

ANZICA DONOR COUNSELLING GUIDELINES ADDENDUM

Donor legislation in each state or territory of Australia, and New Zealand, and requirements for counselling related to donor arrangements (version January 2024)

This Addendum has been created in good faith and is accurate to the best of our knowledge and current to March 2024. Please note, that this document does not replace each ANZICA practitioner’s responsibility to ensure they are up to date with all legislation relevant to their counselling practice.

Australian Capital Territory- Legislation Currently Under Review	
Legislation	The Assisted Reproductive Technology Act 2024 – passed 29/3/24. Specific information that will come under the Act are yet to be clarified. All ART providers must comply with national legislation regarding the use of embryos and are also subject to the <i>National Health and Medical Research Council's (NHMRC) Ethical guidelines on the use of assisted reproductive technology in clinical practice and research</i> and must be licensed by the Fertility Society of Australia and New Zealand’s Reproductive Technology Accreditation Committee (RTAC). This requires them to comply with the RTAC’s Code of Practice (COP). Where there is any conflict in the requirements of these regulations, compliance with national and state legislation overrides the requirements of guidelines.
De identified & personal donation	
Minimum # of counselling sessions	
Access to treatment	
Valuable consideration (payment or reimbursement)	
Family Limit (National & Worldwide)	
Importing gametes (National & Worldwide)	

Cooling off period	
Storage limits	
Donor linking services	
Right to information	
Donor Register	
Access to older records	

New South Wales	
Legislation	<p>Assisted Reproductive Technology Act 2007 No 69 Assisted Reproductive Technology Regulation 2009 Assisted Reproductive Technology Regulation 2014 Assisted Reproductive Technology Amendment (Exemptions) Regulation 2015 Assisted Reproductive Technology Amendment Bill 2016 Status of Children Act, 1996 Human Tissue Act 1983</p>
De identified & personal donation	<p>The ART legislation just uses the word “Donor”- it doesn’t differentiate between known or de-identified, the rules apply the same. The terminology used by clinics - De-identified donor/Clinic recruited donor/ Known donor</p>
Minimum # of counselling sessions	<p>The ART Act, 2007, and subsequent amendments do not stipulate the number of counselling sessions that should take place. Legislation does however stipulate that with the provision of ART, “counselling services are available to any woman who seeks ART treatment, any spouse of such a woman and any person proposing to provide a gamete” AND that “counselling be offered before the gamete or embryo is used” (Division 2 (12)). The RTAC COP and ANZICA Professional Standard Guidelines provide guidance and recommendations on the number of counselling sessions required.</p>
Access to treatment	<p>Treatment cannot take place unless written consent is in place. Treatment cannot take place if the ART provider believes on reasonable grounds that the donor is deceased unless the donor has provided posthumous use consent, the woman has been notified of the suspected death and the woman has given written consent to proceed with the ART treatment knowing this information. An ART provider must not provide ART using gametes obtained from a donor more than 5 years before the provision of the treatment unless the ART provider has taken reasonable steps to establish if the donor is alive. An ART provider must not provide ART treatment to a child or obtain a gamete from a child (exemptions and conditions noted). The ART provider must not use a donor who is a close family member of the other person whose gamete is to be used to create an embryo. Close family member definition is listed in the ART Legislation, 2007, 28 (2). The Human Tissue Act, 1983, comments on a donor being an adult and having provided written consent.</p>
Valuable consideration (payment or reimbursement)	<p>NSW Legislation does not comment on this. However, gamete donation in Australia must be altruistic. The NHMRC Ethical Guidelines refer to this matter (5.4) and the reimbursement of out-of-pocket expenses.</p>

Family Limit (National & Worldwide)	(ART Act 2007, 27) “An ART provider must not provide ART treatment using a donated gamete if the treatment is likely to result in offspring of the donor being born, whether or not as a result of ART treatment, to more than 5 women (or such lesser number as may be specified in the donor’s consent), including the donor and any current or former spouse of the donor”. An exemption to this is where “the woman or the spouse of the woman is the parent of a child born as a result of ART treatment using a donated gamete from the same donor,” or “the woman belongs to a class of women prescribed by the regulations for the purposes of this section.
Importing gametes (National & Worldwide)	Yes, it is permitted. Imported gametes must meet the same requirements as expected of donors who donate gametes within NSW
Cooling off period	There is no cooling-off period stipulated in the NSW Legislation.
Storage limits	Donated gametes can be stored for up to 15 years. Less if stipulated by the donor. Embryos created from donated gametes can be stored for up to 15 years from when the embryo was created. Less if stipulated by the recipient. An application for an extension can be made to NSW Health.
Donor linking services	NSW Health manages and maintains The Central Register for all live birth outcomes from ART donor treatment from 2010. From 2010 onwards all live birth outcomes, following ART donor treatment, should be registered on The Central Register by the ART provider within 2 months of a child being born. The Central Register also includes a Voluntary Register for those who donated gametes and those who were born as a result of ART donor treatment before 2010. Donors and donor-conceived adults born before 2010 can voluntarily add their information to The Central Register. For pre-2010 outcomes, NSW Health, who manages the register, will link consenting adults- e.g. Donor with donor-conceived adult; donor-conceived adult with a half-genetic sibling who was also born as a result of the same donor’s donation. These connections will only be made with written consent in place on the Central Register. NSW Health does not provide counselling support with this linking service but recommends it to the applicant.
Right to information	ART donor treatment after 2010 Donor-conceived individuals will, on turning 18, have access to all identifying information about the donor, medical history, the name of the ART provider and the gender and year of birth of every offspring of the donor. A parent of a child born through donation can access ethnicity and physical characteristics information, medical history, gender and year of birth of other offspring. Donors can access the gender and year of birth of offspring. Donor’s own adult children can access the gender and year of birth of all donor offspring. ART donor treatment pre-2010 Donor-conceived adults can access ‘accessible information’ about a donor (non-identifying).

	<p>Donors can apply for information on the gender and year of birth of offspring. Identifying information will only be released by NSW Health when written consent is in place. Applications can be made to NSW Health or the ART provider. All forms are available at www.health.nsw.gov.au/art/Pages/forms.aspx</p>
Donor Register	The Central Register, managed by NSW Health.
Access to older records	<p>All treatment records, old and new, are kept by the ART provider. ART Legislation stipulates the ART provider must retain records for a period of 50 years after the record is made.</p>

New Zealand	
Legislation	Human Assisted Reproductive Technologies Act 2004 (HART Act 2004) HART Order 2005.
De identified & personal donation	Personal, known and clinic-recruited (de-identified) donation is permitted in New Zealand within Fertility Clinics and when legislative criteria and guidelines are met.
Minimum # of counselling sessions	Recipients and donors are required to attend 1-2 individual counselling sessions before commencing and consenting to receive or donate gametes. Partners of donors must attend at least one counselling session. Both members of a recipient partnership must attend all counselling sessions together. A joint session with recipients and donors is required for personal and known donations. A joint session is optional for clinic-recruited and matched donations.
Access to treatment	Gamete and embryo donation are accessible when deemed appropriate and safe practice by a fertility specialist. Treatment can be declined on the grounds of planned non-disclosure to DCP in some clinics. Treatment can be declined due to concerns of the safety or well-being of anyone involved, including a resulting child.
Valuable consideration (payment or reimbursement)	There is no valuable consideration permitted in New Zealand based on the current legislation. Egg donors are offered a reimbursement payment, which is paid from the recipients, via the clinic to the donor in 2 instalments and is optional. Sperm donors are offered a reimbursement fee to cover the costs of getting to clinic appointments.
Family Limit (National & Worldwide)	There is variation across the 3 New Zealand clinics and each clinic sets this limit themselves. This ranges from 5-7. There is no central register in New Zealand to cross-reference the potential of donation across multiple clinics.
Importing gametes (National & Worldwide)	Not prohibited but donation must meet requirements set under the HART Act, such as relating to the identifiability of the donor and no valuable consideration (payment) involved.
Cooling off period	Cooling off is specified individually by each clinic. This includes a requirement of at least 12-18 months following the birth of the last child before starting the process of embryo donation and 12 months for the use of posthumous material. Some clinics have a 'stand down' period of 3 months during quarantine of gametes before treatment can commence, and a criterion that at least 3 months pass from the time of first conversation around gamete donation to starting treatment.
Storage limits	There is a 10-year storage limit on all genetic material. Extensions to this can be applied for through the Ministry of Health's Ethics Committee for Assisted Reproductive Technology (ECART).
Donor linking services	Clinics currently provide donor-linking services to recipients, donors and DCPs. There is no national service. The government donor register is for information provision only and does not provide support, nor does it hold records for donations which occurred prior to 2005.

Right to information	The New Zealand legislation stipulates the rights of donor-conceived people to access identifying information about their conception and genetic links. This information is held in a government donor register and available to recipients from the child who is born and autonomously to a DCP from the age of 18 (16-17 through the family courts). The register and clinics have an obligation to share held information with recipients' parents and DCP. There is an optional process for sibling linking both through the government register and the clinics.
Donor Register	The donor register sits with the Dept. of Internal Affairs with the Register General of Births Deaths and Marriages. Recipients can access relevant information from the time a child is born and donor-conceived people can access information from the register from the age of 18 (16-17 in specific circumstances through the family courts). The guardians of DCP can apply to access the information up until the DCP reaches the age of 18.
Access to older records	A voluntary register was set up in 2004 for donors who donated pre-HART Act and would like to make their information identifiable. This is reliant on donors knowing about the register, wanting to make their information available, and that DCPs are made aware of both their conception origins and directions to the existence of the voluntary register. Find a sperm or egg donor or a donor-conceived child New Zealand Government (www.govt.nz) Clinics are responsible for holding records for all donations and currently support linking from donor treatment, post-HART Act and also which occurred before the HART Act specifying the rights of the child to information.

Northern Territory

Legislation	Northern Territory does not have a regulatory framework surrounding the provision of ART services. All ART providers must comply with national legislation regarding the use of embryos and are also subject to the <i>National Health and Medical Research Council's (NHMRC) Ethical guidelines on the use of assisted reproductive technology in clinical practice and research</i> and must be licensed by the Fertility Society of Australia and New Zealand's Reproductive Technology Accreditation Committee (RTAC). This requires them to comply with the RTAC's Code of Practice. Where there is any conflict in the requirements of these regulations, compliance with national and state legislation overrides the requirements of guidelines.
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Queensland - Legislation Currently Under Review

Legislation	Queensland does not have a regulatory framework surrounding the provision of ART services. A Parliamentary enquiry is currently underway and the establishment of a Register is being considered. All ART providers must comply with national legislation regarding the use of embryos and are also subject to the <i>National Health and Medical Research Council's (NHMRC) Ethical guidelines on the use of assisted reproductive technology in clinical practice and research</i> and must be licensed by the Fertility Society of Australia and New Zealand's Reproductive Technology Accreditation Committee (RTAC). This requires them to comply with the RTAC's Code of Practice. Where there is any conflict in the requirements of these regulations, compliance with national and state legislation overrides the requirements of guidelines.
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South Australia	
Legislation	<u>SA Assisted Reproductive Treatment Act 1988 & SA Assisted Reproductive Treatment Regulations 2010</u> . The <u>NHMRC guidelines on the use of ART in clinical practice</u> must be complied with under the <u>SA Conditions of Registration</u> to provide assisted reproductive treatment in SA as defined in Section 3 of the ACT.
De identified & personal donation	Known and De-identified donation is allowable for sperm, oocytes, and embryos.
Minimum # of counselling sessions	As per the NHMRC guidelines Section 4,4,1 <i>"Individuals and couples involved in a donor conceptions program must undergo counselling because of the complex nature of the issues involved."</i> ANZICA Professional Standards Guidelines recommend a minimum of at least 2 sessions for both recipients and donors with a joint session included for known donation.
Access to treatment	Section 4 A of the SA ART Act indicates that the welfare of the Child is paramount. "Any child born as a consequence of ART in accordance with the Act must be treated as paramount and accepted as a fundamental principle in respect to the operation of the Act. " SA Conditions of Registration allow for ART states must not to provide assisted insemination or IVF to a woman whose age is greater than, or equal to the average age of menopause.
Valuable consideration (payment or reimbursement)	Donors must be altruistic, only reasonable reimbursement for out of pocket costs is allowable.
Family Limit (National & Worldwide)	In South Australia, the family limits are 10 families (excluding the donors' own) as guided by NHMRC guidelines. Use of o/seas banks is allowable
Importing gametes (National & Worldwide)	Importation of Sperm and Oocytes is allowable as long as Donors are compliant with SA legislation. Creation of embryos for transport o/seas for use in commercial surrogacy is not allowable
Cooling off period	N/A
Storage limits	Nil limits of storage of gametes made from the genetic material of intending parents. 15-year limit of storage of gametes created via donor gametes unless approval from the Health Minister as per SA Conditions of Registration.
Donor linking services	SA Donor Conception Register (NB not yet operational to the public) and Clinics where possible
Right to information	DCPs can access Identifying records at the age of 18 years or earlier with parental consent, however donors not obligated to release this information until a DCP is 18 years of age. Donor linking is led by DCP. Donors are not guaranteed access to the ID of any offspring without the express consent of DCP. Donor Conception records must be kept indefinitely as per SA Conditions of Registration

Donor Register	South Australian Donor Conception Register (NB as of Feb 2024 not yet operational to the public but historical and current records are being uploaded) <u>At the time of writing new amendments are currently being tabled in SA Parliament. February 2024.</u>
Access to older records	South Australian Donor Conception Register. Clinics where possible

Tasmania

Legislation	Tasmania does not have a regulatory framework surrounding the provision of ART services. All ART providers must comply with national legislation regarding the use of embryos and are also subject to the <i>National Health and Medical Research Council's (NHMRC) Ethical guidelines on the use of assisted reproductive technology in clinical practice and research</i> and must be licensed by the Fertility Society of Australia and New Zealand's Reproductive Technology Accreditation Committee (RTAC). This requires them to comply with the RTAC's Code of Practice. Where there is any conflict in the requirements of these regulations, compliance with national and state legislation overrides the requirements of guidelines.
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Victoria	
Legislation	Assisted Reproductive Treatment Act 2008 https://www.legislation.vic.gov.au/in-force/acts/assisted-reproductive-treatment-act-2008/028
De identified & personal donation	Spouse/Partner of donors must attend counselling for both known and de-identified donations. Donors can withdraw the use of gametes, but not once embryos have been created– donors must re-consent to donation under new legislation from 2021, otherwise, they can withdraw consent at any time.
Minimum # of counselling sessions	Known Donation minimum 2x individual sessions with donors and recipient & 1x group session. The clinic-recruited donors 2x individual sessions.
Access to treatment	No restrictions within legislation, clinics will set age limits for the use of donors recruited by clinics, as use or females own eggs.
Valuable consideration (payment or reimbursement)	Reasonable expenses can be reimbursed to the donor.
Family Limit (National & Worldwide)	10 Woman limit worldwide
Importing gametes (National & Worldwide)	Subject to Approval by VARTA – both from other states and territories and overseas.
Cooling off period	No cooling-off period.
Storage limits	5 years, extension for a further 5 years through treating clinic. Storage time frame beyond 10 years with application and approval from Patient Review Panel (PRP) - https://www.legislation.vic.gov.au/in-force/acts/assisted-reproductive-treatment-act-2008/028
Donor linking services	Currently through VARTA - however changes pending as noted by the Victorian Health Minister in December 2023, with VARTA to be disbanded at the end of 2023, no current information of where the donor register will be managed from.
Right to information	Information can be accessed through VARTA, by parents, DCP and the donor, whom information is shared with depending on the age of the DCP and can be accessed either through the Donor Register or the Voluntary Register, depending on the age of the DCP. Information can also be shared from the treating clinic, with permission from DCP, donor or DCP Parents https://www.health.vic.gov.au/patient-care/access-to-donor-conception-information
Donor Register	Currently managed by VARTA – however changes pending as noted by the Victorian Health Minister in December 2023, with VARTA to be disbanded at the end of 2023, no current information of where the donor register will be managed from.
Access to older records	

Western Australia	
Legislation	WA Human Reproductive Technology Act 1991 (WA HRT Act 1991)
De identified & personal donation	Spouses/Partners of donors must attend counselling and give consent. Counselling with donor and partner (if applicable); Counselling with recipients then group counselling of all parties followed by 3 months cooling off period. At the end of the cooling-off period, all parties meet again as a couple and then as a group before ART commences. Donors can withdraw consent right up until the gametes are used.
Minimum # of counselling sessions	Known donation – 2 individual sessions and 1 group session. Unknown donation – 2 sessions
Access to treatment	Eligibility for IVF – must have a medical reason; age limits set by ART clinicians
Valuable consideration (payment or reimbursement)	Reasonable expenses only can be reimbursed to the donor e.g. travel costs to the clinic.
Family Limit (National & Worldwide)	5 Family Limit - National & Worldwide
Importing gametes (National & Worldwide)	Not prohibited but donation must meet requirements set under the HRT Act, such as donor identity release to the donor-conceived person at 16; no valuable consideration (payment) for donation; 5 Family Limit (National & Worldwide) worldwide
Cooling off period	Yes 3 months for known donation before ART can start
Storage limits	10 years with extension possible by application to the WA Reproductive Technology Council - https://www.rtc.org.au/embryo-storage-2/
Donor linking services	DCIS - https://www.healthywa.wa.gov.au/Articles/A_E/Donor-conception-information-service#:~:text=The%20Donor%20Conception%20Information%20Service,fertility%20clinic%20in%20Western%20Australia
Right to information	Donor Identity release to the donor-conceived person at 16 years; Parents of the donor-conceived person and donor may join the Voluntary Register before the donor-conceived person is 16 to make contact with each other. Contact can only be initiated by the donor-conceived person when they are 16 years old.
Donor Register	Established in 1993 by the state government's Dept. of Health – Donor Conception Information Service – DCIS- established 2023 - https://www.healthywa.wa.gov.au/Articles/A_E/Donor-conception-information-service#:~:text=The%20Donor%20Conception%20Information%20Service,fertility%20clinic%20in%20Western%20Australia . Voluntary register established in 2004 by the state government's Dept. of Health - Donor Conception Information Service – DCIS - https://www.healthywa.wa.gov.au/Articles/A_E/Donor-conception-information-service#:~:text=The%20Donor%20Conception%20Information%20Service,fertility%20clinic%20in%20Western%20Australia

	20Australia
Access to older records	ART clinics are the primary source of information. It is unlikely that the Department of Health will have information about donations used in WA before April 1993. For every DCIS application, the information held by the Department of Health will be searched, and when enabled by legislation, the results will be provided. Due to the length of time that a donation can be used for; it is possible that a donation collected before 1993 was used after 1993, in which case some records may be held. ART clinics were not mandated to keep information before 1993, although in some instances records still exist. Donors can contact ART clinics directly to obtain their donor code and a non-identifying list of people born from their donation.