

EXPLANATORY STATEMENT

Research Involving Human Embryos Act 2002

Declaration of ‘corresponding State laws’

Summary

Section 7 of the Commonwealth *Research Involving Human Embryos Act 2002* (RIHE Act) confers power on the Minister to declare a law to be a corresponding State law for the purposes of the RIHE Act. This Ministerial declaration provides that the *Prohibition of Human Cloning for Reproduction Act 2003 (South Australia)* (South Australian PHCR Act) and the *Research Involving Human Embryos Act 2003 (South Australia)* (South Australian RIHE Act) are such corresponding State laws.

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 the 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.

Pursuant to an Inter-Governmental Agreement reached by all jurisdictions at a Council of Australian Governments (CoAG) meeting in April 2002, each State and the Australian Capital Territory enacted its own legislation to achieve national consistency with the RIHE Act. After assessment by the Commonwealth, each such State and Territory Act was declared to be a corresponding State law for the purposes of the RIHE Act. The South Australian RIHE Act was declared to be a ‘corresponding State Law’ on 3 October 2003.

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*. Consequently, the South Australian PHCR Act and the South Australian RIHE Act were no longer considered appropriate to be ‘corresponding State laws.’ The relevant ministerial declaration has, accordingly, been revoked.

As a response to the Commonwealth’s changes to the RIHE Act, all jurisdictions (except the Northern Territory) agreed at a CoAG meeting in April 2007 to amend legislation to ensure national consistency regarding the regulation of human embryo research.

The South Australian legislature has since amended the South Australian PHCR Act and the South Australian RIHE Act, which are now in a form appropriate to be ‘corresponding State laws’ for the purposes of the RIHE Act.

The South Australian amending legislation is the *Statutes Amendment (Prohibition of Human Cloning for Reproduction and Regulation of Research Involving Human Embryos) Act 2009 (South Australia) (No 11 of 2009)*.

Instrument

The effect of the instrument is to declare the South Australian PHCR Act and the South Australian RIHE Act to be corresponding State laws for the purposes of the RIHE Act.

Consultation

No consultation was undertaken in respect of this declaration as it is of a minor and machinery nature.

Commencement

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