

EXPLANATORY STATEMENT

Research Involving Human Embryos (Corresponding State Law—NSW) 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 provides that the *Research Involving Human Embryos (New South Wales) Act 2003* (New South Wales 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. Section 7 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 undertook to enact its own legislation to achieve national consistency with the RIHE Act. In compliance with this agreement, the New South Wales Parliament enacted the *Research Involving Human Embryos (New South Wales) Act 2003*.

Unlike most other jurisdictions' enactments, the New South Wales Act specifically applies the law of the Commonwealth as a law of the State, and accordingly a Ministerial declaration that the New South Wales Act is a corresponding State law for the purposes of subsection 7(1) of the RIHE Act is not necessary in a technical sense. However, it is desirable from the perspective of consistency with the other COAG members, and to dispel any possible doubt as to the New South Wales Act's effectiveness, that this Ministerial declaration be made.

Instrument

The effect of the instrument is to declare the New South Wales 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 it is of a minor machinery nature, and implements, in respect of New South Wales, the agreement that was reached the April 2002 COAG meeting.

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

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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 *Research Involving Human Embryos (New South Wales) Act 2003* of New South Wales 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.

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*).