

# Infertility Treatment (Amendment) Bill

## EXPLANATORY MEMORANDUM

### PART 1—PRELIMINARY

- Clause 1 sets out the purposes of the Bill.
- Clause 2 is the commencement provision. It provides that the Bill will come into operation on the day on which it receives Royal Assent.
- Clause 3 provides that in this Bill the **Infertility Treatment Act 1995** is called the Principal Act.

### PART 2—AMENDMENT OF PRINCIPAL ACT

- Clause 4 substitutes a new sub-section (4) for section 2(4) of the Principal Act, the effect of which is to extend the period for commencement of the unproclaimed provisions of the Principal Act to 1 January 1998.
- Clause 5 sets out a number of amendments to the Principal Act, the effect of which is to repeal the provisions in relation to the Standing Review and Advisory Committee on Infertility and to provide that the Infertility Treatment Authority may, in accordance with the Principal Act, continue and complete any thing of a continuing nature commenced by the Standing Review and Advisory Committee on Infertility established under the **Infertility (Medical Procedures) Act 1984**.
- Clause 6 amends section 3 of the Principal Act by inserting definitions of "de facto relationship", "husband", "spouse" and "wife", the effect of which is to extend access to treatment procedures under the Principal Act to de facto couples living together as husband and wife on a genuine domestic basis and extend application of provisions in the Principal Act in relation to donor spouses to de facto spouses of donors.

De facto relationship means the relationship of a man and a woman who are living together as husband and wife on a genuine domestic basis, although not married. Husband in relation to a woman who is living with a man in a de facto relationship, means the man with whom she is living in that de facto relationship. Wife in relation to a man who is living with a woman in a de

facto relationship, means the woman with whom he is living in that de facto relationship.

Spouse in relation to a man who is living with a woman in a de facto relationship, means the woman with whom he is living in that de facto relationship. Spouse in relation to a woman who is living with a man in a de facto relationship, means the man with whom she is living in that de facto relationship.

Clause 6 also inserts a new sub-section (2) into section 3 of the Principal Act. The new sub-section (2) provides that if a man or woman living in a de facto relationship is also married, a reference in the Principal Act to a husband, wife or spouse of such a man or woman (as the case requires) does not include a reference to the husband or wife to whom the man or woman is married.

Clause 7 substitutes a new sub-section (1) for sub-section (1) of section 8 of the Principal Act, the effect of which is to provide that a woman who undergoes a treatment procedure must be married and living with her husband on a genuine domestic basis or be living with a man in a de facto relationship.

Clause 8 amends sub-sections (1) and (2) of section 13 of the Principal Act by substituting references to a donor being married at the time of giving consent under section 12 of the Principal Act with references to a donor being married or living in a de facto relationship at the time of giving consent under section 12 of the Principal Act. The effect of this is to extend the consent provisions in section 13 of the Principal Act to de facto spouses of donors.

Clause 8 also inserts a new sub-section (3)(d) into section 13 of the Principal Act, the effect of which is to provide, for the purposes of section 13(2) of the Principal Act, that in the case of a de facto relationship, a donor and spouse divorce when the donor and spouse cease to live together as husband and wife on a genuine domestic basis.

Clause 8 also amends sub-section (4) of section 13 of the Principal Act by substituting a reference to a woman and a man who are married to each other and who have both consented under section 12 of the Principal Act with a reference to a woman and a man who are married to each other or are living together in a de facto relationship and who have both consented under section 12 of the Principal Act. The effect of this is to extend section 13(4) of the Principal Act to de facto couples.

Clause 9 substitutes a new paragraph (a) for section 15(1)(a) of the Principal Act, by substituting a reference to a donor marrying after the donor has given consent

under section 12 of the Principal Act with a reference to a donor marrying or commencing to live in a de facto relationship after the donor has given consent under section 12 of the Principal Act. The effect of this is to extend the objection provisions in section 15 of the Principal Act to de facto spouses of donors.

Clause 9 also amends section 15(5) of the Principal Act, the effect of which is to provide that an objection by a spouse of a donor lapses if the person who made it ceases to be married to the donor or ceases to live in a de facto relationship with the donor.

Clause 10 substitutes a new sub-section (3) for section 18(3) of the Principal Act. The new sub-section (3) provides that in section 18 "spouse", in relation to a donor, means a person who was, at the time the donor gave consent under section 18(1)(b) of the Principal Act, married to the donor or living in a de facto relationship with the donor. The effect of this is to extend the consent provisions in section 18 of the Principal Act to de facto spouses of donors.

Clause 11 substitutes a new sub-section (4) for section 19(4) of the Principal Act. The new sub-section (4) provides that in section 19 "spouse", in relation to a donor, means a person who was, at the time the donor gave consent under section 18(1)(b) of the Principal Act, married to the donor or living in a de facto relationship with the donor. The effect of this is to extend the consent provisions in section 19 of the Principal Act to de facto spouses of donors.

Clause 12 amends sub-sections (1) and (2) of section 28 of the Principal Act by substituting references to a donor being married at the time of giving consent under section 27 of the Principal Act with references to a donor being married or living in a de facto relationship at the time of giving consent under section 27 of the Principal Act. The effect of this is to extend the consent provisions in section 28 of the Principal Act to de facto spouses of donors.

Clause 12 also inserts a new sub-section (3)(d) into section 28 of the Principal Act, the effect of which is to provide, for the purposes of section 28(2) of the Principal Act, that in the case of a de facto relationship, a donor and spouse divorce when the donor and spouse cease to live together as husband and wife on a genuine domestic basis.

Clause 13 inserts a new sub-section (3) into section 29 of the Principal Act. The new sub-section (3) provides that in section 29 "spouse", in relation to a donor, means a person who was, at the time the donor gave consent under section 27 or 28 of the Principal Act, married to the donor or living in a de facto relationship with the donor.

Clause 14 amends section 30 of the Principal Act, by substituting a reference in sub-section (1) to a donor marrying after the donor has given consent under section 27 of the Principal Act with a reference to a donor marrying or commencing to live in a de facto relationship after the donor has given consent under section 27 of the Principal Act. The effect of this is to extend the objection provisions in section 30 of the Principal Act to de facto spouses of donors.

Clause 14 also amends section 30(5) of the Principal Act, the effect of which is to provide that an objection by a spouse of a donor lapses if the person who made it ceases to be married to the donor or ceases to live in a de facto relationship with the donor.

Clause 15 amends section 41 of the Principal Act, the effect of which is to prohibit a person using for a treatment procedure or research a gamete produced by a person less than 18 years old or a zygote or an embryo formed from gametes produced by a person less than 18 years old, except in accordance with the regulations.

Clause 16 amends section 53(1)(d) of the Principal Act by substituting a reference to persons being married at the time of the giving of consent under section 53(1)(d) with a reference to persons being married or living in a de facto relationship at the time of the giving of consent under section 53(1)(d). The effect of this is to extend the consent provisions in section 53 of the Principal Act to de facto spouses of donors.

Clause 17 inserts a new sub-section (3) into section 171 of the Principal Act, the effect of which is to provide that, unless the contrary intention appears, the definitions of "husband", "spouse" and "wife" to be inserted into section 3 of the Principal Act by clause 6 do not apply to Division 2 of Part 14 of the Principal Act, which Division deals with transitional provisions.

Clause 17 also amends section 180(4) of the Principal Act, the effect of which is to provide that "husband", in section 180(4) of the Principal Act, has the meaning to be given to "husband" in section 3 of the Principal Act as a result of amendments to section 3 by clause 6.

Clause 18 repeals section 195 of the Principal Act. Section 195 of the Principal Act is a transitional provision extending application of the Principal Act to a man and a woman who:

- at 10 August 1986 were living together as husband and wife on a genuine domestic basis, although not legally married; and

- are living together as husband and wife on a genuine domestic basis, although not legally married; and
- before 10 August 1986 have undergone examination or treatment with a view to undergoing a procedure which, if the Principal Act were in operation, would be a fertilisation procedure.

Section 195 of the Principal Act is not necessary as a result of the amendments to the Principal Act to be introduced by this Bill because a man and a woman to whom section 195 applies will come within the definition of "de facto relationship" to be inserted into section 3 of the Principal Act by clause 6.

Clause 19 sets out a number of amendments to the Principal Act, the effect of which is to substitute references in the Act to the spouse of a woman with references to the husband of a woman.

Clause 20 is a statute law revision which amends sections 22(2)(a), 173 and 180(4)(a) of the Principal Act.

