GOVERNMENT OF WESTERN AUSTRALIA

Terms of Reference

ASSISTED REPRODUCTIVE TECHNOLOGY AND SURROGACY LEGISLATION

MINISTERIAL EXPERT PANEL

1. PURPOSE

The Assisted Reproductive Technology (ART) and Surrogacy Legislation Ministerial Expert Panel (MEP) will provide advice to the WA Government to assist in the development, consultation and implementation of new legislation for ART and surrogacy in Western Australia.

2. BACKGROUND

In 2018, the WA Government commissioned the independent Review of the Western Australian *Human Reproductive Technology Act 1991* (HRT Act) and the *Surrogacy Act 2008* (Surrogacy Act) undertaken by Associate Professor Sonia Allan (Allan Review). The Government Response to the Allan Review was tabled in Parliament on 18 August 2021 and was accompanied by a commitment to the development of new ART and surrogacy legislation in Western Australia. The Allan Review made a total of 122 recommendations of which 67 recommendations relate to the HRT Act and 55 recommendations relate to the Surrogacy Act.

Overall, the Government supported most of the recommendations (supported or supported in principle 73 recommendations; did not support 6 recommendations; with 43 recommendations noted or for further consideration) which will provide a strong foundation for new legislation in this complex and sensitive area while at the same time safeguarding public and professional confidence. The Government committed to providing for better, less burdensome regulation for ART and surrogacy which benefits those who need help to have a family, ART service providers, and the wider community.

A number of recommendations made in the Allan Review were identified by Government as requiring further consideration, in order to identify and consider the implications of the recommendation for new legislation. The development and introduction of the new ART and surrogacy legislation in Western Australia is being supported by the establishment of a Ministerial Expert Panel (MEP) which will provide advice to government and undertake targeted consultation with key stakeholders for those areas requiring further deliberation and consultation.

3. ROLE

The MEP will take the findings and recommendations of the Allan Review and the Government Response to the Allan Review, including consideration of the recommended regulatory framework and areas requiring further consultation, and consider the detail of how new legislation could be implemented safely and appropriately in Western Australia.

As such, the MEP's remit is to consider both the 'what' and 'how' of new ART and surrogacy legislation using the Government Response to the Allan Review as a starting point. The

MEP will provide advice in the form of a final report on those areas supported by Government for adoption and propose positions on those areas identified as requiring further consideration and consultation to meet the needs of the Western Australian community.

The MEP will do this by:

a) Seeking expert advice on specific elements of new ART and surrogacy legislation; and

b) Undertaking a targeted consultation on specific topics for which further consultation has been identified as required.

This consultation will be based on topics identified by the Government Response to the Allan Review as requiring further consideration and consultation, as well as any identified by the Minister for Health, the Premier, the Department of Health, the Department of Communities and Department of Justice.

The MEP will communicate and engage with targeted stakeholders with a range of perspectives, harnessing their expertise and experience to develop advice on the access, safeguards, and practical considerations required to develop new legislation for ART and surrogacy.

The MEP will consult with the following (including but not limited to):

- Consumers including persons accessing (or seeking to access) ART and surrogacy; donors; and persons born from ART
- Gender and sexually diverse advocacy groups
- Aboriginal, culturally and linguistically diverse groups
- ART service providers from fertility clinics
- The Western Australian Reproductive Technology Council
- Medical, nursing and allied health professionals providing ART and surrogacy services
- Legal professionals and organisations
- Research institutes and regulatory bodies
- Other subject matter experts.

The MEP will develop and endorse policy positions and recommendations on specific elements for new ART and surrogacy legislation which will be considered by Government to develop instructions for the final Bill. This body of work will be supported by Department of Health staff.

The MEP should, at all times, apply the best interests of the WA community to all discussions and decisions over and above their own personal interests.

The role of the MEP is not to:

a) replicate the consultations undertaken by the Allan Review
b) consider the argument 'for' or 'against' new ART and surrogacy legislation
c) focus on the detail of any implementation required for the new ART and surrogacy legislation
d) draft the legislation – to be drafted by the Parliamentary Counsel's Office based on drafting instructions provided by the Department which reflect the Government's final policy positions.

4. MEMBERSHIP

The MEP membership will represent the interests of:

- Consumers accessing ART and surrogacy, donors, and persons born from ART
- Fertility clinics and ART industry sector
- Medical professionals providing ART and surrogacy services
- Other professionals delivering services representing health and science professions
- Legal professionals practicing in the relevant areas of surrogacy / ART
- Ethicists
- Research and regulatory bodies.

4.1 Chair

The Independent Chair will be appointed by Cabinet, on the recommendation of the Minister for Health. The role of the Chair is to:

- Provide clear direction to facilitate a rigorous and timely decision-making process
- Determine any items that require out-of-session consideration by the MEP
- Act as the lead liaison between the MEP and Minister for Health
- Lead the consultation process, including facilitating one-on-one consultation sessions with key stakeholders as required
- Lead the development of policy positions and legislative recommendations
- Be the representative of the MEP for media requests and inquiries with the approval of the Minister for Health
- Ensure the MEP Terms of Reference are applied throughout the term of the MEP; and
- Provide ownership of the agenda.

The Deputy Chair will be appointed by Cabinet, on the recommendation of the Minister for Health, and will act as Chair in his or her absence.

4.2 Members

The role of a Member is to:

- Contribute to constructive debate on issues raised
- Participate in targeted consultation as required
- Provide advice to the Chair on all matters relevant to these Terms of Reference
- Consider and review documents / issues out of session as required
- Provide advice on policy positions and legislative recommendations.

Membership consists of:

- Professor Roger Hart – Chair, Fertility Specialist, Researcher, Professor of Reproductive Medicine at the University of Western Australia, Medical Director of Fertility Specialists of Western Australia, National Medical Director of City Fertility, Head of Reproductive Medicine Service at King Edward Memorial Hospital.
- Dr Louise Farrell OAM – Deputy Chair, Consultant Obstetrician and Gynaecologist, Head of Colposcopy Services, King Edward Memorial Hospital. Former Chair of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists WA Branch, previous Clinical Director (Obstetrics and Gynaecology) at St John of God Hospital Subiaco.
- Dr Angela Cooney, General Practitioner with expertise in reproductive health, women's health and working with LGBTQI+ clients. Former Medical Director of Family Planning WA (now Sexual Health Quarters).
- Dr Ian Hammond AM, retired Consultant Gynaecologic Oncologist. Former Clinical Professor, School of Women's and Infants Health, University of Western Australia. Previous Chair and Member of National Cervical Screening Program Committees and Expert Advisory Groups.
- Mr Martin Kavanagh, Barrister and Solicitor with extensive experience in family law and family violence orders with particular interest in surrogacy, LGBTQI+ legal issues, State Administrative Tribunal, Guardianship and Administration, Hague Convention (Child Abduction) matters, and international family law (particularly Ireland, USA, England and Wales).
- Ms Rachel Oakeley, Barrister with a special interest in family law, infertility law and surrogacy matters including complex property, parenting, adoption, child protection, child support and international cases. Registered arbitrator and nationally accredited mediator chairing family law mediations and providing advocacy services to instructors from family law practices.
- Ms Fiona Seaward, Acting Deputy State Counsel for the State Solicitor's Office and former Commissioner of the Law Reform Commission of Western Australia.
- The Hon Dr Sally Talbot MLC, Member for South West Region, Chair of the Standing Committee on Legislation, former Chair, Deputy Chair and Member of various Parliamentary Committees including the Select Committee into Public Obstetric Services and the Joint Select Committee on End of Life Choices.

4.3 Attendees

The Chair may invite non-members to participate if they are considered to be directly involved in the matter/s at hand or have expertise to assist in advising on matters as required.

4.4 Accountability

The MEP will report to the Minister for Health as required.

4.5 Proxy Membership

Nil proxy.

5. RESOURCES

The MEP will be supported by staff in the Minister for Health's office and the Department of Health who will:

- Undertake a secretariat role including compilation of agendas, document distribution and other coordination functions.
- Provide research, analysis and evaluation, including the identification and management of emerging issues, risks and trends at local, national and international levels and develop policy proposals and options to support the work of the MEP.
- Prepare reports, briefs and submissions (such as Cabinet and Parliament documents, Ministerial Briefs and correspondence, and discussion papers) on the legislative, regulatory and policy issues related to ART and surrogacy.
- Coordinate and support targeted stakeholder consultations and seek advice to resolve key issues and provide advice and input into the development of legislation and regulation.

6. OPERATING PROCEDURES

6.1 Meeting Frequency

- Meetings will be held at a minimum of one meeting every month for two hours.
- The Minister or the Chair may convene additional meetings on an as needs basis to progress the work in the timeframe specified by the Minister.

6.2 Quorum

- A quorum will consist of at least four MEP members.

6.3 Meeting Documentation

- All meeting documentation intended for the MEP's consideration (including but not limited to reports, presentations, briefing notes) are to be provided to the Secretariat a minimum of five working days prior to the meeting.
- Late papers will only be circulated with approval from the Secretariat and Chair.
- At the discretion of the Chair, items may be considered out of session if deemed appropriate to review and/or requiring immediate attention in advance of a scheduled meeting.

6.4 Records

- A decision and action log will be maintained by the Secretariat.

7. TERM

The MEP will operate from May 2022 to December 2022 – or until such time as the Minister for Health determines the Panel has completed its function.

8. CONFLICT OF INTEREST

A declaration of conflict of interest is required where a member has competing professional or personal interests. In this instance and on advice from the Chair, the member will either refrain from voting/participating in consensus decision making or retire from the room for that Agenda Item. All declarations of conflicts of interest will be recorded in the minutes.

9. CONFIDENTIALITY

MEP members will be in receipt of information that is regarded as confidential. Members acknowledge their responsibility to maintain confidentiality of all information that is not in the public domain and will maintain all documents in a confidential manner separate from any other business or responsibilities.

10. CHANGE LOG

Version	Date	Commentary
1.0	10/02/2022	Initial Draft
1.1	02/03/2022	Incorporates feedback from Project Control Group
1.2	24/03/2022	Incorporates feedback from Minister for Health
1.3	16/05/2022	Incorporates Member details post Cabinet approval

11. ENDORSEMENT

Date	Final Approval	Signed
07/06/2022	MEP Chair	Professor Roger Hart
16/05/2022	Minister for Health	Hon. Amber-Jade Sanderson MLC

APPENDIX 1: Ministerial Expert Panel Guiding Principles

Background

The Ministerial Expert Panel (MEP) will abide by fundamental principles to guide the new assisted reproductive technology (ART) and surrogacy legislation development and targeted consultation process.

The guiding principles are drawn from the:

- Fertility Society of Australia Reproductive Technology Accreditation Committee Code of Practice for ART Units
- National Health and Medical Research Council (NHMRC) Ethical Guidelines on the Use of ART in Clinical Practice and Research, and
- the WA Health Code of Conduct.

MEP Guiding Principles

- ART activities must be conducted in a way that shows respect to all involved.
- The interests and wellbeing of the person who may be born as a result of an ART activity must be the central important consideration in all decisions about the activity.
- ART activities must be undertaken in a manner that minimises harm and maximises the benefit to each individual or couple involved in the ART activity, any persons who may be born as a result of the activity, and any other child within the family unit who may be affected by that birth.
- Decision-making in the clinical practice of ART must recognise and take into account the biological connections and social relationships that exist or may be formed as a result of the ART activity.
- Decision-making in the clinical practice of ART must recognise and respect the autonomy of all relevant parties, promoting and supporting the notion of valid consent as a fundamental condition of the use of ART.
- Decision-making in the clinical practice of ART must recognise that social relationships and social context may affect an individual's or a couple's decision-making and be sensitive to cultural and spiritual differences.
- Processes and policies for determining an individual's or a couple's eligibility to access ART services must be just, equitable, transparent and respectful of human dignity and the natural human rights of all persons, including the right to not be unlawfully or unreasonably discriminated against.
- The provision of ART must be underpinned by policies that support effective and efficient practices that minimise interventions not supported by evidence of successful clinical outcomes.
- The provision of ART must be transparent and open to scrutiny, while ensuring the protection of the privacy of all individuals or couples involved in ART and persons born, to the degree that is protected by law.
- ART activities must be carried out in compliance with existing laws and regulatory frameworks; and must also comply with relevant professional and accreditation standards.
- All people, including health practitioners, have the right to be shown respect for their culture, beliefs, values and personal characteristics.