

EXPLANATORY STATEMENT

Instruments of Revocation

Research Involving Human Embryos Act 2002

Section 33 (3) of the Acts Interpretation Act 1901 provides that ‘where an Act confers powers to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.’

Background

The *Research Involving Human Embryos Act 2002* (RIHE) received Royal Assent on 19 December 2002. The RIHE Act regulated the use of human embryos for research where those embryos were created for assisted reproductive technology and were excess to the couples’ needs.

Section 7 of the RIHE Act defines ‘corresponding State law’ in such a way as to contemplate declarations by the Minister, by notice in the *Gazette*, of a law of a State (which is defined to include the Australian Capital Territory and the Northern Territory) to be such a ‘corresponding State law.’ This is for constitutional reasons arising out of the agreement by COAG on 5 April 2002, as a consequence of which all States and Territories entered into an Inter-Governmental Agreement. The Inter-Governmental Agreement included a provision that ‘each State and Territory (would) use its best endeavours to submit to its Parliament, within 12 months of 19 December 2002, a Bill or Bills that would have the effect of achieving national consistency with the Commonwealth *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002*.’

All jurisdictions except the Northern Territory have, accordingly, enacted legislation containing regulatory provisions identical to those of the RIHE Act as originally enacted. Each such piece of legislation has been declared variously by your predecessors, the Honourable Kevin Andrews and Julie Bishop, to be a ‘corresponding State legislation’ for the purposes of section 7 of the RIHE Act.

The *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006* was assented to on 12 December 2006. The relevant provisions commence on 12 June 2007. That Act amends aspects of the regulatory scheme and, as a result the corresponding State law in each jurisdiction will cease to reflect the Commonwealth legislation from that date.

Instrument

To take account of amendments made to the RIHE Act, the Instruments of Revocation revoke the declarations that State laws relating to research involving human embryos in Queensland, New South Wales, Victoria, Tasmania, South Australia, Western Australia and the Australian Capital Territory, are corresponding State laws for the purpose of section 7 of the RIHE Act.

Consultation

No consultation was undertaken in respect of these Revocations as they are of a minor and machinery nature.

Commencement

These Instruments of Revocation take effect on and from 12 June 2007, the date on which the amendments made by the *Prohibition of Human Cloning for Reproduction and the Regulation of Human embryo Research Amendment Act 2006* take effect.