

## EXPLANATORY STATEMENT

### Research Involving Human Embryos (Corresponding State Law—ACT) Declaration 2018

#### *Research Involving Human Embryos Act 2002*

#### **Summary**

Subsection 7(1) of the Commonwealth *Research Involving Human Embryos Act 2002* (RIHE Act) confers power on the Minister to declare a law of a State or Territory to be a corresponding State law for the purposes of the RIHE Act. This Ministerial declaration replaces an earlier Ministerial declaration that sunsetted on 1 October 2018, and provides that the Australian Capital Territory *Human Cloning and Embryo Research Act 2004* (ACT Act) is a corresponding State law.

#### **Background**

The RIHE Act, which received Royal Assent on 19 December 2002, regulates the use of human embryos for research where those embryos have been created for assisted reproductive technology and are excess to couples' needs. Subsection 7(1) of the RIHE Act provides that a 'corresponding State law' is, in effect, a law of a State (or Territory) which the Minister has declared to be corresponding.

Under an agreement reached by all jurisdictions at a Council of Australian Governments (COAG) meeting in April 2002, each State and the Australian Capital Territory (ACT) undertook to enact its own legislation to achieve national consistency with the RIHE Act. In this context, the ACT Legislative Assembly enacted the *Human Cloning and Embryo Research Act 2004* (ACT Act).

In 2006, the RIHE Act was amended by the *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006*. As a response to the Commonwealth's changes to the RIHE Act, the Australian Capital Territory Legislative Assembly amended the ACT Act with effect from 18 April 2008, so that it continued to be in a form appropriate to be a 'corresponding State law' for the purposes of the RIHE Act. The ACT amending legislation was the *Human Cloning and Embryo Research Amendment Act 2008*. Most recently, in 2008, the ACT Act was declared to be a corresponding State law for the purposes of the RIHE Act.

The 2008 Ministerial declaration is a legislative instrument for the purposes of the *Legislation Act 2003*. Part 4 of Chapter 3 of the *Legislation Act 2003* provides that the Ministerial declaration will be automatically repealed ten years after it came into effect. The 2008 declaration sunsetted on 1 October 2018. In order for the ACT Act to continue to be regarded as a corresponding State Law for the purposes of subsection 7(1) of the RIHE Act, it is necessary that the 2008 Ministerial declaration be remade and registered.

### **Instrument**

The effect of the instrument is to declare the ACT Act to be a corresponding State law for the purposes of subsection 7(1) of the RIHE Act.

### **Consultation**

No consultation was undertaken in respect of this declaration as the ACT Act continues to be consistent with the RIHE Act, and therefore the declaration is of a minor, machinery nature.

### **Commencement**

This declaration is to take effect from the day after it is registered on the Federal Register of Legislative Instruments.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Research Involving Human Embryos (Corresponding State Law—ACT) Declaration 2018**

This Declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Declaration**

The Declaration of Corresponding State Law provides that the *Human Cloning and Embryo Research Act 2004* of the Australian Capital Territory is a corresponding State law for the purposes of the Commonwealth *Research Involving Human Embryos Act 2002* (RIHE Act).

The RIHE Act, which received Royal Assent on 19 December 2002, regulates the use of human embryos for research where those embryos have been created for assisted reproductive technology and are excess to couples' needs. Subsection 7(1) of the RIHE Act provides that a 'corresponding State law' is, in effect, a law of a State (or Territory) which the Minister has declared to be corresponding.

This Ministerial declaration replaces an earlier Ministerial declaration that sunsetted on 1 October 2018.

#### **Human rights implications**

This Declaration does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Declaration is compatible with human rights as it does not raise any human rights issues.

Note: The name of this instrument was amended on registration as the instrument as lodged did not have a unique name (see subsection 10(2), *Legislation Rule 2016*).