



Australian Medical Association (WA)

**Submission to the Review of the  
*Human Reproductive Technology  
Act 1991 (HRT Act) and the  
Surrogacy Act 2008***

## Introduction

The Australian Medical Association (WA) welcomes the opportunity to provide a submission to the Reviews of the HRT Act 1991 and Surrogacy Act 2008. The AMA (WA) is the State's peak medical representative body, and the only independent organisation acting on behalf of Western Australian doctors. We aim to better represent the medical profession to the government and to the community and advocate for the best interests of patients.

The Terms of Reference for this review are extensive and it is evident that a comprehensive, rigorous process is being undertaken. In our submission, the AMA (WA) addresses the Terms of Reference which pertain to clinical outcomes, research and medical ethics. Above all, the priority of the HRT Act and Surrogacy Act should be the interests of the child who is conceived as a result of the assisted reproductive technology. The health of the mother, biological, surrogate or donor, should also be of utmost importance.

The AMA (WA) supports nationally consistent legislation around assisted reproductive technology and surrogacy. To the extent that ethics inform the legislation, they should be in keeping with current societal values and beliefs, as well as the National Health and Medical Research Council (NHMRC) Ethical Guidelines. Our submission is consistent with the Federal AMA Position Statement on Ethical Issues in Reproductive Medicine (attached). The Acts should be responsive to advances in technology and clinical practice, and encourage regulated research.

While eligibility for assisted reproductive technology is not explicitly addressed in the Terms of Reference, it is worth noting the complexities that exist around such criteria. Access to IVF in WA is based upon 'medical reasons', such as clinical infertility. The definition of 'infertility' is inevitably changing with shifting demographics, for example same sex couples, increasing age of parents, and chronic comorbidities. The AMA (WA) believes that access to assisted reproductive technology and surrogacy should not discriminate against individuals on the basis of their sexual orientation. Removing the requirement that an 'eligible couple' be of the opposite sex to each other would both bring these Acts in line with other Australian legislation and reflect societal views.

Adherence to best clinical practice when assessing patient eligibility is the responsibility of the treating doctor and not covered in legislation. However, it is worth noting the changing health landscape, including the prevalence of chronic comorbidities and obesity in people of childbearing age, which increase the risks of pregnancy and reduce the likelihood of success. Doctors should apply their clinical judgement in keeping with best practice, as consistently as possible.

## HRT Act

*Research and experimentation on gametes, eggs in the process of fertilisation and embryos. In particular, consider the current disparity between the HRT Act and relevant Commonwealth legislation and need to adopt nationally consistent legislation regarding excess assisted reproductive technology (ART) embryo research and prohibited practices.*

The AMA (WA) supports legislative change which brings WA in line with the National Health and Medical Research Council (NHMRC) Ethical Guidelines. There is scope for greater levels of research to be conducted in WA, which should continue to be tightly regulated.

### **Genetic testing of embryos, saviour siblings, mitochondrial donation and gene editing technology**

With health of the child as the central consideration, genetic testing should be allowed for, including pre-implantation genetic screening for saviour siblings and embryos of women under the age of 35 years. Consideration should be given to reducing barriers to research into mitochondrial donation in cases of severe or fatal inherited disease.

*Posthumous collection, storage and use of gametes and embryos, including the consent required, conditions for use, and any impact on other legislation.*

The AMA (WA) are opposed to the removal of gametes from deceased persons who have not given effective consent to the procedure. The current arrangement under the Human Tissue and Transplant Act 1982 (WA), whereby a designated officer for a hospital may authorise the removal of tissue from the body of a deceased person, may conflict with the HRT Act which does not permit the use of sperm posthumously to conceive a child.

*The storage of gametes, eggs in the process of fertilisations and embryos (including the duration of storage and procedures for extension of storage periods)*

There should be a review of the current provision that precludes patients from having more than three embryos in storage, given the low chance of successful implantation for each embryo. This should instead be a matter for clinical judgement. The duration limit of 10 years with the potential for extension is largely reasonable.

**The impact of the HRT Act of relevant Commonwealth and State legislation, and aspects of legislation of other jurisdictions which could be incorporated in to the HRT Act.**

The AMA (WA) supports increasing the donor family limit in WA from five to ten, bringing legislation in line with most other states and territories. This would simplify use of donated gametes interstate.

### *The effectiveness of the current licensing regimen*

The current system of licensing outlined in the HRT Act is unique to WA. The AMA (WA) supports the process of application to the Reproductive Technology Council for license, given the complex and specialised area of medicine.

### *The effectiveness of the operation of the Council and committees of the Council*

The AMA (WA) is not aware of any issues with the effectiveness of the Reproductive Technology Council (RTC). The Council should maintain its balance of members, including those from industry, academia, medical professionals, legal representatives, and ethicists to offer balanced views, reflective of societal values.

### *Management of information/the Reproductive Technology Registers, including:*

- *Confidentiality of information*
- *Use of data for research*
- *Use of data for purposes of national data collection and;*
- *Access to information about donation, genetic parentage and donor conception,*
- *The Voluntary Register (donor-assisted conception)*

The AMA (WA) are strongly in favour of data linkage between IVF clinic reports, birth registers and disease monitoring programs. We also support continued access to information about donation, genetic parentage and donor conception for children from the age of 16 years.

## **Surrogacy Act**

There is an opportunity to revisit eligibility criteria for surrogacy. The current legislation requires that a uterus (surrogate) is arranged before an embryo can be made. However, conditions necessitating assisted reproductive technology such as hysterectomy due to cancer or other impending medical issues, mean that this is not always plausible. The AMA (WA) recommends that this criteria be revisited and amended to allow an embryo to be made before a surrogate is identified.

The current lower limit of arranged parent age is 25 years. Again, given the complexities inherent in assisted reproductive technology, this cut-off need not be rigid. There are other existing ways in which the parents' maturity is assessed, such as psychological counselling. An independent assessment of psychological competency should be conducted when deciding on parents' eligibility for surrogacy.

### ***Need for continued prohibition on commercial surrogacy***

The AMA (WA) supports the continued prohibition on commercial surrogacy. However, there reasonable compensation should be considered, including earnings foregone, other expenses and “inconvenience”.

### **International commercial surrogacy arrangements**

We note that the demand for surrogacy in Australia and in part the restrictions in place may be driving the overseas surrogacy market. This leads to the exploitation of vulnerable people – couples as well as the surrogate. The AMA (WA) advocates for clinicians to be strong in discouraging Australians from participating in these overseas programs.



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