Infertility Treatment (Amendment) Act 1997
Act No. 37/1997

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NOTES 10
The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The purposes of this Act are to amend the Infertility Treatment Act 1995—

(a) to extend the period for commencement of the unproclaimed provisions of the Act;
(b) to repeal the provisions in relation to the Standing Review and Advisory Committee on Infertility;

(c) to extend access to treatment procedures under the Act to de facto couples living together as husband and wife on a genuine domestic basis;

(d) to make various miscellaneous amendments to the Act.

2. *Commencement*

This Act comes into operation on the day on which it receives the Royal Assent.

3. *Principal Act*

In this Act, the *Infertility Treatment Act 1995* is called the Principal Act.
PART 2—AMENDMENT OF PRINCIPAL ACT

4. Commencement of unproclaimed provisions of Principal Act

In section 2 of the Principal Act, for sub-section (4) substitute—

"(4) If a provision referred to in sub-section (3) does not come into operation before 1 January 1998, it comes into operation on that day.".

5. Standing Review and Advisory Committee on Infertility

(1) In the Principal Act—

(a) in section 1(f), omit "and the Standing Review and Advisory Committee on Infertility";

(b) in section 3, the definition of "Committee" is repealed;

(c) in section 89(3), paragraph (f) is repealed;

(d) in section 98, sub-sections (7) and (8) are repealed;

(e) in section 99—

(i) in sub-section (1), for "Subject to sub-section (2), the" substitute "The";

(ii) sub-section (2) is repealed;

(f) in section 100, sub-section (2) is repealed;

(g) in section 118(1), omit "and the Committee";

(h) in section 122, sub-section (5) is repealed;

(i) Part 10 is repealed;
(j) in section 150—
   (i) omit "or the Committee";
   (ii) omit "98(8) or";

(k) in section 161(a)—
   (i) for "the Minister, the Authority or the Committee" substitute "the Minister or the Authority";
   (ii) omit "or the Committee" (where secondly occurring);

(l) in section 164(a)—
   (i) omit "or the Committee";
   (ii) omit "98(8) or".

(2) In section 194 of the Principal Act, for sub-sections (2) and (3) substitute—

"(2) The Authority may, in accordance with this Act, continue and complete any thing of a continuing nature commenced by the former Committee.".

6. Application of Act to de facto relationships

(1) In section 3 of the Principal Act, before "In this Act" insert "(1)".

(2) In section 3 of the Principal Act insert—

"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;
"spouse"—

(a) 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;

(b) 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;'.

(3) At the end of section 3 of the Principal Act, insert—

"(2) If a man or woman living in a de facto relationship is also married, a reference in this 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.".

7. Persons who may undergo treatment procedures

In section 8 of the Principal Act, for sub-section (1) substitute—

"(1) A woman who undergoes a treatment procedure must—

(a) be married and living with her husband on a genuine domestic basis; or

(b) be living with a man in a de facto relationship.".
8. Consent of spouse of donor under section 13

In section 13 of the Principal Act—

(a) in sub-section (1), for "is married at the time consent is given" substitute "is, at the time consent is given, married or living in a de facto relationship";

(b) in sub-section (2), for "was not married at the time the donor gave consent" substitute "was not, at the time the donor gave consent, married or living in a de facto relationship";

(c) after sub-section (3)(c) insert—

"or

(d) in the case of a de facto relationship, when the donor and spouse cease to live together as husband and wife on a genuine domestic basis.";

(d) in sub-section (4), after "each other" insert "or are living together in a de facto relationship (as the case requires)".

9. Objection by later spouse under section 15

In section 15 of the Principal Act—

(a) in sub-section (1), for paragraph (a) substitute—

"(a) after the donor has given consent under section 12 in respect of an oocyte, sperm, zygote or embryo, the donor marries or commences living in a de facto relationship; and";

(b) in sub-section (5), after "to the donor" insert "or ceases to live in a de facto relationship with the donor (as the case requires)".
10. Identified donors

In section 18 of the Principal Act, for sub-section (3) substitute—

'(3) In this section, "spouse", in relation to a donor, means a person who was, at the time the donor gave consent under sub-section (1)(b), married to the donor or living in a de facto relationship with the donor.'.

11. Requirements as to consent to use of gamete, etc from identified donor

In section 19 of the Principal Act, for sub-section (4) substitute—

'(4) In this section, "spouse", in relation to a donor, means a person who was, at the time the donor gave consent under section 18(1)(b), married to the donor or living in a de facto relationship with the donor.'.

12. Consent of spouse of donor under section 28

In section 28 of the Principal Act—

(a) in sub-section (1), for "is married at the time consent is given" substitute "is, at the time consent is given, married or living in a de facto relationship";

(b) in sub-section (2), for "was not married at the time the donor gave consent" substitute "was not, at the time the donor gave consent, married or living in a de facto relationship";

(c) after sub-section (3)(c) insert—

"or

(d) in the case of a de facto relationship, when the donor and spouse cease to live together as husband and wife on a genuine domestic basis.".
13. Requirements as to consent

In section 29 of the Principal Act, after subsection (2) insert—

'(3) In this section, "spouse", in relation to a donor, means a person who was, at the time the donor gave consent under section 27 or 28, married to the donor or living in a de facto relationship with the donor.'.

14. Objection by later spouse under section 30

In section 30 of the Principal Act—

(a) in sub-section (1), for "If a donor marries a person after he or she has given consent under section 27" substitute "If, after a donor has given consent under section 27, he or she marries or commences living in a de facto relationship";

(b) in sub-section (5), after "to the donor" insert "or ceases to live in a de facto relationship with the donor (as the case requires)".

15. Ban on procedure involving gametes produced by children

In section 41(a) and (b) of the Principal Act, omit ", unless that person is married".

16. Removal of zygotes and embryos from storage

In section 53(1)(d) of the Principal Act, for "is married at the time of the giving of the consent" substitute "is, at the time of the giving of the consent, married or living in a de facto relationship".
17. Definitions

(1) After section 171(2) of the Principal Act insert—

'(3) Unless the contrary intention appears, the definitions of "husband", "spouse" and "wife" in section 3(1) of this Act do not apply to this Division.'.

(2) In section 180(4) of the Principal Act, after "husband" insert "(within the meaning of section 3(1) of this Act)".

18. Repeal of section 195

Section 195 of the Principal Act is repealed.

19. References to spouse

In the Principal Act—

(a) in section 4(2), omit "or spouse" (where twice occurring);

(b) in section 63(2)(c), for "spouse" (where twice occurring) substitute "husband";

(c) in section 66(c), for "spouse" substitute "husband";

(d) in sections 71 and 72, for "spouse" (wherever occurring) substitute "husband".

20. Statute law revision

In the Principal Act—

(a) in section 22(2)(a), for "being" substitute "bring";

(b) in section 173, omit "(1)";

(c) in section 180(4)(a), for "identify" substitute "identity".

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NOTES

† Minister's second reading speech—
Legislative Council: 22 April 1997
Legislative Assembly: 30 April 1997

The long title for the Bill for this Act was "to amend the Infertility Treatment Act 1995 and for other purposes."