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| Review of practices by assisted reproductive treatment providers |
| Terms of reference |

# Background

On 13 November 2018, the Victorian Government committed to crack down on unscrupulous IVF providers, and to task the Health Complaints Commissioner (the Commissioner) to lead an investigation into dodgy, dangerous and unethical practices by IVF providers including where providers fail to be up front about success rates or costs – with hefty penalties for those who don’t comply.

The commitment was made following the release of the interim report of the review of assisted reproductive treatment (the Review), *Helping Victorians Create Families with Assisted Reproductive Treatment,* prepared by Mr Michael Gorton AM.

The interim report notes that between 1 February 2017 and 20 July 2018, the Commissioner received 28 complaints relating to 58 separate issues[[1]](#footnote-2). Inadequate or misleading information was the single most common issue cited, followed by inappropriate fees or billing, and inadequate or inappropriate treatment.

In 2016 the Australian Competition and Consumer Commission (ACCC) conducted an investigation into potentially misleading advertising by Australian assisted reproductive treatment providers. The ACCC and Consumer Affairs Victoria (CAV) are responsible for enforcing compliance with the Australian Consumer Law including misleading and deceptive conduct, false or misleading representations, or unconscionable conduct. The ACCC found that some providers made success rate comparisons without adequate disclosure about, or qualification of, the nature of the data or graphics used to make the claim. The ACCC issued a public statement about its findings and advised it would continue to monitor complaints received.

The interim report notes the Review found some isolated instances of clinics and individual fertility specialists publishing information that may mislead. The Victorian Assisted Reproductive Treatment Authority (VARTA) notes the difficulty in assessing success rates of different fertility clinics as clinics measure their success rates in various ways. The interim report also notes that it heard evidence about a number of serious incidents related to a clinical error, inadequate communication with a patient, unethical practice, and sub-optimal care of a patient.

# Purpose

To refer a health service matter under section 103 of the *Health Complaints Act 2016* in relation to practices of assisted reproductive treatment providers including potential dangerous and unethical practices.

To request the Commissioner conduct an inquiry into this matter, noting any consumer law matters arising out of the inquiry including matters of false, misleading and deceptive conduct of assisted reproductive treatment providers including success rates and costs will be referred to CAV for investigation.

It is expected that appropriate action is taken against providers, consistent with the legal remit of the Commissioner and CAV.

Where matters are identified as part of the inquiry which are outside the jurisdiction of the Commissioner or CAV, those matters may be referred to other regulators as appropriate such as the Australian Health Practitioner Regulation Agency, in accordance with both regulator’s usual practice.

# Scope

To inform the inquiry, it is anticipated a wide reaching consultation and public engagement process would be undertaken to identify experiences of the public (including patients and people working in clinics), of potentially dangerous, unethical, false, misleading or deceptive practices by assisted reproductive treatment providers, through a range of engagement forums and strategies that may include:

* direct and indirect engagement with stakeholders
* formal and informal mechanisms for providing feedback
* using existing networks and forums, such as online patient and industry forums
* promotion of the consultation and engagement process including protections for people making a complaint.

In conducting the inquiry, the Commissioner would have regard to:

* relevant incidents identified by respondents in the interim report of the Review
* previous complaints of assisted reproductive treatment providers received by the Commissioner
* relevant matters identified through the public consultation process.

Where a health service matter arises as part of the inquiry that warrants an investigation and meets the relevant legal thresholds, the Commissioner may consider conducting an investigation under Part 4 of the Health Complaints Act into the matter and taking any appropriate action through that process.

Where a consumer law matter arises as part of the inquiry the Commissioner is expected to forward the matter to CAV to investigate and if appropriate, take enforcement action.

# Reporting

A final report should be delivered approximately nine months after referral to the Commissioner and address the matters outlined in Scope above and any residual issues. On completing the inquiry, the Commissioner may make recommendations about the matter to the Minister for Health.

Consultation with CAV should be undertaken as necessary to complete the final report and reflect any outcomes, residual issues, recommendations or options in relation to consumer law matters.

*Individual matters should be reported in a manner that protects the privacy of individuals.*

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Available at https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/perinatal-reproductive/assisted-reproduction

1. Twenty-four complaints related to health services and four related to health records. A single complaint may relate to multiple issues. [↑](#footnote-ref-2)