



**A.C.N. 008 123 466 Pty Ltd  
(Formerly Repromed Pty Ltd)**

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ART Act Review  
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Dear Associate Professor Allan

***Assisted Reproductive Treatment Act Review***

I make this submission on behalf of the University of Adelaide ("University") as its General Counsel and on behalf of ACN 008123466 Pty Ltd ("ACN") as Director. ACN is a wholly owned subsidiary of the University and was formerly Repromed Pty Ltd.

The University's and ACN's main interests in the ART Act review are in respect of past ART patient records, the rights of persons in accessing those records and how such access should be managed where the ART clinic is no longer in operation.

**History**

Prior to the formation of Repromed Pty Ltd in 1987, ART procedures were performed at the Queen Elizabeth Hospital ("QEH") by doctors who subsequently became practitioners at Repromed.

From 1987 to 2006, Repromed Pty Ltd operated Repromed. There were several Repromed clinic locations and some of the treatment was still provided at the QEH. Repromed Pty Ltd and the University were joint-holders of an ART licence under the legislative framework at the time.

In 2006, the Repromed business was sold to the current operator, Adelaide Fertility Centre Pty Ltd ("AFC") which continues to trade under the Repromed name. As it was a sale of business and not a takeover, SA Health required that all medical records in ACN's custody up to the time of sale be retained by ACN unless the patient or donor consented to a transfer to AFC. Consent was obtained from a small proportion of patients and donors and those records were able to be transferred to AFC. Records of patients treated at the QEH were retained by the QEH.

Following the business sale, the University / ACN continued to be joint-licence holders but only for the limited purposes of continued storage of any remaining ART gametes that: (a) had already been allocated to ongoing AFC patients for the purposes of future sibling conception; and (b) for which AFC had not been able to locate the donor to obtain a transfer consent.

Leading up to the changes to the ART Act in 2010, the University / ACN engaged in discussions with SA Health about the impact of those changes. As the University / ACN no longer operated an ART clinic, they would surrender the joint licence and would not seek registration under the amended ART Act. This would mean that the University / ACN would no longer be subject to the ART Act. The University / ACN asked that the Minister give consideration to issuing a directive to the University / ACN to transfer the historical records to a clinic nominated by the Minister so that those records could continue to be managed within a controlled legislative framework. This suggestion was not acted upon and the records have remained with ACN.

As a consequence of the complex history outlined above, records relating to ART procedures performed at the QEH and Repromed up until 2006 are held by 3 different parties: ACN, AFC and QEH. Of these, only AFC currently operates a registered ART clinic and is bound by the ART Act and NHMRC *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research*.

### **Welfare of the child**

An ever-increasing number of donor-conceived children are seeking information about their donor parent. In some cases, the information is requested by the child's birth parent on behalf of the child.

Although no longer bound by the ART legislative requirements or NHMRC Guidelines, ACN has continued to receive and process such requests for information as best it can. However, as a shell company with no employees, it does not have the resources or expertise to offer the support that the donor-conceived child needs, nor to adequately deal with the sensitivities and complexity of ethical issues that may arise.

Some examples of difficult scenarios we have encountered are:

- Should an estranged husband of a recipient of donor sperm be entitled to request information about the donor on behalf of the children?
- A birth parent does not want the donor-conceived child to find out that they were donor-conceived and asserts that they underwent the ART treatment on the condition that the fact of donor conception would never be disclosed to the child. Does the welfare of the child overrule any such alleged undertaking, even if one were made?
- Where a birth parent is requesting donor information on behalf of a donor-conceived child, should the child be of a minimum age before information is disclosed?

Over the years since the Repromed business sale, ACN been engaged in consulted with SA Health about the most suitable repository for the historical records but no resolution has been reached. We submit that a central donor conception register would be the best way to ensure the paramountcy of the welfare of the child in respect of their ability to access donor information.

### **Donor Conception Register**

The University / ACN strongly supports the establishment of a central donor conception register. Such a register should be established not only to store all information mandated from the date of establishment but also with a view to capturing historical donor conception records, insofar as they exist<sup>1</sup>.

In addition to requests from donor-conceived children or donor-recipients about their donor, ACN also receive requests from former gamete donors seeking information about children resulting from their donations. The current dispersion of historical records across ACN, AFC and QEH makes it confusing and difficult for persons seeking access to information. A central donor conception register will enable records to be centralised in one location. Persons will need only lodge an access request with one entity, access requests will be responded to in a consistent manner and the register will be subject to the controls prescribed under the Act.

The register can also be used to record consents provided by:

- donor-conceived children for their information to be provided to their donor or to donor-conceived half siblings; or
- donors for their information to be provided to donor-conceived children or recipient parents

This can be used to facilitate donor linking between interested parties.

A central State-run register would also be in the best position to liaise and potentially share information with registers in other States. We are aware that, in previous times, some donor sperm was 'imported' from interstate ART clinics. The donor conception register in that originating State may hold up-to-date information about that donor that could be added to the South Australian register.

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<sup>1</sup> The historical Repromed donor conception records are incomplete. This may be because they have been lost, or were not kept in the first place. Detailed ART recordkeeping obligations were only enacted in 1996.

Counselling should be a pre-requisite to gaining access to information on the donor conception register. Where donor linking is facilitated, additional counselling would be prudent for both the donor-conceived child and the donor. The donor conception register facility should make provision for such service.

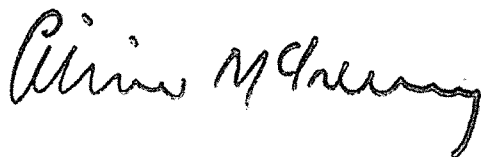
#### **Records and Confidentiality**

If a central donor conception register is established, ACN will require a Regulation that expressly permits it to provide historical donor conception records to the entity maintaining the register. This will enable ACN to transfer the information lawfully: absent such a regulation, the transfer will be in breach of privacy legislation and confidentiality requirements imposed contractually and at common law.

If a central donor conception register is not established, ACN will continue to consult with SA Health for a more suitable host for its historical donor records. Therefore, the Regulation should be neutrally drafted to enable the transfer of records to any party, with the approval of the Minister.

Thank you for inviting the University and ACN to participate in this review of the ART Act. We are happy to clarify or amplify any aspect of this submission and look forward to the outcomes of this review.

Yours faithfully



Céline McInerney  
General Counsel, The University of Adelaide  
and Director, ACN 008123466 Pty Ltd

