

Infertility (Medical Procedures) Act 1984

No. 10163

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Infertility (Medical Procedures) Act 1984

No. 10163

An Act relating to the regulation of certain procedures for the alleviation of infertility or to assist conception, to amend the *Human Tissue Act 1982* and the *Freedom of Information Act 1982*, to prohibit agreements relating to surrogate motherhood and for other purposes.

[Assented to 20 November 1984]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

PART I.—PRELIMINARY

Short title.

1. This Act may be cited as the *Infertility (Medical Procedures) Act 1984*.

Commencement.

2. The several provisions of this Act shall come into operation on a day, or on the respective days, to be fixed by proclamation, or successive proclamations, of the Governor in Council published in the *Government Gazette*.

Interpretation.**3. (1) In this Act unless the contrary intention appears—**

“Approved counsellor” means approved counsellor within the meaning of section 9 (4).

“Approved hospital” means a scheduled hospital or a private hospital that is for the time being approved under section 7 as a place at which one or more relevant procedures or the procedure of artificial insemination may be carried out.

“Committee” in relation to a scheduled hospital means the committee of management or board of directors or governing body of the scheduled hospital.

“Designated officer” in relation to a hospital means—

(a) a person for the time being appointed under section 8 to be a designated officer for that hospital; or

(b) where at any time, in relation to a hospital, there is no such person, the medical superintendent or, if there is no medical superintendent, the principal executive officer of the hospital or, while the medical superintendent or principal executive officer, as the case may be, is absent from or not on duty at the hospital, a person acting in the place of the medical superintendent or principal executive officer.

“Fertilization procedure” means—

(a) a relevant procedure; or

(b) any other procedure (other than the procedure of artificial insemination) for implanting in the body of a woman—

(i) an ovum produced by that woman or by another woman, whether or not it is fertilized outside the body of the first-mentioned woman; or

(ii) an embryo derived from an ovum produced by that woman or by another woman whether or not it is fertilized outside the body of the first-mentioned woman.

“Prescribed” means prescribed by this Act or the regulations.

“Private hospital” means a hospital registered under Division 3 of Part X. of the *Health Act 1958* and classed by the Health Commission as a hospital.

“Proprietor” in relation to a private hospital includes the owner, the occupier or any person having the management or control of the private hospital.

“Relevant procedure” means a procedure to which section 10, 11, 12 or 13 applies.

“Scheduled hospital” has the same meaning as in the *Hospitals and Charities Act 1958*.

(2) In this Act—

- (a) a reference to a married woman includes a reference to a woman—
- (i) who, at the commencement of this section, is living with a man as his wife on a *bona fide* domestic basis although not married to him; and
 - (ii) who, before the commencement of this section, had undergone examination or treatment with a view to the carrying out by a medical practitioner of a procedure that, if carried out after that commencement, would be a relevant procedure; and
- (b) a reference to the husband of a woman includes, in relation to a woman to whom paragraph (a) applies, a reference to the man with whom the woman is, at the commencement of this section, living as his wife on a *bona fide* domestic basis but does not include a reference to the man (if any) to whom the woman is, at that time, actually married.

Application of Act.

4. A provision of section 10, 11, 12 or 13 does not apply to or in respect of anything done or suffered before the date on which the provision came into operation and, in relation to a relevant procedure carried out within six months after that date, a reference in those sections to twelve months shall be construed as a reference to six months.

PART II.—REGULATION OF PROCEDURES

Procedure not to be carried out except in accordance with this Act.

5. (1) Subject to sub-section (2), a person shall not carry out a fertilization procedure.

Penalty: 100 penalty units or imprisonment for four years.

(2) Sub-section (1) does not apply to a person who carries out a relevant procedure in accordance with this Act.

Prohibition of certain procedures.

6. (1) A person shall not carry out a prohibited procedure.

Penalty: 100 penalty units or imprisonment for four years.

(2) In sub-section (1), “prohibited procedure” means—

- (a) cloning; or
- (b) a procedure under which the gametes of a man or a woman are fertilized by the gametes of an animal.

(3) A person shall not carry out an experimental procedure other than an experimental procedure approved by the Standing Review and Advisory Committee.

Penalty: 100 penalty units or imprisonment for four years.

(4) In sub-section (3), "**experimental procedure**" means a procedure that involves carrying out research on an embryo of a kind that would cause damage to the embryo, would make the embryo unfit for implantation or would reduce the prospects of a pregnancy resulting from the implantation of the embryo.

(5) Where ova are removed from the body of a woman, a person shall not cause or permit those ova to be fertilized outside the body of the woman except for the purposes of the implantation of embryos derived from those ova in the womb of that woman or another woman in a relevant procedure in accordance with this Act.

Penalty: 100 penalty units or imprisonment for four years.

(6) A person shall not carry out a procedure that involves freezing an embryo.

Penalty: 100 penalty units or imprisonment for four years.

(7) Sub-section (6) does not apply to a procedure carried out in an approved hospital that involves freezing an embryo if that procedure is carried out for the purposes of enabling the embryo to be implanted in the womb of a woman at a later date.

(8) Nothing in this Act prevents or inhibits the carrying out in an approved hospital of research on, and the development of techniques for, freezing or otherwise storing ova removed from the body of a woman.

Approval of hospitals.

7. (1) The Committee of a scheduled hospital or the proprietor of a private hospital may make application to the Minister for approval of the hospital as a place at which relevant procedures of the class specified in the application may be carried out.

(2) An application under sub-section (1) shall be made in the form prescribed for relevant procedures to which section 10, 11, 12 or 13 applies or for the procedure of artificial insemination, whichever is applicable.

(3) The Minister may, if he is satisfied that the scheduled hospital or the private hospital has facilities appropriate for the carrying out of relevant procedures of the class specified in the application, by instrument in writing approve the hospital as a place at which procedures of that class may be carried out, subject to such terms and conditions as are specified in the instrument.

(4) The Minister may, at any time by notice in writing given to the Committee of a scheduled hospital or the proprietor of a private hospital vary the terms and conditions to which an approval of that hospital as a place at which relevant procedures of the class specified in the notice may be carried out is subject.

(5) Where the Minister is satisfied that—

- (a) a scheduled hospital;
- (b) the Committee or designated officer of a scheduled hospital;
- (c) a private hospital; or
- (d) the proprietor or designated officer of a private hospital—

has committed an offence against this Act or the regulations or has failed to comply with a term or condition to which the approval of that hospital under this section is subject, the Minister may, by notice in writing given to the Committee of the scheduled hospital or proprietor of the private hospital, cancel the approval of the hospital as a place at which relevant procedures of the class specified in the notice may be carried out.

(6) Where the approval of a scheduled hospital or a private hospital is cancelled under this section, the Minister may give such directions as he determines in relation to the control and management of the hospital, the continuation of treatment of patients, use of gametes held by the hospital for relevant procedures (including directions for transfer of gametes to an approved hospital), keeping of records and other relevant matters.

(7) In this section, a reference to a relevant procedure includes a reference to the procedure of artificial insemination.

Designated officer.

8. (1) The Committee of a scheduled hospital, being an approved hospital, or the proprietor of a private hospital, being an approved hospital, may, by instrument in writing, appoint such persons, being medical practitioners or other persons, as the Committee or proprietor considers appropriate to be, for the purposes of this Act, designated officers for the hospital.

(2) The power under this section to appoint a person as a designated officer includes the power, by instrument in writing, to remove a person so appointed.

Approval of counsellors.

9. (1) A person may make application to the Minister for approval as a counsellor for the purposes of this Act.

(2) An application under sub-section (1) shall be in the prescribed form and shall specify—

- (a) each approved hospital where the relevant procedures in relation to which the applicant proposes to give counsel may be carried out; and
- (b) whether the applicant seeks approval in relation to giving counsel—
 - (i) to a woman in relation to whom a relevant procedure specified in the approval may be, or has been, carried out;
 - (ii) to the husband of such a woman;
 - (iii) to a person who may give gametes for use in a relevant procedure;
 - (iv) to the spouse of such a person; or
 - (v) to two or more of the classes of person specified in sub-paragraphs (i) to (iv).

(3) The Minister may by instrument in writing approve an applicant under this section as a counsellor for the purposes of this Act in relation to giving counsel to the classes of person specified in the instrument and may, by instrument in writing, vary or cancel that approval.

(4) Where the Minister approves a person as a counsellor under this section or varies or cancels that approval, he shall give notice in writing to each approved hospital of that approval, variation or cancellation.

(5) A reference in this Act to an approved counsellor in relation to giving counsel to a particular person means a person approved for the time being under this section as a counsellor for the purposes of this Act in relation to giving counsel to persons of the same class as that particular person.

(6) The Minister shall from time to time and at least once in each year cause to be published in the *Government Gazette* the names of persons approved for the time being under this Act as counsellors for the purpose of giving counsel to specified classes of persons.

Procedure of *in vitro* fertilization—no donors.

10. (1) This section applies to the procedure of implanting in the womb of a woman an embryo derived from an ovum produced by her and fertilized outside her body by semen produced by her husband.

(2) A procedure to which this section applies shall not be carried out at a place other than a hospital that is approved by the Minister as a place at which such procedures may be carried out.

(3) A procedure to which this section applies shall not be carried out unless—

- (a) the woman in relation to whom the procedure is carried out is a married woman;

- (b) the woman and her husband each consents in writing to the carrying out of the procedure;
- (c) not less than twelve months before the carrying out of the procedure, the woman and her husband had begun to undergo, or have undergone, such examination or treatment by a medical practitioner (other than the medical practitioner by whom the procedure is to be carried out) as might reasonably be expected to establish whether or not a procedure other than a fertilization procedure might cause the woman to become pregnant;
- (d) as a result of that examination or treatment, a medical practitioner (other than the medical practitioner by whom the procedure is to be carried out) is satisfied that it is reasonably established that the woman is unlikely to become pregnant as the result of a procedure other than a fertilization procedure; and
- (e) the medical practitioner by whom the procedure is to be carried out is satisfied—
 - (i) that the woman and her husband have received counselling, including counselling in relation to prescribed matters, from an approved counsellor;
 - (ii) that an approved counsellor will be available to give further counsel to the woman and her husband after the procedure is carried out.

Procedure of *in vitro* fertilization—male donors.

11. (1) This section applies to the procedure of implanting in the womb of a woman an embryo derived from an ovum produced by her and fertilized outside her body by semen produced by a man other than her husband.

(2) A procedure to which this section applies shall not be carried out at a place other than a hospital that is approved by the Minister as a place at which such procedures may be carried out.

(3) A procedure to which this section applies shall not be carried out unless—

- (a) the woman in relation to whom the procedure is carried out is a married woman;
- (b) the woman and her husband have each consented in writing to the carrying out of a procedure to which this section applies and neither the woman nor her husband has withdrawn that consent;
- (c) not less than twelve months before the carrying out of the procedure, the woman and her husband had begun to undergo, and have undergone, such examination or treatment by a medical practitioner other than the medical

- practitioner by whom the procedure is to be carried out as might reasonably be expected to establish whether or not a procedure other than a fertilization procedure might cause the woman to become pregnant;
- (d) as a result of that examination or treatment, a medical practitioner (other than the medical practitioner by whom the procedure is to be carried out) is satisfied that it is reasonably established—
- (i) that the woman is unlikely to become pregnant as the result of a procedure other than a fertilization procedure; or
 - (ii) that if the woman were to become pregnant as a result of the fertilization of an ovum produced by her by semen produced by her husband an undesirable hereditary disorder may be transmitted to a child born as the result of the pregnancy;
- (e) the medical practitioner by whom the procedure is to be carried out is satisfied—
- (i) that the woman and her husband have received counselling, including counselling in relation to prescribed matters, from an approved counsellor; and
 - (ii) that an approved counsellor will be available to give further counsel to the woman and her husband after the procedure is carried out.
- (4) Where a consent is given under paragraph (b) of sub-section (3)—
- (a) the document in which the consent is given shall be kept by the hospital in which the procedure to which this section applies is carried out;
 - (b) a copy shall be given to the woman in relation to whom the procedure is to be carried out; and
 - (c) a copy shall be given to the husband of the woman.
- (5) A person shall not use semen produced by a man (in this section called "the donor") for the purposes of a procedure to which this section applies unless—
- (a) the donor has consented in writing to the use of the semen in such a procedure and has not withdrawn that consent;
 - (b) where there is a spouse of the donor, the spouse has consented in writing to the use of the semen in such a procedure and has not withdrawn that consent; and
 - (c) the donor and the spouse (if any) of the donor have received counselling from an approved counsellor.

Penalty: 25 penalty units or imprisonment for one year.

- (6) A man who gives semen that is or may be used in a procedure to which this section applies shall not receive, and another person shall

not make or give, any payment or other amount for or in respect of the giving of the semen other than—

- (a) an amount, not exceeding an amount calculated at a prescribed rate, in respect of expenses incurred by that man in travelling to and attending at the place at which the semen is given; or
- (b) an amount in reimbursement of medical expenses incurred by that man in connexion with the giving of the semen.

Penalty applying to this sub-section: 25 penalty units or imprisonment for one year.

Procedure of *in vitro* fertilization—female donors.

12. (1) This section applies to the procedure of implanting in the womb of a woman (in this section called “the patient”) an embryo derived from an ovum produced by another woman (in this section called “the donor”) and fertilized outside the body of the patient and outside the body of the donor by semen produced by the husband of the patient.

(2) A procedure to which this section applies shall not be carried out at a place other than a hospital that is approved by the Minister as a place at which such procedures may be carried out.

(3) A procedure to which this section applies shall not be carried out unless—

- (a) the patient is a married woman;
- (b) the patient and her husband each consented in writing to the carrying out of the procedure and neither the patient nor her husband has withdrawn that consent;
- (c) not less than twelve months before the carrying out of the procedure, the patient and her husband had begun to undergo, and have undergone, such examination or treatment by a medical practitioner (other than the medical practitioner by whom the procedure is to be carried out) as might reasonably be expected to establish whether or not a procedure other than a fertilization procedure might cause the patient to become pregnant;
- (d) as a result of that examination or treatment, a medical practitioner (other than the medical practitioner by whom the procedure is to be carried out) is satisfied that it is reasonably established—
 - (i) that the patient is unlikely to become pregnant as the result of a procedure other than a fertilization procedure; or
 - (ii) that if the patient were to become pregnant as a result of the fertilization of an ovum produced by her, an

undesirable hereditary disorder may be transmitted to a child born as a result of the pregnancy; and

(e) the medical practitioner by whom the procedure is to be carried out is satisfied—

- (i) that the patient and her husband have received counselling, including counselling in relation to prescribed matters, from an approved counsellor; and
- (ii) that an approved counsellor will be available to give further counsel to the patient and her husband after the procedure is carried out.

(4) Where a consent is given under paragraph (b) of sub-section (3)—

- (a) the document in which the consent is given shall be kept by the hospital in which the procedure to which this section applies is carried out;
- (b) a copy shall be given to the patient; and
- (c) a copy shall be given to the husband of the patient.

(5) A person shall not in a procedure to which this section applies, use an ovum removed from a woman (in this sub-section called “the donor”) unless, before the ovum was removed—

- (a) the donor consented in writing to the use of the ovum in a procedure to which this section applies, being a procedure to be carried out in relation to another woman, and has not withdrawn that consent;
- (b) the husband (if any) of the donor consented in writing to the use of the ovum in such a procedure and has not withdrawn that consent; and
- (c) the donor and her husband (if any) received counselling from an approved counsellor.

Penalty: 25 penalty units or imprisonment for one year.

(6) A woman who gives an ovum that is or may be used in a procedure to which this section applies shall not receive, and another person shall not make or give any payment or other amount for or in respect of the giving of the ovum other than—

- (a) an amount, not exceeding an amount calculated at a prescribed rate, in respect of expenses incurred by that woman in travelling to and attending at the place at which the ovum is given; or
- (b) an amount in reimbursement of medical expenses incurred by that woman in connexion with the giving of the ovum.

Penalty applying to this sub-section: 25 penalty units or imprisonment for one year.

Procedure of *in vitro* fertilization—male and female donors.

13. (1) This section applies to the procedure of implanting in the womb of a woman (in this section called "the patient") an embryo derived from an ovum produced by another woman (in this section called "the donor") and fertilized outside the body of the patient and outside the body of the donor by semen produced by a man other than the husband of the patient.

(2) A procedure to which this section applies shall not be carried out at a place other than a hospital that is approved by the Minister as a place at which such procedures may be carried out.

(3) A procedure to which this section applies shall not be carried out unless—

- (a) the patient is a married woman;
- (b) the patient and her husband each consented in writing to the carrying out of the procedure and neither the patient nor the husband has withdrawn that consent;
- (c) not less than twelve months before the carrying out of the procedure, the patient and her husband had begun to undergo, and have undergone, such examination or treatment by a medical practitioner (other than the medical practitioner by whom the procedure is to be carried out) as might reasonably be expected to establish whether or not a procedure other than a fertilization procedure might cause the patient to become pregnant;
- (d) as a result of that examination or treatment, a medical practitioner (other than the medical practitioner by whom the procedure is to be carried out) is satisfied that it is reasonably established—
 - (i) that the patient is unlikely to become pregnant as the result of a procedure other than a procedure to which this section applies; or
 - (ii) that if the patient were to become pregnant as a result of the fertilization of an ovum produced by her or if semen produced by her husband were used to fertilize an ovum as a result of which a woman becomes pregnant, an undesirable hereditary disorder may be transmitted to a child born as the result of the pregnancy;
- (e) where more than one embryo is used in the procedure, the gametes from which each embryo was derived were produced by the same two persons; and
- (f) the medical practitioner by whom the procedure is to be carried out is satisfied—
 - (i) that the patient and her husband have received counselling, including counselling in relation to prescribed matters, from an approved counsellor; and

(ii) that an approved counsellor will be available to give further counsel to the patient and her husband after the procedure is carried out.

(4) Where a consent is given under paragraph (b) of sub-section (3)—

(a) the document in which the consent is given shall be kept by the hospital in which the procedure to which this section applies is carried out;

(b) a copy shall be given to the patient; and

(c) a copy shall be given to the husband of the patient.

(5) A person shall not use semen produced by a man (in this sub-section called "the donor") for the purposes of a procedure to which this section applies unless—

(a) the donor has consented in writing to the use of the semen in such a procedure and has not withdrawn that consent;

(b) where there is a spouse of the donor, the spouse has consented to the use of the semen in such a procedure and has not withdrawn that consent; and

(c) the donor and the spouse (if any) of the donor have received counselling from an approved counsellor.

Penalty: 50 penalty units or imprisonment for two years.

(6) A person shall not, in a procedure to which this section applies, use an ovum removed from a woman (in this sub-section called "the donor") unless, before the ovum was removed—

(a) the donor consented in writing to the use of the ovum in a procedure to which this section applies, being a procedure to be carried out in relation to another woman, and has not withdrawn that consent;

(b) the husband (if any) of the donor consented in writing to the use of the ovum in such a procedure and has not withdrawn that consent; and

(c) the donor and her husband (if any) received counselling from an approved counsellor.

Penalty: 50 penalty units or imprisonment for two years.

(7) A person who gives gametes that are or may be used in a procedure to which this section applies shall not receive, and another person shall not make or give, any payment or other amount for or in respect of the giving of the gametes other than—

(a) an amount, not exceeding an amount calculated at a prescribed rate, in respect of expenses incurred by that person in travelling to and attending at the place at which the gametes are given; or

- (b) an amount in reimbursement of medical expenses incurred by that person in connexion with the giving of the gametes.

Penalty: 50 penalty units or imprisonment for two years.

(8) Where, for the purposes of a relevant procedure, an embryo has been derived from gametes produced by a married woman and her husband and is not required for the purposes of a relevant procedure carried out in relation to that married woman, the embryo may, subject to and in accordance with this section, be used in a procedure to which this section applies to be carried out in relation to another married woman where—

- (a) before the embryo was derived from the gametes produced by the first-mentioned married woman and her husband each consented in writing to the use of such an embryo for a procedure carried out in relation to another married woman and neither the first-mentioned married woman nor her husband had withdrawn that consent; and
- (b) the first-mentioned married woman and her husband had received counselling from an approved counsellor in relation to that consent.

(9) A married woman and her husband who give an embryo that is or may be used in a procedure to which this section applies shall not receive, and another person shall not make or give, any payment or other amount for or in respect of the giving of the embryo.

Penalty applying to this sub-section: 75 penalty units or imprisonment for three years.

Authority for use of embryo in alternative relevant procedure.

14. (1) Where, after an embryo has been derived from an ovum produced by a woman and fertilized outside her body for the purposes of a relevant procedure to be carried out in relation to her or another woman, the embryo cannot be implanted in the body of that woman whether by reason of her death or an accident or injury causing her to be incapable of receiving the implantation or otherwise—

- (a) the embryo shall be made available, in accordance with the consent of the persons who produced the gametes from which the embryo was derived, for use in a relevant procedure carried out in relation to another woman; or
- (b) where those consents cannot be obtained because the persons are dead or cannot be found, the Minister shall direct the designated officer of the approved hospital where the embryo is stored to ensure that the embryo is made available for use in a relevant procedure.

(2) Where the Minister gives a direction to a designated officer under sub-section (1) in relation to the use of an embryo in a relevant procedure—

- (a) the designated officer shall comply with the directions; and
- (b) the provisions of section 13 (other than sub-sections (5), (6) and (8)) apply to the relevant procedure.

Withdrawal of consent to use of gametes.

15. (1) Where—

- (a) a person who has given gametes for use in a specified relevant procedure; or
- (b) the spouse of such a person—

withdraws consent to the use of the gametes in that procedure by notice in writing given to the designated officer of the approved hospital at which the gametes were given, the designated officer shall—

- (c) unless the person or spouse has consented to the use of the gametes in any other relevant procedure; or
- (d) the gametes have been used in a relevant procedure—

forthwith on receiving the notice, destroy the gametes or cause them to be destroyed.

(2) A person shall not incur any civil or criminal liability by reason only of the use in a relevant procedure of gametes given by a person who withdraws consent to the use unless where consent was withdrawn before that use the person knew or ought reasonably to have known of the withdrawal of the consent.

Use of gametes of identified donors.

16. Where, for the purposes of a relevant procedure to be carried out in relation to a married woman, the married woman and her husband request in writing that gametes to be given by a specified person (in this section called "the donor") be used, nothing in this Act prevents the use of those gametes in a relevant procedure carried out in accordance with this Act if the designated officer of the approved hospital where the procedure is to be carried out has certified in writing—

- (a) that the same criteria have been applied to the examination of the suitability of the gametes for use in that procedure as would be applied to the selection of any other gametes for use in such a procedure; and
- (b) that the married woman, her husband and the donor have received counselling (in addition to any other counselling required under this Act) in respect of the use of the gametes of the donor in the procedure.

Artificial insemination.

17. (1) A person, who is not a medical practitioner shall not carry out a procedure of artificial insemination.

Penalty: 25 penalty units or imprisonment for one year.

(2) Sub-section (1) does not apply to a person who carries out a procedure of artificial insemination in an approved hospital.

Artificial insemination—counselling.

18. A person shall not carry out a procedure of artificial insemination unless the woman in relation to whom the procedure is carried out and her husband have received counselling, including counselling in relation to prescribed matters, from an approved counsellor.

Penalty: 10 penalty units.

PART III.—RECORDS**Records to be kept by approved hospitals.**

19. (1) The Committee of a scheduled hospital, being an approved hospital and the proprietor of a private hospital, being an approved hospital, shall maintain or cause to be maintained a register for the purposes of this Part.

(2) The designated officer of an approved hospital shall, in respect of things done or that may be done in that hospital relating to relevant procedures (whether or not carried out in that hospital) enter in the register maintained by the Committee or proprietor of that hospital under sub-section (1)—

- (a) the prescribed particulars of each person who gives gametes that are or may be used in a relevant procedure;
- (b) the prescribed particulars of consents given by persons for the purposes of relevant procedures;
- (c) the prescribed particulars of amounts paid to each person who gives gametes that are or may be used in a relevant procedure in respect of expenses incurred in connexion with the giving of the gametes;
- (d) where gametes are destroyed, the prescribed particulars of the destruction;
- (e) where an embryo is derived from the fertilization of an ovum, the prescribed particulars relating to that embryo;
- (f) where an embryo is disposed of (otherwise than by implantation in the womb of a woman), the prescribed particulars of that disposal;
- (g) the prescribed particulars of the use of gametes in relevant procedures; and

(h) where a child is born as a result of a pregnancy occurring as a result of a relevant procedure carried out in the hospital, the prescribed particulars, so far as they are or ought reasonably to be known to the designated officer, of the birth of the child including particulars of any physical abnormalities identified at or about the time of the birth and of the parents of the child and of donors of gametes used in the procedure.

(3) Where a child is born as a result of a pregnancy occurring as a result of a relevant procedure carried out in an approved hospital, the designated officer of the approved hospital shall send or cause to be sent to the Health Commission a copy of—

(a) the particulars entered in the register under paragraph (a) of sub-section (2) of each person who gave gametes that were used in the procedure; and

(b) the particulars entered in the register under paragraph (h) of sub-section (2) relating to that birth.

(4) Where a relevant procedure is carried out in an approved hospital and gametes used in the procedure were given in another approved hospital—

(a) the designated officer of the approved hospital in which the gametes were given shall give to the designated officer of the other approved hospital a copy of the prescribed particulars relating to the gametes, and of consents relating to those gametes, required to be entered in a register under this section; and

(b) the designated officer of the approved hospital in which the relevant procedure is carried out shall enter those prescribed particulars in the register maintained under this section by the Committee or proprietor of that approved hospital.

(5) In this section, a reference to a relevant procedure includes a reference to a procedure of artificial insemination.

Penalty: 5 penalty units.

Disclosure of non-identifying information to donors and patients.

20. (1) Before a relevant procedure is carried out in relation to a married woman, the designated officer of the approved hospital in which the procedure is to be carried out shall give in writing to the married woman particulars of each person (other than particulars by which that person may be identified) who gives gametes that may be used in the procedure.

(2) The designated officer of an approved hospital shall offer or cause to be offered in writing to each person who gives gametes that may be used in a relevant procedure to give particulars of each married woman in relation to whom the procedure may be carried out (other

than particulars by which the married woman or her husband may be identified) and, where the person asks in writing to be given those particulars, the designated officer shall give the person those particulars or, where the gametes have been given to another approved hospital, inform the person of the name of the hospital from which those particulars may be obtained.

(3) A person who gives gametes that may be used in a relevant procedure may in writing ask the designated officer of the approved hospital where the gametes may be or have been used to give the person particulars of each child born as the result of a pregnancy occurring as the result of the use of the gametes (other than particulars by which the child may be identified).

Records of artificial insemination not carried out in approved hospital.

21. Where a procedure of artificial insemination is carried out by a medical practitioner, the medical practitioner shall keep a written record of—

- (a) the prescribed particulars of the man who gave the semen used in the procedure; and
- (b) where a child is born as the result of a pregnancy occurring as a result, or as a possible result, of the procedure, the prescribed particulars of the birth of the child—

and, where a child is so born, shall send to the Health Commission a copy of that written record.

Health Commission to keep central register.

22. (1) The Health Commission shall maintain or cause to be maintained a register containing the particulars copies of which are sent to the Health Commission under section 19 or 21.

(2) The regulations—

- (a) may prescribe the classes of persons who may be given access to specified parts of the register maintained under this section and to specified information contained in that register and the circumstances in which and conditions subject to which persons included in those classes of persons may have that access; or
- (b) may provide that the Minister or the Secretary of the Health Commission may, subject to sub-section (3), permit specified persons or specified classes of persons to have access to specified parts of that register and to specified information contained in that register under such circumstances and subject to such conditions as the Minister or the Secretary determines.

(3) The Minister or the Secretary of the Health Commission shall not under regulations made under this section permit a person to have access to information that identifies another person or from which another person may be identified unless that other person, or a person acting on behalf of that other person, has consented in writing to the permitting of access to that information.

(4) The Health Commission shall, before 30 September in each year after the year in which this section comes into operation, submit to the Minister of Health a report—

(a) on proposals for regulations to be made under sub-section (2); and

(b) where regulations have been made under sub-section (2), the manner of the operation of those regulations.

(5) The Minister of Health shall cause a report made to him under sub-section (4) to be laid before both Houses of Parliament within three weeks after it is received or, if Parliament is not then sitting, within three weeks after the next assembling of Parliament.

Information not to be disclosed.

23. (1) Except as provided in this Act and subject to this section, a person shall not, except in the performance of a duty or function under this Act, disclose to another person any particulars required to be entered in a register maintained under section 19 or 22, being particulars known to that person in the capacity as a designated officer of an approved hospital, an approved counsellor, a medical practitioner or person employed or engaged in an approved hospital or a person employed in the Health Commission.

Penalty: 50 penalty units.

(2) A person born as the result of a pregnancy occurring as the result of the carrying out of a relevant procedure may make application to the Health Commission for information about the donor of gametes from which the embryo used in the relevant procedure was derived.

(3) Where the Health Commission receives an application under sub-section (2), the Health Commission shall give or cause to be given to the applicant such information (other than information from which a donor of gametes may be identified) as the Health Commission has in its possession or under its control.

PART IV.—GENERAL

Conscientious objection to participation in treatment.

24. (1) Subject to sub-section (2), a person shall not be under any duty, whether by contract or by any statutory or other legal requirement, to participate in a relevant procedure to which the person has a conscientious objection.

(2) Nothing in sub-section (1) affects a duty to participate in treatment that is necessary to save the life of a woman in relation to whom a procedure referred to in that sub-section is being or has been carried out.

(3) In any legal proceedings, the onus of proving a conscientious objection referred to in sub-section (1) rests on the person claiming to rely on it.

Gametes of person under eighteen not to be used in procedures.

25. (1) It is not lawful to use in a relevant procedure gametes produced by a child.

Penalty: 50 penalty units or imprisonment for two years.

(2) In sub-section (1), "child" means a person who—

- (a) has not attained the age of eighteen years; and
- (b) is not married.

Prohibition of certain procedures.

26. A person shall not carry out a procedure of artificial insemination of a woman or a relevant procedure where the semen used for the artificial insemination or relevant procedure was produced by more than one man.

Penalty: 50 penalty units or imprisonment for two years.

False or misleading statements.

27. (1) A person who gives gametes that may be used in a relevant procedure or in a procedure of artificial insemination carried out in an approved hospital shall not, in connexion with providing medical or other particulars in relation to the giving of the gametes, make a statement that is false or misleading by reason of the inclusion in the statement of false or misleading matter or of the omission from the statement of any material matter.

Penalty: 10 penalty units.

(2) It is a defence to a prosecution of a person for an offence under sub-section (1), that when the statement was made, the person believed on reasonable grounds that the false matter was true, the misleading matter was not misleading or, in the case of an omission, that no material matter had been omitted.

Offences.

28. (1) Where a person commits an offence against this Act in an approved hospital, the hospital is guilty of an offence.

Penalty: 100 penalty units.

(2) Where a person commits an offence against this Act in an approved hospital, the designated officer of the hospital is guilty of an offence.

Penalty: 100 penalty units or imprisonment for four years.

Standing Review and Advisory Committee.

29. (1) There shall be a Standing Review and Advisory Committee consisting of—

- (a) a person holding a qualification in the study of philosophy;
- (b) two medical practitioners;
- (c) two persons representing religious bodies;
- (d) a person qualified in social work;
- (e) a legal practitioner; and
- (f) a person qualified as a teacher with an interest in community affairs—

appointed by the Minister, one of whom shall be appointed as chairman.

(2) A member of the Committee shall hold office for such period as is specified in the instrument of appointment and shall be eligible for re-appointment.

(3) A member of the Committee may be removed from office at any time by the Minister.

(4) A member of the Committee is not, by reason only of being a member, subject to the *Public Service Act 1974*.

(5) Subject to this section, the Committee may regulate its proceedings in such manner as it thinks fit.

(6) The functions of the Committee are—

- (a) to advise the Minister in relation to infertility and procedures for alleviating infertility;
- (b) to consider requests for approval of and, if it sees fit, to approve, experimental procedures for the purposes of section 6 (3); and
- (c) to advise and report to the Minister on any matters relating to infertility and procedures for alleviating infertility and any other associated matters referred to it by the Minister.

(7) In the exercise of its functions, the Committee—

- (a) shall have regard to the principle that childless couples should be assisted in fulfilling their desire to have children;

- (b) shall ensure that the highest regard is given to the principle that human life shall be preserved and protected at all times; and
- (c) shall have regard to the spirit and intent of the several provisions of this Act.

(8) Where the Committee approves an experimental procedure for the purposes of section 6 (3), the Committee shall forthwith report the approval to the Minister.

(9) The Committee shall make an annual report to the Minister on—

- (a) programmes in Victoria under which relevant procedures were carried out in approved hospitals during the year to which the report relates; and
- (b) particulars of each programme carried out in each approved hospital in that year including the number of relevant procedures carried out and the number of participants in each programme.

(10) The Committee may from time to time make such recommendations to the Minister on its activities and on its own operation and composition as it sees fit.

(11) The Committee may collate such information relating to and keep such records of, programmes and procedures to which this Act relates as it sees fit and may collate information relating to, and keep records of, similar programmes and procedures carried out in another State or in a Territory.

(12) The Minister shall cause—

- (a) each report made by the Committee under sub-section (8); and
- (b) each annual report made by the Committee under sub-section (9)—

to be laid before each House of Parliament within 14 sitting days after the Minister receives the report or, if a House of Parliament is not then sitting, within 14 days after the next meeting of that House.

PART V.—SURROGATE MOTHERHOOD

Provisions relating to surrogate mothers.

30. (1) In this section, a reference to a woman who acts, or agrees with another person or other persons to act, as a surrogate mother is a reference to a woman who has entered into, or enters into, a contract, agreement or arrangement with that other person or those other persons, whether formal or informal, and whether or not for payment or reward under which the woman agrees—

- (a) to become pregnant, or to seek or attempt to become pregnant, with the intention that a child born as the result of the pregnancy become and be treated, whether by adoption, agreement or otherwise, as the child of that other person or of those other persons; or
- (b) being pregnant, that a child born as the result of the pregnancy become and be treated, whether by adoption, agreement or otherwise, as the child of that other person or those other persons.

(2) A person shall not—

- (a) publish, or cause to be published, a statement or an advertisement, notice or other document that—
 - (i) is intended or likely to induce a person to agree to act as a surrogate mother;
 - (ii) seeks or purports to seek a woman who is willing to agree to act as a surrogate mother; or
 - (iii) states or implies that a woman is willing to agree to act as a surrogate mother;
- (b) make, give or receive, or agree to make, give or receive, a payment or reward for or in consideration of the making of a contract, agreement or arrangement under which a woman agrees to act as a surrogate mother; or
- (c) receive or agree to receive a payment or reward in consideration for acting, or agreeing to act, as a surrogate mother.

Penalty: 50 penalty units or imprisonment for two years.

(3) A contract or agreement (whether made before or after the commencement of this section) under which a woman agrees with another person or other persons to act as a surrogate mother is void.

PART VI.—APPLICATION FOR REVIEW

Review of decision by Administrative Appeals Tribunal.

31. (1) An application may be made to the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1984* for a review of a decision of the Minister under this Act.

(2) In this Act, a reference to a decision is a reference to a decision within the meaning of the *Administrative Appeals Tribunal Act 1984* made on or after the commencement of this section.

PART VII.—REGULATIONS

Regulations.

32. (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing authorized or required to be prescribed for the purposes of this Act and in particular for or with respect to—

- (a) prescribing the particulars to be recorded in a register maintained by an approved hospital including particulars of the previous medical and social history of a person who gives gametes for use in a relevant procedure; and
 - (b) prescribing matters in relation to which counselling is required before a relevant procedure of a specified class is carried out.
- (2) The regulations shall be subject to disallowance by Parliament.

PART VIII.—CONSEQUENTIAL AMENDMENTS

Sale of gametes prohibited.

33. In section 39 (2) of the *Human Tissue Act* 1982, after the word "tissue" (where twice occurring) there shall be inserted the words "(other than spermatozoa or ova)".

No. 9860.

Health Commission register exempt from *Freedom of Information Act* 1982.

34. After section 33 (7) of the *Freedom of Information Act* 1982, there shall be inserted the following sub-section:

No. 9859 as amended by Nos. 10046 and 10087.

"(8) Nothing in this section shall be construed so as to affect the procedures for access to information contained in the register maintained by the Health Commission under the *Infertility (Medical Procedures) Act* 1984."