

2025

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

ASSISTED REPRODUCTIVE TECHNOLOGY AMENDMENT BILL 2025 (NO 2)

EXPLANATORY STATEMENT
and

HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004*, s 37)

Presented by
RACHEL STEPHEN SMITH MLA
MINISTER FOR HEALTH
October 2025

THIS PAGE IS INTENTIONALLY LEFT BLANK

ASSISTED REPRODUCTIVE TECHNOLOGY AMENDMENT BILL 2025 (NO 2)

The Bill **is** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004 (Human Rights Act)*.

This explanatory statement relates to the *Assisted Reproductive Technology Amendment Bill 2025 (No 2)* (the **Bill**) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

OVERVIEW OF THE BILL

The Bill amends the *Assisted Reproductive Technology Act 2024 (ART Act)*, with a primary focus on sections 66 and 67. These provisions regulate the disclosure of information on the Assisted Reproductive Technology (**ART**) donor register to donor conceived people and parents of donor conceived children or young people.

The Bill makes the following key amendments to the ART Act:

- Amendment to the age of access at which donor conceived people may receive donor information from the donor register under section 66 of the ART Act (clause 8). The Bill increases the general age of access for all mandatory donor information (including both identifying and non-identifying information) from 16 to 18 years (as per amended section 66(1)(a)), but retains access for donor conceived people aged under 18 years who have been ‘assessed by a counsellor’ (which has a specific definition under amended section 51(2) of the ART Act for the purposes of the donor register – see clause 7 of the Bill).
- Retention of default access to certain non-identifying donor information for donor conceived people aged 16 and 17 years who have not been ‘assessed by a counsellor’ (new section 66A in clause 8). However, for these donor conceived people, mandatory donor information of an identifying nature can only be accessed if the donor has provided explicit consent in writing.
- Amendment to parental access to mandatory donor information from the donor register under section 67 of the ART Act (clause 9). The Bill limits access for parents of donor conceived people to only certain non-identifying donor information. The remaining mandatory donor information of an identifying nature can only be accessed by the parent if the donor has provided explicit consent in writing.
- Minor, editorial amendments to Part 6 of the ART Act to clarify that Division 6.3 also deals with any information held by ART providers after the commencement of the Act.

This explanatory statement refers to ‘identifying’ information or ‘non-identifying’ information for ease of reference and readability. However, the Bill does not define these terms or include a general test to determine whether or not information is identifying. Rather, to ensure certainty

and transparency as to the kind of information to be disclosed, the Bill explicitly lists the donor's information which may be released in each circumstance. When this explanatory statement references 'identifying information' it is referring to the list of mandatory information set out in clauses 8 and 9, new section 66A(2)(b) and subsection 67(1)(b) respectively:

- the donor's full name;
- the donor's date and place of birth;
- the donor's home address.

When this explanatory statement refers to 'non-identifying information' it is referring to the list of mandatory information set out in clauses 8 and 9 – new section 66A(2)(a) and subsection 67(1)(a) respectively:

- the donor's year of birth;
- the donor's country of birth;
- the donor's ethnicity and physical characteristics;
- the donor's relevant medical history;
- the donor's country of residence.

Further, references to 'assessed by a counsellor' (as well as similar references to 'counsellor assessed') are intended to have the same meaning throughout this explanatory statement as the defined term under the amended section 51(2) in clause 7 of the Bill – that is, 'assessed by a counsellor' refers to where:

- a donor conceived person has received appropriate counselling services from a suitably qualified and experienced counsellor; and
- the counsellor is satisfied the person is able to understand and comply with the donor's contact preferences; and
- the counsellor is satisfied the person is able to understand that the donor has no parental rights or responsibilities in relation to the donor conceived person.

Following the commencement of the ART Act, all three ART providers in the ACT, along with the Office of LGBTIQA+ Affairs and several ART clients, reported a significant drop in supply of donated gametes, providing feedback that gametes are now nearly impossible to source in the ACT. This includes reports of:

- Up to an 80% drop in ART cycles since the legislation commenced due to lack of gamete availability.
- Very few, if any, suppliers indicating willingness to supply gametes under the new legal conditions.

Stakeholder feedback has consistently indicated that sections 66 and 67 are the primary barriers to the supply of donated gametes in the ACT. ART providers report that many potential donors are unwilling to consent to the automatic release of identifying information to parents and donor conceived people under 18 years of age. Additionally, most gametes used in ART

in the ACT come from international gamete banks, with ART providers reporting an inability or unwillingness on the part of these gamete banks to adapt their donor consent agreements to align with the ART Act. International gamete banks have indicated that the option for mature donor conceived people to automatically access identifying donor information at an age younger than 16 introduces unacceptable legal risk for them and is inconsistent with their home regulatory obligations.

ART Act

The ART Act commenced on 28 March 2024. It establishes a regulatory framework for the safe and ethical delivery of ART services, with provisions about (but not limited to):

- registration requirements for ART providers;
- standards for the provision of clinical services;
- retrieval of gametes, creation of embryos, and their storage and disposal;
- family limits; and
- establishment of a donor register.

During the initial implementation of the ART Act, stakeholders raised concerns about the transitional arrangements and the impact of the ART Act on gamete supply. In response, legislative amendments were expedited and passed in March 2025 under the *Assisted Reproductive Technology Amendment Act 2025* to extend the operation of the transitional provisions to a broader cohort of people. It was also acknowledged during this process that stakeholder concerns regarding reduced gamete supply would require further consideration. The aim of this Bill is to address these gamete supply issues.

Donor Register

A key feature under Part 5 of the ART Act is the establishment of the donor register, which commenced on 28 March 2025. The donor register collects, manages, and provides access to information relating to donors, donor conceived people, and the parents of donor conceived people. A primary purpose of the donor register is to support donor conceived individuals in accessing information about their genetic origins. This includes information that contributes to a person's sense of identity, such as the ethnicity of their donor, relevant medical history, and information about potential donor siblings.

The donor register comprises two components:

- Mandatory component – For ART treatments conducted on or after 28 March 2025, ART providers are required to submit relevant information to the donor register within 2 months of a live birth. This submitted information is called 'mandatory information'. In relation to donors, the list of mandatory information is found at section 53 and largely comprises the identifying and non-identifying information listed above, and also includes the sex and year of birth of each of the donor's donor conceived offspring; the name of each ART provider that has previously obtained a donated gamete from the donor and the date on which the gamete was obtained; and the donor's consent.

- Voluntary component – which allows individuals such as donors, and parents of donor conceived children or young people who were involved in ART procedures, whether before, on, or after 28 March 2025 to voluntarily submit information to the donor register. Donor conceived people may also submit information about themselves if they wish to do so.

The existing sections 66 and 67 outline the circumstances where donor conceived persons or their parents can access mandatory and voluntary information from the donor register. In relation to the mandatory component of the donor register, comprising information submitted to the register by ART providers for ART treatments conducted on or after 28 March 2025, the ART Act currently provides:

- Section 66 – a donor conceived person can access mandatory information about their donor if the donor conceived person is a ‘mature donor conceived person’ (i.e., either 16 years of age or older, or assessed by a counsellor as being able to understand their donor’s contact preferences and that the donor has no parental rights or responsibilities to them).
- Section 67 – a parent can access mandatory information about their donor conceived child’s donor, where the gamete used in the relevant ART treatment was donated on or after 28 March 2025.

Amendments to section 51 – Meaning of *mature donor conceived person* for Part 5 of the ART Act

The Bill does not amend the definition of ‘mature donor conceived person’ in a substantive way. A mature donor conceived person under Part 5 remains a donor conceived person who is either at least 16 years old (**Limb A**) or has been assessed by a suitably qualified and experienced counsellor as being able to understand and comply with a donor’s contact preferences and understand the donor has no parental rights or responsibilities in relation to the donor conceived person (**Limb B**).

However, clause 7 creates a new separately defined term to encapsulate Limb B – ‘assessed by a counsellor’. To be a ‘mature donor conceived person’, a donor conceived person must meet either Limb A or Limb B (either be 16 years of age or older as per section 51(1) or ‘assessed by a counsellor’ as defined under section 51(2)). This amendment ensures that other provisions under Part 5 of the ART Act with references to a ‘mature donor conceived person’, (such as in sections 55 and 58) are not affected by the changes to how donor information may be disclosed under sections 66 and 67.

Amendments to section 66 and new section 66A – Age of access for donor conceived people

Stakeholder feedback has identified that section 66 of the ART Act currently acts as a barrier to maintaining an adequate gamete supply in the ACT. Currently, any donor conceived person aged at least 16 years old (Limb A) or otherwise assessed by a counsellor (to use the new defined term for Limb B) can access both identifying and non-identifying mandatory information about the donor kept on the donor register.

This model does not align well with current prevailing overseas practice, whereby international gamete banks typically obtain donor consent and gametes on the basis that identifying

information will only be released when the donor conceived person reaches 18 years of age. The compounding effect of ACT's inclusion of a lower age threshold, as well as a maturity-based access pathway for donor conceived people under 16 years of age, has reportedly created uncertainty and concerns for suppliers.

Under clause 8, the ART Act will be amended so that:

- only a donor conceived person who is aged at least 18 years old or assessed by a counsellor will be able to access both identifying and non-identifying mandatory information about their donor from the donor register.
- a donor conceived person aged 16 or 17 years who has not been assessed by a counsellor (whether because they have not undergone the assessment, or because they have been assessed as not having sufficient understanding of their obligations) will be able to access non-identifying mandatory donor information by default, but will only be able to access identifying mandatory information if the donor consents in writing. This reflects the same level of information that their parents can access via clause 9 (which is described in further detail below).

As outlined above, a donor conceived person is 'assessed by a counsellor' if they have been assessed by a counsellor of being able to understand their donor's contact preferences and that the donor has no parental rights or responsibilities to them (see clause 7, section 51(2) for the full definition of 'assessed by a counsellor').

This amendment would bring the ACT's legislative framework into closer alignment with the legislative model in Victoria, which maintains a sustainable gamete supply from both domestic and international gamete banks. It would also be consistent with the National Health and Medical Research Council *Ethical guidelines on the use of assisted reproductive technology in clinical practice and research (NHMRC Guidelines)*, which are followed by the ART industry in Australia, and which ACT providers are required to comply with as part of their ART accreditation by the Reproductive Technology Accreditation Committee of the Fertility Society of Australia and New Zealand. ART accreditation is required by section 12 of the ART Act in order for an ART provider to be registered, and it is an offence for an ART provider to provide ART services if they are not registered (see 21 of the ART Act).

The intent of this reform is to address the concerns of stakeholders regarding the maintenance of a viable gamete supply, while minimising the extent to which the rights of donor conceived people to access information about their genetic heritage may be restricted.

As access to the voluntary component of the donor register is initiated by donor conceived individuals, donors, and parents on a voluntary (rather than mandatory) basis, it is not considered to be impacting gamete supply. Accordingly, provisions relating to access to the voluntary register are not being amended and donor conceived persons aged 16 years or older, or assessed by a counsellor, will still be able to access any voluntarily provided information from donors or donor siblings, subject to any restrictions those individuals have placed on its disclosure.

Apart from amending section 66, the changes under clause 8 are not intended to affect the interpretation or application of any other section in the ART Act that refers to a maturity requirement.

Amendments to section 67 – Parental access

Stakeholder feedback and data about ART in Australia has identified that section 67 of the ART Act currently acts as a barrier to maintaining an adequate gamete supply. The primary concern raised by stakeholders relates to this provision permitting early parental access to identifying donor information. This information forms part of the mandatory information that ART providers are required to submit to the donor register shortly after the birth of a donor conceived child following ART treatment provided on or after 28 March 2025. Under the current legislation for donors who donated their gametes on or after 28 March 2025, parents may obtain their identifying details shortly after a child is born, such as the donor's full name and their home address, without the donor's ability to withhold consent to this information being shared.

The ACT is currently the only Australian jurisdiction that permits this level of access to identifying donor information directly by parents without requiring donor consent for this disclosure. Stakeholders have raised concerns about its impact on both donor willingness and the overall availability of donated gametes.

The original intent behind allowing parental access to the donor register was to support families to normalise donor conception and integrate this information into their child's life story from an early age. This approach was informed by the historical context in which donor conception was often kept secret, sometimes resulting in donor conceived individuals discovering their genetic origins later in life. Such late disclosures have been reported to negatively affect individuals' wellbeing and their relationships with family members.

The proposed amendment to section 67(1) of the ART Act will revise the current provision to restrict parental access so that only non-identifying mandatory information about their donor conceived child's donor will be provided by default. Identifying mandatory information will become accessible to parents only where the donor has explicitly consented in writing to such disclosure.

The Bill does not amend the limitation on disclosure at section 67(2)(a). This means that parental access to mandatory donor information is still restricted only to donors who donated their gametes on or after commencement day (which is 28 March 2025). If a donor donated their gametes before 28 March 2025, parents will not be able to access their mandatory information, even if those gametes are then used in ART treatment provided on or after 28 March 2025.

Clause 10 of the Bill provides a general exception to the limitation on disclosure at section 67(2)(a) if the donor consents in writing to the disclosure. This means that if a donor has provided consent to parental access to their mandatory information, that access will not be restricted because the relevant gametes were donated before 28 March 2025.

As access to the voluntary component of the donor register is initiated by donor conceived individuals, donors, and parents on a voluntary basis, it is not considered to be contributing to the current challenges in gamete supply. Accordingly, parents will still be able to access any voluntarily provided information from donors or donor siblings, subject to any restrictions those individuals have placed on its disclosure.

This amendment would bring the ACT's legislative framework into closer alignment with comparable laws in Queensland, Victoria, and South Australia, where identifying donor information is also subject to donor consent.

Minor amendments to Part 6, Part 12 and Dictionary

Clauses 11–15 of the Bill make minor and technical amendments to clarify that certain provisions in Part 6, and in particular Division 6.3 (Access to information held by ART providers) do not only apply to pre-commencement records, but also to any current information held by ART providers.

The proposed amendments ensure that the relevant headings and notes correctly reflect that 'accessible information' as defined under section 75 of the ART Act may include information held by ART providers that are not pre-commencement records. The amendments give greater clarity for donor conceived persons or their parents seeking accessible information directly from an ART provider under section 76 of the ART Act.

The Bill also updates definitions of *commencement day* in Part 5, Part 6, and section 132E of the ART Act as well as the definition of *transitional period* in Part 12 with the actual dates to improve readability of the legislation. It also makes minor consequential amendments to certain terms in the Dictionary.

CONSULTATION ON THE PROPOSED APPROACH

Consultation during the implementation of the ART Act

Following the introduction of the ART Act, the former ACT Health Directorate (**ACTHD**) (ACTHD now being part of the Health and Community Services Directorate, or **HCSD**) engaged in consultation with the three ART providers operating in the ACT. These consultations took place during both the implementation phase of the ART Act and the development of the amendment Bill passed in March 2025. The purpose of this engagement was to gather feedback on the application of the legislation and its potential impacts on ART industry practice. In addition to formal consultations, input was also received from other stakeholders and members of the public who provided feedback independently. These included members of the donor conceived community, gamete donors and donors' families, ART clients, and organisations representing families who have children conceived using ART.

A range of issues were raised, prompting further analysis and consideration of legislative reform. A key concern identified through this consultation process was the provision of parental access to identifying donor information shortly after the birth of a donor conceived child. The age of access by donor conceived people to identifying donor information was also raised as a concern. These issues were particularly significant in the context of ensuring an adequate and sustainable supply of donated gametes in the ACT.

Consultation on current proposed amendments to the ART Act

Internal Stakeholders

The Health Risk Facilities and Radiation Safety Team, ACTHD, was consulted to ensure awareness of the proposed changes, given its regulatory responsibilities under the ART Act. No issues were raised by the team.

Other ACT Government Agencies

The Office of LGBTIQA+ Affairs, previously within the Chief Minister, Treasury and Economic Development Directorate (**CMTEDD**), and now within HCSD, was regularly consulted through development of the Bill. Its feedback – particularly regarding the practical implications of the amendments for LGBTIQA+ community members – was instrumental in shaping and refining the policy intent. Feedback from the Office of LGBTIQA+ Affairs helped to inform the necessity and scope of the Bill, and particularly informed consideration of the disproportionate impact of reduced gamete supply on LGBTIQA+ individuals and couples, reinforcing the need for evidence-based and human rights-oriented policy decisions.

The ACT Human Rights Commission and the Justice and Community Safety Directorate (**JACS**) Human Rights Scrutiny Team were engaged on an ongoing basis to assess the proposed amendments in relation to human rights considerations. These considerations helped to guide the development and scope of the Bill.

External Stakeholders

Feedback was received through face-to-face engagement and written submissions from the following stakeholders:

- constituents who had previously contacted ACTHD regarding gamete supply issues;
- ACT Donor Conception Advocacy Group (formerly the ACT Branch of Donor Conceived Australia);
- Rainbow Families;
- Australian Solo Mothers by Choice / Assisted Reproductive Treatment Families Australia;
- the three ACT-based ART providers –
 - Genea;
 - Compass Fertility; and
 - IVF Australia (part of Virtus Health).

Targeted consultation was also conducted on the draft Bill. Stakeholders such as the Office of LGBTIQA+ Affairs, the three ART providers in the ACT, ACT Donor Conception Advocacy Group, Rainbow Families and Australian Solo Mothers by Choice were provided a draft version of the Bill for feedback. Changes were made to the Bill following this feedback, such as requiring the donor to have provided their consent in writing.

All three ART providers in the ACT agreed that, in order to resolve gamete supply shortages in the ACT, sections 66 and 67 of the ART Act needed to be amended. In relation to parental access, the ART providers argued that the inconsistency of the provision with contractual arrangements with international gamete banks is directly contributing to the significant shortage of gametes available in the ACT. The ART providers also stated that the current age of access for donor conceived people is negatively affecting gamete supply and encouraged the minimum age of access for donor conceived people to be raised to 18 years of age without allowing earlier access based on counsellor assessments.

Other constituents and community advocacy groups were also generally supportive of the amendments to parental access in order to address declining gamete supply.

Feedback on amending the age of access for donor conceived people was more mixed. Some stakeholders, such as ACT Donor Conceived Advocacy Group and Australian Solo Mothers by Choice did not support amending the age of access for donor conceived people, arguing for the rights of donor conceived people to access identifying information about their donors. Other stakeholders, such as Rainbow Families indicated support for increasing the age of access and noted that the current younger age of access could create uncertainty for donors, leading to a reduced gamete supply. They argued this in turn made it harder for families to access fertility treatment from ART providers, and would increase costs and delays, and could potentially drive individuals to seek less medically and legally safe alternatives.

State-Based Government Agencies

ACTHD and HCSD also maintained regular engagement with jurisdictional counterparts responsible for ART legislation and regulation. Specific consultation on parental access provisions was undertaken with the following agencies:

- Department of Health, Victoria (including the team formerly responsible for the Victorian Assisted Reproductive Treatment Authority – **VARTA**)
- Queensland Health
- Department of Justice, Queensland Government
- Department of Health, Government of Western Australia.

These jurisdictions shared insights into the rationale behind their respective policy positions on donor and donor sibling information access. They also provided key lessons learned from their legislative and operational experiences, which informed the ACT's policy development process.

CLIMATE IMPACT

There are no climate impacts anticipated under the Bill.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Bill, due regard was given to its compatibility with human rights as set out in the Human Rights Act. An assessment of the Bill against section 28 of the Human Rights Act is provided below. Section 28 provides that human rights are subject only to

reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Rights engaged

The Bill engages the following sections of the Human Rights Act:

- Section 8 – Right to equality and non-discrimination (*promoted*)
- Section 11 – Right to protection of the family and children (*limited*)
- Section 12 – Right to privacy (*promoted and limited*)
- Section 16 – Right to freedom of opinion and expression (*limited*).

Rights Promoted

Section 8 – Right to equality and non-discrimination

Section 8 of the Human Rights Act provides that everyone is entitled to enjoy their rights without discrimination of any kind and that everyone is equal before the law and entitled to the equal protection of the law without discrimination.

The Bill promotes this right by addressing the negative impacts that the affected provisions of the ART Act have had on gamete supply in the ACT. The lack of gamete supply has increased the expenses associated with sourcing gametes and reduced availability, resulting in inequitable access to ART services.

The impact of gamete supply shortages disproportionately affects the LGBTIQA+ community and single women, given the necessary role of ART treatment in conceiving children for a significant portion of these groups, and that these groups are more likely to rely on donated gametes.

By addressing this discriminatory impact, the Bill promotes the right to equality and non-discrimination and will help ensure that LGBTIQA+ people and single women are not unfairly disadvantaged in their ability to access ART.

Section 12 – Right to privacy

Section 12 of the Human Rights Act protects individuals from unlawful or arbitrary interference with privacy, family, home, or correspondence. The Bill promotes privacy rights for gamete donors by limiting the release of their personal information via the donor register.

Age of access for donor conceived people

The Bill amends section 66 to raise the general age at which donor conceived persons may access identifying mandatory information about their donor. Clause 8 promotes a donor's right to privacy by ensuring that identifying donor information is only disclosed when the donor conceived person seeking it has been assessed as capable of understanding and respecting the implications of that disclosure ('assessed by a counsellor') or is a legal adult. If they have not been 'assessed by a counsellor', a donor conceived person aged 16 or 17 will only be able to automatically access non-identifying mandatory donor information, and will only be able to access identifying mandatory donor information if the donor explicitly consents in writing.

Parental access

The Bill also promotes the right to privacy by amending section 67 to ensure that identifying mandatory information about a donor is not disclosed to parents of donor conceived persons without the donor's explicit consent in writing. Without a donor's consent in writing, parents will only be able to access non-identifying mandatory information, such as the donor's ethnicity and country of birth. This change reflects a more protective approach to managing access to sensitive donor information by parents of donor conceived people. It recognises that the disclosure of identifying information, such as a donor's name and address, can raise complex privacy, ethical, and relational considerations, particularly when the donor has no ongoing relationship with the child or family and has not given their consent to parental access.

Together, the two amendments promote a donor's right to privacy by providing greater protections around the release of their mandatory information.

Rights Limited

The limitation of rights relating to donor conceived children and young people.

Section 11 – Right to protection of the family and children

Section 16 – Right to freedom of opinion and expression

1. *Nature of the right and the limitation (s28(a) and (c))*

Section 11(2) of the Human Rights Act provides that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind. The rights of the child are interpreted by reference to the rights contained in the *United Nations Convention on the Rights of the Child* (UNCRC), which requires that the best interests of the child must be a primary consideration in any decision that affects the child. 'Best interest' encompasses requirements of preservation of identity, health, education, cultural and kinship relations, and opportunities for social and personal development. Article 8 of the UNCRC protects a child's right to preserve their identity, including their nationality, name and family relations. International courts and scholars have extended this to include the right to know one's genetic origins, which is recognised as an important part of a child's identity and development. The Bill interacts with the rights of a child to know their genetic heritage as it makes changes to when a donor conceived child or young person can access mandatory information about their donor.

Section 16(2) of the Human Rights Act protects the right to freedom of expression, which includes the freedom to seek and receive information. This right includes the right to receive personal, cultural, and identity-related information. In this context of rights relating to donor conceived children and young people, this includes the right of donor conceived persons to seek information about their donor and their genetic heritage.

Age of access for donor conceived people

Clause 8 engages and limits a donor conceived child's right to know their genetic heritage, as well as their right to seek and receive information by raising the general age at which donor

conceived persons may access identifying mandatory donor information from 16 to 18 years, unless assessed by a counsellor (as newly defined under section 51(2) of the ART Act – see clause 7 of the Bill). The amendment to section 66 restricts full access of mandatory information to those aged 18 and over, or younger if assessed by a counsellor. New section 66A only allows access to non-identifying mandatory information at ages 16 and 17 (without being assessed by a counsellor), if the donor has not given their explicit consent. The availability of non-identifying information from age 16 ensures that donor conceived persons can still begin to explore their genetic heritage, while full access is deferred until they are legally adults or earlier, if assessed by a counsellor.

As the counsellor assessed pathway is retained, the limitation on the right of donor conceived children to know their genetic heritage largely affects donor conceived people aged 16 and 17 who can no longer access identifying mandatory donor information by default but must first be assessed by a counsellor, or have explicit consent in writing from the donor.

As such, 16- and 17-year-old donor conceived persons' right to access information that is relevant for the understanding of their genetic heritage, identity and kinship is affected, limiting both the rights of the child and the right to freedom of expression.

Parental access

Clause 9 indirectly limits the rights of a child to know their genetic heritage by restricting the ability of parents to access identifying mandatory information about the donor. Under the existing legislation, parents may obtain mandatory identifying donor information soon after the birth of the child, which enables early integration of donor identity and heritage into the child's upbringing. Clause 9 will amend section 67 so that parents can only access non-identifying mandatory information, unless the donor has otherwise explicitly consented in writing. The limitation of clause 9 on the rights of the child to know their genetic heritage is indirect, as it does not prevent the donor conceived child from accessing donor information themselves once they reach the relevant age or have been counsellor assessed as per section 66 or section 66A.

2. *Legitimate purpose (s28(b))*

The Bill's amendments to sections 66 and 67 of the ART Act pursue a legitimate purpose of addressing the critical shortage of donated gametes in the ACT, following the commencement of the ART Act. This shortage of gamete supply has significantly impacted the ability of individuals and families to access ART services, particularly for groups who are disproportionately affected by supply constraints, such as the LGBTIQA+ community and single women. Stakeholder feedback has consistently identified sections 66 and 67 as the key barriers to supply.

The Bill seeks to restore donor confidence, align with standards in other Australian jurisdictions (discussed below), and ensure the continued supply of donated gametes in the ACT. Ensuring the availability of gametes for those who require them to form a family is of a legitimate and pressing public interest.

3. Rational connection between the limitation and the purpose (s28(d))

Age of access for donor conceived people

Clause 8 contributes to the objective of improving gamete supply. International gamete banks typically obtain donor consent on the general basis that identifying information will only be released when the donor conceived person reaches 18 years of age. ACT providers have consistently reported that the ACT's current provision automatically allowing access from age 16 has impacted gamete supply due to its incompatibility with international gamete bank agreements.

While some jurisdictions, such as Queensland, allow access from age 16, they do not permit access by younger donor-conceived persons even if assessed by a counsellor (or equivalent). Queensland Government counterparts have reported no concerns from ART providers and noted that some international gamete banks have adapted their agreements to comply with Queensland law. However, the compounding effect of ACT's inclusion of both a lower age threshold in conjunction with counsellor assessed access for donor conceived people under 16 years of age has created uncertainty and concerns for suppliers.

The chosen approach reflects the NHMRC Guidelines, which form part of the accreditation requirements for ART clinics across Australia. According to the NHMRC Guidelines, donor conceived individuals should be entitled to access identifying information about their donor once they reach the age of 18 or have been assessed as sufficiently mature. Accredited ART providers have been required to comply with the NHMRC Guidelines since 2004. It is now also a requirement under the ART Act for all ART providers to hold ART accreditation in order to provide ART services in the ACT (see section 12 of the ART Act). Aligning the ART Act's approach with the NHMRC Guidelines is intended to support ART providers in sourcing compliant gametes, as they would not need to ensure compliance with two sets of rules.

The chosen approach under clause 8 is most closely aligned with the Victorian legislative model. The Victorian model, while articulated differently to the ACT legislation, has a legal right of access to identifying donor information by donor conceived persons aged 18 years or older, and counsellor assessed donor conceived persons under the age of 18. Victoria also allows access by donor conceived children with their parent's consent. In contrast, NSW does not provide a legal right of access to identifying donor information by a donor conceived person under the age of 18.

According to data from the Australian and New Zealand Assisted Reproduction Database (**ANZARD**) on the rates of donated gamete use in 2019, Victoria and NSW had similar numbers (512 and 489 cycles per million population, respectively). This similarity indicates that the counsellor assessed provisions in Victoria have not led to lower rates of gamete use. In relation to assessing the impact on gamete supply, it is acknowledged that comparison across different state jurisdictions is only useful to a degree. This is because of key differentiating factors across jurisdictions. For instance, NSW has significantly larger population size than the ACT with a well-established local gamete supply. Victoria is also less reliant on international donor gametes and has recently established a publicly funded local egg and sperm bank, the first of its kind in Australia.

Nonetheless, by adopting a similar framework to Victoria (i.e. general access at 18 years or older, or assessed by a counsellor), the ACT can be more assured of compatibility with international donor agreements and reduce the risk of continued gamete supply disruption.

Parental access

The proposed limitation on parental access to identifying donor information supports the objective of restoring gamete supply in the ACT. Feedback from ART providers indicates that the current legislative framework has led to a significant decline in gamete supply. This includes reports of up to an 80 per cent drop in ART cycles since the legislation commenced, and very few, if any, suppliers indicating willingness to supply gametes under the new legal conditions.

The ACT's current approach in allowing early parental access without donor consent is inconsistent with international gamete bank agreements. ART providers have reported that because of this inconsistency, it is nearly impossible to source gametes from international suppliers. In the ACT, clients depend almost entirely on international donors, and ART providers advise that there is low interest in altruistic donation to unknown recipients in smaller populations like the ACT. The amendment to section 67 will remove a significant point of divergence between the ACT and other jurisdictions such as Victoria and New South Wales, both of which do not permit parental access to identifying donor information without the donor's consent. While gamete supply in those jurisdictions may be supported by other factors, such as public donor programs or larger population bases, ANZARD data shows continued gamete supply. By harmonising the ACT's approach with these jurisdictions, the amendment improves the likelihood of addressing the current supply challenges. By amending section 67 to require donor consent in writing before releasing mandatory identifying information, the Bill will remove a significant barrier to the availability of international donor gametes.

4. Proportionality (s28 (e))

While sections 11 and 16(2) of the Human Rights Act protect the rights of donor conceived children to know their genetic heritage and to seek and receive information, these rights must be balanced against other rights and legitimate public interests, including a donor's right to privacy and restoring access to ART services in the ACT. The rights of donor conceived children do not guarantee unrestricted access to all personal information held by public authorities, especially where that information relates to third parties who have privacy interests. In the context of the ART Act, identifying donor information includes their full name, date and place of birth, and home address, which are highly sensitive personal details.

Age of access for donor conceived people

The limitation on access to identifying donor information by donor conceived persons aged under 18 years is a proportionate and carefully targeted measure. It does not remove the general right to access mandatory donor information altogether but defers full access without being counsellor assessed until the individual is legally an adult. For donor conceived persons aged under 18 years old, the Bill retains full access if assessed by a counsellor, as well as access to non-identifying mandatory information if the donor conceived person has not been assessed by a counsellor but is 16 or 17 years old (unless the donor consents to the release of identifying information).

In developing clause 8, several alternative approaches were considered to balance the rights of donor conceived children to know their genetic heritage and seek information with the need to restore gamete supply. One option considered was to remove the counsellor assessed pathway for donor conceived young persons altogether. This option would create a hard age threshold (either at 16 or 18 years of age), similar to the Queensland model, which does not permit access to the donor register by donor conceived people younger than the age threshold, regardless of whether they have been counsellor assessed (or equivalent).

While this approach with an age of 18 may more definitively align with international donor agreements and therefore offer better redress to the shortage of gamete supply, it would also restrict the rights of young donor conceived people who may be capable of understanding and managing the implications of donor information. Removing counsellor assessed access and having an arbitrary age threshold (whether that age is 16 or 18) would represent a more restrictive approach and unduly limit the best interests of the child as a primary consideration.

The chosen approach under clause 8 balances the competing considerations. It better aligns with international gamete consent agreements of releasing identifying information at age 18 or older, while also preserving an access pathway for minors assessed by a counsellor.

Clause 8 includes key safeguards designed to minimise the impact on the rights of donor conceived children to know their genetic heritage and to seek and receive information while achieving the objective of restoring gamete supply. These safeguards include the retention of default access to non-identifying mandatory information from age 16 and the retention of a counsellor assessed pathway.

Allowing default non-identifying information access from age 16 supports donor conceived persons in beginning to explore their genetic heritage during adolescence, even if full identifying donor information is not yet available. Donor conceived people aged 16 and 17 will still be able to access some level of information about the donor such as the year and country of birth, ethnicity, medical history and physical characteristics, without being counsellor assessed (whether because they have not undergone the assessment, or because they have been assessed as not having sufficient understanding of their obligations).

Retaining the counsellor assessed pathway ensures young people who demonstrate the emotional and cognitive capacity to understand and manage the implications of accessing donor information are not arbitrarily excluded due to their age. Donor conceived people assessed by a counsellor will be able to access the full suite of mandatory donor information available in the register, this includes their donor's full name, date and place of birth and home address, in addition to the non-identifying information outlined above.

The threshold for being assessed by a counsellor is outlined in clause 7 and involves a 'suitably qualified and experienced counsellor' being satisfied that the donor conceived person can understand and comply with donor contact preferences and understand that the donor has no parental rights or responsibilities. In practice, it is expected that most 16- and 17-year-old donor conceived persons would be able to meet this test. The limitation on their rights is therefore largely because of the removal of their default right to obtain identifying mandatory donor information and instead be required to first be assessed by a counsellor. Counsellor assessed access is retained, ensuring a pathway for mature donor conceived persons under 18 to access identifying donor information.

The age of access amendment only affects access to identifying donor information via the mandatory component of the donor register. The other avenues under the ART Act for mature donor conceived persons to access donor information are not affected, such as through the voluntary component of the donor register, personal health information under section 25, and the accessible information pathway under Division 6.3. By confining the change to the specific pathway that has been identified as contributing to donor reluctance and gamete supply shortages, the amendment ensures that the limitation is narrowly targeted and does not interfere with other entitlements or avenues for donor conceived people to be able to access relevant information. Additionally, where a donor has given their consent in writing, donor conceived people aged 16 or 17 years of age who have not been assessed by a counsellor are able to access identifying mandatory donor information.

These safeguards minimise the impact on donor conceived children and ensure that the limitation on their right to know their genetic heritage and right to seek and receive information is carefully targeted and proportionate.

Parental access

The limitation on parental access to identifying donor information is the least restrictive means reasonably available to achieve the objective of restoring gamete supply. While the amendment to section 67 may indirectly delay or limit the incorporation of donor identity into a donor conceived child's upbringing, it still allows parents default access to non-identifying donor information, such as a donor's country of birth, ethnicity and physical characteristics. The retention of default access to non-identifying donor information enables integration of genetic heritage into the family narrative as part of a donor conceived person's upbringing.

Less restrictive alternatives were considered but did not achieve the legitimate objective. For instance, it was considered whether the policy intent could be achieved by maintaining automatic parental access to both identifying and non-identifying mandatory donor information but allowing donors to 'opt out'. However, stakeholder feedback on operational realities indicated that an opt-out approach would not effectively achieve the objective of restoring gamete supply in the ACT. International gamete banks, which supply the majority of donor gametes used in the ACT, have standard agreements in place with donors which do not accommodate jurisdiction-specific opt-out mechanisms. ART providers have advised that international gamete banks are unwilling or unable to modify their consent frameworks to accommodate an opt-out model. If this alternative were to be adopted, the ACT would be likely to continue to be excluded from accessing international donor gametes, which are critical to meeting local demand given the limited availability of local donors.

Furthermore, an opt-out model would place the burden on donors to actively refuse disclosure, which may be perceived as unclear, particularly where donors may not fully understand the implications of failing to opt out. This uncertainty would be likely to deter potential donors from participating altogether. In smaller jurisdictions like the ACT, where altruistic donation to unknown recipients is already limited, any additional deterrent, such as perceived lack of control over personal information, could negatively impact gamete supply.

The disclosure of information is not arbitrary, rather, clause 9 explicitly lists what types of mandatory information can and cannot be disclosed, depending on whether the donor has

given consent. The chosen approach of requiring donor consent in writing before releasing mandatory information of an identifying nature (but still allowing for the default release of non-identifying information) is narrowly targeted to address the specific barrier to gamete supply identified by stakeholders, that is, the incompatibility of automatic parental access to identifying information with international gamete bank agreements.

Safeguards are incorporated in the Bill through the continued availability of default parental access to non-identifying mandatory donor information and the preservation of access to mandatory identifying information by the donor conceived person themselves, once they reach the relevant age or have been counsellor assessed. Additionally, the amendment does not impose a blanket prohibition on parental access to identifying mandatory donor information. Where a donor has explicitly consented in writing to the release of their identifying information, parental access is retained. This ensures that families who wish to incorporate donor identity into their child's life story from an early age can still do so, provided the donor agrees.

The amendment to section 67 is limited to the pathway through which parents of donor-conceived children access mandatory donor information via the donor register. Parents will continue to have access to voluntary information under the donor register. The amendment also does not affect other aspects of the ART Act that support parental engagement, including access to personal health information under section 25 relevant to the child's medical wellbeing, and the accessible information pathway under Division 6.3.

These measures ensure that the indirect impact of clause 9 on a child's right to know their genetic heritage is to a minimal extent, while still being able to resolve the issue of gamete supply.

The limitation of rights of parents of donor conceived children

Section 11 – Right to protection of the family and children

Section 12 – Right to protection from unlawful or arbitrary interferences with their privacy, family, home, or correspondence

Section 16 – Right to freedom of opinion and expression

1. *Nature of the right and the limitation (s28(a) and (c))*

The right to protection of the family and children is outlined in s 11 of the Human Rights Act and provides that, "the family is the natural and basic group unit of society and is entitled to be protected by society". Section 12 of the Human Rights Act protects individuals from unlawful or arbitrary interferences with their privacy, family, home, or correspondence. In relation to families, both rights have origins in Article 23(1) of the International Covenant on Civil and Political Rights, which recognises that families should not be "subjected to arbitrary or unlawful interference with [their] privacy, family, home or correspondence..." by public authorities. The definition of "arbitrary" in this context is broader than its ordinary meaning: the UN Human Rights Committee describes it extending to actions consistent with laws:

“...arbitrary interference can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant.”

In the context of ART, the protections against interferences with family extends to parents of donor conceived children and includes protection from interference with parents' ability to access information relevant to their child's genetic heritage, which in turn helps support family narratives and informed parenting.

The amendment to section 67 limits this aspect of protection against family interference by restricting parental access to identifying mandatory donor information unless the donor has explicitly consented in writing. While parents retain access to non-identifying mandatory information, the removal of automatic access to identifying information represents a shift in how the protection of parents from interference with their family are balanced against the privacy interests of the donor and the public health interest of ensuring gamete supply.

Section 16(2) of the Human Rights Act protects the right to freedom of expression, which includes the freedom to seek and receive information. This right is not limited to political expression but extends to personal, cultural, and identity-related information. In the context of ART, this includes the right of parents of donor conceived children to seek and receive information about the donor, which may support their family narrative and help the child understand their genetic heritage.

As a result of the restriction on the type of information parents of donor conceived children may receive, their right to freedom of expression is limited, in conjunction with their right to privacy and family life, because the nature of the information interferes with their ability to parent.

2. *Legitimate purpose (s28(b))*

The limitation on parental access to identifying donor information directly connects to the pressing purpose of restoring gamete supply in the ACT to ensure the continued availability of ART services. Since the commencement of the ART Act, ART providers have reported a significant decline in gamete supply.

Stakeholder feedback has consistently identified section 67 as a significant barrier to gamete supply. The objective of clause 9 is to remove this barrier by addressing its incompatibility with international gamete bank agreements. The purpose of restoring adequate gamete supply is not a matter of administrative convenience, it is a concern that affects key health outcomes such as reproductive rights and family formation.

3. *Rational connection between the limitation and the purpose (s28(d))*

The ACT relies heavily on international gamete donors for its supply of donated gametes for use in ART. Section 67, which currently allows identifying donor information to be disclosed to parents without donor consent, has been directly linked to donor reluctance and incompatibility with international donor agreements. ART providers have confirmed that international gamete

banks are unwilling or unable to update their existing consent agreements to reflect parental access. This has contributed to significant shortages of gamete supply in the ACT.

Clause 9 addresses the incompatibility of ACT's framework with international gamete bank policies by requiring donor consent in writing before releasing identifying information to parents. The amendment aligns the ACT with Queensland, South Australia, and Victoria's approach and resolves a key barrier to international gamete supply.

Further analysis about how this amendment is connected to the legitimate objective of restoring adequate gamete supply in the ACT is provided above, in the discussion of the rights limitations affecting donor conceived children and young people.

4. Proportionality (s28 (e))

The amendment to section 67 introduces a consent-based model for parental access to identifying mandatory donor information, aligning with international gamete bank contractual agreements and most other Australian jurisdictions. The parents' right to protection against family interference and right to seek and receive information must be balanced against competing rights and legitimate public interests. In this context, there is a legitimate public interest in maintaining an adequate gamete supply to retain accessibility to ART services.

While clause 9 restricts parental access to identifying mandatory donor information, it does so in a tailored way. Non-identifying mandatory donor information remains accessible to parents by default, such as the donor's year and country of birth, relevant medical history, ethnicity, physical characteristics and country of residence. These non-identifying pieces of information can still contribute to allowing parents to build their family narrative. The amendment also does not entirely prohibit parents from accessing identifying mandatory donor information. Where a donor has given their consent in writing, parental access is retained.

Less restrictive alternatives were considered but found to be ineffective. For instance, the 'opt-out' option for donors discussed above did not resolve incompatibility with international gamete bank consent frameworks, undermining the objective of the amendment.

Further analysis about the proportionality of the parental access amendment is provided above, in the discussion of the rights limitations affecting donor conceived children and young people. The amendment addresses a specific barrier to donor participation and gamete supply while mitigating the impact on the broader rights of parents to protection against family interference and access to information necessary for raising their child.

ASSISTED REPRODUCTIVE TECHNOLOGY AMENDMENT BILL 2025
(NO 2)

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **ASSISTED REPRODUCTIVE TECHNOLOGY AMENDMENT BILL 2025 (NO 2)**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

.....

Tara Cheyne MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause provides that the title of the Act will be the *Assisted Reproductive Technology Amendment Act 2025 (No 2)* (the Act).

Clause 2 Commencement

This clause provides the commencement date of the Act. As per Section 75 (1) of the *Legislation Act 2001*, naming and commencement provisions commence automatically on the notification day (clauses 1 and 2). The remaining clauses (clauses 3 to 23) will commence the day after this Act's notification day.

Clause 3 Legislation amended

This is a formal clause identifying that the Act amends the *Assisted Reproductive Technology Act 2024*.

Clause 4 Definitions—pt 5

Section 50, new definition of assessed by a counsellor

This clause inserts the new defined term 'assessed by a counsellor' into the list of definitions for Part 5 of the ART Act (see clause 7).

Clause 5 Section 50, definition of commencement day

This clause updates the definition of *commencement day* for part 5 of the ART Act by replacing 'the day this section commences' with the specific date of 28 March 2025. This is the date this section commenced, so the amendment does not result in any substantive change to the provision. Prior to commencement of this section, it was not possible to specify this date with certainty, as commencement could have been deferred or brought forward. Since the section has now commenced, the actual date can be substituted in to improve reader accessibility.

Clause 6 Section 50, definition of mature donor conceived person

This clause makes an editorial amendment to specify that the definition of mature donor conceived person can be found in section 51(1) rather than the more general reference to section 51.

Clause 7 Section 51

This clause substitutes the original section 51. It makes the following changes.

This clause amends the heading of section 51 of the ART Act to 'Meaning of *mature donor conceived person* etc—pt 5' to accommodate the new defined term of 'assessed by a counsellor'.

This clause inserts a new defined term 'assessed by a counsellor' within the existing definition of '*mature donor conceived person*'. It does not amend the definition of '*mature donor conceived person*' in any substantive way; instead it attributes a defined term to the second

limb of who may be considered a mature donor conceived person (original section 51 (1) (b)). It provides that a donor conceived person has been '*assessed by a counsellor*' if certain counselling requirements are met.

The purpose of this clause relates to the amendment to section 66 and new section 66A under clause 8. The two limbs for who constitutes a '*mature donor conceived person*' necessarily needed to be separated out. This is because clause 8 only makes reference to the second limb – the counsellor assessed limb. Referencing the second limb as '*assessed by a counsellor*' rather than '*the test under section 51 (1) (b)*' in section 66 and 66A improves readability of the legislation.

This clause also makes some editorial changes which clarify obligations including:

- Clarifying that the parental rights and responsibilities of the donor referred to in subsection (2)(b)(ii) are with respect to the donor conceived person and not to anyone else.
- Clarifying that subsection (3) which provides that a regulation may be made prescribing a qualification relates to subsection (2) specifically.

Clause 8 Section 66

This clause amends section 66 and creates a new section 66A to specify what information the director-general must give to a donor conceived person depending on the person's age or whether they have been assessed by a counsellor, upon the donor conceived person's application.

This clause amends the heading of section 66 to 'Disclosure to donor conceived person—adult or assessed by counsellor' to reflect the changes outlined below.

The updated section 66 outlines that where a donor conceived person applies to the donor register for information, and if they satisfy the criteria of being an adult (at least 18 years old) or assessed by a counsellor (as defined in updated section 51 (2) – clause 7), that they must receive the information kept in the donor register provided for under subsections (2) (a)–(d) as follows:

- Mandatory donor information given to the director-general under section 53. The full list of mandatory donor information can be found at section 53(2)(a).
- Voluntary information the donor provided to the donor register, subject to any restrictions on disclosure.
- Voluntary information a donor sibling provided to the donor register, subject to any restrictions on disclosure.
- The sex and year of birth of the donor siblings.

New section 66A outlines that where a donor conceived person applies to the donor register for information, and if they are 16 or 17 years old and have not been assessed by a counsellor, they can receive the information kept in the donor register provided for under subsections (2) (a)–(e) as follows:

- Certain parts of their donor's mandatory information (which is of a non-identifying nature) given to the director-general under section 53. The information is listed at subsections (2) (a) (i)–(v).
- If the donor consents in writing, certain parts of their donor's mandatory information (which is of an identifying nature) given to the director-general under section 53. The information is listed at subsections (2)(b)(i)–(iii).
- Voluntary information the donor provided to the donor register, subject to any restrictions on disclosure.
- Voluntary information a donor sibling provided to the donor register, subject to any restrictions on disclosure.
- The sex and year of birth of the donor siblings.

Clause 9 Disclosure to parent of donor conceived child or young person

Section 67 (1)

This clause amends section 67 (1) to specify what information the director-general must give to a parent of a donor conceived person or young person, upon the parent's application.

Updated section 67 (1) (a) outlines that where a parent of a donor conceived child or young person applies to the donor register for information, they can receive the list of information about the donor kept in the donor register listed from (i)–(v) that has been mandatorily provided to the director-general by ART providers under section 53. This list contains information of a non-identifying nature.

Updated section 67 (1) (b) outlines a list of information kept in the donor register from (i)–(iii) about a donor that has been mandatorily provided to the director-general by ART providers under section 53. This information can only be given to a parent of a donor conceived child or young person if the donor has given explicit consent in writing to its release. This information includes the donor's full name, date and place of birth and home address and is of an identifying nature.

Updated sections 67 (1) (c)–(e) mirror original section 66 (b)–(d). Prior to this Act, section 67 provided parents access to the same information that their child would be entitled to receive as a mature donor conceived person under section 66. This clause amends parental access in relation to mandatory donor information as outlined above, but retains the same access for parents for the remaining types of information – namely: voluntary information given by the donor, voluntary information given by a donor sibling, and the sex and year of birth of the donor siblings.

Clause 10 Section 67(2)(b)

This clause amends section 67(2)(b) to include an additional exception to the condition for release of mandatory information to parents set out in section 67(2)(a). Section 67(2)(a) provides that where a parent has applied for information under section 67(1), the director-

general must not give the parent mandatory information about the child or young person's donor if the child or young person was born as a result of ART treatment or self-insemination using a gamete donated before the commencement day (i.e., 28 March 2025). However, the section 67(2)(a) condition on parental access to mandatory information does not apply if that information was given voluntarily under division 5.2 (original s 67(2)(b), updated s 67(2)(b)(i)). This clause additionally provides that the section 67(2)(a) condition on parental access to mandatory information does not apply if the donor has given their written consent to the parental disclosure (updated s 67(2)(b)(ii)).

Clause 11 Part 6 heading

This clause substitutes the current heading of Part 6 to include the addition of 'and other information held by ART providers'. This is to clarify that Part 6 includes provisions about information held by ART providers beyond just pre-commencement records.

Clause 12 Definitions – pt 6

Section 71, definition of *commencement day*

This clause updates the definition of *commencement day* for part 6 of the ART Act by replacing 'the day this section commences' with the specific date of 29 March 2024. This is the date this section commenced, so the amendment does not result in any substantive change to the provision. Prior to commencement of this section, it was not possible to specify this date with certainty, as commencement could have been deferred or brought forward. Since the section has now commenced, the actual date can be substituted in to improve reader accessibility.

Clause 13 Division 6.3 heading

This clause substitutes the current heading 'Access to pre-commencement records' to 'Access to information held by ART providers', to clarify that Division 6.3 includes provisions about information that may be held by ART providers distinct from pre-commencement records.

Clause 14 Division 6.3, note

This clause omits the current wording 'before the commencement day' in the note under Division 6.3. The note outlines what the division covers. This clause clarifies that the Division deals with access to information about ART services that may not be kept in the donor register, regardless of whether the ART services were provided before or after the commencement day. This amendment accommodates the potential for information to be accessed under Division 6.3 which relate to ART services provided after the commencement day that may not be kept in the donor register.

Clause 15 Meaning of *accessible information* – div 6.3

Section 75(2)

This clause is a consequential amendment which inserts a reference to the updated heading of section 66, and a reference to new section 66A.

Section 75(2) clarifies that ‘*accessible information*’ does not include information that can be obtained through the donor register via the disclosure provisions, namely, sections 66 and 67 and new section 66A.

Clause 16 Definitions – pt 12

Section 128, definition of *transitional period*

This clause updates the definition of *transitional period* for part 12 of the ART Act by substituting in the specific beginning and end dates – 29 March 2024 and 28 September 2024. These are the dates sections 128 and 12 commenced respectively, so the amendment does not result in any substantive change to the provision. Prior to commencement of section 12 (which is the end date of the transitional period), it was not possible to specify this date with certainty, as commencement of section 12 could have been deferred or brought forward. Since section 12 has now commenced, the actual dates can be substituted in to improve reader accessibility.

Clause 17 Certain things done or omitted to be done not invalid

Section 132E, definition of *commencement day*

This clause updates the definition of *commencement day* for section 132E of the ART Act by replacing ‘the day this section commences’ with the specific date of 28 March 2025. This is the date this section commenced as per the *Assisted Reproductive Technology Amendment Act 2025*, so the amendment does not result in any substantive change to the provision. Prior to commencement of this section, it was not possible to specify this date with certainty, as commencement could have been deferred or brought forward. Since the section has now commenced, the actual date can be substituted in to improve reader accessibility.

Clause 18 Dictionary, definition of *accessible information*

This clause updates a reference to Division 6.3 within the definition of *accessible information* in the Dictionary of the Act with its updated heading as amended by clause 13.

Clause 19 Dictionary, definition of *ART provider*, paragraph (b)

This clause updates a reference to the heading of Part 6 in the following definition:

- *ART provider*

This clause is a consequential amendment to clause 11.

Clause 20 Dictionary, new definition of *assessed by a counsellor*

This clause updates the Dictionary in the Act to add a reference to the new defined term of ‘*assessed by a counsellor*’.

Clause 21 Dictionary, definition of *commencement day*, paragraph (b)

This clause updates a reference to the heading of Part 6 in the following definition:

- *commencement day*

This clause is a consequential amendment to clause 11.

Clause 22 Dictionary, definition of *mature donor conceived person*

This clause makes an editorial amendment to specify that the definition of *mature donor conceived person* can be found in section 51(1) rather than the more general reference to section 51.

Clause 23 Dictionary, definitions of *pre-commencement record* and *retention period*

This clause updates references to the heading of Part 6 in the following definitions:

- *pre-commencement record*
- *retention period*

This clause is a consequential amendment to clause 11.