Infertility Treatment (Amendment) Act 2001
Act No. 59/2001

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The Parliament of Victoria enacts as follows:

1. **Purpose**

   The main purpose of this Act is to make various amendments to the *Infertility Treatment Act 1995* to provide for—

   (a) the removal of the requirement for a spouse's consent in limited circumstances where the couple is no longer living together on a genuine domestic basis;
(b) the use of embryos formed from gametes of a person who has died;

(c) voluntary inclusion on the donor treatment procedure information Register of information related to donations and treatment procedures undertaken prior to 1 July 1988 and for the release of that information.

2. Commencement

This Act comes into operation on the day after 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.

4. Spousal consent

(1) In section 13(2) of the Principal Act—

(a) in paragraph (b), for "divorce" substitute "cease to live together as husband and wife on a genuine domestic basis";

(b) in paragraph (c), for "that divorce" substitute "the donor and that spouse have ceased to live together as husband and wife on a genuine domestic basis".  

(2) In section 13 of the Principal Act, for sub-section (3) substitute—

"(3) Despite sub-section (1), the consent of the spouse of a donor is not required where the donor and that spouse are no longer living together as husband and wife on a genuine domestic basis.".

(3) In section 15 of the Principal Act, for sub-section (5) substitute—

"(5) An objection by a spouse of a donor (whether married or living together in a de facto relationship) lapses if the donor and that spouse are no longer living together as husband and wife on a genuine domestic basis.".

(4) In section 18(3) of the Principal Act, after "married to the donor" insert "and living together as husband and wife on a genuine domestic basis".

(5) In section 19(4) of the Principal Act, after "married to the donor" insert "and living together as husband and wife on a genuine domestic basis".

5. Use of embryos formed from gamete of a person who has died

In section 43 of the Principal Act, paragraph (c) is repealed.

6. New Part 7A inserted

After Part 7 of the Principal Act insert—

'PART 7A—PRE-1 JULY 1988 PROCEDURE INFORMATION

92A. Definitions

In this Part—
"counsellor" means a person approved under Part 8 to give counselling to persons applying for information under this Part;

"pre-1 July 1988 donor" means a donor whose gamete, zygote or embryo was used in a pre-1 July 1988 treatment procedure;

"pre-1 July 1988 information" means information relating to—
(a) a pre-1 July 1988 donor; or
(b) a pre-1 July 1988 treatment procedure;

"pre-1 July 1988 treatment procedure" means a treatment procedure or artificial insemination carried out before 1 July 1988;

"Register" means the donor procedure treatment information Register established and maintained under section 82.

92B. Application of Part
(1) This Part applies despite Part 7 and section 181(9).

(2) Sections 89 and 90 do not apply to the release of information under this Part.

92C. Recording of pre-1 July 1988 information
(1) The Authority must establish in the Register a separate part relating to pre-1 July 1988 information.
(2) There shall be entered in the part of the Register relating to pre-1 July 1988 information—

(a) the names and addresses of persons, including—

(i) persons born as a result of pre-1 July 1988 treatment procedures;

(ii) the descendants of persons born as a result of pre-1 July 1988 treatment procedures;

(iii) pre-1 July 1988 donors;

(iv) women who have undergone pre-1 July 1988 treatment procedures and their husbands; and

(v) the relatives of persons described in this section—

who have requested the Authority in writing to so enter their names and addresses; and

(b) in relation to each person so registered, the wishes of the person in relation to—

(i) obtaining information about another person whose name is, or may in the future be, entered in the Register; or

(ii) another person whose name is, or may in the future be, entered in the Register obtaining information about him or her.
(3) The Authority must not enter information on the part of the Register relating to pre-1 July 1988 information if the request to enter the information is made by a person who is under 18 years of age.

92D. **Release of information**

The Authority may release information from the part of the Register relating to pre-1 July 1988 information in accordance with this Part.

92E. **Request for release of information**

Any person—

(a) who requests the Authority in writing to enter his or her name in the part of the Register relating to pre-1 July 1988 information; or

(b) whose name is entered in the part of the Register relating to pre-1 July 1988 information—

may request the Authority to provide information from that part of the Register about another person whose name is, or may in the future be, entered in that part of the Register.

92F. **Authority to comply with wishes of person who provided information**

The Authority may only release information about a person from the part of the Register relating to pre-1 July 1988 information in accordance with the wishes of that person entered in that part of the Register.
92G. Authority may give information

(1) The Authority may, in writing, give information entered in the part of the Register relating to pre-1 July 1988 information to a person who has made a request under section 92E if—

(a) in the case of information from which a person will or may be identified, the Authority is satisfied that—

(i) the person to whom the information is to be given; and

(ii) the person who requested the information be entered on the Register—

have received counselling about the potential consequences of the disclosure of that information from a counsellor; and

(b) in the case of information other than information from which a person will or may be identified, the Authority is satisfied that—

(i) the person to whom the information is to be given; and

(ii) the person who requested the information be entered on the Register—

have been offered counselling about the potential consequences of the disclosure of that information from a counsellor.

(2) The Authority must not release information under sub-section (1) to a person who is under 18 years of age.
92H. Counselling waived in certain circumstances

The Authority may waive a requirement for counselling under section 92G if—

(a) a person who is required under that section to receive counselling is dead; or

(b) the Authority is satisfied that a person who is required under that section to receive counselling is unable to be found; or

(c) the Authority is satisfied that counselling is not appropriate in the particular circumstances.

92I. Offences

(1) Any person who is, or has been a member of the Authority, or employed or engaged to assist the Authority to carry out its functions must not release information from the part of the Register relating to pre-1 July 1988 information except in accordance with this Part.

Penalty: 50 penalty units.

(2) A person who gives any information under this Part must keep a record of—

(a) the person to whom the information has been given; and

(b) the information given.

Penalty: 50 penalty units.'.
ENDNOTES

† Minister's second reading speech—
Legislative Council: 19 September 2001
Legislative Assembly: 27 September 2001

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