Directors:
Stephen Page AccS (Fam)
Bruce Provan AccS (Fam)

Brisbane - Level 10, 95 North Quay
Sydney:- 526/368 Sussex Street
Melbourne: Level 8, 805/220 Collins Street

All Correspondence to:
PO Box 12135
George Street Qld 4003

Page Provan Pty Limited
ACN 634 100 566
ABN 94 634 100 566

Telephone: (07) 3221 9751
admin@pageprovan.com.au
www.pageprovan.com.au

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1 September 2025

The Hon. Sarah Mitchell MLC
Chair
Select Committee on Fertility Support and
Assisted Reproductive Treatment

By email: fertilitysupport@parliament.nsw.gov.au

Dear Ms Mitchell

SUBMISSION TO SELECT COMMITTEE ON FERTILITY SUPPORT AND ASSISTED REPRODUCTIVE TREATMENT

Introduction

Thank you for asking me to make a submission to the inquiry. There are ten topics I wish to address:

1. Regulation of private donations
2. Posthumous reproduction
3. Access to ART
4. Distance
5. Cost
6. Family limits
7. Intended parents are not donors
8. Discrimination for NSW Government employees
9. Regulation of IVF
10. Bodily autonomy for surrogates

I do not intend to replicate my very long submissions to the Australian Law Reform Commission surrogacy inquiry, except in broad terms as to access, cost and as to bodily autonomy for surrogates.

1. Regulation of private donations

The number one issue of concern for me is that there needs to be regulation of private donations. Regulation is desperately needed. Much time and space has been spent discussing family limits through IVF clinics, but seemingly none has been spent discussing the looming iceberg- that of the impact on women and children of private donations.

It is absurd that with currently 5 central registries in our country (ACT, NSW, SA, Victoria and WA), soon to be joined by a sixth (Queensland), aside from NSW none of them are empowered to talk with the others.

A man can thus hit the cap in one place or another, and then continue blithely on, creating children left, right and centre, through private donations.

I want to be clear. I support the ability to undertake private donations. I have spoken to many intended parents (many of them clients of mine) and known sperm donors (some of whom were clients) that they support the idea of being known to each other, and particularly to the child. Many private sperm donors do so out of altruism. Some, such as Robert Charles Albon AKA Joe Donor, have just kept going, long after they should have stopped.

Intended parents and would be donors should continue to have reproductive freedom and bodily autonomy and continue to be allowed to have private donations if they wish. To seek to stop private donations is next to impossible, and would require the State to police bedrooms, a task that is both objectionable, and legally questionable[1].

Sadly, there have been numerous cases in recent years where men have created many children via private donations. One man, after hitting the cap with clinics, continued to donate privately, creating 23 children in one year[2]. After the news broke, vials of his sperm and embryos created from his sperm had to be discarded. One man continued to donate into his 70's, well after he had been rejected by IVF clinics, both for reaching the family limit, and due to his age[3]. Mr Albon, an American, who came to Australia to create children in 2019[4], has now created by his count 180 children in several countries, and has been found by English judges[5] to have been exploiting vulnerable women[6]. One donor, using 4 aliases, has created apparently 60 children[7]. The Dutchman, Jonathan Meijer[8] who had, according to Netflix, 1000 children, but at least 500, had created some in Australia. Most recently, a Victorian man has created 27 children with 15 women, after allegedly saying to the women that he would voluntarily keep to a limit of 10 women[9]. Most worryingly, many of the children he conceived live close to each other.

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[1] *Human Rights (Sexual Conduct) Act 2004* (Cth).
[2] https://www.kidspot.com.au/birth/conception/ivf/australias-most-prolific-sperm-donor-has-fathered-23-children-in-a-year/news-story/4d163b3b0e64c8aeda1a96d25daf35b2 .
[3] https://www.dailymail.co.uk/news/article-9087093/Meet-Australias-oldest-sperm-donor-fathered-50-kids.html
[4] https://www.9news.com.au/national/60-minutes-joe-donor-sperm-ivf-pregnancy-children/bb45b667-9494-4684-8295-64945eb8f3b8 .
[5] https://www.bailii.org/ew/cases/EWFC/HCJ/2023/333.html .
[6] https://www.judiciary.uk/judgments/redcar-and-cleveland-borough-council-v-ma-and-others-and-durham-county-council-v-mb-and-others/ .
[7] https://www.dailymail.co.uk/news/article-11764815/Sperm-donor-fathers-60-children-using-fake-names.html .
[8] https://www.canberratimes.com.au/story/8176448/dutch-court-bans-father-of-hundreds-from-donating-sperm/?cs=14232 .
[9] https://www.theage.com.au/national/victoria/the-sperm-donor-loophole-that-led-to-27-half-siblings-20250716-p5mfb5.html .

It is impossible to stop intended parents and would be donors meeting up, for example, at the pub, café or by chatting on the phone.

Most, however, seem to meet via apps and websites. It is imperative that these are regulated to stop this Wild West. One Facebook group has reportedly has over 20,000 members (primarily in Australia) and counts that *over 2,000* children have been born[10]. The host of the group has created 20 children, including from his baby-making[11] tours[12].

If we are serious as a country about protecting the lives of children, including their identities, and the vulnerable and desperate women, then we should be regulating these sites and apps. In doing so, while private donations can still occur, many of the current risks will be curtailed.

I appreciate that regulation of donor apps and websites may be a Commonwealth responsibility. Even so, if the Committee expresses its clear concerns and seeks that action be taken, that may be listened to. To do nothing is to condone the current reckless approach towards the lives of vulnerable women and children.

The role of donors needs to be clear, in light of the High Court decision in *Masson v Parsons* [2019] HCA 21 that State laws are overridden if in conflict with the *Family Law Act 1975* (Cth). Who is a parent under the latter is a question of fact. Parentage may be determined by intention. A man who provides his sperm in a private known donation may either be a parent or a donor, depending on intention. It is unclear whether a man who provides his sperm for donation, but by sex, is a parent or a donor. Thus a woman may think that she is receiving a kind donation, but may then discover, as happened in the two cases litigated by Mr Albon that the man claims that he is a parent, with all that flows from that.

Regulating these apps and websites will be difficult but not impossible.

Those who run these sites should be required:

- To obtain the ID of the would be donors, for example, driver's licence or passport;
- To provide a clear notice that it is an offence not to tell the truth (and making it an offence not to tell the truth) that they have to click on and confirm that what they are saying is the truth;
- To set out information on the sites that must be navigated past before the visitor can search for a would be donor or recipient: the uncertainty about whether or not donors are parents, the parties should get through medical screening (with a link to, say, the Fertility Society of Australia and New Zealand), obtain legal advice, enter into written agreements, and have fertility counselling (with a link to the website for Australian and New Zealand Infertility Counsellors Association);
- To obtain from would be donors:
    - the last time they had STI screening and the results;

[10] https://www.abc.net.au/news/2024-07-28/inside-the-growing-online-sperm-marketplace/104103648 .
[11] https://www.kidspot.com.au/news/serial-sperm-donor-adam-hooper-going-on-babymaking-tour-of-queensland/news-story/b7465a4c01a2b3451e73f7072defedff .
[12] https://www.newstalkzb.co.nz/on-air/heather-du-plessis-allan-drive/audio/adam-hooper-australian-sperm-donor-on-his-nationwide-new-zealand-donation-tour/ .

- whether they have or are carriers for any of a list of common inheritable conditions, such as cystic fibrosis;
- whether they have any criminal convictions, and if so what and when;
- whether they were or are the subject of any domestic violence order, and if so when, and whether the order is current;
- the number of women they have donated to. If the cap hits 9, other than their spouse or former spouse, they are not allowed to access the website/app. The live number they have donated to would appear on their profile.

- The website/app owner or manager would be subject to criminal penalties for failure to comply.
- The website app owner or manager would need to be registered, and therefore subject to keep records permanently, inspection, if thought appropriate- accreditation through RTAC (or whatever might replace RTAC) and be subject to shutdown powers, like those in s.57 *ART Act 2007*.
- The website/app would be required to provide the name and ID of every would be donor to one co-ordinating State agency, such as the NSW Ministry of Health, which would be authorised to share with:
  - an agency in each other State and Territory; and
  - RTAC (or whatever might replace RTAC). RTAC in turn would be authorised to provide that information to accredited IVF clinics. The purpose of the information sharing, which would require privacy consents, would be to ensure that the cap on donation in each State and Territory is not exceeded.

If those measures are put in place, then the current risks, including no caps, will be reduced considerably. While bedrooms can't be policed, websites/apps can be. Kids deserve better than waking up one morning and discovering that they have 60 genetic siblings.

2. Posthumous reproduction

Currently, a byzantine system operates in NSW, impacting widows whose husbands have suddenly died. He may have died in an accident, or from a stroke. Some of those widows at that point, in the midst of their grief, want to have the option of being able to retrieve his sperm so that they can later, if they wish, use that sperm in order to become mums. Time is short to enable retrieval.

In every case I have seen involving posthumous retrieval, the decision of the widow has only been made with the active support of the deceased's family, such as his parents. I have never seen a case of retrieval and use where there has been active opposition from the deceased's family.

A practice by some lawyers is to immediately rush off to the Supreme Court to obtain an order for retrieval. The simpler, cheaper, quicker and less traumatic (for the widow) approach is to obtain authorisation under the *Human Tissue Act 1983*. Authorisation under that Act for retrieval is by a designated officer if the body is at a hospital. Consent from the senior available

next of kin is required, and authorisation only occurs if the deceased did not object to the retrieval. The widow typically executed a statutory declaration.

Consent, or at least clearance, from the coroner is also required.

If the stars align, then the whole process of finding the people to do the retrieval (a doctor and scientist), liaising with the coroner and the hospital (including any donor team), and having the paperwork in place, takes all of 4 hours.

Where the body is not in a hospital, but say at Lidcombe morgue, then the widow is the one consenting.

Too often, there are difficulties:

a) NSW, unlike Victoria and Queensland, does not allow retrieval from those who are terminally ill but unresponsive. Therefore, the call that a retrieval is sought will come at 8pm on a Friday, and not a more civilised hour, when it is much easier to find the doctor and scientist, and get people on the phone. Scientists typically want to work usual hours, including on weekends, especially given that their part takes in the order of 3 hours.

b) Retrievals cannot be undertaken in remote places, but only close to IVF clinics.

c) In the whole of Sydney there are only 2 or 3 doctors who undertake retrievals. Against the odds, on one occasion I managed to persuade a urologist at the hospital to undertake the retrieval. *None* of the largest IVF clinics undertake this work.

d) The Chief Health Officer has directed[13] authorised officers NOT to authorise retrievals, but for applications to be made to the Supreme Court. This is despite judges of that Court saying that they do not have jurisdiction to order retrievals[14]. The result was that a widow who was a client of mine was harassed by the hospital's donor team to authorise organ donation, and was forced to move the body to Lidcombe morgue to effect retrieval. The donation was unable to occur as a result. The hospital was warned what the impact of the decision would be on donation. No widow should have been subjected to that.

e) Part of the concern by IVF clinics is that the *ART Act* seemingly makes it an offence not to store without the deceased's written consent- which he cannot give!

Once the retrieval has been effected (assuming there is viable sperm), the sperm cannot be used in NSW. In the past it had to be exported to the ACT or Queensland. Now, due to quirks of ACT law, and the more welcoming Queensland law, the sperm would be exported to Queensland in order for it to be used.

The *ART Act* needs to be amended, along the lines of the Queensland Act, to enable retrieval when the person is non-responsive, and the ability to use and store in NSW, and not force widows to have to export interstate (and attend upon the clinic and doctor interstate) in order to be able to use.

[13] https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2024_023.pdf at 4.5.
[14] *Chapman v SE Sydney LHD* [2018] NSWSC 1231. Cf. *Noone v Genea* [202] NSWSC 1860.

Before any amendments are in place, it would be helpful if the Chief Health Officer communicated with designated officers that they can authorise retrievals, and that there is doubt that the Supreme court can authorise retrievals.

Queensland currently adopts the flexible, thorough and sensible approach of the NHMRC *Ethical Guidelines* as to posthumous reproduction. It is likely when the remaining provisions of Queensland's *ART Act* commence in 2026 that regulation and statute will replicate that approach. That approach does not impose unnecessary burdens on widows, but maintains a sensible balance, attuned to the highly sensitive ethical issues.

In Queensland, a doctor at one of the hospitals put together, with assistance from an IVF clinic and me, a two page guide for doctors and donor teams in hospitals covering the issue of sperm retrievals. That guide has been distributed throughout Queensland hospitals. I would encourage the same in NSW.

The current ALRC human tissue law review has recommended in its issues paper that posthumous retrieval be removed from the *Human Tissue Acts*, and be moved to the *ART Acts*. If posthumous retrieval is removed from the *Human Tissue Act 1983*, but is not provided for under the *ART Act 2007*, then many widows will be denied the ability to retrieve sperm from their late husbands.

3. Access to Assisted Reproductive Treatment

Everyone who is over 18 who needs to access should be able to do so, without discrimination. International courts, particularly in the Americas and Europe have held that under their respective human rights conventions there is a right to access ART. Courts in the Americas have held that there is also a right to access surrogacy.

I cover these human rights issues at length in my ALRC surrogacy submission. Australia is a party to a number of relevant human rights instruments, including:

- ICCPR
- CRC
- CEDAW
- ICESCR
- CRDP

In some cases, these Conventions have been made part of our domestic law. For the most part, they have not. There remains, however, a legitimate explanation by anyone affected by decisions of Government or the courts that in the absence of statute or regulation that there will be compliance by the decision maker with our international obligations[15].

Unlike other states, NSW has not discriminated in the provision of ART. Following the passage of amendments to the *Sex Discrimination Act 1984* (Cth) in 2013, which for the first time protected LGBTQIA+ people in the provision of services, the Commonwealth allowed the

[15] *Teoh's case* (1995) 183 CLR 273.

States and Territories until 2016, or in the case of Western Australia, 2017, to get their houses in order.

It has taken some time for some other States to remove discrimination in ART, and that job is not yet done:

- 2017: South Australia removed discrimination in surrogacy for same sex couples
- 2019: South Australia removed discrimination in surrogacy for single intended parents
- 2022: the Northern Territory removed discrimination in the provision of ART
- 2024: the Australian Capital Territory removed discrimination in surrogacy for single intended parents, and the requirement for the surrogate to be a member of a couple
- 2024: Queensland removed discrimination based on sexuality or relationship status in the provision of ART
- Currently, the Western Australian Parliament is considering the *Assisted Reproductive Technology and Surrogacy Bill 2025* (WA), which will remove discrimination in the provision of ART and surrogacy. A previous attempt, to remove discrimination in surrogacy, failed in 2018.
- Currently, Tasmania discriminates in surrogacy, requiring all parties to the surrogacy arrangement to reside there.

4. Distance

The tyranny of distance, to use Prof Blainey's term, applies to the provision of ART as it does to other aspects of life. It can be particularly harsh as to posthumous retrieval.

Therefore, those who live remotely will struggle at times to access ART. Having said that, NSW consumers are better served with access to IVF clinics than are those in more remote parts of the country. In Western Australia, for example, the IVF clinic that is the furthest from the Perth GPO is only 25 km away[16]. In the Northern Territory, there is only one IVF clinic, in Darwin.

NSW has many IVF clinics. In addition:

- A clinic in Mildura services the far south-west.
- Three clinics in Canberra service the Canberra district.
- Three clinics on the Gold Coast service far northern NSW.

It is common, for example, for those living in the Northern Rivers to attend IVF clinics in Brisbane and on the Gold Coast.

Difficulties arose for many of these cross-border patients during the pandemic, due to border closures. One effect of the pandemic has been the take up by fertility clinics and fertility counsellors of remote technology, such as Teams and Zoom, which has helped reduce the burden of distance. Before the pandemic, fertility counsellors were often required by their

[16] Adora Fertility Craigie.

guidelines to see patients in person. For those who lived some distance away from the counsellors, this was problematic. The use of technology has made distance much less burdensome for many of my regional and remote clients in their dealings with doctors, clinics and counsellors.

5. Cost

NSW, and more recently, Victoria, are the only States that subsidise ART, in addition to Medicare benefits paid for by the Commonwealth.

For intended parents, the cost of IVF is substantial. It has been estimated recently in Queensland, for example, that the out of pocket cost to consumers of an IVF cycle is about $12,000, with a further $5,000 paid for by Medicare benefits.

Medicare is likely the most generous taxpayer subsidy for the provision of IVF anywhere in the world. The Commonwealth has not implemented recommendations of a review in 2021 which were that the number of cycles ought to be capped.

In response to demand, several IVF clinics provide bulk billed IVF, which has greatly decreased the costs burden. Treatment is normally provided in relatively straightforward cases, where there is no gamete donation or surrogacy, although one of the clinics provides bulk billed IVF with known donors.

For some intended parents, such as women accessing donor sperm, IVF is not required. Instead, they may be able to undertake artificial insemination (intra-uterine insemination) through their fertility doctor. The cost of accessing the sperm and treatment can be as low as $2,000.

The IVF industry in Australia is highly concentrated, which is reflected in NSW. The largest clinics are:

1. Virtus Health (IVF Australia, Melbourne IVF, Tas IVF Queensland Fertility Group)
2. Monash IVF (Repromed)
3. Genea (Fertility First)
4. City Fertility
5. Adora Fertility

From my talking with clinics, fertility doctors and clients, it seems that the Sydney IVF market is the most competitive IVF market in the country.

Those who engage in surrogacy pay the most of anyone. A typical surrogacy journey will cost in the order of $70-$100,000, most of which relates to the cost of IVF.

As I set out in my ALRC surrogacy submission, it remains a living fossil that Medicare does not pay for the costs of surrogacy. In my own case, this meant that when my husband and I underwent 3 embryo transfers in a row (the first resulting in a miscarriage, the second resulting in an ectopic pregnancy, and the third being successful), $9,000 was added to our bill.

6. Family limits

It is odd that in a country of 27 million we do not have one standard for family limits Australia wide. NSW legislated, in 2007, for a family limit of 5 before RTAC advised clinics to consider 10 to be the national limit in 2011. That limit of 5 is also misleading. The assumption, on seeing that number, is that the donation can be to 5 women. In practice, the number is 4, as it allows for the donor to have a family- even if the donor does not have and does not want to have children.

There is a hodgepodge of family limits nationwide, as seen in **Table 1**.

Table 1: Different family limits across Australia

State/ Territory	Family limit	Basis
ACT	5 local, 10 nationwide	*Assisted Reproductive Technology Act 2024* (ACT), s. 40
NSW	5 women (+ partner)	*Assisted Reproductive Technology Act 2007* (NSW), s.27
NT	Reasonable, in effect 10 women	NHMRC, RTAC
Qld	Reasonable, in effect 10 women; soon likely to be 10 women	NHMRC, RTAC *Assisted Reproductive Technology Act 2024* (Qld), s.25 likely to commence in March 2026
SA	Reasonable, in effect 10 women	NHMRC, RTAC
Tas	Reasonable, in effect 5 women	Local practice, given the isolation and small population size of Tasmania.
Vic	10 women (+partner)	*Assisted Reproductive Technology Act 2008* (Vic), s.29
WA	5 families worldwide	*Human Reproductive Technology Directions 2021* (WA), cl.8.1; and as proposed in *Assisted Reproductive Technology and Surrogacy Bill 2025* (WA), cl. 27

The reason that each of these limits is in place is, rightly, to limit the risk of consanguinity. Western Australia alone specifies that the limit is worldwide.

In New South Wales, the Ministry of Health has taken the view, seemingly without any legislative basis, that the limit is 5 worldwide. In doing so, it has waved the big stick of s.57 of the *ART Act 2007* and told clinics to comply with its view of the limit. Feedback I have received from several clinics is that the Ministry's view is contrary to the clinics' view of the legislation, but also has the likely effect of greatly limiting the availability and choice of donors. Much of the donor sperm made available in clinics in NSW is imported, primarily from the United States. An effect of our requirements not to pay donors and to ensure transparency of donations is a shortage of sperm donors, which is made up by imports.

The vigilance of the Ministry about its view would be commended, if the Ministry had a legal basis for doing so, and if it had turned its mind to the much bigger problem of the current and future impact of unregulated private donations (which it appears to have ignored).

A common complaint by intended parents is a shortage of choice of sperm donors (and during the pandemic, at times a severe shortage of donors), with the result that intended parents either undertake private, unregulated donation or go overseas. Going overseas usually means that the donors are anonymous- and that the child may therefore never know who the donor is.

It has been put to me by US sperm banks that Australia is a very difficult market. This is because, it is asserted:

1. There is not one market, but several, each with their own idiosyncratic requirements.

2. Each market is small.

3. Donors must be altruistic and consent to their identity being known in due course by the offspring.

4. There are differing family limits.

5. A family limit of 5 makes it close to uneconomic to supply sperm; and a worldwide limit of 5 does make it uneconomic to supply sperm.

I do not have insight into the inner workings of US sperm banks.

There are some steps that can be taken to make more sperm available for NSW patients, and thus be less demand for private donation or undertaking donation overseas:

a) That the limit of 5 women be interpreted by the NSW Ministry of Health as 5 women in NSW and/or who receive treatment from NSW clinics.

b) That following the 3 month Health Ministers' rapid review, *if* there is agreement for national regulation of the IVF industry, with uniform laws, that the national limit be 10 women in Australia.

c) If there is no agreement for national regulation of the IVF industry, that s.27 of the *ART Act* be amended so that the limit is 10 women in Australia (with their partner included under the cap).

7. Intended parents through surrogacy are not donors

It may seem an obvious point, but those who provide their gametes to a surrogate in order to enable the former to become parents are not donors to the surrogate- as the point of the process is not to donate the gametes, but to enable the intended parents to be the parents.

While that might seem obvious, that point is not obvious to the Ministry of Health. The Ministry has maintained that intended parents through surrogacy are donors (to the surrogates) and therefore IVF clinics must report as such to the Central Registry, in addition to the obligations of the parties to notify the Central Registry prior to obtaining a parentage order. This rationale

is because the surrogate can always change her mind. Unless and until a parentage order is made, she is the mother.

The Ministry has threatened use of s.57 of the *ART Act* for clinics that do not comply.

Victoria had the same issue- until a meeting between the IVF clinics and the Regulator made plain that the intended parents were not donors, which was then put into effect by amendments in 2021.

Following representations by me, Queensland's *ART Act* makes plain that the intended parents through surrogacy are not donors.

The *ART and Surrogacy Bill 2025* (WA) also makes plain that intended parents through surrogacy are not donors.

The idea that the intended parent is a donor is offensive to intended parents and to surrogates, as I have made plain to the Ministry. The Ministry's view, however is firm.

That view remains so, despite case law that says even when a parentage order is not made, the intended genetic father through surrogacy is a parent[17].

I seek that it be recognised that intended parents in this circumstance are **not** donors, and that preferably this occur first by recognition by the Ministry of Health, then amendment of the *ART Act* to that effect.

8. Discrimination of NSW Government employees

I note that the *Anti-discrimination Act 1977* is the subject of a review. The effect of the law in NSW is that it is easier to discriminate against a teacher who is a NSW government employee who undertakes surrogacy in, for example, Canada, than a female teacher employed by a Catholic diocese in NSW who undertakes the same journey.

The former will not be able to have parental leave[18] unless they obtain a parentage order from the Supreme Court and prove that their surrogacy journey was altruistic[19] (as it is in Canada). Given that their parentage in Canada is recognised in Australia[20], and is already the subject of an order there, obtaining an order from the Supreme Court would likely be an exercise in futility. The Court would rightly question whether it has the ability to make an order, given that parentage is recognised under Australian law, and an order has been made in Canada, which is likely to be recognised here under comity principles.

By comparison, the late Pope made it clear his view that surrogacy was *"deplorable"*. The Dicastery of the Faith issued last year made it plain that surrogacy was to be abhorred. However, a female teacher employed by a NSW Diocese is protected by the *Disability*

[17] *Seto & Poon* [2021] FamCA 288; *Tickner & Rodda* [2021] FedCFamC1F 279 -both decisions being made concerning NSW couples. See also *Gallo & Ruiz* [2024] FedCFamC1F 893.
[18] https://arp.nsw.gov.au/support-employees-engaged-altruistic-surrogacy-and-permanent-out-home-care-parenting-arrangements .
[19] Cf. *Long v Secretary, Department of Education* [2022] NSWCATAD 131.
[20] *Family Law Act 1975* (Cth), s.69R, *Family Law Regulations 2024* (Cth), s.10.

Discrimination Act 1992 (Cth) and is therefore entitled to parenting leave following her child's birth via surrogacy in Canada.

9. Regulation of IVF

It is odd and adds to the cost of compliance of IVF clinics (and therefore adds costs to consumers) that we have 8 systems of regulating IVF in this country, a country that has a similar population to several large cities around the world.

I hope that an outcome of the 3 month rapid review by Health Ministers is that there is agreement for one system of regulation of IVF, with one national donor registry and one regulator. I commend to the Committee the excellent report[21] in 2024 by Greg Hunt and Rachel Swift. The preparation of the report involved extensive industry, government and community consultations.

The report came about because of recognition by the FSANZ board:

1. That the only power that RTAC has is to accredit or de-accredit. RTAC does not have the power to fine a non-compliant clinic, for example;

2. For RTAC to gain any other powers would require authorisation by the ACCC (to avoid engaging in cartel behaviour);

3. RTAC lacked independence, and was a creature of FSANZ;

4. The multiplicity of laws and systems regulating IVF Australia wide needed simplification. The complexity added confusion and cost, which costs were ultimately passed on to consumers;

5. There was an immediate need for a national donor registry.

10. Bodily autonomy for surrogates

While comprehensive reform of surrogacy regulation in NSW is needed, in my view the best course is to wait until the ALRC has completed its surrogacy review.

There is one issue I seek that NSW legislate prior to the handing down of the ALRC's surrogacy review report in July next year. That is that the bodily autonomy of surrogates be recognised under the *Surrogacy Act 2010*. It is odd that when the Act was enacted, being modelled on Queensland's *Surrogacy Act 2010*, the section in the Queensland Act that upheld the surrogate's bodily autonomy was not replicated in the NSW Act.

Most States uphold this right by statute, as seen in **Table 2**.

[21] https://www.fertilitysociety.com.au/news-item/18245/fsanz-releases-landmark-report-on-australias-10-year-fertility-roadmap.

Table 2: upholding the surrogate's bodily autonomy

State/ Territory	Bodily autonomy protected by statute?	Law	From when
ACT	Yes	*Parentage Act 2004*, s.28E	2024
NSW	No		
NT	Yes	*Surrogacy Act 2022*, s.	2022
Qld	Yes	*Surrogacy Act 2010*, s.16	2010
SA	Yes	*Surrogacy Act 2019*, s.16	2019
Tas	Yes	*Surrogacy Act 2012*, s. 11	2012
Vic	Yes	*Assisted Reproductive Treatment Act 2008*, s.44A	2022
WA	No		

Those who risk their lives in order to be pregnant for others should have the clearly stated right under statute that they have control over their bodies. They should not have to rely on the common law. The *Surrogacy Act 2010* should be amended to that effect without delay.

About me

I am a dad with my husband through altruistic surrogacy and known egg donation in Queensland.

I was admitted as a solicitor in 1987. I have been an accredited family law specialist since 1996. I am a Fellow of the International Academy of Family Lawyers and of the Academy of Adoption and Assisted Reproduction Attorneys.

I am also a member of the Queensland Law Society, Family Law Practitioners Association of Queensland, Pride in Law, Australian Lawyers for Human Rights and the Family Law Section of the Law Council of Australia.

Between 2017-2022 I lectured at UNSW in *Ethics and the Law in Reproductive Medicine*, for which I received a teaching prize (2019).

Since 1988, I have advised in over 2,000 surrogacy journeys for clients throughout Australia and in 39 other countries. Since 2014, I have prepared known donor agreements. Since 2017, I have advised IVF clinics about regulatory issues to do with *ART Acts*. Since about 2017, I have advised in posthumous retrieval and reproduction cases.

Since 2011, I have written and presented widely around the globe about ART/surrogacy, including writing *When Not If: Surrogacy for Australians* (2022), and *International Assisted Reproductive Technology, American Bar Association* (2024).

I have received a number of awards, including inaugural Pride in Law Award (2020) and Queensland Law Society President's Medal (2023).

I serve on a number of committees, including with both Academies, as an international representative on the ART Committee of the American Bar Association (since 2012), Secretary of the Fertility Society of Australia and New Zealand, and as a member of the advisory committee of the Australian Law Reform Commission's surrogacy review.

The views in this submission are mine alone.

Publication and attendance

I consent to my submission being published. If asked, I would be honoured to give evidence to your Committee. As I am in Brisbane, this may need to be remotely.

Yours faithfully
Page Provan Pty Ltd

Stephen Page
2023 Qld Law Society President's Medal Recipient
Page Provan
family and fertility lawyers
Accredited Specialist Family Law

Email: *stephen@pageprovan.com.au*