

Proposed Advice to the Minister of Health on the Import and Export of Gametes and Embryos

**Submission to Advisory committee on assisted
Reproductive Technology (ACART).**

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Contact

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About the New Zealand Nurses Organisation

The New Zealand Nurses Organisation is the leading professional and industrial organisation for nurses in Aotearoa New Zealand, representing over 46,000 nurses, midwives, students, kaimahi hauora and health workers on a range of employment-related and professional issues. Te Rūnanga o Aotearoa comprises our Māori membership and is the arm through which our Te Tiriti o Waitangi partnership is articulated.

NZNO provides leadership, research and support for professional excellence in nursing, negotiates collective employment agreements on behalf of its members and collaborates with government and other agencies throughout the health sector. Nurses are the largest group of health professionals comprising half the health workforce.

The NZNO vision is “Freed to care, Proud to nurse”. Our members enhance the health and wellbeing of all people of Aotearoa New Zealand and are united in their professional and industrial aspirations to achieve a safe, sustainable and accessible system of public health care for all New Zealanders.

EXECUTIVE SUMMARY

1. The New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on ACARTS's Proposed Advice to the Minister of Health on the Import and Export of Gametes and Embryos.
2. NZNO has consulted its members and staff in the preparation of this submission, including professional nursing, policy, and legal advisers, Te Rūnanga, Te Poari, Regional Council and Board members and members of our specialist Colleges and Sections.
3. NZNO was aware of and welcomed ACART's thoughtful and inclusive public consultation on this topic last year, although we did not make a submission.
4. We have been equally impressed with this consultation and the open-minded and thorough exploration of issues arising from the potential import and export of gametes and embryos.
5. In general, NZNO **supports** the proposed advice on import and export requirements, namely that:
 - the import and export of human gametes and embryos should be allowed if consistent with the provisions of the Human Assisted Reproductive Technology Act;

- the Ethics committee on Assisted Reproductive Technology should explicitly consider and decide applications to undertake research involving imported gametes and embryos; and that
 - there should be regulations governing the imported gametes and embryos.
6. NZNO agrees that the Ministry of Health should be asked to consider developing guidelines for fertility service providers on donor compensation and expenses for surrogates, and comprehensive public health information about factors affecting fertility, and about gamete donation.
 7. However, since there are critical gaps in the Ministry of Health's collection and utilisation and of key New Zealand health and health workforce data, NZNO is not convinced that the Ministry has the resources to consider strategies for collection of data about the use and outcomes of offshore fertility treatment by New Zealanders; we suggest it may be more appropriate for fertility service providers to collect that data, which has commercial as well as social value.
 8. With respect to the proposed advice that meeting the principles and requirements of the HART Act should apply in all cases, NZNO's legal advisers note a potential breach of section 13, which prohibits the commercial supply of gametes.
 9. We also submit that further consideration should be given to allowing a degree of flexibility to ease restrictions on compassionate grounds in exceptional circumstances; the difficulty of decision-making in such cases is not a sufficient reason to reject that provision, considering its potential impact on the lives of individuals.
 10. The consultation questions are addressed in the discussion which follows.

DISCUSSION

11. NZNO recognises the need to ensure equitable access to new technologies that can address health issues such as infertility, and supports clarification of regulations for the import and export of embryos and gametes.
12. We agree that the principles and requirements of the HART Act set standards that are largely consistent with public opinion and policy, including restricting the import of gametes and embryos to circumstances where there is an intended use, that they should not be a subject of trade, or collected without informed consent and assiduous protection of human rights.

Question 1: Do you agree that the principles and requirements of the HART Act should apply in all cases where people wish to import into and use New Zealand gametes and embryos sourced or created in other countries?

13. NZNO believes this would be useful in ensuring accurate records are kept of all children created from donor gametes and embryos, not just those created from procedures carried out in Aotearoa New Zealand.
14. Feedback from our members indicates that nurses perceive real risks in allowing the import and export of gametes and embryos and that it is important that there are well monitored regulations requiring the ethical standards imposed by the HART Act be adhered to whatever the source.
15. However, given the pace of innovation, global diversity and increased migration, it is not possible to predict all the circumstances in which time-limited fertility decisions have to be made.
16. Accordingly, we support the suggestion made by some submitters (Clause 58, p10) that consideration be given, on humanitarian grounds, to including a provision easing restrictions in exceptional circumstances.
17. We note, for instance, that PHARMAC's decision-making criteria, currently under review, includes the discretion to consider "such other criteria as PHARMAC thinks fit".
18. Increasing disparities in Aotearoa evidenced across many social and economic indicators including health, wealth and ethnicity (Statistics New Zealand) underline the need for humane, non-discriminatory and flexible regulation rather than prescriptive regulation.
19. This is particularly important given the structural discrimination the Human Rights Commission reports is pervasive in our public services (Human Rights Commission, July 2012).
20. NZNO legal advisers also note a potential breach of s13 which prohibits the commercial supply of human embryos and gametes within New Zealand, but does not affect the activities of those investigating reproductive treatment internationally where payment for donor gametes and embryos is usual. If the legislation is to apply to the import of embryos created from commercially supplied eggs, then a breach may occur. It should be clarified if this is the intention and, if not, provision needs to be made allowing its continuance.

Question 2: Do you agree that export of gametes and embryos should be possible provided that the subsequent use of the gametes or embryos is consistent the principles and requirements of the HART Act, including any prohibition? Do you agree that all gamete providers, including donors should give informed consent to the export of gametes or of embryos created from their gametes?

21. Yes.

Question 3: Do you agree that fertility services providers should continue to make decisions about whether the import and export of gametes and embryos for assisted reproductive procedures is consistent with the principles of the HART Act and New Zealand requirements.

22. Yes. In general, NZNO sees no reason to change the current arrangements as providers offer a transparent, high quality service, albeit an expensive one beyond the reach of many New Zealanders.
23. NZNO supports the addition of import / export processes to the Fertility Service Standard.
24. In particular, providers should be expected to declare that the intended use of exported gametes and embryos complies with the principles and requirements of the HART Act, and be able to certify the clinics from which they import gametes and embryos comply with New Zealand expectations.
25. NZNO also suggests that because of the serious nature of the responsibility invested in providers that they are encouraged to consult widely and provide information around import/export of embryos to consumers and government. Infertility affects a significant proportion of the population and reproduction is a fundamental aspect of human society. It is essential that those exercising what amounts to significant power and control over the reproductive opportunities for many people do so according to human rights principles.

Question 4: Do you agree that ECART's role in respect of human reproductive research should explicitly include considering and deciding applications to undertake research involving imported and exported gametes and embryos?

26. Yes - that is both consistent and transparent.

Question 5: Do you agree that regulations should be made about the requirements for the import and export of gametes and embryos.

27. Yes. There is strong support in NZNO for robust regulation and monitoring.

28. See 24 above

Question 6: Do you agree that the Ministry of Health should be asked to consider guidance to fertility service providers that allows for increased levels of donor compensation, particularly for egg donors...and, for consistency, guidance about expenses available for surrogates.

29. NZNO agrees that the Ministry of Health could provide guidance to fertility service providers about donor compensation and expenses for surrogates, though we did not receive specific feedback about increased levels of compensation.

30. We note that S13 will need to be amended if this guidance is to cover commercially sourced donor gametes and embryos from overseas.

Question 7: Do you agree that the Ministry of Health should be asked to consider public health information about the impact of age and other factors on fertility, and about gamete donation.

31. Fertility is a public health issue, and the Ministry should certainly be providing evidence-based information about factors affecting fertility.

32. The Ministry should be aware of, and active in supporting, the 'constellation of human reproductive rights' listed by The United Nations Population Fund (Reproductive Rights- Advancing UPFPA) which include a strong focus on the right to have access to information to enable informed choice.

33. NZNO suggests that information about the impact of alcohol on fertility - including unplanned pregnancies - is essential and overdue.

34. NZNO supports health warnings on alcohol products with and recommends that information about the effect of alcohol on fertility be included on the labelling and packaging of alcohol.

Question 8: Do you agree that the Ministry of Health should be asked to consider strategies for collecting data about the use and outcomes of offshore fertility treatment by New Zealanders?

- 35. NZNO recognises that data about New Zealanders going offshore for fertility treatment would make a useful contribution to decision-making in the local context, but is aware that the Ministry of Health is already having difficulty in collecting and utilising essential and comprehensive New Zealand health and health workforce data; under the present circumstances we would be reluctant to add further responsibility.
- 36. NZNO would support fertility services providers being tasked with that obligation, however, particularly since there is a financial incentive for them to do so.
- 37. NZNO would also like to see fertility services providers being required/encouraged to undertake long term evaluation and research on the effect of human assisted reproductive technologies on patients and children.

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REFERENCES

Human Rights Commission. (July 2012). *A fair go for all: addressing structural discrimination in the public services*. Wellington: Fairfax media.
Reproductive Rights- Advancing UPFPA. (n.d.). Retrieved March 21, 2014, from United Nations Population Fund: <http://www.unfpa.org/rights/rights.htm>