

## Fact sheet one

# Access to ART at a registered clinic in South Australia

The *Assisted Reproductive Treatment Act 1988* sets out the circumstances in which a person (or couple) can access assisted reproductive treatment (ART) at a registered clinic in South Australia.

Access to treatment in South Australia is based on clinical need. A registered clinic must not provide assisted insemination or In Vitro Fertilisation to extend a woman's fertility beyond the average age of menopause.

*NB 'registered clinic' and 'registered provider' represent the same entity*

### Who can access treatment at a registered clinic?

A person (or couple) can access treatment at a registered clinic in South Australia:

- > If the woman or her partner are, or appear to be, infertile OR  
*This usually means 12 months of unprotected intercourse or an inability to carry a pregnancy to term. To determine infertility a, ART clinic will normally undertake tests on both the woman and her partner (if any)*
- > If there is a risk that a serious genetic defect, disease or illness would be transmitted to a child conceived naturally OR  
*You will need to contact your GP, an ART clinic or a genetic specialist to see if you qualify under this criterion*
- > If a woman's deceased partner/spouse has left written instructions/directions (prior to his death) that his sperm could be used for the benefit of the widow to conceive a child (posthumous use of sperm or embryos)\* OR
- > For the purposes of a recognised surrogacy agreement OR
- > In the event of future infertility as a result of a serious medical condition/disease or from the treatment for the condition itself, for example chemotherapy which may render a person infertile.

\*conditions apply

### How is a person assessed as eligible for treatment at a registered ART clinic?

The *Assisted Reproductive Treatment Act 1988* contains a fundamental principle which registered assisted reproductive treatment providers must comply with. It states:

*The welfare of any child to be born as a consequence of the provision of assisted reproductive treatment in accordance with this Act must be treated as being of paramount importance, and accepted as a fundamental principle, in respect of the operation of this Act (Assisted Reproductive Treatment Act 1988; s4A).*

When a clinician is assessing whether a person/couple are eligible for treatment, it is the clinician's responsibility to ensure that the above principle is fundamental in the provision of treatment. This principle also underpins the regulation of ART and is an accepted national principle. In practice this means that if there are questions about the suitability of a client wanting to undertake ART to conceive a child, for example parenting capacity, then clinicians can turn to this principle when deciding whether to proceed with treatment.

A potential recipient of treatment (and the donor if donor gametes/embryos are to be used) may



be asked questions about past behaviours to ascertain whether there is a risk to the child to be born. Questions may include whether you have been found guilty of a sexual offence involving a child, whether you have had a child removed from your custody or similar questions to ascertain whether there may be a risk to the child to be born.

### **Does a registered ART provider have to provide treatment?**

There is no legal obligation on any medical practitioner, including infertility clinicians and specialists to provide medical treatment, including assisted reproductive treatment. The Assisted Reproductive Treatment Regulations 2010 contains the following provision:

***Act does not require provision of ART:*** *Nothing in the Act requires a registered [provider] to provide ART to another person (whether or not ART may be provided in accordance with the ART Act or its regulations).*

Fact sheets are advisory only and are not legally binding. They are based on the Legal and Legislative Policy Team's understanding of the *Assisted Reproductive Treatment Act 1988* and how assisted reproductive treatment practice works. This is not legal advice.

### **For more information**

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