for  
8 finding out whether the gamete provider is alive.  
9 *register* means the register maintained under the *Births, Deaths and*  
10 *Marriages Registration Act 1997*, section 39.

11 **39 Donated gametes or embryos—time limits on use**

- 12 (1) An ART provider commits an offence if—  
13 (a) it provides ART treatment—  
14 (i) using a donated gamete that was obtained more than  
15 15 years before the treatment is provided; or  
16 (ii) using an embryo created from a donated gamete, or a  
17 donated embryo, that was created more than 15 years  
18 before the treatment is provided; and  
19 (b) the treatment is provided without the written authorisation of the  
20 director-general.  
21 Maximum penalty: 100 penalty units.  
22 (2) The director-general may authorise ART treatment for subsection (1)  
23 (b) only if satisfied there are reasonable grounds for doing so.  
24 (3) The director-general may make guidelines in relation to the giving of  
25 an authorisation under subsection (2).  
26 (4) A guideline is a notifiable instrument.

- 1 (5) For this section, a *gamete* used in the provision of ART treatment  
2 does not include an embryo created from the gamete.

3 **40 Donated gametes or embryos—limits on number of**  
4 **families**

- 5 (1) An ART provider commits an offence if—  
6 (a) it provides ART treatment using a donated gamete; and  
7 (b) the donor has donated gametes used in ART treatment  
8 previously; and  
9 (c) either of the following apply:  
10 (i) 5 or more families include a child born as a result of  
11 ART treatment provided in the ACT using a donated  
12 gamete or embryo of the donor;  
13 (ii) 10 or more families include a child born as a result of  
14 ART treatment provided in Australia using a donated  
15 gamete or embryo of the donor.

16 Maximum penalty: 200 penalty units.

- 17 (2) It is a defence to a prosecution for an offence against subsection (1)  
18 if the ART provider proves that it exercised due diligence to prevent  
19 the contravention, which must include—  
20 (a) searching its records; and  
21 (b) making reasonable inquiries of the donor; and  
22 (c) if it has reason to believe another ART provider (including an  
23 interstate ART provider) has obtained or been supplied with a  
24 gamete or embryo of the donor—requesting information from  
25 the other ART provider under section 41.

26 *Note* The defendant has a legal burden in relation to the matters mentioned in  
27 s (2) (see [Criminal Code](#), s 59).

- 1           (3) In this section:
- 2           *family* means a parent, their domestic partner (if any) and their
- 3           children.
- 4   **41       Requirement to give information about number of**
- 5           **families**
- 6           (1) If a registered ART provider requests information in relation to a
- 7           donor from another ART provider under section 40 (2) (c), the other
- 8           ART provider must give the registered ART provider—
- 9           (a) the number of families to which 1 or more of the following
- 10          applies:
- 11           (i) the family includes a child born as a result of
- 12           ART treatment provided by the other ART provider using
- 13           a donated gamete or embryo of the donor;
- 14           (ii) the family includes a person who is pregnant as a result of
- 15           ART treatment provided by the other ART provider using
- 16           a donated gamete or embryo of the donor;
- 17           (iii) the family includes a person for whom an embryo has been
- 18           created by the other ART provider using a donated gamete
- 19           of the donor and placed in storage; and
- 20          (b) the number of people who are not parents and to whom 1 or both
- 21          of the following apply:
- 22           (i) the person is pregnant as a result of ART treatment
- 23           provided by the other ART provider using a donated
- 24           gamete or embryo of the donor;
- 25           (ii) an embryo has been created by the other ART provider
- 26           using a donated gamete of the donor and placed in storage
- 27           for the person; and

- 1                      (c) details of any other ART providers that have been supplied with  
2                                      a donated gamete, or an embryo created from a donated gamete,  
3                                      of the donor; and
- 4                      (d) any other information prescribed by regulation.
- 5                      (2) An ART provider commits an offence if it—
- 6                                      (a) receives a request for information from a registered  
7                                      ART provider under section 40 (2) (c); and
- 8                                      (b) fails to give the information required under subsection (1).
- 9                                      Maximum penalty: 30 penalty units.
- 10                      (3) In this section:
- 11                                      *family*—see section 40 (3).

12                      **42                      Use of gametes to create embryo with close family**  
13                                      **member**

- 14                      (1) An ART provider commits an offence if it—
- 15                                      (a) uses a gamete to create an embryo (whether inside or outside the  
16                                      body of a person); and
- 17                                      (b) knows that the gamete provider is a close family member of the  
18                                      other person whose gamete is used to create the embryo.
- 19                                      Maximum penalty: 200 penalty units, imprisonment for 2 years or  
20                                      both.
- 21                      (2) In this section:
- 22                                      *close family member*, of a person, means a parent, child, sibling  
23                                      (including a half-sibling), grandparent or grandchild of the person  
24                                      from birth.

1 **Division 4.4** **Storage and transfer of gametes and**  
2 **embryos**

3 **43 Storage of gametes or embryos**

- 4 (1) An ART provider commits an offence if—  
5 (a) it stores a gamete or embryo; and  
6 (b) the gamete or embryo is stored—  
7 (i) without the gamete provider's consent; or  
8 (ii) in a way that is inconsistent with the gamete provider's  
9 consent.

10 Maximum penalty: 200 penalty units.

- 11 (2) An ART provider commits an offence if—  
12 (a) it stores a gamete or embryo; and  
13 (b) the gamete or embryo is stored for longer than the shortest of the  
14 following periods:  
15 (i) a storage period the ART provider has proposed by written  
16 notice to the gamete provider (whether before or after the  
17 gamete was obtained);  
18 (ii) the storage period stated in the gamete provider's consent  
19 or, for an embryo, the shortest storage period stated in the  
20 gamete providers' consents;  
21 (iii) for a donated gamete—15 years after the day the gamete  
22 was obtained from the donor plus any additional period  
23 authorised by the director-general under section 39 (2);

- 1 (iv) for an embryo created from a donated gamete, or a donated  
2 embryo—15 years after the day the embryo was created  
3 plus any additional period authorised by the  
4 director-general under section 39 (2).

5 Maximum penalty: 30 penalty units.

- 6 (3) Subsection (1) and (2) do not apply to an ART provider if—
- 7 (a) it is required to store the gamete under section 26 (Provision of  
8 ART treatment to child or young person); or
- 9 (b) it has a reasonable excuse for contravening a storage  
10 requirement under subsection (1) or (2); or
- 11 (c) a gamete provider is deceased and the ART provider stores their  
12 gamete or embryo for the purpose of its authorised use  
13 (including use authorised by a court order under section 37) or  
14 to allow a person to apply for a court order under section 37.

15 *Note* The defendant has an evidential burden in relation to the matters  
16 mentioned in s (3) (see [Criminal Code](#), s 58).

17 **44 Supply of gametes or embryos to another person**

- 18 (1) An ART provider commits an offence if—
- 19 (a) it supplies a gamete or an embryo to another person (including  
20 another ART provider); and
- 21 (b) the gamete or embryo is supplied without the gamete provider's  
22 consent, or in a way that is inconsistent with the gamete  
23 provider's consent.

24 Maximum penalty: 200 penalty units.



1 (2) Subsection (1) does not apply if the gamete provider is deceased and  
2 the ART provider supplies the gamete or embryo for the purpose of  
3 its authorised use (including use authorised by a court order under  
4 section 37).

5 *Note* The defendant has an evidential burden in relation to the matters  
6 mentioned in s (2) (see [Criminal Code](#), s 58).

7 **45 Export of gametes or embryos from ACT**

- 8 (1) An ART provider commits an offence if—
- 9 (a) it exports a gamete or embryo, or causes a gamete or embryo to  
10 be exported, from the ACT; and
- 11 (b) the gamete or embryo is exported or caused to be exported  
12 without the gamete provider’s consent, or in a way that is  
13 inconsistent with the gamete provider’s consent.

14 Maximum penalty: 100 penalty units.

15 (2) Subsection (1) does not apply if the gamete provider is deceased and  
16 the ART provider exports the gamete or embryo for the purpose of its  
17 authorised use (including use authorised by a court order under  
18 section 37).

19 *Note* The defendant has an evidential burden in relation to the matters  
20 mentioned in s (2) (see [Criminal Code](#), s 58).

21 **Division 4.5 Record keeping requirements**

22 **46 Requirement to collect information about gamete**  
23 **provider**

- 24 (1) An ART provider must collect the following information before  
25 obtaining a gamete, whether from the gamete provider or anyone else:
- 26 (a) for all gametes—
- 27 (i) the gamete provider’s full name; and
- 28 (ii) the gamete provider’s home address; and

- 1 (iii) the gamete provider's date of birth;
- 2 (b) for donated gametes—
- 3 (i) the donor's place of birth; and
- 4 (ii) the donor's ethnicity and physical characteristics; and
- 5 (iii) the donor's relevant medical history; and
- 6 (iv) the sex and year of birth of each donor conceived offspring
- 7 of the donor; and
- 8 (v) the name of each ART provider that has previously
- 9 obtained a donated gamete from the donor and the date on
- 10 which the gamete was obtained.
- 11 (2) An ART provider must collect the information mentioned in
- 12 subsection (1) in relation to a gamete before using the gamete, or an
- 13 embryo created from the gamete, for any purpose.
- 14 (3) An ART provider commits an offence if it fails to comply with this
- 15 section.
- 16 Maximum penalty: 50 penalty units.
- 17 (4) An offence against this section is a strict liability offence.

18 **47 Requirement to collect information about person**

19 **undergoing ART treatment**

- 20 (1) An ART provider must collect a person's full name, home address
- 21 and date of birth before using a gamete in the provision of
- 22 ART treatment to the person.
- 23 (2) An ART provider commits an offence if it fails to comply with
- 24 subsection (1).
- 25 Maximum penalty: 50 penalty units.

- 1 (3) If a donated gamete is used in the provision of ART treatment to a  
2 person, an ART provider must take reasonable steps to find out—
- 3 (a) within 1 to 4 months after providing the treatment—whether the  
4 person is pregnant as a result of the treatment; and
- 5 (b) within 10 to 15 months after providing the treatment—whether  
6 a child was born as a result of the treatment, and if so, the child’s  
7 full name, sex and date of birth.
- 8 (4) An ART provider commits an offence if it fails to comply with  
9 subsection (3).
- 10 Maximum penalty: 50 penalty units.
- 11 (5) Subsection (4) does not apply to an ART provider that fails to comply  
12 with subsection (3) (b) if—
- 13 (a) within 10 months after providing the treatment, the person who  
14 underwent the treatment tells the ART provider that a child was  
15 born as a result of the treatment, and the child’s full name, sex  
16 and date of birth; or
- 17 (b) it knows that no child was born as a result of the treatment.
- 18 *Note* The defendant has an evidential burden in relation to the matters  
19 mentioned in s (5) (see [Criminal Code](#), s 58).
- 20 (6) An offence against subsection (2) is a strict liability offence.

21 **48 Requirement to keep records**

- 22 (1) An ART provider must keep a record of the following:
- 23 (a) in relation to each gamete or embryo in its possession—
- 24 (i) information collected under section 46 (1); and
- 25 (ii) information about each other ART provider that has had  
26 possession of the gamete or embryo (including the gametes  
27 used to create the embryo); and
- 28 (iii) each gamete provider’s consent; and

- 1 (iv) any use, supply or export of the gamete or embryo; and  
2 (v) the period during which the gamete or embryo has been in  
3 storage;
- 4 (b) in relation to each person to whom it provides ART treatment—  
5 (i) information collected under section 47 (1); and  
6 (ii) if a donated gamete was used in the provision of the  
7 treatment—information collected under section 47 (3) (a);
- 8 (c) in relation to each child it knows was born as a result of  
9 ART treatment it provided—  
10 (i) the child’s full name, sex and date of birth; and  
11 (ii) the full name of the person who gave birth to the child; and  
12 (iii) if a donated gamete was used in the provision of the  
13 treatment—the donor’s full name and date and place of  
14 birth;
- 15 (d) if it does not know whether a child was born, or knows a child  
16 was not born, as a result of ART treatment it provided at least  
17 15 months earlier—information to that effect;
- 18 (e) any other information prescribed by regulation.
- 19 (2) An ART provider commits an offence if it fails to comply with  
20 subsection (1).  
21 Maximum penalty: 30 penalty units.
- 22 (3) An ART provider must keep a record mentioned in subsection (1) for  
23 50 years.  
24 Maximum penalty: 100 penalty units.

1   **49           Information sharing between ART providers**

2           An ART provider that supplies a gamete or embryo to another  
3           ART provider—

4           (a) must give the other ART provider a copy of the gamete  
5           provider’s consent in relation to the gamete or embryo; and

6           (b) may give the other ART provider a copy of any other  
7           information required to be collected under this Act in relation to  
8           the gamete or embryo.

1 **Part 5** **Donor register**

2 **Division 5.1** **Preliminary**

3 **50** **Definitions—pt 5**

4 In this part:

5 *commencement day* means the day this section commences.

6 *donor*, in relation to a donor conceived person, includes the gamete  
7 provider of a donated gamete used in self-insemination resulting in  
8 the person's birth.

9 *donor code* means a reference number used by an ART provider to  
10 identify a donor.

11 *donor conceived*, in relation to a person, includes a person born as a  
12 result of self-insemination using a donated gamete.

13 *donor sibling*, in relation to a donor conceived person, includes the  
14 person's sibling born as a result of self-insemination using a gamete  
15 donated by the person's donor.

16 *informal donor arrangement* means—

17 (a) ART treatment using a donated gamete if the treatment is not  
18 provided for fee or reward, or in carrying on a business; or

19 (b) self-insemination using a donated gamete.

20 *mature donor conceived person*—see section 51.

21 **51** **Meaning of *mature donor conceived person*—pt 5**

22 (1) In this part:

23 *mature donor conceived person* means a donor conceived person  
24 who—

25 (a) is at least 16 years old; or

- 1 (b) has received appropriate counselling services from a suitably  
2 qualified and experienced counsellor who is satisfied the person  
3 is able to—
- 4 (i) understand and comply with the donor’s contact  
5 preferences under section 58; and
- 6 (ii) understand that the donor has no parental rights or  
7 responsibilities (including financial rights and  
8 responsibilities).
- 9 (2) A regulation may prescribe a qualification a person must hold to be  
10 suitably qualified and experienced to provide the counselling  
11 services.

12 **52 Donor register**

- 13 (1) The director-general must keep a donor register.
- 14 (2) The register may be kept in any form the director-general decides.
- 15 (3) The director-general may correct any mistake, error or omission in  
16 the register.

17 **Division 5.2 Information in donor register**

18 **53 Mandatory information**

- 19 (1) This section applies to an ART provider that provides ART treatment  
20 using a donated gamete.
- 21 (2) The ART provider must, within 2 months after becoming aware that  
22 a child has been born alive as a result of the treatment, give the  
23 director-general—
- 24 (a) the following information about the donor:
- 25 (i) their full name;
- 26 (ii) their home address;

- 1 (iii) their date and place of birth;
- 2 (iv) their ethnicity and physical characteristics;
- 3 (v) their relevant medical history;
- 4 (vi) the sex and year of birth of each of their donor conceived
- 5 offspring;
- 6 (vii) the name of each ART provider that has previously
- 7 obtained a donated gamete from the donor and the date on
- 8 which the gamete was obtained;
- 9 (viii) their consent; and
- 10 (b) the full name, sex and date of birth of the child; and
- 11 (c) the full name of the person who gave birth to the child.
- 12 (3) If the ART provider does not know whether a child was born alive as
- 13 a result of the treatment, it must, within 15 to 16 months after
- 14 providing the treatment—
- 15 (a) tell the director-general it does not know whether a child was
- 16 born alive as a result of the treatment; and
- 17 (b) give the director-general—
- 18 (i) information about the donor mentioned in
- 19 subsection (2) (a); and
- 20 (ii) the full name of the person who underwent the treatment.
- 21 (4) An ART provider commits an offence if it fails to comply with this
- 22 section.
- 23 Maximum penalty: 100 penalty units.
- 24 (5) The director-general must enter in the donor register any information
- 25 given to the director-general under this section.



1 **54** **Voluntary information about donors**

- 2 (1) This section applies to—
- 3 (a) a donor who donated a gamete before the commencement day;
- 4 or
- 5 (b) a donor who donated a gamete for use in an informal donor
- 6 arrangement; or
- 7 (c) an ART provider acting on behalf of a donor mentioned in
- 8 paragraph (a) or (b) with the donor’s consent.
- 9 (2) The donor or ART provider may, by written notice, give the
- 10 director-general any of the following information about the donor for
- 11 inclusion in the donor register:
- 12 (a) their full name;
- 13 (b) their home address;
- 14 (c) their date and place of birth;
- 15 (d) their donor code;
- 16 (e) their relevant medical history;
- 17 (f) the sex and year of birth of each of their donor conceived
- 18 offspring;
- 19 (g) the name of each ART provider that has obtained a donated
- 20 gamete from the donor and the date on which the gamete was
- 21 obtained.
- 22 (3) The notice may state restrictions on the disclosure of the information.
- 23 (4) The director-general may require that the notice be accompanied by
- 24 evidence—
- 25 (a) that the information contained in the notice is accurate; and
- 26 (b) if the information is given on a donor’s behalf—that the donor
- 27 has consented to the information being given.

- 1 (5) The director-general may enter in the donor register any information  
2 given to the director-general under this section.

3 **55 Voluntary information about donor conceived people**

- 4 (1) A mature donor conceived person may, by written notice, give the  
5 director-general any of the following information for inclusion in the  
6 donor register:

- 7 (a) their full name;  
8 (b) their sex;  
9 (c) their home address;  
10 (d) their date and place of birth;  
11 (e) their donor's donor code;  
12 (f) the full name of the person who gave birth to them.

- 13 (2) A parent of a donor conceived child or young person may, by written  
14 notice, give the director-general any of the following information  
15 about the child or young person for inclusion in the donor register:

- 16 (a) their full name;  
17 (b) their sex;  
18 (c) their date of birth;  
19 (d) their donor's donor code;  
20 (e) the full name of the person who gave birth to the child or young  
21 person.

- 22 (3) The notice may state restrictions on the disclosure of the information.

- 23 (4) The director-general may—

- 24 (a) require that the notice be accompanied by evidence that the  
25 information contained in the notice is accurate; and

- 1 (b) enter in the donor register any information given to the  
2 director-general under this section.

3 **56 Voluntary information about informal donor**  
4 **arrangements**

- 5 (1) A parent of a donor conceived person born as a result of an informal  
6 donor arrangement may, by written notice, give the director-general  
7 any of the following information for inclusion in the donor register:
- 8 (a) the parent's full name;
- 9 (b) the donor conceived person's full name, sex and date of birth;
- 10 (c) if the donor consents in writing—the donor's full name and date  
11 of birth;
- 12 (d) whether the donor conceived person was born as a result of  
13 ART treatment or self-insemination.
- 14 (2) The notice may state restrictions on the disclosure of the information.
- 15 (3) The director-general may require that the notice be accompanied by  
16 evidence—
- 17 (a) that the information contained in the notice is accurate; and
- 18 (b) if the information is given on a donor's behalf—that the donor  
19 has consented to the information being given.
- 20 (4) The director-general may enter in the donor register any information  
21 given to the director-general under this section.

22 **57 Voluntary information about personal characteristics**

- 23 (1) A donor or mature donor conceived person may, by written notice,  
24 give the director-general information about their personal  
25 characteristics for inclusion in the donor register.
- 26 (2) The notice may state restrictions on the disclosure of the information.

- 1           (3) The director-general may enter in the donor register any information  
2           given to the director-general under this section.

3       **58           Voluntary information about contact preferences**

- 4           (1) A donor or mature donor conceived person may, by written notice,  
5           give the director-general the following information for inclusion in  
6           the donor register:
- 7               (a) their contact details and preferred way to be contacted about  
8               matters in relation to the donor register; or
- 9               (b) that they do not wish to be contacted about matters in relation to  
10              the donor register.
- 11          (2) The director-general must enter in the donor register any information  
12          given to the director-general under this section.

13       **59           Information entered on director-general's own initiative**

- 14          (1) The director-general may, on their own initiative, enter the following  
15          information in the donor register:
- 16               (a) mandatory information given by an ART provider other than in  
17               accordance with section 53;
- 18               (b) mandatory information given to the director-general under  
19               section 61 (Direction to give information about donor conceived  
20               person);
- 21               (c) mandatory information given to the director-general under  
22               section 62 (Information sharing between director-general and  
23               registrar-general).

- 1 (2) Also, the director-general may, on their own initiative, enter  
2 information in the donor register if—
- 3 (a) the director-general is satisfied on reasonable grounds the  
4 information is about—
- 5 (i) a donor conceived person born as a result of  
6 ART treatment provided on or after the commencement  
7 day; or
- 8 (ii) a donor of a person mentioned in paragraph (i); and
- 9 (b) the information is mandatory information given—
- 10 (i) other than in accordance with section 53; and
- 11 (ii) by the subject of the information or, if the subject is a donor  
12 conceived child or young person, by their parent.
- 13 (3) The director-general must include the source of the information when  
14 entering the information in the donor register.
- 15 *Note* This section does not allow the director-general to include in the donor  
16 register information provided unlawfully.

17 **Division 5.3 Measures to ensure accuracy of**  
18 **information**

19 **60 Requirement to ensure accuracy**

- 20 (1) The director-general must ensure, as far as is practicable, that  
21 information in the donor register is accurate and not misleading.
- 22 (2) For subsection (1), the director-general may do any of the following:
- 23 (a) refuse to enter information;
- 24 (b) revise or remove information;
- 25 (c) retain historical information;

26 **Example**  
27 a person's former name

- 1 (d) add any notes the director-general considers appropriate;
- 2 (e) ask an ART provider to give information to verify information
- 3 given voluntarily by a person under division 5.2.
- 4 (3) A person may ask the director-general to revise incorrect or outdated
- 5 information about the person in the donor register.
- 6 (4) The director-general must remove information given voluntarily by a
- 7 person under division 5.2 if—
- 8 (a) the person asks the director-general to remove the information;
- 9 and
- 10 (b) the director-general is satisfied the information is not required
- 11 to be on the donor register.

12 **61 Direction to give information about donor conceived**

13 **person**

- 14 (1) This section applies if the director-general believes on reasonable
- 15 grounds that a health service provider has mandatory information—
- 16 (a) in relation to a donor conceived person born as a result of
- 17 ART treatment provided on or after the commencement day;
- 18 and
- 19 (b) that has not been provided in accordance with section 53.
- 20 (2) The director-general may give the health service provider a written
- 21 direction requiring the provider to answer stated questions, or give
- 22 stated information to—
- 23 (a) determine whether a donor conceived person was born alive as
- 24 a result of ART treatment provided on or after the
- 25 commencement day; or
- 26 (b) determine whether any mandatory information in relation to the
- 27 donor conceived person has been correctly entered in the donor
- 28 register; or

- 1 (c) obtain any mandatory information in relation to the donor  
2 conceived person.
- 3 (3) The direction may include requirements about how the answers or  
4 information must be given.
- 5 (4) The health service provider commits an offence if the provider  
6 contravenes the direction.
- 7 Maximum penalty: 30 penalty units.
- 8 (5) The health service provider is not excused from complying with a  
9 direction on the ground that doing so may—
- 10 (a) tend to incriminate the provider; or  
11 (b) expose the provider to a penalty.
- 12 (6) However, any information or document obtained, directly or  
13 indirectly, because of the health service provider's compliance with  
14 the direction is not admissible in evidence against the provider in a  
15 civil or criminal proceeding, other than a proceeding for an offence  
16 arising out of the false or misleading nature of the information or  
17 document.
- 18 (7) In this section:  
19 *health service provider*—see the *Health Act 1993*, section 7.

20 **62 Information sharing between director-general and**  
21 **registrar-general**

- 22 (1) The director-general and the registrar-general may share information  
23 in relation to the following to assist the director-general to meet the  
24 requirements of section 60:
- 25 (a) a donor conceived person;  
26 (b) a donor;  
27 (c) a person who gave birth to a donor conceived person;

- 1 (d) a domestic partner of a person mentioned in paragraph (c).  
2 (2) Subsection (1) has effect despite anything elsewhere in this Act or  
3 another territory law.

4 **Division 5.4 Disclosure of information in donor**  
5 **register**

6 **63 Disclosure of information in donor register generally**

- 7 (1) The director-general may disclose information kept in the donor  
8 register only in accordance with this part.  
9 (2) For disclosure of information under this part, the director-general is  
10 entitled to assume that information given to the director-general and  
11 kept in the donor register is accurate.  
12 (3) Nothing in this section limits section 60 (Requirement to ensure  
13 accuracy).

14 **64 Disclosure to subject of information**

- 15 (1) The director-general must, on application by any of the following  
16 people, give the person a copy of any information about the person  
17 kept in the donor register:  
18 (a) a donor;  
19 (b) a mature donor conceived person;  
20 (c) a person who has undergone ART treatment or self-insemination  
21 using a donated gamete.  
22 (2) The director-general must, on application by a parent of a donor  
23 conceived child or young person, give the parent a copy of any  
24 information about the child or young person kept in the donor register.  
25 (3) This section does not authorise disclosure of information about—  
26 (a) anyone other than the applicant, or for an application under  
27 subsection (2), anyone other than the child or young person; or



- 1 (b) the applicant's relationship with other people, or for an  
2 application under subsection (2), the child or young person's  
3 relationship with other people, unless the information was  
4 originally provided by the applicant.

5 **65 Disclosure to donor**

6 The director-general must, on application by a donor, give the donor  
7 a copy of the following information kept in the donor register in  
8 relation to a person born as a result of ART treatment or  
9 self-insemination using the donor's donated gamete:

- 10 (a) the person's sex and year of birth;  
11 (b) information the person gave voluntarily under division 5.2,  
12 subject to any restrictions on disclosure stated by the person.

13 **66 Disclosure to donor conceived person**

14 The director-general must, on application by a mature donor  
15 conceived person, give the person a copy of the following information  
16 kept in the donor register:

- 17 (a) if the person was born as a result of ART treatment provided on  
18 or after the commencement day—mandatory information about  
19 the person's donor;  
20 (b) information the person's donor gave voluntarily under  
21 division 5.2, subject to any restrictions on disclosure stated by  
22 the donor;  
23 (c) information the person's donor sibling gave voluntarily under  
24 division 5.2, subject to any restrictions on disclosure stated by  
25 the sibling;  
26 (d) the sex and year of birth of the person's donor siblings.

- 1     **67           Disclosure to parent of donor conceived child or young**  
2     **person**
- 3           (1) The director-general must, on application by a parent of a donor  
4           conceived child or young person, give the parent a copy of the  
5           information the child or young person would be entitled to be given  
6           as a mature donor conceived person under section 66.
- 7           (2) However, the director-general must not give the parent mandatory  
8           information about the child or young person’s donor if—
- 9                   (a) the child or young person was born as a result of ART treatment  
10                  or self-insemination using a gamete donated before the  
11                  commencement day; and
- 12                  (b) the donor has not otherwise given the mandatory information  
13                  voluntarily under division 5.2.
- 14           (3) The director-general must, on application by a suitable person, give  
15           the person a copy of the information that may be given to a parent  
16           under this section if—
- 17                   (a) the parent is unwilling or unable to seek the information on the  
18                  child or young person’s behalf; and
- 19                   (b) the information cannot reasonably be obtained by the person in  
20                  any other way.
- 21           (4) In this section:
- 22                   *suitable person*, in relation to a child or young person, means a person  
23                  the director-general considers is a representative of the child or young  
24                  person with a genuine interest in their welfare.
- 25     **68           Disclosure of information on director-general’s initiative**
- 26           (1) The director-general may, on their own initiative, disclose  
27           information kept in the donor register that has been entered or revised  
28           under section 59 or section 60 to a person who would otherwise be  
29           entitled to be given the information under this part.

- 1           (2) The director-general may, on their own initiative, disclose personal  
2           health information kept in the donor register—
- 3           (a) only if the director-general believes on reasonable grounds that  
4           the disclosure is necessary to—
- 5               (i) prevent or reduce a serious and imminent risk to anyone’s  
6               life or physical, mental or emotional health; or
- 7               (ii) warn the person to whom the information is disclosed  
8               about the existence of a medical condition that may be  
9               harmful to the person or the person’s children (including  
10              future children); and
- 11          (b) to the following people:
- 12               (i) a mature donor conceived person if the information is  
13               about their donor;
- 14               (ii) a parent of a donor conceived child or young person if the  
15               information is about the child or young person’s donor;
- 16               (iii) a person who is pregnant as a result of ART treatment or  
17               self-insemination using a donor’s donated gamete if the  
18               information is about the donor;
- 19               (iv) a donor if the information is about a person born as a result  
20               of ART treatment or self-insemination using the donor’s  
21               donated gamete;
- 22               (v) a donor conceived person if the information is about their  
23               donor sibling.
- 24          (3) The director-general may, on their own initiative, disclose  
25          information kept in the donor register—
- 26          (a) if the director-general believes on reasonable grounds that—
- 27               (i) a donor or donor conceived person is involved in a  
28               consanguineous relationship; or

- 1 (ii) another serious risk to the safety or welfare of a donor or  
2 donor conceived person exists; and
- 3 (b) only to the extent that the disclosure is necessary to allow the  
4 affected person, or their parent, to understand the risk; and
- 5 (c) to the following people:
- 6 (i) a donor, or donor conceived person, to whom  
7 subsection (3) applies (an *affected person*);
- 8 (ii) a parent of an affected child or young person.
- 9 (4) Nothing in this section requires the director-general to disclose  
10 information to any person.
- 11 (5) In this section:
- 12 *personal health information*—see the *Health Records (Privacy and*  
13 *Access) Act 1997*, dictionary.

14 **69 Contacting donor conceived person for consent to**  
15 **disclosure**

- 16 (1) The director-general may contact a mature donor conceived person to  
17 ask whether the person wishes to consent to the disclosure of  
18 information under this division.
- 19 (2) The director-general may contact a person under subsection (1)—
- 20 (a) at the request of the person’s donor; or
- 21 (b) at the request of the person’s donor sibling; or
- 22 (c) on the director-general’s own initiative.
- 23 (3) The director-general may contact a person under subsection (1) only  
24 if, in their opinion, the contact is justified to promote the safety or  
25 welfare of at least 1 of the people concerned.

- 1 (4) The director-general may—  
2 (a) consult any entity the director-general believes may assist in the  
3 exercise of their functions under this section; and  
4 (b) arrange for any of the people concerned to be provided with  
5 counselling the director-general believes is necessary to assist  
6 the person and the director-general in the matter.  
7 (5) A regulation may prescribe guidelines in accordance with which the  
8 director-general must exercise the director-general's functions under  
9 this section.

10 **70 Consent to disclosure generally**

- 11 (1) A person whose information is kept in the donor register may consent  
12 to the disclosure of the information in circumstances not otherwise  
13 allowed under this part.  
14 (2) The consent must be given by written notice to the director-general.  
15 (3) The director-general may require the person to provide proof of  
16 identity with the consent.  
17 (4) The consent may be withdrawn or modified by written notice to the  
18 director-general.  
19 (5) Nothing in this part prevents the director-general from disclosing  
20 information about a person kept in the donor register if—  
21 (a) the person has consented to the disclosure under this section; and  
22 (b) the disclosure is consistent with the consent.

1       **Part 6**                               **Pre-commencement records**

2       **Division 6.1**                   **Preliminary**

3       **71**               **Definitions—pt 6**

4               In this part:

5               *ART provider* includes a former ART provider.

6               *commencement day* means the day this section commences.

7               *pre-commencement record* means a record made by an  
8               ART provider about an ART service provided before the  
9               commencement day.

10              *retention period*, in relation to a pre-commencement record, means  
11              75 years after—

12              (a) the day on which the ART service to which the record relates  
13              was provided; or

14              (b) if the record relates to more than 1 ART service—the day on  
15              which the last of those services was provided.

16       **Division 6.2**                   **Retention of pre-commencement**  
17                                           **records**

18       **72**               **Requirement to retain records**

19              (1) An ART provider commits an offence if—

20              (a) it has control of a pre-commencement record; and

21              (b) the record's retention period has not ended; and

22              (c) it fails to retain the record in a readily accessible form.

23              Maximum penalty: 50 penalty units.

1 (2) Subsection (1) does not apply if the ART provider fails to retain the  
2 record only because it transfers the record in accordance with  
3 section 73.

4 *Note* The defendant has an evidential burden in relation to the matters  
5 mentioned in s (2) (see [Criminal Code](#), s 58).

6 **73 Transfer of records**

7 (1) A person may transfer any pre-commencement record within the  
8 person's control to a registered ART provider.

9 (2) The person must give the director-general written notice of the  
10 transfer as soon as practicable after transferring the record.

11 (3) The registered ART provider must give the director-general written  
12 notice confirming the transfer as soon as practicable after receiving  
13 the record.

14 (4) A person commits an offence if the person fails to comply with  
15 subsection (2) or (3).

16 Maximum penalty: 30 penalty units.

17 (5) A regulation may prescribe additional procedures or requirements for  
18 the transfer of records, including—

19 (a) providing for the transfer of pre-commencement records if an  
20 ART provider dies, is wound up or otherwise lacks capacity to  
21 retain the records in accordance with this part; and

22 (b) matters required to be included in a notice given to the  
23 director-general under this section.

24 **74 Director-general may authorise destruction of records**

25 (1) Despite anything else in this part, a person may destroy a  
26 pre-commencement record during the retention period if authorised  
27 in writing by the director-general.

- 1 (2) The director-general may authorise the destruction of a  
2 pre-commencement record only if satisfied that no person would be  
3 adversely affected by the destruction of the record.

4 **Example**

5 The director-general authorises destruction of pre-commencement records because  
6 the records relate to gametes that no longer exist and the director-general is satisfied  
7 that no person was born as a result of ART treatment using the gametes.

8 **Division 6.3 Access to pre-commencement**  
9 **records**

10 *Note* This division deals with access to information about ART services  
11 provided before the commencement day that may not be kept in the donor  
12 register.

13 **75 Meaning of *accessible information*—div 6.3**

- 14 (1) In this division:

15 *accessible information*, about a donor, means—

16 (a) non-identifying information about—

17 (i) the donor's ethnicity and physical characteristics; and

18 (ii) the donor's relevant medical history; and

19 (iii) the sex and year of birth of each person born as a result of  
20 ART treatment using a donated gamete of the donor; and

21 (b) any other information about the donor (including identifying  
22 information) if the donor has consented to its disclosure.

- 23 (2) However, *accessible information* does not include information that  
24 can be obtained under section 66 (Disclosure to donor conceived  
25 person) or section 67 (Disclosure to parent of donor conceived child  
26 or young person).



- 1           (3) In this section:
- 2                 *identifying information* means information that identifies the  
3                 individual to whom the information relates.
- 4                 *non-identifying information* means information that does not  
5                 identify the individual to whom the information relates.

6         **76           Application for accessible information about donor**

- 7           (1) The following people may apply for accessible information about a  
8           donor:
- 9                 (a) a person born as a result of ART treatment using the donor’s  
10                 donated gamete if—
- 11                         (i) the person is at least 16 years old; or
- 12                         (ii) the ART provider to whom the application is made is  
13                         satisfied the person is sufficiently mature to access  
14                         information under this Act;
- 15                 (b) a parent of a child or young person born as a result of  
16                 ART treatment using the donor’s donated gamete.
- 17           (2) An application for accessible information may be made to—
- 18                 (a) the ART provider who provided the ART treatment resulting in  
19                 the person’s birth; or
- 20                 (b) an ART provider the applicant suspects on reasonable grounds  
21                 may have accessible information about the donor.

22         **77           Disclosure of accessible information by ART provider**

- 23           (1) Within 28 days after receiving an application under section 76, an  
24           ART provider must give the applicant—
- 25                 (a) a copy of all accessible information about the donor held by the  
26                 ART provider; and

- 1                   (b) if the ART provider has no accessible information about the  
2                   donor—a statement to that effect; and
- 3                   (c) if the ART provider has reason to believe another ART provider  
4                   may have any accessible information about the donor—details  
5                   of the other ART provider.
- 6           (2) An ART provider commits an offence if it fails to comply with this  
7           section.
- 8           Maximum penalty: 50 penalty units.

1 **Part 7** **Regulatory action**

2 **Division 7.1** **Preliminary**

3 **78** **Definitions—pt 7**

4 In this part:

5 *associated entity*, of a corporation, means—

- 6 (a) a related corporation; or
- 7 (b) an executive officer of the corporation or related corporation; or
- 8 (c) a person with a significant interest in the corporation or related
- 9 corporation.

10 *recipient*, in relation to an improvement notice or prohibition notice,

11 means the person to whom the notice is given under this part.

12 *related corporation* means a related body corporate under the

13 [Corporations Act](#).

14 **Division 7.2** **Improvement notices**

15 **79** **Giving improvement notice**

16 (1) This section applies if the director-general is satisfied on reasonable

17 grounds that—

- 18 (a) a person has contravened, is contravening, or is likely to
- 19 contravene ART legislation; or
- 20 (b) it is otherwise necessary to require a person to rectify a matter
- 21 or activity to prevent or minimise a risk to another person's
- 22 health, safety or welfare or to public health or safety.

23 (2) The director-general may give a notice (an *improvement notice*) to

24 the person requiring the person to rectify the matter or activity to

25 which the notice relates.

- 1 (3) If the person is a corporation, the director-general may also give an  
2 improvement notice to an associated entity of the corporation.

3 **80 Content of improvement notice**

- 4 (1) An improvement notice must state the following:  
5 (a) that it is an improvement notice under this Act;  
6 (b) the name of the recipient;  
7 (c) the grounds on which the notice is given;  
8 (d) the period within which the recipient must rectify the matter or  
9 activity to which the notice relates;  
10 (e) that the notice continues in force until it is revoked;  
11 (f) the period after which the recipient may apply to have the notice  
12 revoked.  
13 (2) An improvement notice may state the action the recipient must take  
14 to comply with the notice.

15 **81 Extension of compliance period**

- 16 (1) The director-general may, on application by the recipient or on the  
17 director-general's own initiative, extend the compliance period  
18 before it ends.  
19 (2) The director-general must give written notice of their decision under  
20 subsection (1) to the recipient.  
21 (3) If an application for extension is refused, the written notice must state  
22 the reasons for the refusal.  
23 (4) In this section:  
24 ***compliance period*** means the period mentioned in section 80 (1) (d),  
25 and includes that period as extended under this section.

1    **82           Revoking improvement notice**

- 2           (1) An improvement notice remains in force until the day it is revoked.
- 3           (2) The director-general may, on application by the recipient made in  
4           accordance with the notice or on the director-general's own initiative,  
5           revoke the notice if satisfied it has been complied with.
- 6           (3) The director-general must give written notice of their decision under  
7           subsection (2) to the recipient.
- 8           (4) If an application for revocation is refused, the written notice must—
- 9                 (a) state the reasons for the refusal; and
- 10                (b) set a further period after which an application can be made under  
11                subsection (2).

12    **83           Contravention of improvement notice**

- 13           (1) A person commits an offence if the person—
- 14                 (a) is given an improvement notice under section 79; and
- 15                 (b) contravenes the notice.
- 16           Maximum penalty:
- 17                 (a) for a 1st offence—150 penalty units; or
- 18                 (b) for a 2nd or subsequent offence—300 penalty units.
- 19           (2) A person who contravenes subsection (1) commits a separate offence  
20           for each day (after the first day of the contravention) during any part  
21           of which the contravention continues.
- 22           Maximum penalty (for each day): 20 penalty units.

1       **Division 7.3                      Prohibition notices**

2       **84                      Giving prohibition notice**

3           (1) This section applies if the director-general is satisfied on reasonable  
4           grounds that—

5                   (a) a person has contravened, is contravening, or is likely to  
6                   contravene ART legislation; or

7                   (b) a person has been refused ART accreditation or had their  
8                   accreditation suspended, cancelled or revoked; or

9                   (c) it is otherwise necessary to prohibit a person from carrying on a  
10                  business, or part of a business, that provides ART services to  
11                  prevent or minimise a serious risk to another person’s health,  
12                  safety or welfare or to public health or safety.

13          (2) The director-general may give a notice (a *prohibition notice*) to the  
14          person prohibiting the person from—

15                   (a) carrying on a business, or part of a business, that provides  
16                   ART services; and

17                   (b) offering to provide ART services.

18          (3) If the person is a corporation, the director-general may also give a  
19          prohibition notice to an associated entity of the corporation.

20       **85                      Content of prohibition notice**

21           A prohibition notice must state the following:

22                   (a) that it is a prohibition notice under this Act;

23                   (b) the name of the recipient;

24                   (c) the grounds on which the notice is given;

1 (d) any conditions on the prohibition the director-general considers  
2 appropriate;

3 **Examples**

- 4 • the prohibition applies only to stated premises  
5 • the prohibition applies only to premises in a stated area

6 (e) the day the prohibition ends or that the notice continues in force  
7 until it is revoked;

8 (f) the period after which the recipient may apply to have the notice  
9 revoked.

10 **86 Ending prohibition**

11 (1) A prohibition notice remains in force until the earliest of the  
12 following:

- 13 (a) the day the prohibition ends as stated in the notice;  
14 (b) the day the notice is revoked.

15 (2) The director-general may, on application by the recipient made in  
16 accordance with the notice or on the director-general's own initiative,  
17 revoke the notice if satisfied the grounds on which it was given no  
18 longer apply.

19 (3) The director-general must give written notice of their decision under  
20 subsection (2) to the recipient.

21 (4) If an application for revocation is refused, the written notice must—  
22 (a) state the reasons for the refusal; and  
23 (b) set a further period after which an application can be made under  
24 subsection (2).

- 1     **87            Contravention of prohibition notice**
- 2           (1) A person commits an offence if the person—
- 3               (a) is given a prohibition notice under section 84; and
- 4               (b) contravenes the notice.
- 5           Maximum penalty:
- 6               (a) for a 1st offence—250 penalty units; or
- 7               (b) for a 2nd or subsequent offence—500 penalty units.
- 8           (2) A person who contravenes subsection (1) commits a separate offence
- 9               for each day (after the first day of the contravention) during any part
- 10              of which the contravention continues.
- 11           Maximum penalty (for each day): 30 penalty units.

12     **Division 7.4            Miscellaneous**

- 13     **88            Direction to give information about potential notice**
- 14           **recipients**
- 15           (1) This section applies to a corporation to whom an improvement or
- 16               prohibition notice is given.
- 17           (2) The director-general may give the corporation a written direction to
- 18               give information—
- 19               (a) reasonably required by the director-general to determine if the
- 20                      corporation has any associated entities to whom a notice may be
- 21                      given; and
- 22               (b) within a stated reasonable period.



1           (3) A person commits an offence if the person fails to comply with a  
2           direction under subsection (2).

3           Maximum penalty:

4           (a) for a 1st offence—100 penalty units; or

5           (b) for a 2nd or subsequent offence—200 penalty units.

6           (4) Subsection (3) does not apply if the person has a reasonable excuse  
7           for failing to comply with the direction.

8           *Note*     The defendant has an evidential burden in relation to the matters  
9           mentioned in s (4) (see [Criminal Code](#), s 58).

1           **Part 8**                                   **Enforcement**

2           **Division 8.1**                       **Preliminary**

3           **89**           **Definitions—pt 8**

4           In this part:

5           *authorised person* means a person appointed as an authorised person  
6           under section 90.

7           *connected*—an activity or thing is connected with an offence if—

- 8           (a) the offence has been committed in relation to it; or  
9           (b) it will provide evidence of the commission of the offence; or  
10          (c) it was used, is being used, or is intended to be used, to commit  
11          the offence.

12          *occupier*, of premises, includes—

- 13          (a) a person an authorised person believes on reasonable grounds to  
14          be an occupier of the premises; and  
15          (b) a person apparently in charge of the premises.

16          *offence* includes an offence that there are reasonable grounds for  
17          believing has been, is being, or will be, committed.

18          *premises* includes the following:

- 19          (a) land (whether or not vacant);  
20          (b) any part of a building, tent, stall or other structure (whether of a  
21          permanent or temporary nature).

22          *warrant* means a warrant issued under division 8.5.

1 **90 Appointment of authorised people**

2 The director-general may appoint a public servant as an authorised  
3 person for this Act.

4 *Note* For laws about appointments, see the [Legislation Act](#), pt 19.3.

5 **91 Identity cards**

6 (1) The director-general must give an authorised person an identity card  
7 that—

8 (a) states the authorised person’s name; and

9 (b) states that the person is an authorised person; and

10 (c) includes a recent photograph of the person; and

11 (d) states the card’s date of issue and expiry; and

12 (e) includes anything else prescribed by regulation.

13 (2) A person must return their identity card to the director-general within  
14 7 days after the day the person stops being an authorised person.

15 Maximum penalty: 1 penalty unit.

16 (3) Subsection (2) does not apply to a person if their identity card is—

17 (a) lost or stolen; or

18 (b) destroyed by someone else.

19 *Note* The defendant has an evidential burden in relation to the matters  
20 mentioned in s (3) (see [Criminal Code](#), s 58).

21 (4) An offence against this section is a strict liability offence.

1       **Division 8.2                    Exercise of powers generally**

2       **92                    Requirements before certain powers can be exercised**

3           (1) This section applies if an authorised person intends to exercise any of  
4           the following powers:

5                   (a) giving a direction under section 94 (1) (Direction to give  
6                   information);

7                   (b) giving a direction under section 95 (1) or (2) (Direction to give  
8                   name and address);

9                   (c) entering premises under section 96 (1) (b) or (c) (Powers of  
10                   authorised person to enter premises);

11                   (d) giving a direction under section 98 (1) (e) (General powers on  
12                   entry to premises).

13           (2) Before exercising the power, the authorised person must—

14                   (a) either—

15                           (i) show their identity card to the affected person; or

16                           (ii) if the authorised person intends to exercise the power other  
17                           than in person—provide other evidence of the authorised  
18                           person’s identity to the affected person; and

19                   (b) tell the affected person the reason for exercising the power; and

20                   (c) tell the affected person about any relevant offence in relation to  
21                   the power.

22                   **Examples—exercise of powers other than in person**

23                   1 an authorised person emails a person giving them a direction to give  
24                   information

25                   2 an authorised person emails a person asking for consent to enter and search  
26                   the person’s premises using a remote-controlled surveillance device

1 (3) The authorised person must ensure the matters mentioned in  
2 subsection (2) are communicated in a way that the authorised person  
3 believes the affected person is likely to understand.

4 (4) In this section:

5 *affected person*, in relation to the exercise of a power under this part,  
6 means—

- 7 (a) the individual affected by the exercise of the power; or  
8 (b) if the person is not an individual—an employee, officer or agent  
9 of the person affected by the exercise of the power.

10 *relevant offence* means an offence against—

- 11 (a) for a direction under section 94 (1)—section 94 (2); or  
12 (b) for a direction under section 95 (1) or (2)—section 95 (3); or  
13 (c) for a direction under section 98 (1) (e)—section 98 (2).

14 **93 Privilege against self-incrimination does not apply**

15 (1) If an authorised person gives a person a direction to give information,  
16 a document or other thing under this part, the person is not excused  
17 from complying with the direction on the ground that doing so may—

- 18 (a) tend to incriminate the person; or  
19 (b) expose the person to a penalty.

20 (2) However, any information, document or thing obtained, directly or  
21 indirectly, because of the person's compliance with the direction is  
22 not admissible in evidence against the person in a civil or criminal  
23 proceeding, other than a proceeding for an offence arising out of the  
24 false or misleading nature of the information, document or thing.

1       **Division 8.3                      Power to obtain information**

2       **94                      Direction to give information**

- 3           (1) An authorised person may, in writing, direct a person to give the  
4           authorised person information, a document or other thing within a  
5           stated reasonable period if the information, document or thing is  
6           reasonably required by the authorised person for this Act.

7           *Note*     The [Legislation Act](#), s 171 deals with the application of client legal  
8           privilege.

- 9           (2) The person must take reasonable steps to comply with the direction.

10          Maximum penalty: 50 penalty units.

- 11          (3) Subsection (2) does not apply unless the authorised person—

12           (a) complies with section 92 (Requirements before certain powers  
13           can be exercised); and

14           (b) explains the effect of section 93 (Privilege against  
15           self-incrimination does not apply).

16          *Note*     The defendant has an evidential burden in relation to the matters  
17          mentioned in s (3) (see [Criminal Code](#), s 58).

18       **95                      Direction to give name and address**

- 19          (1) An authorised person may direct a person to state the person's name  
20          and home address if the authorised person believes on reasonable  
21          grounds that the person—

22           (a) is involved in the commission of an offence against this Act; or

23           (b) may be able to assist in the investigation of an offence against  
24           this Act.

1 (2) If the authorised person believes on reasonable grounds that  
2 information given in response to a direction under subsection (1) is  
3 false or misleading, the authorised person may direct the person to  
4 produce evidence of the correctness of the information within a stated  
5 reasonable period.

6 (3) A person must comply with a direction given to the person under this  
7 section.

8 Maximum penalty: 5 penalty units.

9 *Note* It is an offence to make a false or misleading statement or give false or  
10 misleading information (see [Criminal Code](#), pt 3.4).

11 (4) An offence against this section is a strict liability offence.

12 (5) Subsection (3) does not apply to a person unless the authorised person  
13 complies with section 92 (Requirements before certain powers can be  
14 exercised).

15 *Note* The defendant has an evidential burden in relation to the matter  
16 mentioned in s (5) (see [Criminal Code](#), s 58).

## 17 **Division 8.4 Power to enter premises**

### 18 **96 Powers of authorised person to enter premises**

19 (1) For this Act, an authorised person may—

20 (a) at any reasonable time, enter premises that the public is entitled  
21 to use or that are open to the public (whether or not on payment  
22 of money); or

23 (b) at any time, enter premises with the occupier's consent; or

24 (c) at any time, enter premises if the authorised person believes on  
25 reasonable grounds that—

26 (i) an offence against this Act is being, or is likely to be, or  
27 has just been, committed at the premises; and

- 1                   (ii) the risk to a person, the environment or public health  
2                   resulting from the offence is so serious and urgent that  
3                   immediate entry to the premises without the authority of a  
4                   warrant is necessary; or
- 5                   (d) enter premises in accordance with a warrant.
- 6                   (2) However, subsection (1) (a) or (c) do not authorise entry into a part  
7                   of the premises that is being used only for residential purposes.
- 8                   (3) If an authorised person wants to ask for consent to enter a building or  
9                   other structure on the premises, the authorised person may, without  
10                  the occupier’s consent, enter any land that forms part of the premises  
11                  to ask for the consent.
- 12                  (4) To remove any doubt, an authorised person may enter premises under  
13                  subsection (1) without payment of an entry fee or other charge.
- 14                  (5) An authorised person may—
- 15                   (a) enter the premises with 1 or more people who, in the opinion of  
16                   the authorised person, have knowledge or skills that could assist  
17                   the authorised person to carry out their functions; and
- 18                   (b) if entering the premises in accordance with a warrant—also  
19                   enter the premises with necessary force.

20                  **97                  Obtaining consent to entry**

- 21                  (1) For section 96 (1) (b), an authorised person must—
- 22                   (a) before asking the occupier for consent—tell the occupier—
- 23                   (i) the purpose of the proposed entry; and
- 24                   (ii) the reason for, and identity of, any other person  
25                   accompanying the authorised person; and
- 26                   (iii) that anything found and seized under this part may be used  
27                   in evidence in court; and
- 28                   (iv) that consent may be refused; and



- 1 (b) if the occupier consents to the entry—give the occupier a written  
2 record confirming—
- 3 (i) the matters mentioned in paragraph (a); and  
4 (ii) that the occupier was told about those matters; and  
5 (iii) the time and date when the consent was given.
- 6 (2) A court must find that the occupier did not consent if—
- 7 (a) a question arises, in a proceeding before the court, whether the  
8 occupier consented to the authorised person entering the  
9 premises under this part; and
- 10 (b) a record mentioned in subsection (1) (b) is not produced in  
11 evidence; and
- 12 (c) it is not proved that the occupier consented to the entry.

13 **98 General powers on entry to premises**

- 14 (1) An authorised person who enters premises under this division may do  
15 1 or more of the following in relation to the premises or anything at  
16 the premises:
- 17 (a) examine anything;
- 18 (b) take a measurement or conduct a test;
- 19 (c) take a sample;
- 20 (d) take images, make audio or video recordings or any other kind  
21 of record;
- 22 (e) if reasonably required for an authorised person to exercise a  
23 power under this division, direct the occupier of the premises, or  
24 anyone at the premises, to do 1 or more of the following:
- 25 (i) give information, a document or other thing (including  
26 information, a document or thing that is not at the  
27 premises);

- 1 (ii) produce a document or other thing (including a document  
2 or other thing that is not at the premises);
- 3 (iii) answer a question;
- 4 (iv) give the authorised person reasonable help to exercise a  
5 power under this part.

6 *Note* The [Legislation Act](#), s 171 deals with the application of client legal  
7 privilege.

- 8 (2) A person must take all reasonable steps to comply with a direction  
9 given under subsection (1) (e).

10 Maximum penalty: 50 penalty units.

- 11 (3) Subsection (2) does not apply in relation to a direction given to a  
12 person under subsection (1) (e) (i), (ii) and (iii) unless, before giving  
13 the direction, the authorised person—

14 (a) complies with section 92 (Requirements before certain powers  
15 can be exercised); and

16 (b) explains the effect of section 93 (Privilege against  
17 self-incrimination does not apply) to the person.

18 *Note* The defendant has an evidential burden in relation to the matters  
19 mentioned in s (3) (see [Criminal Code](#), s 58).

## 20 Division 8.5 Warrants

### 21 99 Definitions—div 8.5

22 In this division:

23 *remote application*—see section 100 (3).

24 *warrant form*—see section 103 (2).

25 *warrant terms*—see section 102 (2).

1 **100 Application for warrant**

- 2 (1) An authorised person may apply to a magistrate for a warrant to enter  
3 the premises and exercise the authorised person's powers under this  
4 part.
- 5 (2) The application must—
- 6 (a) be sworn; and
- 7 (b) state the grounds on which the warrant is sought.
- 8 (3) However, if the authorised person considers it necessary because of  
9 urgent or other special circumstances, the authorised person may  
10 make an application (a *remote application*) by—
- 11 (a) preparing a written application stating the grounds on which a  
12 warrant is sought; and
- 13 (b) applying to the magistrate for the warrant other than in person  
14 before the written application is sworn.

15 **101 Magistrate may refuse to consider application for warrant**  
16 **until authorised person gives relevant information**

17 The magistrate may refuse to consider an application for a warrant  
18 made under section 100 until the authorised person gives the  
19 magistrate all the information the magistrate requires about the  
20 application in the way the magistrate requires.

21 **102 Decision on application for warrant**

- 22 (1) If an application for a warrant is made under section 100, the  
23 magistrate may issue the warrant only if satisfied there are reasonable  
24 grounds for suspecting—
- 25 (a) there is a particular thing or activity connected with an offence  
26 against this Act; and

- 1 (b) the thing or activity—
- 2 (i) is, or is being engaged in, at the premises; or
- 3 (ii) may be, or may be engaged in, at the premises within the
- 4 next 14 days.
- 5 (2) The warrant must include the following information (the *warrant*
- 6 *terms*):
- 7 (a) a statement that an authorised person may, with any necessary
- 8 assistance and force, enter the premises and exercise the
- 9 authorised person’s powers under this part;
- 10 (b) details of the offence for which the warrant is issued;
- 11 (c) the things that may be seized under the warrant;
- 12 (d) the hours when the premises may be entered;
- 13 (e) the date, within 14 days after the day of the warrant’s issue,
- 14 when the warrant ends.

15 **103 Warrant issued on remote application**

- 16 (1) A magistrate may issue a warrant on a remote application by—
- 17 (a) immediately giving a written copy of the warrant to the
- 18 authorised person if it is practicable to do so; or
- 19 (b) if it is not practicable to do so—tell the authorised person the
- 20 following:
- 21 (i) the warrant terms;
- 22 (ii) the date and time the warrant is issued.
- 23 (2) If the magistrate issues a warrant under subsection (1) (b), the
- 24 authorised person must complete a form of warrant (the *warrant*
- 25 *form*) stating—
- 26 (a) the magistrate’s name; and

- 1 (b) the date and time the magistrate issued the warrant; and  
2 (c) the warrant terms.
- 3 (3) The written copy of the warrant, or the warrant form properly  
4 completed by the authorised person, authorises the entry and the  
5 exercise of the authorised person's powers under this part.
- 6 (4) The authorised person must, as soon as is reasonably practicable—  
7 (a) swear the remote application; and  
8 (b) give the magistrate—  
9 (i) the sworn application; and  
10 (ii) if the authorised person completed a warrant form—the  
11 warrant form.
- 12 (5) On receiving the documents mentioned in subsection (4) (b), the  
13 magistrate must attach them to the warrant.
- 14 (6) A court must find that a power exercised by an authorised person was  
15 not authorised by a warrant under this section if—  
16 (a) a question arises in a proceeding before the court whether the  
17 exercise of the power was authorised by a warrant; and  
18 (b) the warrant is not produced in evidence; and  
19 (c) it is not proved that the exercise of the power was authorised by  
20 a warrant under this section.

21 **104 Announcement before entry under warrant**

- 22 (1) Before anyone enters premises under a warrant, an authorised person  
23 must—  
24 (a) announce that they are authorised to enter the premises; and  
25 (b) give anyone at the premises an opportunity to allow entry to the  
26 premises; and

1 (c) if the occupier of the premises is present at the premises—  
2 identify themselves to the person.

3 (2) The authorised person is not required to comply with subsection (1)  
4 if they believe on reasonable grounds that immediate entry to the  
5 premises is required to ensure—

6 (a) the safety of anyone (including themselves or any person  
7 assisting them); or

8 (b) that the effective execution of the warrant is not frustrated.

9 **105 Warrant etc to be given to occupier**

10 If the occupier of premises is present at the premises while a warrant  
11 is being executed, the authorised person must give to the occupier—

12 (a) a copy of—

13 (i) the warrant; or

14 (ii) if section 103 (1) (b) applies—the warrant form; and

15 (b) a document setting out the occupier’s rights and obligations.

16 **106 Occupier entitled to watch search etc**

17 (1) If the occupier of premises is present at the premises while a warrant  
18 is being executed, the occupier is entitled to watch the authorised  
19 person, and any person assisting the authorised person, conduct any  
20 search and exercise any other power authorised by the warrant.

21 (2) However, the occupier is not entitled to watch the authorised person  
22 or a person assisting the authorised person, exercise their powers if—

23 (a) to do so would interfere with the powers being exercised; or

24 (b) the occupier is under arrest, and allowing them to watch the  
25 powers being exercised would interfere with the objective of the  
26 warrant.

- 1           (3) This section does not prevent an authorised officer exercising powers  
2           under this part in 2 or more areas of the premises at the same time.

3           **Division 8.6                   Power to seize things**

4           **107           Authorised person may seize things at premises**

- 5           (1) An authorised person who enters premises under this part—  
6           (a) may seize anything at the premises if satisfied on reasonable  
7           grounds that—  
8           (i) the thing is connected with an offence against this Act; and  
9           (ii) the seizure is necessary to prevent the thing from being—  
10           (A) concealed, lost or destroyed; or  
11           (B) used to commit, continue or repeat the offence; and  
12           (b) if the premises were entered with the occupier’s consent—may  
13           also seize anything at the premises if seizure of the thing is  
14           consistent with the purpose of the entry told to the occupier  
15           when seeking the occupier’s consent; and  
16           (c) if the premises were entered under a warrant—may also seize  
17           anything at the premises that the authorised person is authorised  
18           to seize under the warrant.

- 19           (2) Having seized a thing, the authorised person may—  
20           (a) remove the thing from the premises where it was seized to  
21           another place; or  
22           (b) leave the thing at the premises where it is seized and restrict  
23           access to it.

24           *Note*       If an authorised person seizes a thing, the authorised person must give a  
25           receipt for it to the person from whom it was seized (see s 111).

- 1 (3) If access to a seized thing is restricted under subsection (2) (b), the  
2 authorised person must secure, in a conspicuous place at the premises,  
3 a notice identifying that the thing is seized.

4 **108 Moving things to another place for examination or**  
5 **processing under warrant**

- 6 (1) A thing found at premises entered under a warrant may be moved to  
7 another place for examination or processing to decide whether it may  
8 be seized under the warrant if—
- 9 (a) both of the following apply:
- 10 (i) there are reasonable grounds for believing that the thing is  
11 or contains something to which the warrant relates;
- 12 (ii) it is significantly more practicable to do so taking into  
13 account the timeliness and cost of examining or processing  
14 the thing at another place and the availability of expert  
15 assistance; or
- 16 (b) the occupier of the premises agrees in writing.
- 17 (2) The thing may be moved to another place for examination or  
18 processing for not longer than 72 hours.
- 19 (3) An authorised person may apply to a magistrate for an extension of  
20 time if they believe on reasonable grounds that the thing cannot be  
21 examined or processed within 72 hours.
- 22 (4) The authorised person must give notice of the application to the  
23 occupier of the premises, and the occupier is entitled to be heard on  
24 the application.
- 25 (5) If a thing is moved to another place under this section, the authorised  
26 person must, if practicable—
- 27 (a) tell the person from whom the thing was seized the address of  
28 the place where, and time when, the examination or processing  
29 will be carried out; and



1 (b) allow the person from whom the thing was seized or their  
2 representative to be present during the examination or  
3 processing.

4 (6) The provisions of this part relating to the issue of warrants apply, with  
5 any necessary changes, to the giving of an extension under  
6 subsection (3).

7 **109 Owner etc may access seized things**

8 A person who would, apart from the seizure, be entitled to inspect a  
9 thing seized under this division may—

10 (a) inspect the thing; and

11 (b) make a visual recording of the thing; and

12 (c) if the thing is a document—take extracts from, or make copies  
13 of, the thing.

14 **110 Person must not interfere with seized things**

15 (1) A person commits an offence if—

16 (a) a thing has been seized under this division; and

17 (b) the person interferes with the thing, or anything containing the  
18 thing; and

19 (c) the person does not have the approval of an authorised person to  
20 interfere with the thing.

21 Maximum penalty: 50 penalty units.

22 (2) An offence against this section is a strict liability offence.

23 **111 Authorised person must give receipt for seized things**

24 (1) If an authorised person seizes a thing under this division, they must—

25 (a) as soon as practicable after seizing the thing, give the person  
26 from whom the thing was seized a receipt for the thing; or

- 1 (b) if complying with paragraph (a) is not practicable—secure a  
2 receipt for the thing in a conspicuous place at the premises where  
3 the thing was seized.
- 4 (2) A receipt must include the following information:
- 5 (a) a description of the thing seized;
- 6 (b) the reasons why the thing was seized;
- 7 (c) the authorised person’s name, and how they can be contacted;
- 8 (d) if the thing is moved from the premises where it was seized—  
9 where the thing will be taken.

10 **112 Return of seized things**

- 11 (1) Unless subsection (2) applies, a thing seized under this division must  
12 be returned to its owner, or reasonable compensation must be paid to  
13 the owner by the Territory for the loss of the thing.
- 14 (2) The thing is not required to be returned and reasonable compensation  
15 is not required to be paid for it if—
- 16 (a) both of the following apply:
- 17 (i) a prosecution for an offence connected with the thing  
18 (a *relevant offence*) is started against the owner within the  
19 1-year period;
- 20 (ii) the proceeding (including any appeal) is finalised and the  
21 owner is convicted or found guilty of the offence; or
- 22 (b) an infringement notice for a relevant offence is served on the  
23 owner within the 1-year period and—
- 24 (i) the owner gives notice disputing liability for the offence  
25 (a *disputed liability notice*) in accordance with the  
26 [Magistrates Court Act 1930](#), section 132; and

- 1 (ii) an information is laid in the Magistrates Court against the  
2 owner for the offence within 60 days after the day the  
3 disputed liability notice is given; and
- 4 (iii) the proceeding (including any appeal) is finalised and the  
5 owner is convicted or found guilty of the offence; or
- 6 (c) an infringement notice for a relevant offence is served on the  
7 owner within the 1-year period and—
- 8 (i) the infringement notice penalty for the offence is paid; and  
9 (ii) the notice is not withdrawn; or
- 10 (d) a court makes an order under a territory law that the thing is  
11 forfeited to the Territory or must be otherwise dealt with.
- 12 (3) If subsection (2) applies—
- 13 (a) the thing is forfeited to the Territory; and  
14 (b) the registrar may direct that the thing be sold, destroyed or  
15 otherwise disposed of.
- 16 (4) In this section:
- 17 *1-year period*, in relation to a seized thing, means 12 months after the  
18 day the thing was seized.

19 **113 Order disallowing seizure**

- 20 (1) If a thing is seized under this division, a person claiming to be entitled  
21 to the thing may apply to the Magistrates Court for an order  
22 disallowing the seizure.
- 23 (2) The application—
- 24 (a) must be made not later than 10 days after the day the thing is  
25 seized; and
- 26 (b) must not be heard unless the applicant has served a copy of the  
27 application on the director-general.

- 1           (3) The director-general is entitled to appear as a respondent at the  
2           hearing of the application.
- 3           (4) The court must make an order disallowing the seizure of the thing if  
4           satisfied—
- 5                 (a) the applicant would, apart from the seizure, be entitled to the  
6                 return of the seized thing; and
- 7                 (b) the thing is not connected with an offence against this Act; and
- 8                 (c) possession of the thing by the person would not be an offence.
- 9           (5) The court may also make an order disallowing the seizure if satisfied  
10           there are exceptional circumstances justifying the making of the  
11           order.
- 12           (6) If the court makes an order disallowing the seizure, the court may  
13           make 1 or more of the following ancillary orders:
- 14                 (a) an order directing the director-general to return the thing to the  
15                 applicant or to someone else who appears to be entitled to it;
- 16                 (b) if the thing cannot be returned or has depreciated in value  
17                 because of the disallowed seizure—an order directing the  
18                 Territory to pay reasonable compensation;
- 19                 (c) an order about costs in relation to the application.

20           **Division 8.7                    Miscellaneous**

21           **114            Damage etc to be minimised**

- 22           (1) In the exercise, or purported exercise, of a function under this part, an  
23           authorised person must take reasonable steps to ensure that they, and  
24           any person assisting them, cause as little inconvenience, detriment  
25           and damage as is practicable.

1 (2) If an authorised person, or a person assisting them, damages anything  
2 in the exercise or purported exercise of a function under this part, the  
3 authorised person must give written notice of the details of the  
4 damage to the person who they believe on reasonable grounds is the  
5 owner of the thing.

6 (3) If the damage occurs on premises entered under this part in the  
7 absence of the occupier, the notice may be given by securing it in a  
8 conspicuous place at the premises.

9 **115 Compensation for exercise of enforcement powers**

10 (1) A person may claim compensation from the Territory if the person  
11 suffers loss or expense because of the exercise, or purported exercise,  
12 of a function under this part by—

13 (a) an authorised person; or

14 (b) a person assisting an authorised person.

15 (2) Compensation may be claimed and ordered in a proceeding for—

16 (a) compensation brought in a court of competent jurisdiction; or

17 (b) an offence against this Act brought against the person making  
18 the claim for compensation.

19 (3) A court may order the payment of reasonable compensation for the  
20 loss or expense only if satisfied it is just to make the order in the  
21 circumstances of the particular case.

22 (4) A regulation may prescribe matters that may, must or must not be  
23 taken into account by the court in considering whether it is just to  
24 make the order.

1 **Part 9** **Procedural and evidentiary**  
2 **provisions**

3 **116 Court to notify director-general of offence**

4 If a person is convicted or found guilty of an offence against this Act,  
5 the registrar or other proper officer of the court must notify the  
6 director-general in writing.

7 **117 Destruction or falsification of records**

- 8 (1) A person commits an offence if—  
9 (a) the person knowingly falsifies or destroys a record; and  
10 (b) the record is a pre-commencement record or another record  
11 required to be kept under this Act.

12 Maximum penalty: 100 penalty units.

- 13 (2) Subsection (1) does not apply to the destruction of a record if—  
14 (a) the destruction is authorised by the director-general; or  
15 (b) the record is a hard copy version that has been converted to  
16 electronic format.

17 *Note* The defendant has an evidential burden in relation to the matters  
18 mentioned in s (2) (see [Criminal Code](#), s 58).

- 19 (3) In this section:  
20 *pre-commencement record*—see section 71.

21 **118 Criminal liability of executive officer**

- 22 (1) An executive officer of a corporation is taken to commit an offence  
23 if—  
24 (a) the corporation commits an offence against this Act (a *relevant*  
25 *offence*); and

- 1 (b) the officer was reckless about whether the relevant offence  
2 would be committed; and
- 3 (c) the officer was in a position to influence the conduct of the  
4 corporation in relation to the commission of the relevant  
5 offence; and
- 6 (d) the officer failed to take reasonable steps to prevent the  
7 commission of the relevant offence.
- 8 Maximum penalty: The maximum penalty that may be imposed for  
9 the commission of the offence by an individual.
- 10 (2) Subsection (1) does not apply if the corporation would have a defence  
11 to a prosecution for the relevant offence.
- 12 *Note* The defendant has an evidential burden in relation to the matters  
13 mentioned in s (2) (see [Criminal Code](#), s 58).
- 14 (3) In deciding whether the executive officer took (or failed to take)  
15 reasonable steps to prevent the commission of the offence, a court  
16 must consider any action the officer took directed towards ensuring  
17 the following (to the extent that the action is relevant to the act or  
18 omission):
- 19 (a) that the corporation arranges regular professional assessments  
20 of the corporation's compliance with the provision to which the  
21 offence relates;
- 22 (b) that the corporation implements any appropriate  
23 recommendation arising from such an assessment;
- 24 (c) that the corporation's employees, agents and contractors have a  
25 reasonable knowledge and understanding of the requirement to  
26 comply with the provision to which the offence relates;
- 27 (d) any action the officer took when the officer became aware that  
28 the offence was, or might be, about to be committed.
- 29 (4) Subsection (3) does not limit the matters the court may consider.

- 1 (5) This section applies whether or not the corporation is prosecuted for,  
2 or convicted of, the relevant offence.

3 **119 Evidentiary certificates**

4 In a proceeding for an offence against this Act, a certificate that  
5 appears to be signed by the director-general or another person  
6 prescribed by regulation, and that states a matter relating to any of the  
7 following, is evidence of the matter:

- 8 (a) the registration of an ART provider under part 3;  
9 (b) the prohibition of a person from carrying on a business, or part  
10 of a business, that provides ART services under division 7.3;  
11 (c) any other matter prescribed by regulation relating to the  
12 administration of this Act.

13 **120 Disclosure of information by ART providers and others**

- 14 (1) A requirement to disclose information under this Act has effect  
15 despite any duty of confidentiality or other restriction on disclosure  
16 (including under the *Health Records (Privacy and Access) Act 1997*).
- 17 (2) If a person discloses information in accordance with this Act—  
18 (a) the disclosure is not—  
19 (i) a breach of confidence; or  
20 (ii) a breach of professional etiquette or ethics; or  
21 (iii) a breach of a rule of professional conduct; and  
22 (b) the person does not incur civil or criminal liability only because  
23 of the disclosure.



1   **121       Protection of public officials from liability**

- 2           (1) A public official is not civilly liable for conduct engaged in honestly  
3           and without recklessness—
- 4               (a) in the exercise of a function under this Act or another territory  
5               law; or
- 6               (b) in the reasonable belief that the conduct was in the exercise of a  
7               function under this Act or another territory law.
- 8           (2) Any liability that would, apart from this section, attach to the public  
9           official attaches instead to the Territory.

1 **Part 10** **Notification and review of**  
2 **decisions**

3 **122** **Meaning of *reviewable decision*—pt 10**

4 In this part:

5 *reviewable decision* means a decision of the director-general to—

- 6 (a) impose conditions on registration under section 16; or  
7 (b) give an improvement notice under section 79; or  
8 (c) refuse to revoke an improvement notice under section 82; or  
9 (d) give a prohibition notice under section 84; or  
10 (e) refuse to revoke a prohibition notice under section 86.

11 **123** **Reviewable decision notices**

12 If the director-general makes a reviewable decision in relation to an  
13 ART provider, the director-general must give a reviewable decision  
14 notice to the ART provider.

15 *Note* The director-general must also take reasonable steps to give a reviewable  
16 decision notice to any other person whose interests are affected by the  
17 decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

18 **124** **Applications for review**

19 The following people may apply to the ACAT for review of a  
20 reviewable decision:

- 21 (a) the ART provider in relation to which the decision has been  
22 made;  
23 (b) any other person whose interests are affected by the decision.

1 **Part 11** **Miscellaneous**

2 **125** **Determination of fees**

- 3 (1) The Minister may determine fees for this Act.  
4 (2) A determination is a disallowable instrument.

5 **126** **Incorporating, applying or adopting documents in**  
6 **regulations**

- 7 (1) A regulation may incorporate, apply or adopt (with or without change  
8 or modification)—

- 9 (a) a law as in force from time to time; or  
10 (b) another instrument as in force from time to time.

- 11 (2) The [Legislation Act](#), section 47 (6) does not apply to an instrument  
12 incorporated, applied or adopted under subsection (1).

13 *Note* An instrument under s (1) does not need to be notified under the  
14 [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#),  
15 s 47 (7)).

- 16 (3) The director-general must ensure that an instrument incorporated,  
17 applied or adopted under subsection (1) is—

- 18 (a) on the ACT legislation register; or  
19 (b) available for inspection by anyone without charge during  
20 ordinary business hours at an ACT government office; or  
21 (c) accessible on an ACT government website, or by a link on an  
22 ACT government website.

- 23 (4) An instrument that is incorporated, applied or adopted under  
24 subsection (1) is not enforceable by or against the Territory or anyone  
25 else unless it is made accessible in accordance with subsection (3).

- 26 (5) In this section:

27 *ACT legislation register*—see the [Legislation Act](#), section 18 (1).

1 **127 Regulation-making power**

2 (1) The Executive may make regulations for this Act.

3 (2) A regulation may create offences and fix maximum penalties of not  
4 more than 30 penalty units for the offences.

1 **Part 12** **Transitional**

2 **128** **Meaning of *transitional period*—pt 12**

3 In this part:

4 *transitional period* means the period starting on the day this section  
5 commences and ending on the day section 12 commences.

6 **129** **Use, supply and export of gametes and embryos**

7 A provision relating to the use, supply or export of a gamete or  
8 embryo applies to a gamete obtained, or an embryo created, before  
9 the end of the transitional period.

10 **130** **Storage of gametes and embryos**

11 Section 43 (Storage of gametes or embryos) does not apply to a  
12 gamete obtained, or an embryo created, before the end of the  
13 transitional period.

14 **131** **Completion of family—gametes donated before end of  
15 transitional period**

16 (1) This section applies to a donated gamete if, before the end of the  
17 transitional period—

18 (a) the gamete is donated; and

19 (b) a child is conceived as a result of ART treatment using another  
20 donated gamete of the donor.

21 (2) An ART provider may use the gamete—

22 (a) in the provision of ART treatment to the person who gave birth  
23 to the child, or their domestic partner; or

24 (b) to create an embryo for use in the provision of ART treatment  
25 to the person who gave birth to the child, or their domestic  
26 partner.

- 1           (3) For a gamete used in accordance with this section—
- 2               (a) the donor is taken to have consented to the use and may modify
- 3               or withdraw consent in accordance with section 30; and
- 4               (b) if the child mentioned in subsection (1) (b) was conceived before
- 5               the transitional period—the following provisions do not apply
- 6               to the ART provider in relation to the gamete, or an embryo
- 7               created from the gamete:
- 8                   (i) section 39 (Donated gametes or embryos—time limits on
- 9                   use);
- 10                  (ii) section 40 (Donated gametes or embryos—limits on
- 11                  number of families);
- 12                  (iii) section 46 (Requirement to collect information about
- 13                  gamete provider);
- 14                  (iv) section 47 (Requirement to collect information about
- 15                  person undergoing ART treatment);
- 16                  (v) section 48 (Requirement to keep records);
- 17                  (vi) section 53 (Mandatory information); and
- 18               (c) if the child mentioned in subsection (1) (b) is conceived during
- 19               the transitional period—the following provisions do not apply
- 20               to the ART provider in relation to the gamete, or an embryo
- 21               created from the gamete:
- 22                   (i) section 39 (Donated gametes or embryos—time limits on
- 23                   use);
- 24                   (ii) section 40 (1) (Donated gametes or embryos—limits on
- 25                   number of families);
- 26                   (iii) section 53 (Mandatory information).

- 1 **132**      **Completion of family—embryos created before end of**  
2                    **transitional period**
- 3            (1) This section applies to an embryo created from a donated gamete  
4            before the end of the transitional period, for use in the provision of  
5            ART treatment to a particular person.
- 6            (2) An ART provider may use the embryo to provide ART treatment to  
7            the person or their domestic partner.
- 8            (3) For an embryo used in accordance with this section—
- 9                    (a) each gamete provider is taken to have consented to the use and  
10                    may modify or withdraw consent in accordance with section 30;  
11                    and
- 12                    (b) if the embryo is created before the transitional period—the  
13                    following provisions do not apply to the ART provider in  
14                    relation to the embryo:
- 15                            (i) section 39 (Donated gametes or embryos—time limits on  
16                            use);
- 17                            (ii) section 40 (Donated gametes or embryos—limits on  
18                            number of families);
- 19                            (iii) section 46 (Requirement to collect information about  
20                            gamete provider);
- 21                            (iv) section 47 (Requirement to collect information about  
22                            person undergoing ART treatment);
- 23                            (v) section 48 (Requirement to keep records);
- 24                            (vi) section 53 (Mandatory information); and
- 25                    (c) if the embryo is created during the transitional period—the  
26                    following provisions do not apply to the ART provider in  
27                    relation to the embryo:
- 28                            (i) section 39 (Donated gametes or embryos—time limits on  
29                            use);

1 (ii) section 40 (1) (Donated gametes or embryos—limits on  
2 number of families);

3 (iii) section 53 (Mandatory information).

4 **133 Expiry—pt 12**

5 This part expires 15 years after the day it commences.

6 *Note* A transitional provision is repealed on its expiry but continues to have  
7 effect after its repeal (see [Legislation Act](#), s 88).



1 **Part 13** **Consequential amendments**

2 **134** **Freedom of Information Act 2016**  
3 **New section 11A**

4 *insert*

5 **11A** **Relationship with Assisted Reproductive Technology**  
6 **Act 2023**

7 This Act does not apply to information kept in the donor register  
8 under the *Assisted Reproductive Technology Act 2023*.

9 **135** **Human Cloning and Embryo Research Act 2004**  
10 **New section 49A**

11 *in part 5, insert*

12 **49A** **Court to notify director-general of offence**

13 If a person is convicted or found guilty of an offence against this Act,  
14 the registrar or other proper officer of the court must notify the  
15 director-general in writing.

## 1 Dictionary

2 (see s 3)

3 *Note* The [Legislation Act](#) contains definitions relevant to this Act.  
4 For example:

- 5 • ACT
- 6 • adult
- 7 • director-general (see s 163)
- 8 • disallowable instrument (see s 9)
- 9 • doctor
- 10 • domestic partner (see s 169 (1))
- 11 • Executive
- 12 • exercise
- 13 • fail
- 14 • found guilty
- 15 • function
- 16 • home address
- 17 • individual
- 18 • in relation to
- 19 • Minister (see s 162)
- 20 • notifiable instrument (see s 10)
- 21 • parent
- 22 • penalty unit (see s 133)
- 23 • the Territory.

24 ***accessible information***, about a donor, for division 6.3 (Access to  
25 pre-commencement records)—see section 75.

26 ***ART accreditation*** means accreditation by any of the following:

- 27 (a) the Reproductive Technology Accreditation Committee of the  
28 Fertility Society of Australia and New Zealand (ACN 006 214  
29 115);
- 30 (b) a body prescribed for the [Research Involving Human Embryos](#)  
31 [Act 2002](#) (Cwth), section 8, definition of ***accredited ART centre***,  
32 paragraph (b);

- 1 (c) another body prescribed by regulation.
- 2 **artificial insemination** means a procedure of transferring sperm  
3 without also transferring an oocyte into the vagina, cervical canal or  
4 uterus of a person.
- 5 **ART legislation** means this Act and the following:
- 6 (a) the [Human Cloning and Embryo Research Act 2004](#);
- 7 (b) the [Prohibition of Human Cloning for Reproduction Act 2002](#)  
8 (Cwlth);
- 9 (c) the [Research Involving Human Embryos Act 2002](#) (Cwlth).
- 10 **ART provider**—
- 11 (a) for this Act generally—see section 11; and
- 12 (b) for part 6 (Pre-commencement records)—see section 71.
- 13 **ART service**—see section 10.
- 14 **ART treatment** (or **assisted reproductive technology treatment**)—  
15 see section 9.
- 16 **associated entity**, of a corporation, for part 7 (Regulatory action)—  
17 see section 78.
- 18 **authorised person**, for part 8 (Enforcement)—see section 89.
- 19 **child**—see the [Children and Young People Act 2008](#), section 11.
- 20 **commencement day** means—
- 21 (a) for part 5 (Donor register)—see section 50; and
- 22 (b) for part 6 (Pre-commencement records)—see section 71.0
- 23 **connected**, for part 8 (Enforcement)—see section 89.
- 24 **consent**, of a gamete provider, means consent given by the gamete  
25 provider under section 29.

1           **donated embryo** means an embryo donated after its creation for use  
2 by someone other than—

3           (a) the gamete providers from whom the gametes used to create the  
4 embryo were obtained; or

5           (b) a domestic partner of the gamete providers.

6           **donated gamete**—

7           (a) means a gamete donated by a gamete provider for use by  
8 someone other than the gamete provider or their domestic  
9 partner, and

10          (b) includes a gamete used to create a donated embryo, whether or  
11 not the gamete was originally obtained from the gamete provider  
12 as a donated gamete and whether or not the embryo was  
13 originally created for use as a donated embryo.

14          **donor**—

15          (a) means a gamete provider from whom a donated gamete is  
16 obtained; and

17          (b) in relation to a donor conceived person—

18               (i) means the gamete provider of a donated gamete used in  
19 ART treatment resulting in the person's birth; and

20               (ii) for part 5 (Donor register)—see section 50.

21          **donor code**, for part 5 (Donor register)—see section 50

22          **donor conceived**, in relation to a person—

23          (a) means a person born as a result of ART treatment using a  
24 donated gamete; and

25          (b) for part 5 (Donor register)—see section 50.

26          **donor register** means the register established under section 52.

- 1           **donor sibling**, in relation to a donor conceived person—
- 2           (a) means the person’s sibling born as a result of ART treatment
- 3           using a gamete donated by the person’s donor; and
- 4           (b) for part 5 (Donor register)—see section 50.
- 5           **embryo** means a discrete entity that—
- 6           (a) has arisen from either—
- 7           (i) the first mitotic division when fertilisation of a human
- 8           oocyte by a human sperm is complete; or
- 9           (ii) any other process that initiates organised development of a
- 10           biological entity with a human nuclear genome or altered
- 11           human nuclear genome that has the potential to develop up
- 12           to, or beyond, the stage at which the primitive streak
- 13           appears; and
- 14           (b) has not yet reached 8 weeks of development since the first
- 15           mitotic division.
- 16           **executive officer**, of a corporation, means a person, however
- 17           described and whether or not the person is a director of the
- 18           corporation, who is concerned with, or takes part in, the corporation’s
- 19           management.
- 20           **full name**, in relation to a donor, means each full name ever used by
- 21           the donor.
- 22           **gamete**—
- 23           (a) means a human sperm or a human oocyte; and
- 24           (b) for a gamete used in the provision of ART treatment—includes
- 25           an embryo created from the gamete.

- 1                   ***gamete provider***—
- 2                   (a) in relation to a gamete—means the person from whom the
- 3                   gamete has been obtained; and
- 4                   (b) in relation to an embryo—means a person from whom a gamete
- 5                   used to create the embryo was obtained.
- 6                   ***improvement notice***—see section 79 (2).
- 7                   ***informal donor arrangement***, for part 5 (Donor register)—see
- 8                   section 51.
- 9                   ***mandatory information*** means information of a kind given under
- 10                   section 53.
- 11                   ***mature donor conceived person***, for part 5 (Donor register)—see
- 12                   section 51.
- 13                   ***obtain***, a gamete, includes receive a gamete.
- 14                   ***occupier***, of premises, for part 8 (Enforcement)—see section 89.
- 15                   ***offence***, for part 8 (Enforcement)—see section 89.
- 16                   ***pre-commencement record***, for part 6 (Pre-commencement
- 17                   records)—see section 71.
- 18                   ***premises***—
- 19                   (a) for this Act generally—includes any land or building and part of
- 20                   any land or building; and
- 21                   (b) for part 8 (Enforcement)—see section 89.
- 22                   ***prohibition notice***—see section 84 (2).
- 23                   ***recipient***, in relation to an improvement notice or prohibition notice,
- 24                   for part 7 (Regulatory action)—see section 78.
- 25                   ***registered ART provider*** means a person registered as an ART
- 26                   provider under part 3.
- 27                   ***related corporation***, for part 7 (Regulatory action)—see section 78.

1           **relevant medical history**, of a donor, means any medical history or  
2           genetic test results of the donor or their family that are relevant to the  
3           future health of—

4           (a) a person undergoing ART treatment using the donor’s donated  
5           gamete; or

6           (b) the donor’s donor conceived offspring; or

7           (c) a child of the donor’s donor conceived offspring.

8           **remote application**, for division 8.5 (Warrants)—see section 100 (3).

9           **retention period**, in relation to a pre-commencement record, for  
10          part 6 (Pre-commencement records)—see section 71.

11          **reviewable decision**, for part 10 (Notification and review of  
12          decisions)—see section 122.

13          **self-insemination** means artificial insemination not performed or  
14          supervised by a doctor on behalf of a registered ART provider.

15          **warrant**, for part 8 (Enforcement)—see section 89.

16          **warrant form**, for division 8.5 (Warrants)—see section 103(2).

17          **warrant terms**, for division 8.5 (Warrants)—see section 102(2).

18          **young person**—see the *Children and Young People Act 2008*,  
19          section 12.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 28 November 2023.

**2 Notification**

Notified under the [Legislation Act](#) on 2023.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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