

Quick Guide

Changes to the 2021 Amendment Bill and related policy positions

Public consultation on a draft Assisted Reproductive Treatment (Donor Conception Register) Amendment Bill 2021 closed on 21 June 2021. This Quick Guide provides an overview of the key changes we've made in a revised draft Assisted Reproductive Treatment (Posthumous Use of Material and Donor Conception Register) Amendment Bill 2022 and the related policy positions.

Item	Updated Provision/Position	Policy Rationale
Access	Access to the register will be set out in the Regulations rather than in the Act.	Prescribing access provisions via regulation allows for greater detail and flexibility.
Access for donor-conceived children aged under 18	<p>Where the donor consents in the DCR, recipient parents can access the donor's identifying information and contact preferences to help their child establish a positive attitude towards their genetic heritage.</p> <p>Donor-conceived people over the age of 18 will also be able to provide consent in the DCR to disclose their identifying information to parents of their donor-conceived siblings aged under 18.</p> <p>Recipient parents will have the option to exchange contact details with recipient parents of donor-conceived siblings of their child enabling relationships to be formed early.</p> <p>The Bill provides for donor-conceived persons under 18 years who are deemed 'sufficiently mature', to apply for identifying information about their genetic parent(s) without parental support where extenuating circumstances exist.</p> <p>Donors would be able to consent in the DCR to the disclosure of their identifying information to their genetic offspring aged under 18 should they apply to the Minister.</p>	<p>Feedback in 2021 indicated it is important to facilitate the ability for donor-conceived people under the age of 18 to understand their genetic heritage and where all parties agree, facilitate access to identifying information about their genetic parent(s) and donor-conceived siblings.</p> <p>This position aligns with the current regulatory framework for access to information for donor-conceived persons under the age of 18 who are deemed 'sufficiently mature' via the assisted reproductive treatment clinic that provided the treatment resulting in the conception.</p>

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Statement of Wishes	The Statement of wishes provision has been removed in favour of allowing a contact preference system to be prescribed via regulation.	<p>The Statement of Wishes provision aligned with provisions of the <i>Adoptions Act 1988</i>. Feedback indicated that a more direct language using the words 'contact preferences' was preferred.</p> <p>Contact preferences provide the participant with the ability to manage their relationships and contact with genetic relatives at their own pace and to update those preferences as required.</p>
Provision of false and misleading information	Penalties for the knowing or reckless provision of false and misleading information extended to apply to all persons providing information to the register not just clinics or those required to provide information by Notice of the Minister.	The false and misleading provisions are proposed to be extended to ensure that anyone entering information in the register is liable (not just those providing information via a Notice of the Minister) to discourage improper conduct in relation to the register.
Confidentiality	Provisions to ensure those engaged in the administration of the Act are not in breach of privacy provisions extended to ensure that those who are entitled to access/inspect the register are not in breach of the privacy provisions.	Feedback indicated that the privacy provisions needed amendment so those intended to have access to information in the register are not inadvertently in breach of those provisions.
Birth Certificates (<i>Births, Deaths and Marriages Registration Act 1996</i>)	<p>Provision for all donor-conceived children aged under 18 (born on or after the commencement of amendments) to have donor-conceived status on the back of the certificate.</p> <p>Provision for a donor-conceived person under 18 (born before or after the commencement of amendments) to request a birth certificate that includes the names of their genetic parent(s) and their legal parents, where the donor and legal parents' consent.</p> <p>Provision for donor-conceived persons aged over 18 years to request a certificate with their genetic parent(s) name or donor-conceived status regardless of when they were born.</p>	<p>Feedback indicated that choice and options for their birth certificate were very important to donor-conceived people.</p> <p>A birth certificate is a source of truth and should accurately reflect the genetic parentage of all donor-conceived people, including those who are already in existence.</p> <p>The inclusion of a notation on the birth certificate from birth for future donor-conceived children will support changes in societal views about donor conception from secrecy towards openness and transparency.</p> <p>Donors are not legal parents under the law even if their name appears on the birth certificate. Part 2A of the <i>Family Relationships Act 1975</i> clearly outlines this. Donors have no parental rights and are not liable to pay child support. In addition, donor-conceived offspring are not eligible to contest the will of a donor.</p>

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Minister to authorise disclosure of information	Provisions to provide the Minister power to disclose or withhold information in the register if deemed necessary for the health and welfare of an individual, and to help facilitate appropriate information sharing across State Government Agencies.	<p>Feedback indicated provisions were required to allow for the Minister to disclose information in certain outstanding circumstances. Examples of such circumstances include provision of information where early screening for hereditary medical conditions could be lifesaving or where a donor-conceived child under the age of 18 is palliative and has desire to know their genetic heritage.</p> <p>The provision also allows for disclosure to support information sharing across State Government Agencies for the purposes of administering the Act. For example, to allow for information to be shared between BDM and the register to remove any doubt about whether disclosures are allowed and streamline governance requirements.</p>
Safe access principles	Replace the word 'inspection/access' currently in the legislation/Bill with safe access principles.	The introduction of 'safe access principle' terminology is introduced to recognise the inherent sensitivity of the information on the register which was consistently highlighted through the feedback received on the original Bill. The proposed change in terminology recognises the need to ensure persons interacting with the register are appropriately supported and protected from harm.
Authorisation for Minister to request information for 'search and find'	Provision to authorise the Minister or person administering the Act to request information from third parties to facilitate search and find activities.	<p>An intermediary support service will have a search and find function to facilitate the provision of information and support to historical donors whose right to confidentiality is proposed to be removed.</p> <p>The support service will require access to information retained by other State Government Agencies to support searches for relevant parties.</p>
Freedom of Information	Provision exempting the register from FOI requests.	Access to the register should be facilitated in accordance with the regulations. This recognises the sensitivity of information on the register, that it is personal relating to individuals, and that it is not appropriate to be accessible under the FOI Act.

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Posthumous use of ovum	A new provision is proposed to enable the posthumous use of an ovum similarly to how the posthumous use of semen is currently permitted under the ART Act.	<p>The ART Act currently allows for semen to be used posthumously, provided that before the donor died their semen was collected or used to fertilise an ova or create an embryo and consent to use the semen was given. In such circumstances the semen may be used for a person who was living with the donor on a genuine domestic basis. However, the ART Act does not currently include provisions for the posthumous use of an (unfertilised) ovum.</p> <p>The inclusion of ova will make the ART Act equitable for all people whose partner has died. This change will bring South Australia more in line with both the Victorian and New South Wales provisions in their legislation.</p>
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What's next?

YourSAy is open and inviting written submissions on the draft Amendment Bill until 5.00pm Tuesday, 6 December 2022. Soon after, we will publish a summary report with the feedback received about the draft Bill and in due course, the Bill will be introduced to the South Australian Parliament.