Proposed Amendments to *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services* and *Guidelines on Donation of Eggs or Sperm between Certain Family Members:* Consultation document

Citation: Advisory Committee on Assisted Reproductive Technology. 2012. *Proposed Amendments to* Guidelines on Surrogacy Arrangements involving Providers of Fertility Services *and* Guidelines on Donation of Eggs or Sperm between Certain Family Members*: Consultation document.* Wellington: Advisory Committee on Assisted Reproductive Technology.

Published in June 2012 by the Advisory Committee on Assisted Reproductive Technology
PO Box 5013, Wellington 6145, New Zealand

ISBN: 978-0-478-39353-8 (print)
ISBN: 978-0-478-39352-8 (online)
HP 5516

This document is available on the ACART website:
www.acart.health.govt.nz

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Advisory Committee on Assisted Reproductive Technology

Foreword

Assisted reproduction has traditionally been seen as a way to help people who are infertile, or where pregnancy is a danger to the mother or a resulting child. However, increasingly, assisted reproduction is being seen as a means of providing people outside these categories with the opportunity to build a family; for instance, where a same-sex couple wish to become parents through a surrogacy arrangement. The committee I chair, the Advisory Committee on Assisted Reproductive Technology (ACART), is proposing changes to the eligibility criteria in two guidelines to take account of this use of surrogacy.

The review from which these proposed changes arise was occasioned by a complaint we received in 2011, through the Human Rights Commission, that the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services* discriminate on the basis of sex and sexual orientation. The complaint was specifically about two linked provisions in the guidelines requiring that there be an "intending mother" who has a "medical" condition or diagnosis that justifies the use of a surrogacy arrangement.

We agreed that there is *prima facie* discrimination in the guidelines, and undertook to review the provisions at issue. We concluded that the discrimination was not justified, taking into account the principles of the Human Assisted Reproductive Technology Act 2004. The evidence does not support restricting surrogacy arrangements to cases where there is an intending mother. This conclusion means that the medical criteria, at least in their current form, also need amendment because the criteria specifically link to pregnancy. We also reviewed, for consistency, the medical criteria in the guidelines concerned with donation of eggs or sperm between family members. (In some surrogacy arrangements, people wish to use eggs or sperm donated by a family member.)

We are therefore proposing amendments to the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services* and the *Guidelines on Donation of Eggs or Sperm between Certain Family Members*. In this consultation document we present our proposals and invite your feedback. A submission form is enclosed to help you make your comments, which we will take into account when finalising the proposed guidelines. We are then required to consult with the Minister of Health before issuing new guidelines.

Later this year we will review the medical criteria in the *Guidelines on Embryo Donation for Reproductive Purposes* and the *Guidelines on the Creation and Use, for Reproductive Purposes, of an Embryo Created from Donated Eggs in conjunction with Donated Sperm*.

It should be noted that all current guidelines continue to be in force until we issue amended guidelines. The Ethics Committee on Reproductive Technology (ECART) will then be able to decide applications in accord with the provisions of the amended guidelines.

We look forward to receiving your submission.

John Angus
Chair, Advisory Committee on Assisted Reproductive Technology

How to have your say

Please take this opportunity to have your say. You may make a submission on your own behalf or as a member of an organisation. You can contribute your views in either of these ways:

- email a completed submission form or your comments to acart@moh.govt.nz, or
- post a completed submission form or your comments to:

ACART Secretariat
PO Box 5013
Wellington.

We will place all submissions on ACART's website as they are received, and therefore prefer that submissions are submitted electronically if possible. However, we will accept and consider all submissions regardless of how we receive them.

Where you make a submission on your own behalf, we will remove your contact details before placing the submission on ACART's website. Alternatively, you may request that all or part of a submission is withheld from publication for reasons of confidentiality.

The closing date for submissions is 7 September 2012.

We will consider all submissions and revise the proposed guidelines as necessary. We will then consult with the Minister of Health on the revised proposed guidelines, as required by the Human Assisted Reproductive Technology Act 2004 (the HART Act), before issuing finalised guidelines to the Ethics Committee on Assisted Reproductive Technology (ECART).

We will release a summary of submissions when the guidelines are issued to ECART.

You can obtain additional copies of this consultation document and submission form from the ACART website (www.acart.health.govt.nz) or the ACART Secretariat (email acart@moh.govt.nz or telephone 04 816 3931).

Contents

Executive summary

The Advisory Committee on Assisted Reproductive Technology has reviewed the eligibility criteria in the surrogacy guidelines. After considering evidence about outcomes for children in light of the principles of the HART Act, we have concluded there is no basis to restrict the use of surrogacy arrangements to cases where there is an intending mother. We extended the review to include the eligibility criteria in the *Guidelines on Donation of Eggs or Sperm between Certain Family Members* because in some surrogacy arrangements people wish to use donated eggs or sperm from family members.

The review was occasioned by a complaint we received in 2011, through the Human Rights Commission, that the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services* discriminate on the basis of sex and sexual orientation. The guidelines currently require that there be an "intending mother" who has a "medical" condition or diagnosis that justifies the use of a surrogacy arrangement.

We now invite public feedback on proposed amendments to the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services* and the *Guidelines on Donation of Eggs or Sperm between Certain Family Members*. The amendments in both guidelines are concerned only with eligibility criteria for intending parents who wish to enter a surrogacy arrangement using a fertility services provider and/or use eggs or sperm donated by a family member.

In the surrogacy guidelines:

- currently, single men and male couples are excluded from entering a surrogacy arrangement that involves a New Zealand fertility services provider. Our proposal will enable these men to apply to ECART to enter such a surrogacy arrangement
- the current guidelines do not allow for the use of surrogacy for convenience, in order to avoid the impacts of pregnancy and childbirth, but the exclusion is not explicitly stated. We propose to continue the exclusion, and include a specific provision about it.

In the family eggs or sperm donation guidelines:

- currently, single men and male couples cannot apply to enter a surrogacy arrangement, and therefore are excluded from using eggs donated by a family member. The proposed amendment will enable these men to apply to ECART to use eggs donated by a family member
- currently single women and lesbian couples are able to apply to ECART to use sperm donated by a family member, but must have a medical justification. The proposed amendment will enable these women to apply to ECART to use sperm donated by a family member, without needing to demonstrate a medical need.

The consultation period ends 7 September 2012.

1 Introduction

1.1 Purpose of this consultation document

1. The purpose of this consultation document is to present for public consultation proposed amendments to the Guidelines on Surrogacy Arrangements involving Providers of Fertility Services and Guidelines on Donation of Eggs or Sperm between Certain Family Members. The amendments in both guidelines are concerned with eligibility criteria for intending parents who wish to enter a surrogacy arrangement using a fertility services provider and/or use eggs or sperm donated by a family member.

2. After ACART has finalised and issued amended guidelines, ECART will be able to consider and decide individual applications in accord with the provisions in those guidelines.

1.2 Why is ACART proposing to amend the guidelines?

1.2.1 Surrogacy guidelines

3. We propose to amend the surrogacy guidelines to remove discrimination on the grounds of sex and sexual orientation. A male couple complained to the Human Rights Commission in August 2011 that two provisions in the surrogacy guidelines discriminate on the basis of sex and sexual orientation. The guidelines currently include the requirement that ECART must determine that there is an "intending mother" who "has a medical condition that prevents pregnancy or makes pregnancy potentially damaging to her and/or any resulting child, or a medical diagnosis of unexplained infertility that has not responded to other treatments".

4. We agreed to review the guidelines to remove any unjustified discrimination. We have decided that the eligibility criteria in the guidelines should be amended to remove the reference to an "intending mother". There is no basis to restrict the use of surrogacy arrangements to cases where there is an intending mother. We have also decided to amend the wording of the medical criteria, because the criteria as they stand assume that there is an intending mother.

5. In order to remove any unjustified discrimination as soon as possible, we have limited the scope of our review of the surrogacy guidelines to matters directly arising from the complaint to the Human Rights Commission: the "intending mother" requirement and the medical criteria. Another matter arising from the complaint is the medical criteria in the *Guidelines on Donation of Eggs or Sperm between Certain Family Members* because of the relationship between the two guidelines, discussed in the next section.

1.2.2 Family eggs or sperm donation

6. We recognise that in some surrogacy arrangements, people will need to use donated eggs or sperm, and in many cases a donation will be available from a family member. In these cases the resulting application to ECART will be about two assisted reproductive procedures.

7. We issued advice to ECART in 2008 about applications that include combined assisted reproductive procedures. The advice specifies that where ECART receives such applications:

   - ECART should address the provisions in the guidelines that apply for each of the individual assisted reproductive procedures
   - ECART must not approve an application where the guidelines for the separate assisted reproductive procedures are not compatible.

8. The eligibility criteria in the *Guidelines on Donation of Eggs or Sperm between Certain Family Members* therefore need to be consistent with the surrogacy guidelines, so that the policy intent of amending the surrogacy guidelines is not undermined by requirements in the family eggs or sperm donation guidelines.

9. We have also taken into account that the eligibility criteria in the current guidelines disadvantage single women and lesbian couples who wish to use donated sperm from a family member. Women in this situation need a medical justification and ECART approval (if the sperm donor comes from outside the family, neither is required). The current guidelines do not provide for need arising from the circumstances of being single or in a same-sex couple, and do not support the use of family egg or sperm donations where they are available.

1.3 What are the requirements where people wish to enter a surrogacy arrangement?

10. ACART has the role of issuing guidelines to ECART, so ECART can consider and decide applications where people wish to use treatments (that is, assisted reproductive procedures) that require case-by-case ethical approval by ECART. The treatments requiring ECART approval include surrogacy arrangements involving providers of fertility services.

11. We issued *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services* in November 2007, following public consultation and consultation with the then Minister of Health. The guidelines (set out in Appendix 1) apply only where New Zealanders wish to enter surrogacy arrangements involving New Zealand fertility services providers. They do not apply where people enter surrogacy arrangements outside a provider (for example, using self-insemination) or where people enter a surrogacy arrangement in another country.

12. The guidelines sit within the broader requirements of the HART Act, which is the principal legislation concerned with the regulation of assisted reproduction treatments and human reproductive research. It includes specific provisions in section 14 about surrogacy arrangements. In summary, it states that:

- a surrogacy arrangement is not in itself illegal, but is not binding
- commercial surrogacy arrangements are illegal.

13. The HART Act does not refer to infertility or to a "medical" justification for any treatment. ACART's guidelines, not the HART Act, contain provisions about the circumstances of people seeking to use each assisted reproductive procedure.

1.4 What are the requirements where people wish to use eggs or sperm donated by a family member?

14. We issued the *Guidelines on Donation of Eggs or Sperm between Certain Family Members* in November 2007, also after public consultation and consultation with the then Minister of Health. Like the surrogacy guidelines, the family eggs or sperm donation guidelines apply only where New Zealanders wish to use eggs or sperm donated by family members in a procedure involving New Zealand fertility services providers. The current guidelines are set out in Appendix 3.

15. The Human Assisted Reproductive Technology Order 2005 (the HART Order) sets out the types of family eggs or sperm donations that require ECART approval and those that do not. The list of procedures that do not require ECART approval ("established procedures") in the HART Order includes cases where a procedure uses eggs or sperm donated by a sister, brother or cousin,[1] specifically:

    - where an egg donor is a sister or cousin of a patient (the woman who is the subject of the procedure in which the eggs are being used)
    - where a sperm donor is a brother or cousin of the patient's spouse or partner
    - where, in a procedure that involves eggs donated by a patient's female partner and also involves donated sperm, the sperm donor is a brother or cousin of the patient.

16. Where eggs or sperm are donated by other family members, ECART must give approval on a case-by-case basis, using the *Guidelines on Donation of Eggs or Sperm between Certain Family Members*.[2]

17. ECART must not approve an application for donation where a resulting child would be formed from eggs and sperm from father and daughter, mother and son, brother and sister, grandfather and granddaughter, or grandmother and grandson.

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[1] The definitions of "brother" and "sister" in the HART Order include a full-blood brother or sister, a half-blood brother or sister, a stepbrother or stepsister, and a brother or sister by adoption. The definition of "cousin" specifies a cousin of any degree.

[2] The definition of "family member" in the HART Order is broad: "any other person who is or has been related to the person by blood, marriage, civil union, de facto relationship, or adoption … any other person who is a member of the person's whānau or other culturally recognised family group".

2 ACART's proposed amendments to the surrogacy guidelines

18. We propose to amend the eligibility criteria in the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services*, and also to include within them information about applications that include combined assisted reproductive procedures. Two other amendments are editorial only. Please see Appendix 1 for the full current guidelines and Appendix 2 for the full proposed amended guidelines.

2.1 Proposed changes

2.1.1 Changes to eligibility criteria

19. We propose to replace section 2(a)(i) and (ii) with new eligibility criteria for intending parents.

20. The current provisions require ECART to determine that:

    (i) at least one of the intending parents will be a genetic parent of any resulting child

    (ii) the intending mother has:

    - a medical condition that prevents pregnancy or makes pregnancy potentially damaging to her and/or any resulting child; or
    - a medical diagnosis of unexplained infertility that has not responded to other treatments.

21. The proposed amended provisions require ECART to determine that:

    (i) where there is one intending parent, he or she will be a genetic parent of any resulting child

    (ii) where there are two intending parents, at least one will be a genetic parent of any resulting child

    (iii) there is a need for the surrogacy arrangement, as follows:

    - Where there is one intending parent, the intending parent is either a man or an eligible woman.
    - An eligible woman is a woman who:
      - is unable to conceive a child for medical reasons, or
      - is unable, for medical reasons, to carry a pregnancy or to give birth, or
      - is unlikely to survive a pregnancy or birth, or

- is likely to have her health significantly affected by a pregnancy or birth, or
- is likely to conceive a child who is unlikely to survive the pregnancy or birth, or whose health would be significantly affected by the pregnancy or birth.

- The definition of an eligible woman does not include a woman who wishes to avoid pregnancy or childbirth as a matter of convenience.
- Where there are two intending parents, the intending parents are:
  - a man and an eligible woman, or
  - two men, or
  - two eligible women.

2.1.2 Changes to provide additional information

22. We propose to include additional information about eligibility criteria and applications that include combined assisted reproductive procedures, as follows:

Applications that include combined assisted reproductive procedures

Where applications to ECART include combined assisted reproductive procedures (for example, where a surrogacy arrangement includes eggs or sperm donated by a family member), these guidelines should be read in conjunction with ACART's advice to ECART, issued 24 November 2008, about applications that include combined assisted reproductive procedures. The advice is available on ACART's website at: www.acart.health.govt.nz/moh.nsf/pagescm/22/$File/advice-to-ecart-nov08.pdf

This advice includes the provision that ECART must not approve an application where the guidelines for the separate assisted reproductive procedures are not compatible. An effect of the advice is that these guidelines are not compatible with either the *Guidelines on Embryo Donation for Reproductive Purposes* or the *Guidelines on the Creation and Use, for Reproductive Purposes, of an Embryo Created from Donated Eggs in Conjunction with Donated Sperm*. This means:

- ECART may not approve an application to use a surrogacy arrangement in which the surrogate gestates a donated embryo. A donated embryo must be gestated by an intending mother.
- ECART may not approve an application to use a surrogacy arrangement where the surrogate gestates an embryo created from donated eggs in conjunction with donated sperm. An embryo created from donated eggs in conjunction with donated sperm must be gestated by an intending mother.

2.1.3 Editorial changes

23. We propose to amend 2(a)(vi), removing the reference to the Code of Practice for Assisted Reproductive Technology Units, so that the provision refers only to the Fertility Services Standard, which came into effect in October 2010. We also propose to replace "parents" with "parent(s)" in 2(b)(ii), to take account of surrogacy arrangements where there is only one intending parent.

2.2 Effects of the proposed amendments

24. This section outlines the implications of the proposed changes to the guidelines. We also describe those aspects, including within the wider legislative regime, that will not be affected.

2.2.1 Implications of the proposed amendments

25. The proposed changes relate only to the eligibility criteria for intending parents.

- Currently single men and male couples are excluded from entering a surrogacy arrangement that involves a New Zealand fertility services provider. Our proposed amendments will enable single men and male couples to apply to ECART to enter such a surrogacy arrangement.
- Currently the guidelines are unclear about the application of the eligibility criteria where a lesbian couple wishes to enter a surrogacy arrangement. Our proposed amendments specify that where a lesbian couple wishes to enter a surrogacy arrangement, both women must meet the definition of "eligible woman".
- Our proposed amendments to the medical criteria provide more detail than the current medical criteria.
- The current guidelines do not allow for the use of surrogacy for convenience, in order to avoid the impacts of pregnancy and childbirth, but this exclusion is not explicitly stated. The proposed amendments include a specific provision about the exclusion.
- Currently, ECART may not approve applications involving two combined assisted reproductive procedures where the guidelines are not compatible. Our proposed amendment includes a specific reference to this requirement, and to guidelines that are not compatible with the surrogacy guidelines.

2.2.2 Requirements that will continue

26. Most of the requirements associated with surrogacy arrangements will continue to apply regardless of our proposed amendments, as outlined below.

The guidelines

- The guidelines still apply only where people living in New Zealand wish to enter surrogacy arrangements involving a New Zealand fertility services provider.
- ECART will still consider applications in light of all the provisions in the guidelines and the principles of the HART Act.
- Most provisions in the guidelines will not change; for instance:
  - at least one intending parent must be the genetic parent of a resulting child
  - the parties must have independent legal and medical advice
  - the parties must have counselling in accord with the Fertility Services Standard
  - in making a decision ECART must take into account a wide range of relevant factors, including the scope of counselling and whether the relationship between intending parents and an intending surrogate safeguards the wellbeing of all parties, and especially any resulting child.
- Heterosexual couples will continue to be able to apply to ECART to enter a surrogacy arrangement if the woman meets criteria based on medical need.
- Single women will continue to be able to apply to ECART to enter a surrogacy arrangement if they meet criteria based on medical need.
- ECART will continue to determine if the reason for using a surrogacy arrangement meets criteria in the guidelines.

HART Act

- The provisions of the HART Act will not change, including those concerned with surrogacy arrangements. Surrogacy arrangements will not be enforceable, and commercial arrangements will continue to be prohibited.
- Surrogates will continue to make an informed choice about whom they wish to assist through a surrogacy arrangement.
- Where a child is born from a surrogacy arrangement that involves sperm or eggs donated on or after 22 August 2005, the child at the age of 18 years (or earlier in some circumstances) has the right to access identifying information about the donor.

Status of Children Act 1969

- The effect of the Status of Children Act will not change. The surrogate is the legal mother of a child born from a surrogacy arrangement, until legal parenthood passes to another individual or couple, for example through an adoption order approved by the Family Court under the Adoption Act 1955.

Adult Adoption Information Act 1985

- The Adult Adoption Act will continue to apply where a child is born as a result of a surrogacy arrangement and then adopted. The child will have the right at the age of 20 (or earlier in some circumstances) to access identifying information about the surrogate.

3 The basis for our proposed amendments to the surrogacy guidelines

27. The HART Act sets a framework that provides for the beneficial use of assisted reproductive treatments while protecting against general risks and those associated with particular procedures.

28. Surrogacy is a procedure with risks for all the parties involved, and for any resulting children. Intending parents bear the risk that a surrogate may change her mind and decide not to relinquish a child. Surrogates bear the risks associated with pregnancy and childbirth, the risk that intending parents may change their mind and the emotional impact of relinquishing a child. A child may become the subject of a dispute if the relationship between parties breaks down.

29. Our proposals are based on the general presumption that because surrogacy arrangements carry substantial risks for the adults involved and potential children, the procedure should continue to be used only where needed. More specifically, our proposals take into account:

    1. the principles of the HART Act
    2. more general ethical principles
    3. the public interest in encouraging safe and well-managed surrogacy arrangements.

30. We have also considered the approach in comparable jurisdictions.

3.1 Principles of the HART Act

3.1.1 The health and wellbeing of children

31. The principle set out at section 4(a) of the HART Act requires that the health and wellbeing of children born as a result of the performance of an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure. In developing our proposals, we looked at outcomes and protections for children.

Outcomes for children

32. We reviewed a wide range of information, research and discussion about outcomes for children raised by single people and same-sex couples (see from page 23 for a list of sources used). We concluded that there is no large body of robust evidence that children are harmed if raised by male couples or by single men. Family functioning, rather than family structure, is crucial for children.

33. We also considered common arguments against parenting by same-sex couples or single parents, together with evidence that refutes these arguments, as follows.

Children of same-sex couples may become homosexual themselves

- This argument assumes that there is something inherently undesirable about being homosexual. Leaving aside that issue, research has found that the majority of children of same-sex parents grow up to be heterosexual.

Children of same-sex couples are likely to be stigmatised by their peer group

- There is evidence that the children of same-sex parents experience being teased or bullied by other children.
- However, some studies show that growing up with sexual minority parents facilitates children's capacity to tolerate diversity.

Dual-gender parenting is necessary for children's psychosocial and psychosexual development

- Most of the research on this subject has looked at children of lesbian parents. This research, including longitudinal studies, has found strong evidence that the gender or sexual orientation of parents is not a significant factor in child outcomes. Where studies included families parented by male couples, there were no important differences on a range of measures.
- The slim body of research on gay male co-parents suggests that such parents do not provide a double dose of "masculine" parenting. Instead, they engage in what is conventionally understood as "mothering".
- A comparison between planned gay father families and heterosexual families found no significant differences between family types in regard to children's wellbeing.

Children growing up in single-parent families are at risk of economic or emotional deprivation

- The findings of the longitudinal Christchurch Health and Development Study suggest that although single parenthood is associated with poor outcomes, a more important factor is the broader social and family context.
- A 1994 review of five studies concluded that children are not damaged by having a father who is the primary caregiver.

Protections for children

34. Not all surrogacy arrangements made by people living in New Zealand involve New Zealand fertility services providers. Some choose to enter surrogacy arrangements outside a fertility services provider. Others choose to go to another country to use an overseas surrogate.

35. We hope that enabling a wider group of people to apply to ECART to enter a surrogacy arrangement may encourage people considering surrogacy arrangements to involve a fertility services provider. The provider-ECART process ensures that the implications for any resulting children are taken into account through counselling, legal advice, and ECART consideration.

3.1.2 The health and wellbeing of women

36. The principle set out at section 4(c) of the HART Act requires that the health and wellbeing of women must be protected. Our proposed amendments will not place women at any greater risk in surrogacy arrangements, whether they are intending mothers, surrogates or egg donors.

37. In some cases, women will benefit from the amendments, because they will be able to use fertility services providers rather than informal arrangements. Surrogates who are part of arrangements facilitated by providers benefit from the requirements in the guidelines – such as counselling and independent legal advice – and may be at reduced risk of coercion.

3.1.3 Informed choice and informed consent

38. The principle set out at section 4(d) of the HART Act requires that no assisted reproductive procedure be performed on an individual unless the individual has made an informed choice and given informed consent. Removing the "intending mother" requirement would not compromise this principle. Surrogates will continue to be able to choose the intending parent(s) they assist.

39. A change to the guidelines will not preclude parties choosing to undertake surrogacy arrangements outside New Zealand clinics. However, the proposed amendments will give more people the opportunity to make an informed choice through the guidelines' requirements for implications counselling and independent legal advice.

3.1.4 The needs, values and beliefs of Māori

40. The principle set out at section 4(f) of the HART Act requires that the needs, values and beliefs of Māori should be considered and treated with respect. The proposed amendments will enable male takatāpui (people attracted to the same sex) to apply to ECART in order to enter a surrogacy arrangement.

41. We have noted that a recent analysis of applications to ECART to enter surrogacy arrangements,[3] in the period from September 2005 to December 2010, found that the proportion of provider assisted surrogacy arrangements involving Māori is lower than predicted by the proportion of Māori within the New Zealand population. The paper says that little is known about why Māori are less likely to use surrogacy than other New Zealanders, and suggests cost may be a factor.

42. The report also says that for some Māori, surrogacy will not fit within a framework that places great significance on the integrity of whakapapa. For some, whāngai (fostering or adopting a child) may be a more acceptable route to parenthood, although, for others, surrogacy may be seen positively as comparable to whāngai.

3.1.5 Different ethical, spiritual and cultural perspectives in society

43. The principle set out at section 4(g) of the HART Act requires that the different ethical, spiritual and cultural perspectives in society be considered and treated with respect.

44. We recognise that, whatever approach the policy takes, some people oppose surrogacy on the basis that it is not in the best interests of children because it is unnatural and/or immoral. People with these views will be likely to see increased access to surrogacy arrangements as a further threat to the integrity of the traditional heterosexual family, which they believe is crucial for the wellbeing of children.

45. Other people are primarily concerned with the vulnerability of surrogates, in New Zealand or overseas. These people may perceive that a change to the guidelines exposes more women to risk. On the other hand, the change may encourage intending parents to enter surrogacy arrangements in New Zealand rather than overseas, thus bringing all parties, including surrogates, under the protection of New Zealand standards and requirements.

46. We expect that the proposed changes will generally be welcomed by people in the gay, lesbian, bisexual and transsexual communities, particularly by male couples who wish to become parents using a surrogacy arrangement.

[3] L Anderson, J Snelling, H Tomlins-Jahnke. 2012. The practice of surrogacy in New Zealand. *Australian and New Zealand Journal of Obstetrics and Gynaecology* 28 February. See also M Glover, A McCree, L Dyall. 2008. *Māori Attitudes to Assisted Human Reproduction: An Exploratory Study.* School of Population Health, University of Auckland.

3.2 More general ethical principles

3.2.1 Equity

47. The principle of equity involves not putting one group of people at a disadvantage compared to other groups, unless there is a sound reason. As discussed above, we do not consider there is a justification to exclude male couples or single men from applying to ECART to enter a surrogacy arrangement. In New Zealand, public policy generally supports parenting by same-sex couples or single people in a variety of circumstances. Examples are single parents raising children following the dissolution of a relationship or the death of a partner, and same-sex couples raising children born in previous heterosexual relationships.

48. Heterosexual couples, lesbian couples and single women are all currently able to apply to ECART to enter a surrogacy arrangement, whereas male couples and single men cannot. It would be fair and equitable to amend the surrogacy guidelines so that male couples and single men can also apply to ECART to enter a surrogacy arrangement involving fertility services providers, and thus benefit from the protections of the provider-ECART process.

49. The list of resources provided from page 23 includes papers about the ethical aspects of access to assisted reproductive treatment.

3.2.2 Autonomy

50. The HART Act establishes a regulatory framework that provides for individuals and society to benefit from uses of assisted reproductive procedures while providing protections to manage various risks. Our proposed amendments to the surrogacy guidelines are designed to support the autonomy of as many intending parents as possible by giving them more options for creating a family.

51. At the same time, the guidelines continue to support the autonomy of potential surrogates to decide whether to enter a surrogacy arrangement and whom they will assist to become parents.

3.3 The public interest in encouraging safe and well-managed surrogacy arrangements

52. It is in the public interest that, as far as possible, surrogacy arrangements by New Zealanders be carried out in this country and under ECART's scrutiny. This process ensures that adult parties and any resulting children are protected by the provisions of the HART Act and other relevant legislation (for example the Adoption Act 1955, the Adult Adoption Information Act 1985 and the Care of Children Act 2004).

53. Where individuals and couples enter surrogacy arrangements outside a fertility services provider or in another country, the parties and any resulting children are not covered by the protections of the HART Act. Surrogates and intending parents may not have implications counselling or independent legal advice.

54. Overseas surrogacy arrangements may be carried out in countries with different legal, clinical or ethical requirements from those applying in New Zealand. For instance, in New Zealand, children born from a surrogacy arrangement who are subsequently adopted are able to access identifying information about their birth parents under the Adult Adoption Information Act. This information may not be available for children resulting from surrogacy arrangements in other countries.

55. When a child is born from a surrogacy arrangement overseas, his or her entry to New Zealand involves engagement with immigration, citizenship and adoption requirements, and may be a protracted process with an uncertain outcome.

56. Child, Youth and Family, Immigration New Zealand and the Department of Internal Affairs have issued information about international surrogacy, available at: www.cyf.govt.nz/documents/adoption/international-surrogacy-information-sheet.pdf

3.4 The approach in comparable jurisdictions

57. While policies and processes in other countries do not determine what happens in New Zealand, the approach in other jurisdictions is of interest, particularly those that have some commonalities with New Zealand's principles and regulatory framework. We looked at the eligibility criteria used in comparable jurisdictions in regulating access to surrogacy arrangements, and found that in general they took a neutral approach to the sex and sexual orientation of people seeking to become parents through a surrogacy arrangement. Our findings follow.

3.4.1 Australia

58. In Victoria, clinic-assisted surrogacy must be approved by an independent statutory body, the Patient Review Panel. Intending parents may be single people, same-sex couples or heterosexual couples.

59. In New South Wales and Queensland, the respective Surrogacy Acts 2010 permit single people, same-sex couples and heterosexual couples to become parents (through a parentage order) of a child born from a surrogacy arrangement.

3.4.2 United Kingdom

60. The Human Fertilisation and Embryology Act 1990 does not restrict same-sex couples and single people from entering into a surrogacy arrangement. The Act was amended in 2008 to recognise same-sex couples as legal parents of children conceived through the use of donated sperm, eggs or embryos. Intending parents must apply to adopt the child or apply for a parental order.

3.4.3 Canada

61. The Assisted Human Reproduction Act does not restrict same-sex couples and single people from entering into a surrogacy arrangement.

3.5 Questions about proposed changes to the surrogacy guidelines

62. In the submission form from page 53, we ask for your feedback to the following questions:

Question 1: Do you agree with ACART's conclusions that:

- the surrogacy guidelines currently discriminate on the basis of sex and sexual orientation, and
- the discrimination is not justified in light of the principles of the Human Assisted Reproductive Technology Act 2004?

Question 2: Do you agree with ACART's view that surrogacy should be used only where there is a need, and not for convenience?

Question 3: Do you have any other comments on ACART's proposed amendments to the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services*?

4 ACART's proposed amendments to the family eggs or sperm donation guidelines

63. If single men and male couples are able to apply to ECART to enter a surrogacy arrangement, and the family gamete donation guidelines are not amended to take this into account, ECART will not be able to approve applications where single men and male couples want to use eggs donated by a family member. Amending the relevant guidelines will avoid the risk that surrogacy continues to be excluded for men in this situation.

64. We have also taken into account that currently, the eligibility criteria in the family gamete donation guidelines preclude lesbian couples from applying to ECART to use sperm donated by a family member where there is no clinical need.

65. We therefore propose to amend the eligibility criteria in the *Guidelines on Donation of Eggs or Sperm between Certain Family Members*, and to include in the guidelines information about applications that include combined assisted reproductive procedures. Two other changes are editorial only. Please see Appendix 3 for the full current guidelines and Appendix 4 for the full proposed amended guidelines.

4.1 Proposed changes

4.1.1 Changes to eligibility criteria

66. We propose to replace section 2(a)(i) with new eligibility criteria for intending parents.

67. The current provisions require ECART to determine that:

    (i) the recipient or the recipient's partner has a medical condition affecting his or her reproductive ability, or a medical diagnosis of unexplained infertility, that makes egg or sperm donation appropriate.

68. The proposed amended provisions require ECART to determine that:

    (i) where an intending parent is a single man or intending parents are a male couple:
    - the donation is of eggs only, and
    - there is an accompanying application under the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services*

(ii) where an intending parent is a single woman or intending parents are a female couple:

- the donation is of sperm only, or
- if the donation is of eggs:
  a. there is a need to use donated eggs because the recipient and any partner:
     i. has a medical diagnosis of unexplained infertility, or
     ii. does not have her own eggs or her own eggs are unsuitable, or
     iii. the use of her own eggs is a risk to a resulting child
  b. there is an accompanying application under the *Guidelines on the Creation and Use, for Reproductive Purposes, of an Embryo Created from Donated Eggs with Donated Sperm*

(iii) where intending parents are a heterosexual couple, there is a need to use donated eggs or sperm because the recipient or the recipient's partner:

- has a medical diagnosis of unexplained infertility, or
- does not have his or her own sperm or eggs, or his or her own sperm or eggs are unsuitable, or
- the use of his or her own sperm or eggs is a risk to a resulting child.

4.1.2 Changes to provide additional information

69. We propose to include additional information about applications that include combined assisted reproductive procedures, as follows.

> **Applications that include combined assisted reproductive procedures**
>
> Where applications to ECART include combined assisted reproductive procedures (for example, where a surrogacy arrangement includes eggs or sperm donated by a family member), these guidelines should be read in conjunction with ACART's advice to ECART, issued 24 November 2008, about applications that include combined assisted reproductive procedures. The advice is available on ACART's website at: www.acart.health.govt.nz/moh.nsf/pagescm/22/$File/advice-to-ecart-nov08.pdf

4.1.3 Editorial changes

70. We propose amending the Preamble and 2(a)(ii) to refer only to the Fertility Services Standard, which came into effect in October 2010.

4.2 Effects of the proposed amendments

71. This section outlines the implications of the proposed changes to the guidelines. We also describe those aspects, including within the wider legislative regime, that will not be affected.

4.2.1 Implications of the proposed amendments

72. The proposed changes relate only to the eligibility criteria for intending parents. The list of impacts below assumes that the surrogacy guidelines are amended as proposed.

- Currently single men and male couples are excluded from applying to ECART to enter a surrogacy arrangement and therefore are excluded from using eggs donated by a family member. The proposed amendment, in conjunction with the proposed amendment to the surrogacy guidelines, will mean that single men and male couples will be able to apply to ECART to use eggs donated by a family member in a surrogacy arrangement.
- Currently single women and lesbian couples are able to apply to ECART to use sperm donated by a family member but must have a medical justification. The proposed amendment will enable these women to apply to ECART to use sperm donated by a family member, without needing to demonstrate a medical need.
- Currently the guidelines do not explicitly refer to ACART's advice to ECART on combined assisted reproductive procedures. The proposed amendment refers to that advice.

4.2.2 Requirements that will continue

73. As with the surrogacy guidelines, most requirements will not change, as outlined below.

The guidelines

- ECART will still consider applications in light of all the provisions in the guidelines and the principles of the HART Act.
- Most provisions in the guidelines will not change; for instance:
  - in making a decision, ECART will take into account the potential impact on all parties, and on a resulting child, of the genetic, social, cultural and intergenerational aspects of the proposal
  - the parties must have counselling in accord with the Fertility Services Standard
  - in making a decision, ECART will take into account the scope of the counselling provided, the parties who were included, and whether there was provision for whānau/extended family involvement.

- Single men and male couples will not be able to apply to ECART to use sperm donated by a family member. The surrogacy guidelines require that at least one intending parent be a genetic parent of a resulting child, so ECART could not approve such an application.
- Single women and lesbian couples will be able to apply to ECART to use eggs donated by a family member only if there is a medical justification. ECART will need to consider the application in light of the provisions of both the family eggs or sperm donation guidelines and the guidelines on the use of donated eggs with donated sperm.
- Heterosexual couples will still be able to apply to ECART to use sperm or eggs donated by a family member if there is a medical justification.

The HART Order 2005

- Where heterosexual couples want to use eggs or sperm donated by a stranger or a brother, sister or cousin, the procedure will not require ECART approval.
- Where lesbian couples or single women want to use sperm donated by a stranger or a brother or cousin of the woman who is not carrying the pregnancy, the procedure will not require ECART approval.
- Where sperm or eggs are donated by people who are not family members, or who are brothers, sisters or cousins, the procedure will not require ECART approval.
- Where single women and lesbian couples wish to use donated eggs as well as donated sperm from any source, ECART must approve the application under the *Guidelines on the Creation and Use, for Reproductive Purposes, of an Embryo Created from Donated Eggs with Donated Sperm*. If one or both donors is a family member, ECART must also consider the provisions of the *Guidelines on Donation of Eggs or Sperm between Certain Family Members*.

5 The basis for our proposed amendments to the family eggs or sperm donation guidelines

74. We have concluded that there are no grounds under the principles of the HART Act that justify excluding single men and male couples from applying to ECART to use eggs donated by family members as part of surrogacy arrangements. We have also concluded that there is no justification for requiring single women and lesbian couples to meet a medical test in order to use sperm donated by a family member.

75. It would therefore be equitable to provide for ECART to approve family eggs or sperm donation to be used by single men, single women, same sex couples and heterosexual couples.

76. Much of the discussion about our reasons for proposing amendments to the surrogacy guidelines also applies to our proposed amendments to the family eggs or sperm donation guidelines. As noted, we have concluded there are no grounds under the principles of the HART Act that justify excluding single men and male couples from applying to ECART to enter a surrogacy arrangement. There are thus no grounds that exclude single men and male couples from applying to ECART to use eggs donated by a family member.

77. Below we further discuss the basis of our proposed amendments, which take into account:

    1. the principles of the HART Act
    2. more general ethical principles
    3. the relationship of these guidelines with other guidelines.

5.1 Principles of the HART Act

5.1.1 The health and wellbeing of women and children

78. As in the case of surrogacy arrangements, we are of the view that family donation of eggs or sperm should be used only when needed, and never as a matter of convenience, because of the risks to adult parties and resulting children. All egg donations involve risk for donors because of the processes used to obtain the eggs. Donation within families carries the risk that donors may feel pressured to assist. Relationships within families, including those involving children, may be confused. We have therefore concluded that the guidelines should include explicit eligibility criteria to limit the use of the procedure to cases in which it is necessary.

79. For that reason, the eligibility criteria, in essence, require that intending parents do not have their own eggs or sperm available to them or, if they do, that there is a medical reason for them not to use their own eggs or sperm.

5.1.2 The needs, values and beliefs of Māori

80. Where Māori need to use donated eggs or donated sperm, they will often prefer to use a donation from a family member in order to preserve and strengthen whakapapa. The proposed amendments will enable Māori women who are single or in a same-sex relationship to apply to ECART to use sperm donated by a family member without a medical reason and Māori men who are single or in a same-sex relationship to apply to use eggs donated by a family member.

5.2 More general ethical principles

5.2.1 Equity

81. We recognise that the current guidelines are inequitable because they prevent single women and lesbian couples using sperm donated by a family member unless there is a medical justification. In some cases, such women may currently seek sperm donated by a stranger so they are not subject to the medical requirement or may resort to informal arrangements that do not involve providers.

82. For single men and male couples the current guidelines, together with the current surrogacy guidelines, are also inequitable because they unfairly bar them from applying to ECART to enter a surrogacy arrangement using donated eggs.

83. The amended eligibility criteria recognise that for single people and same-sex couples, the need for donated sperm or eggs is usually a result of their circumstances. We hope that the proposed amendment will encourage single women and lesbian couples to involve fertility services providers when using sperm donated by family members.

5.2.2 Autonomy

84. The proposals give more choices to single people and same-sex couples wishing to become parents. The autonomy of egg or sperm donors continues to be protected through other requirements in the guidelines that will not be changed, including informed consent and counselling requirements.

5.3 The relationship of these guidelines with other guidelines

85. As noted earlier, single men and male couples will not be able to use donated sperm (whether or not it is from a family member). Any use of donated eggs in conjunction with donated sperm is covered by the *Guidelines on the Creation and Use, for Reproductive Purposes, of an Embryo Created from Donated Eggs with Donated Sperm*. Those guidelines do not enable ECART to approve an application to use donated eggs with donated sperm in conjunction with a surrogacy arrangement. In all guidelines, ACART has taken the position that there should be a biological link (sperm, eggs or pregnancy) between a resulting child and at least one intending parent, in order to limit the complexity of resulting relationships.

86. Where single women and female couples want to use donated eggs as well as donated sperm (regardless of the source), they will continue to need to apply under the *Guidelines on the Creation and Use, for Reproductive Purposes, of an Embryo Created from Donated Eggs with Donated Sperm*. If the proposal includes using eggs or sperm donated by a family member, ECART will also consider the application in light of the provisions of the family gamete donation guidelines.

5.4 Questions about proposed changes to the family egg or sperm donation guidelines

87. In the submission form from page 53, we ask for your feedback to the following questions:

Question 4: Do you agree with ACART's proposal that single men and male couples applying to ECART to enter a surrogacy arrangement should also be able to apply to use eggs donated by a family member?

Question 5: Do you agree with ACART's proposal that single women and lesbian couples should be able to apply to ECART to use sperm donated by a family member without needing a medical justification?

Question 6: Do you agree with ACART's view that the use of eggs or sperm donated by a family member should be possible only where intending parents do not have their own eggs or sperm, or if they do, that there is a medical reason for them not to use their own eggs or sperm?

6 Sources used in ACART's analysis

88. We requested a library search that focused on the general topic of parenting by male couples and sole fathers. The parameters of the search were English language books and articles from peer reviewed journals since 1990 with evidence about:

    - the health and wellbeing of children brought up in families led by gay male parents or by a single father, preferably from infancy
    - any other impacts on families, including intergenerational impacts, found by empirical research.

89. The scope of the search included studies that looked at families parented by lesbian parents and gay male parents. Excluded from the search were articles about studies that only included lesbian parent families, on the basis that this research was not relevant.

90. The search was not intended to be lengthy or exhaustive. The literature obtained through this search in turn indicated other sources, which were then also obtained.

91. We received a report that drew on the information obtained as appropriate, including statistics collected from government departments, authoritative literature reviews from overseas and a number of research studies of varying quality. With regard to the evidence on outcomes for children, we noted objections to parenting by same-sex couples and single parents and arguments refuting the objections.

92. The information we considered included a table that gave an overview of key findings on the outcomes of parenting by male couples and single fathers. These studies were all primary studies, meta-analyses or systematic reviews and were all published in peer-reviewed journals. They were included on the basis of their relevance and currency.

93. We also considered information about ethical perspectives on access to assisted reproduction.

94. The sources listed on the pages that follow comprise those we drew on in developing our proposals, including the table of key findings on the outcomes of parenting by male couples and single fathers.

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6.2 Overview of studies on the outcomes of parenting by gay male couples and single fathers

95. These studies are all primary studies, meta-analyses or systematic reviews and have all been published in peer-reviewed journals. They were included on the basis of their relevance and currency.

Author, year and title	Sample size, ages of children, family structure	Sample source, sample type and method	Findings
Averett et al 2009. An evaluation of gay/lesbian and heterosexual adoption.	86 children age 1.5–5 with gay or lesbian parents. 69 children age 6–18 with gay or lesbian parents. 1229 children with heterosexual adoptive parents. Numbers of male parents not stated.	*Sample source* – families participating in the Florida Adoption Project and adverts in gay and lesbian media. Heterosexual comparison group. *Sample type* – cross-sectional. *Method* – survey of the parents using the Family Function Style Scale. Multiple regression analysis. Controlled for pre-existing risk factors.	The study explored the extent of emotional and behavioural problems among the children. Results indicated that child internalising and externalising behaviour was not contingent upon adoptive parents' sexual orientation. Rather, regardless of sexual orientation, adoptive parents are likely to encounter similar challenges in terms of risk factors for child behavioural problems and mitigating factors of such behaviour.
Bailey 1995. Sexual orientation of adult sons of gay fathers.	55 gay or bisexual fathers, 82 sons. Age at least 17. Family structure not stated. Years lived with father measured.	*Sample source* – adverts in homophile publications in six cities in the United States. *Sample type* – cross-sectional. *Method* – fathers interviewed. 52% of sons completed questionnaire.	91% of sons whose orientation could be rated were heterosexual. Gay and heterosexual sons did not differ on potentially relevant variables such as the length of time they had lived with their fathers. Results suggest that any environmental influence of gay fathers on their sons' sexual orientation is not large.
Barrett and Tasker 2001. Growing up with a gay parent: Views of 101 gay fathers on their sons' and daughters' experiences.	101 gay or bisexual fathers of 179 children (88 females and 91 males). Age one month to 44 years. Children living in a diversity of parenting circumstances. 78 percent of the fathers were biologically related.	*Sample source* – the Gay and Bisexual Parenting Survey, which recruits from adverts in gay media and at gay support groups. *Sample type* – cross-sectional. *Method* – Postal questionnaires to the fathers, who were asked to rate their experiences on a five-point Likert-like scale.	Men with cohabiting male partners reported themselves as successfully meeting a variety of parenting challenges. While older children were more likely to know of their father's sexual identity, few gender differences were reported in response to this knowledge. The results suggested that daughters may be more sympathetic. The areas rated most problematic were tension due to having to keep a family secret, being teased or bullied by other children and feeling different.

Author, year and title	Sample size, ages of children, family structure	Sample source, sample type and method	Findings
Bergman et al 2010. Gay men who become fathers via surrogacy: the transition to parenthood.	40 gay fathers, each in a couple. The participants had all become parents through gestational surrogacy.	*Sample source* – clients of a leading surrogacy agency headquartered in California. *Sample type* – cross-sectional. *Method* – Structured telephone interviews with the fathers.	In many ways, gay fathers' transition to parenthood was similar to the experiences of heterosexual fathers. The most striking finding was that the fathers reported greater closeness with their families of origin and heightened self-esteem as a result of becoming parents and raising children.
Biblarz and Stacey 2010. How does the gender of parents matter?	Two groups of studies: 33 studies of two-parent families, 48 studies of single parent families. Of the two-parent family studies, 30 compared lesbian to heterosexual co-parents, one compared gay male to heterosexual co-parents and two compared lesbian to gay male co-parents.	*Sample source* – various. *Sample type* – various. *Method* – meta-analysis comparing differences by gender mix. The two groups of studies were analysed separately.	Strengths typically associated with married mother-father families appeared to the same extent in families with two mothers, and potentially in those with two fathers. Average differences favoured women over men, but parenting skills were not dichotomous or exclusive. The gender of parents correlated in novel ways with parent-child relationships, but had minor significance for children's psychological adjustment and social success.
Bigner and Jacobsen 1989. Parenting behaviours of homosexual fathers.	33 gay fathers, 33 heterosexual fathers. Of the total sample, 6 of the men were married, 56 were divorced or separated and 4 had never married. All were fathers of at least 2 children.	*Sample source* – gay men from the mailing list of a gay father support group in Denver, Colorado. Non-gay men selected randomly from an earlier parenting study of 1700 respondents. *Sample type* – selected at random from a subject pool of 1700 respondents. *Method* – Iowa Parent Behaviour Inventory, an empirical measure of parenting behaviour.	Gay fathers did not differ significantly from non-gay fathers in their reported degree of involvement, nor in intimacy levels with their children. Gay fathers tended to be stricter, be more responsive to children's needs and provide reasons for appropriate behaviour to children more consistently than did non-gay fathers.
Bos 2010. Planned gay father families in kinship arrangements.	36 gay father families and 36 heterosexual families. Age 4–12. The gay fathers all became parents while in same-sex relationships. They donated sperm to lesbian couples and then shared the child-rearing with them in kinship arrangements. All were biological fathers.	*Sample source* – gay fathers recruited by emailing all people on the mailing list of a Dutch interest group for gay and lesbian parents. Heterosexual fathers contacted through schools. *Sample type* – cross-sectional. *Method* – online questionnaires answered by the fathers. Various recognised psychological measures used.	The study examined whether there are differences between gay father families' and heterosexual families' experiences in regard to parental stress and children's wellbeing. No significant differences between the family types were found in terms of emotional involvement and parental concern in the father-child relationship, parental burden (an aspect of parental stress) or the child's wellbeing. However, gay fathers felt less competent in their child-rearing role than did heterosexual fathers.

Author, year and title	Sample size, ages of children, family structure	Sample source, sample type and method	Findings
Crowl et al 2008. A meta-analysis of developmental outcomes for children of same-sex and heterosexual parents.	19 studies involving 564 same-sex parent families and 641 heterosexual parent families. Mean age 10.4.	*Sample source* – extensive literature search, including published and unpublished studies. *Sample type* – various studies addressing six outcome measures. *Method* – meta-analysis.	The outcome measures studied were (a) parent-child relationship quality; (b) children's cognitive development; (c) children's gender role behavior; (d) children's gender identity; (e) children's sexual preference; and (f) children's social and emotional development. Results confirmed previous studies in the current body of literature, suggesting that children raised by same-sex parents fare equally well as children raised by heterosexual parents.
Downey 1994. The school performance of children from single-mother and single-father families: economic or interpersonal deprivation?	409 eighth-grade children in single-father families, 3483 in single mother families and 14,269 in biological two-parent families. Children living with a stepparent excluded.	*Sample source* – a nationally representative (United States) sample. *Sample type* – the National Longitudinal Study of 1988. *Method* – multiple sources of data, eg, school grades and teacher reports.	Children from single father and single mother families performed roughly the same in school, but both were outperformed by children from two-parent families. Lack of economic resources was a more useful indicator for understanding the school difficulties of children from single mother families, whereas lack of interpersonal parent resources provides an accurate description for why children from single father families do poorly in school.
Erich et al 2005. Gay and lesbian adoptive families: An exploratory study of family functioning, adoptive child's behavior, and familial support networks.	47 parents (23 gay male and 24 lesbian) and 68 of their adopted children. All the families had adopted children; slightly more than 35% adopted prior to their first birthday. 43 of the respondents cohabited with a same-sex partner.	*Sample source* – participants located through gay and lesbian support groups and informational websites. *Sample type* – cross-sectional. *Method* – questionnaires to the parents using the FAM-III self-report instrument for measuring family functioning. Multiple regression analysis.	Results suggested that these adoptive families surveyed were performing within the healthy ranges established by scales measuring family functioning and adopted children's behaviour. Additionally, the results suggested that these families had adequate levels of help from their support networks.
Erich et al 2008. An empirical analysis of factors affecting adolescent attachment in adoptive families with homosexual and straight parents.	210 adolescents from 154 families. Age 11–19. 27 parents were lesbian/gay, and of these 9 were male. Adoptive single parents and coupled parents.	*Sample source* – parent groups, web search, newspaper adverts. *Sample type* – cross-sectional. *Method* – parents and adolescents answered questionnaires online using three recognised scales.	Higher level of adopted adolescent attachment to parents was not related to adoptive parent sexual orientation (adolescent attachment to parents was an indicator of youth wellbeing). Adolescent attachment was inversely related to the adopted child's number of placements prior to adoption. Adolescent life satisfaction was inversely related to the child's older age at adoption.

Author, year and title	Sample size, ages of children, family structure	Sample source, sample type and method	Findings
Hemovich and Crano 2009. Family structure and adolescent drug use: an exploration of single-parent families.	37,507 adolescents. 22% of respondents were living in single-parent households.	*Sample source* – United States data collected from adolescents in schools in the Monitoring the Future surveys. *Sample type* – survey. *Method* – cross-sectional data, multivariate analysis.	Drug use among daughters living with single fathers significantly exceeded that of daughters living with single mothers, while gender of parent was not associated with sons' usage. The researchers note that the results could be explained by the single fathers being assigned custody of a drug-using daughter.
Johnston et al 2010. Gay and lesbian households' perceptions of their family functioning: strengths and resiliency.	167 gay male and lesbian parents, of which 78.6% were female. 108 characterised their relationship as a domestic partnership or married.	*Sample source* – announcement on *Family Pride*, an e-newsletter for gay parents. *Sample type* – cross-sectional. *Method* – Parents were surveyed using the Self-report Family Inventory, which measures five domains of family functioning. No heterosexual control group.	The study looked at the families' health/competence, conflict, cohesion, directive leadership and emotional expressiveness. Overall family functioning was determined to be fairly high for the 167 respondents. The concept of expressiveness received the highest average scores on a 5-point Likert scale, and conflict measured the lowest.
Leininger and Ziol-Guest 2008. Reexamining the effects of family structure on children's access to care: the single-father family.	62,193 children. Age 0–17. Children residing in two-parent families, single-mother families and single-father families.	*Sample source* – the 1999 and 2002 rounds of the National Survey of America's Families. *Sample type* – cross-sectional. *Method* – "most knowledgeable adult" in household regarding the child's health care was surveyed. Multivariate logistic regression.	Children who resided in single-father families exhibited poorer access to health care than children in other family structures. Unlike in single-mother families, the effects of residence in a single-father family did not vary by poverty status.
Sirota 2009. Adult attachment style dimensions in women who have gay or bisexual fathers.	68 women with gay or bisexual fathers and 68 women with heterosexual fathers. Mean age 29. All were living in 'heterosexually organized' families before their father identified as gay.	*Sample source* – first group self-selected in response to posters on college campuses in New York and advertisements. Group with hetero dads recruited through colleagues of researcher. *Sample type* – cross-sectional. *Method* – research packets sent via mail, completed and returned. Adult Attachment Scale used.	There were highly significant differences between groups on all three adult attachment dimensions. Women with gay or bisexual fathers were significantly less comfortable with closeness and intimacy and less able to trust and depend on others, and experienced more anxiety in relationships than women with heterosexual fathers. In the view of the author, the data suggested that the attachment insecurity was related more to relational issues occurring within the families than to the fathers' sexual orientation.

Author, year and title	Sample size, ages of children, family structure	Sample source, sample type and method	Findings
Stacey and Bilbarz 2001. (How) does the sexual orientation of parents matter?	21 studies of lesbian and gay parents (of which three involved gay males) and children with a comparison group.	*Sample source* – various. *Sample type* – various. *Method* – meta-analysis.	Researchers frequently downplay findings indicating differences regarding children's gender and sexual preferences and behaviour. The meta-analysis revealed statistically significant differences, but the authors concluded that most of the differences could not be considered deficits from any legitimate public policy perspective. Children of lesbian and gay parents displayed no differences from children of heterosexual parents in psychological wellbeing or cognitive functioning.
Tasker 2005. Lesbian mothers, gay fathers, and their children: a review.	Various.	*Sample source* – literature search of published articles and books from 1978 to 2004. *Sample type* – various studies, some including families parented by gay males. *Method* – extensive systematic review.	Children with lesbian or gay parents were comparable with children with heterosexual parents on key psychosocial developmental outcomes. In many ways, children of lesbian or gay parents had similar experiences of family life compared with children in heterosexual families. Some special considerations applied in the context of lesbian and gay parenting: variation in family forms, children's awareness of lesbian and gay relationships, heterosexism and homophobia. These issues have important implications for managing clinical work with children of lesbian mothers or gay fathers.

7 Frequently asked questions

When will the amended guidelines come into effect?

96. Any amended guidelines come into effect when they are issued. The Advisory Committee on Assisted Reproductive Technology (ACART) issues guidelines after completing consultation with the Minister of Health. We are unable to give a specific date at this stage.

How will ACART publicise any changes?

97. When we issue new or amended guidelines to ECART, we use the following processes:

- publish a formal announcement in the *New Zealand Gazette*
- write to the Minister of Health, the Director-General of Health, the Ethics Committee on Assisted Reproductive Technology (ECART), fertility services providers and Fertility New Zealand, including copies of the guidelines
- place the guidelines on ACART's website
- place a summary of submissions on ACART's website, and send the summary to submitters who requested the summary.

Will ECART's application forms be amended?

98. ECART will decide whether it wishes to make any changes to its application forms, and will notify fertility services providers accordingly. ECART publishes application forms on its website.

How often does ECART meet to consider applications?

99. In 2012, ECART will meet five times. The committee's website (www.ecart.health.govt.nz) gives information about meeting dates and close-off dates for applications.

Do the proposed changes mean ECART must say yes to all applications?

100. No. While the proposed amendments mean a wider group of people may apply to ECART to enter surrogacy arrangements and use eggs or sperm donated by family members, ECART will continue to consider and decide all applications in accord with all provisions in the guidelines and the principles of the HART Act.

Are women who are interested in being surrogates able to choose the people with whom they enter a surrogacy arrangement?

101. Yes. Women will continue to be able to choose the people they want to assist in a surrogacy arrangement.

Other guidelines also have medical criteria that determine the eligibility of intending parents. Does ACART intend to review those?

102. Yes. Later this year, we will review the medical criteria in two other guidelines – those covering embryo donation and the use of donated eggs with donated sperm – and undertake public consultation on any proposed amendments. We have given priority to the surrogacy guidelines and family eggs or sperm donation guidelines because we want to remove any unjustified discrimination as soon as possible and ensure that the eligibility criteria across the guidelines are not inconsistent.

8 Glossary

Brother, in relation to a person, means a brother of full blood or half blood, a stepbrother or a brother by adoption.

Cousin, in relation to a person, means a cousin of any degree.

Donated eggs means eggs that are donated for reproductive purposes but does not include eggs contributed by the spouse or partner of the patient.

Donated sperm means sperm that is donated for reproductive purposes but does not include sperm contributed by the spouse or partner of the patient.

Donor means a person from whose cells a donated embryo is formed or from whose body a donated cell is derived.

Embryo includes a zygote and a cell or group of cells that has the capacity to develop into an individual but does not include stem cells derived from an embryo.

Established procedure means a procedure, treatment or application designated as an established procedure in the Human Assisted Reproductive Technology Order 2005, and that does not require ECART approval.

Family member, in relation to a person, means:

- any other person who is or has been related to the person by blood, marriage, civil union, de facto relationship or adoption; or
- any other person who is a member of the person's whānau or other culturally recognised family group.

Fertility Services Standard is the New Zealand standard used to audit fertility services.

Gamete means an egg or a sperm, whether mature or not; or any other cell (whether naturally occurring or artificially formed or modified) that contains only one copy of all or most chromosomes and is capable of being used for reproductive purposes.

Identifying information, in relation to any person, means that person's name, address or contact details; and includes any information that is likely to enable another person to ascertain that person's name, address or contact details.

Intending mother, in regard to a surrogacy arrangement, means the woman who intends to parent the child born from a surrogacy arrangement.

Intending parent means a person who hopes to become a parent following fertility treatment.

Partner, in relation to a person, means:

- the person's civil union partner, or
- the person's de facto partner.

Patient, in relation to donated eggs or donated sperm, means the person who is the subject of the procedure in which the eggs or sperm are used.

Sister, in relation to a person, means a sister of full blood or half blood, a stepsister or a sister by adoption.

Surrogacy arrangement means an arrangement under which a woman agrees to become pregnant for the purpose of surrendering custody of a child born as a result of the pregnancy.

Surrogate means a woman who agrees to become pregnant for the purpose of surrendering custody of a child born as a result of the pregnancy.

Takatāpui means a person attracted to the same sex.

Whakapapa means genealogy.

Whāngai means a traditional arrangement in which a child is adopted or fostered.

Zygote is two gamete cells joined together, at the earliest stage in reproduction.

Appendix 1: Current *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services*

Guidance on terms used

In these guidelines, unless the context indicates otherwise, words should be interpreted in accordance with definitions given in the Human Assisted Reproductive Technology Act 2004 and the Human Assisted Reproductive Technology Order 2005.

Guidelines

1. When considering an application for a surrogacy arrangement involving a provider of fertility services, ECART must be guided by the principles of the Human Assisted Reproductive Technology Act 2004:

   Section 4: Principles

   All persons exercising powers or performing functions under this Act must be guided by each of the following principles that is relevant to the particular power or function:

   (a) the health and wellbeing of children born as a result of the performance of an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure;

   (b) the human health, safety, and dignity of present and future generations should be preserved and promoted;

   (c) while all persons are affected by assisted reproductive procedures and established procedures, women, more than men, are directly and significantly affected by their application, and the health and wellbeing of women must be protected in the use of these procedures;

   (d) no assisted reproductive procedure should be performed on an individual and no human reproductive research should be conducted on an individual unless the individual has made an informed choice and given informed consent;

   (e) donor offspring should be made aware of their genetic origins and be able to access information about those origins;

   (f) the needs, values, and beliefs of Māori should be considered and treated with respect;

   (g) the different ethical, spiritual, and cultural perspectives in society should be considered and treated with respect.

2. When considering an application for a surrogacy arrangement involving a provider of fertility services:

   (a) ECART must determine that:

      (i) at least one of the intending parents will be a genetic parent of any resulting child

      (ii) the intending mother has:

         - a medical condition that prevents pregnancy or makes pregnancy potentially damaging to her and/or any resulting child; or
         - a medical diagnosis of unexplained infertility that has not responded to other treatments

      (iii) there has been discussion, understanding, and declared intentions between the parties about the day-to-day care, guardianship, and adoption of any resulting child, and any ongoing contact

      (iv) each party has received independent medical advice

      (v) each party has received independent legal advice

      (vi) each party has received counselling in accordance with the Code of Practice for Assisted Reproductive Technology Units or, when it comes into effect, the current Fertility Services Standard.

   (b) ECART must take into account all relevant factors, including:

      (i) whether the intending surrogate has completed her family

      (ii) whether the relationship between the intending parents and the intending surrogate safeguards the wellbeing of all parties and especially any resulting child

      (iii) whether legal reports indicate that the parties clearly understand the legal issues associated with surrogacy arrangements

      (iv) whether counselling has:

         - included implications counselling for all parties
         - included joint counselling for all parties
         - been culturally appropriate
         - provided for whānau / extended family involvement
         - provided for the inclusion of any children of the parties

      (v) whether counselling will be accessible to all parties before and after pregnancy is achieved

      (vi) whether the residency of the parties safeguards the wellbeing of all parties and especially any resulting child.

Appendix 2: Proposed *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services*

Guidance on terms used

In these guidelines, unless the context indicates otherwise, words should be interpreted in accordance with definitions given in the Human Assisted Reproductive Technology Act 2004 and the Human Assisted Reproductive Technology Order 2005.

Eligibility criteria to enter a surrogacy arrangement as an intending parent

The guidelines include provisions about who is able to enter a surrogacy arrangement as an intending parent, where the arrangement involves providers of fertility services. The guidelines do not discriminate on the basis of sex, sexual orientation or relationship status, but require a need to use a surrogacy arrangement.

ECART will consider and decide all applications in accord with all provisions in the guidelines.

Applications that include combined assisted reproductive procedures

Where applications to ECART include combined assisted reproductive procedures (for example, where a surrogacy arrangement includes eggs or sperm donated by a family member), these guidelines should be read in conjunction with ACART's advice to ECART, issued 24 November 2008, about applications that include combined assisted reproductive procedures. The advice is available on ACART's website at: www.acart.health.govt.nz/moh.nsf/pagescm/22/$File/advice-to-ecart-nov08.pdf

This advice includes the provision that ECART not approve an application where the guidelines for the separate assisted reproductive procedures are not compatible. An effect of the advice is that these guidelines are not compatible with either the *Guidelines on Embryo Donation for Reproductive Purposes* or the *Guidelines on the Creation and Use, for Reproductive Purposes, of an Embryo Created from Donated Eggs in Conjunction with Donated Sperm*. This means:

- ECART may not approve an application to use a surrogacy arrangement in which the surrogate gestates a donated embryo. A donated embryo must be gestated by an intending mother.
- ECART may not approve an application to use a surrogacy arrangement where the surrogate gestates an embryo created from donated eggs in conjunction with donated sperm. An embryo created from donated eggs in conjunction with donated sperm must be gestated by an intending mother.

Guidelines

1. When considering an application for a surrogacy arrangement involving a provider of fertility services, ECART must be guided by the principles of the Human Assisted Reproductive Technology Act 2004:

   ### *Section 4: Principles*

   All persons exercising powers or performing functions under this Act must be guided by each of the following principles that is relevant to the particular power or function:

   (a) the health and wellbeing of children born as a result of the performance of an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure;

   (b) the human health, safety, and dignity of present and future generations should be preserved and promoted;

   (c) while all persons are affected by assisted reproductive procedures and established procedures, women, more than men, are directly and significantly affected by their application, and the health and wellbeing of women must be protected in the use of these procedures;

   (d) no assisted reproductive procedure should be performed on an individual and no human reproductive research should be conducted on an individual unless the individual has made an informed choice and given informed consent;

   (e) donor offspring should be made aware of their genetic origins and be able to access information about those origins;

   (f) the needs, values, and beliefs of Māori should be considered and treated with respect;

   (g) the different ethical, spiritual, and cultural perspectives in society should be considered and treated with respect.

2. When considering an application for a surrogacy arrangement involving a provider of fertility services:

   (a) ECART must determine that:

      (i) where there is one intending parent he or she will be a genetic parent of any resulting child

      (ii) where there are two intending parents, at least one will be a genetic parent of any resulting child

(iii) there is a need for the surrogacy arrangement, as follows:

- where there is one intending parent, the intending parent is either a man or an eligible woman
- an eligible woman is a woman who:
  - is unable to conceive a child for medical reasons, or
  - is unable, for medical reasons, to carry a pregnancy or to give birth, or
  - is unlikely to survive a pregnancy or birth, or
  - is likely to have her health significantly affected by a pregnancy or birth, or
  - is likely to conceive a child who is unlikely to survive the pregnancy or birth, or whose health would be significantly affected by the pregnancy or birth
- the definition of an eligible woman does not include a woman who wishes to avoid pregnancy or childbirth as a matter of convenience
- where there are two intending parents, the intending parents are:
  - a man and an eligible woman, or
  - two men, or
  - two eligible women

(iv) there has been discussion, understanding, and declared intentions between the parties about the day-to-day care, guardianship, and adoption of any resulting child, and any ongoing contact

(v) each party has received independent medical advice

(vi) each party has received independent legal advice

(vii) each party has received counselling in accord with the current Fertility Services Standard.

(b) ECART must take into account all relevant factors, including:

(i) whether the intending surrogate has completed her family

(ii) whether the relationship between the intending parent(s) and the intending surrogate safeguards the wellbeing of all parties and especially any resulting child

(iii) whether legal reports indicate that the parties clearly understand the legal issues associated with surrogacy arrangements

(iv) whether counselling has:

- included implications counselling for all parties
- included joint counselling for all parties
- been culturally appropriate
- provided for whānau / extended family involvement
- provided for the inclusion of any children of the parties

(v) whether counselling will be accessible to all parties before and after pregnancy is achieved

(vi) whether the residency of the parties safeguards the wellbeing of all parties and especially any resulting child.

Appendix 3: Current *Guidelines on Donation of Eggs or Sperm between Certain Family Members*

Preamble

The Human Assisted Reproductive Technology Order 2005 (the Order in Council) describes the collection of eggs or sperm for the purposes of donation as established procedures and, therefore, able to proceed under the management of providers of fertility services.

Providers of fertility services must practise in accordance with the Code of Practice for Assisted Reproductive Technology Units or, when it comes into effect, the Fertility Services Standard.

The Order in Council provides that approval of the ethics committee will not be required if:

- in the case of donated eggs, the donor is a sister or cousin of the recipient woman (where both are 20 or older)
- in the case of donated sperm, the donor is a brother or cousin of the recipient woman's spouse or partner (where both are 20 or older)
- in the case of a procedure that involves the use of the eggs of the female partner of the recipient woman and donated sperm, the sperm donor is a brother or cousin of the recipient woman (where both are 20 or older).

Any other proposal for the collection and donation of eggs or sperm between family members must be submitted to ECART for approval.

When considering applications for approval, ECART will be subject to the following guidelines.

Guidance on terms used

In these guidelines, unless the context indicates otherwise, words should be interpreted in accordance with definitions given in the Human Assisted Reproductive Technology Act 2004 and the Human Assisted Reproductive Technology Order 2005.

Guidelines

1. When considering an application for donation of eggs or sperm between certain family members, ECART must be guided by the principles of the Human Assisted Reproductive Technology Act 2004:

Section 4: Principles

All persons exercising powers or performing functions under this Act must be guided by each of the following principles that is relevant to the particular power or function:

(a) the health and wellbeing of children born as a result of the performance of an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure;

(b) the human health, safety, and dignity of present and future generations should be preserved and promoted;

(c) while all persons are affected by assisted reproductive procedures and established procedures, women, more than men, are directly and significantly affected by their application, and the health and wellbeing of women must be protected in the use of these procedures;

(d) no assisted reproductive procedure should be performed on an individual and no human reproductive research should be conducted on an individual unless the individual has made an informed choice and given informed consent;

(e) donor offspring should be made aware of their genetic origins and be able to access information about those origins;

(f) the needs, values, and beliefs of Māori should be considered and treated with respect;

(g) the different ethical, spiritual, and cultural perspectives in society should be considered and treated with respect.

2. When considering an application for donation of eggs or sperm between certain family members:

(a) ECART must determine that:

(i) the recipient or the recipient's partner has a medical condition affecting his or her reproductive ability, or a medical diagnosis of unexplained infertility, that makes egg or sperm donation appropriate

(ii) each party has received counselling in accordance with the Code of Practice for Assisted Reproductive Technology Units or, when it comes into effect, the current Fertility Services Standard.

(b) ECART must take into account all relevant factors, including:

(i) whether the potential impact of the genetic, social, cultural, and intergenerational aspects of the proposed arrangement safeguards the wellbeing of all parties and especially any resulting child

(ii) whether counselling has:

- included implications counselling for all parties
- included joint counselling for all parties
- been culturally appropriate
- provided for whānau/extended family involvement
- provided for the inclusion of any children of the parties

(iii) whether counselling will be accessible to all parties throughout the treatment process

(iv) whether the residency of the parties safeguards the wellbeing of all parties and especially any resulting child.

3. ECART must not approve an application for donation where any resulting child would be formed by eggs and sperm from:

(a) father and daughter

(b) mother and son

(c) brother and sister

(d) grandfather and granddaughter

(e) grandmother and grandson.

Appendix 4: Proposed *Guidelines on Donation of Eggs or Sperm between Certain Family Members*

Preamble

The Human Assisted Reproductive Technology Order 2005 (the Order in Council) describes the collection of eggs or sperm for the purposes of donation as established procedures and, therefore, able to proceed under the management of providers of fertility services.

Providers of fertility services must practise in accordance with the Fertility Services Standard.

The Order in Council provides that approval of the ethics committee will not be required if:

- in the case of donated eggs, the donor is a sister or cousin of the recipient woman (where both are 20 or older)
- in the case of donated sperm, the donor is a brother or cousin of the recipient woman's spouse or partner (where both are 20 or older)
- in the case of a procedure that involves the use of the eggs of the female partner of the recipient woman and donated sperm, the sperm donor is a brother or cousin of the recipient woman (where both are 20 or older).

Any other proposal for the collection and donation of eggs or sperm between family members must be submitted to ECART for approval.

Applications that include combined assisted reproductive procedures

Where applications to ECART include combined assisted reproductive procedures (for example, where a surrogacy arrangement includes eggs or sperm donated by a family member), these guidelines should be read in conjunction with ACART's advice to ECART, issued 24 November 2008, about applications that include combined assisted reproductive procedures. The advice is available on ACART's website at: www.acart.health.govt.nz/moh.nsf/pagescm/22/$File/advice-to-ecart-nov08.pdf

When considering applications for approval, ECART will be subject to the following guidelines.

Guidance on terms used

In these guidelines, unless the context indicates otherwise, words should be interpreted in accordance with definitions given in the Human Assisted Reproductive Technology Act 2004 and the Human Assisted Reproductive Technology Order 2005.

Guidelines

1. When considering an application for donation of eggs or sperm between certain family members, ECART must be guided by the principles of the Human Assisted Reproductive Technology Act 2004:

   ### *Section 4: Principles*

   All persons exercising powers or performing functions under this Act must be guided by each of the following principles that is relevant to the particular power or function:

   (a) the health and wellbeing of children born as a result of the performance of an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure;

   (b) the human health, safety, and dignity of present and future generations should be preserved and promoted;

   (c) while all persons are affected by assisted reproductive procedures and established procedures, women, more than men, are directly and significantly affected by their application, and the health and wellbeing of women must be protected in the use of these procedures;

   (d) no assisted reproductive procedure should be performed on an individual and no human reproductive research should be conducted on an individual unless the individual has made an informed choice and given informed consent;

   (e) donor offspring should be made aware of their genetic origins and be able to access information about those origins;

   (f) the needs, values, and beliefs of Māori should be considered and treated with respect;

   (g) the different ethical, spiritual, and cultural perspectives in society should be considered and treated with respect.

2. When considering an application for donation of eggs or sperm between certain family members, ECART must determine that:

   (i) where an intending parent is a single man or intending parents are a male couple:
   - the donation is of eggs only, and
   - there is an accompanying application under the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services*

   (ii) where an intending parent is a single woman or intending parents are a female couple:

- the donation is of sperm only, or
- if the donation is of eggs:
    a. there is a need to use donated eggs because the recipient and any partner:
        i. has a medical diagnosis of unexplained infertility, or
        ii. does not have her own eggs or her own eggs are unsuitable, or
        iii. the use of her own eggs is a risk to a resulting child
    b. there is an accompanying application under the *Guidelines on the Creation and Use, for Reproductive Purposes, of an Embryo Created from Donated Eggs with Donated Sperm*

(iii) where intending parents are a heterosexual couple, there is a need to use donated eggs or sperm because the recipient or the recipient's partner:

- has a medical diagnosis of unexplained infertility, or
- does not have his or her own sperm or eggs, or his or her own sperm or eggs are unsuitable, or
- the use of his or her own sperm or eggs is a risk to a resulting child

(iv) each party has received counselling in accordance with the current Fertility Services Standard.

3. When considering an application for donation of eggs or sperm between certain family members, ECART must take into account all relevant factors, including:

(i) whether the potential impact of the genetic, social, cultural, and intergenerational aspects of the proposed arrangement safeguards the wellbeing of all parties and especially any resulting child

(ii) whether counselling has:

- included implications counselling for all parties
- included joint counselling for all parties
- been culturally appropriate
- provided for whānau/extended family involvement
- provided for the inclusion of any children of the parties

(iii) whether counselling will be accessible to all parties throughout the treatment process

(iv) whether the residency of the parties safeguards the wellbeing of all parties and especially any resulting child.

4. ECART must not approve an application for donation where any resulting child would be formed by eggs and sperm from:

(a) father and daughter
(b) mother and son
(c) brother and sister
(d) grandfather and granddaughter
(e) grandmother and grandson.

Appendix 5: Members of ACART

John Angus (Chair) MNZM

Dr John Angus was appointed as an ACART member in November 2010 for three years and was subsequently appointed as Chair in October 2011 for one year.

John was Children's Commissioner from 2009 to 2011. Prior to that, he had a long career as a senior social policy advisor within the Ministry of Social Development and its predecessors (1987–2006), and then as a social policy consultant (2006–2009).

John began his career as a historian after obtaining a BA (Hons) (1971) and then a doctorate in history from University of Otago (1977). He went on to spend almost 10 years as a social worker in Dunedin for the Department of Social Welfare and completed a Diploma in Social Work (Victoria University 1982). John then moved into social policy.

John has led policy work on child support, the care and protection of children and support for vulnerable families. He played a leading role in the development of several family support initiatives, such as Family Start and SKIP. From early 2008 to April 2009, he led work on the prevention of child abuse and neglect for the Taskforce for Action on Violence Within Families.

John lives in Central Otago and is married with two adult sons.

Andrew Shelling (Deputy Chair)

Associate Professor Andrew Shelling was appointed to ACART in August 2006 and will have completed two terms in November 2012, when he retires as a member.

Andrew is head of the Medical Genetics Research Group, which is primarily interested in understanding the molecular changes that occur during the development of genetic disorders, focusing on infertility and reproductive cancers. He has a special interest in understanding the cause of premature menopause, and his research is internationally recognised for identifying genetic causes of this common cause of infertility. He initiated the development of a support group for women with premature menopause in New Zealand.

Professor Shelling is currently deputy head of the Department of Obstetrics and Gynaecology, University of Auckland, and is extensively involved in teaching reproduction, genetics and cancer at the university. He has recently served as president of the New Zealand branch of the Human Genetics Society of Australasia. He is currently an associate editor of the journal *Human Reproduction*, one of the leading journals in the area of reproductive research. He is a trustee for the Nurture Foundation for Reproductive Research.

Karen Buckingham

Dr Karen Buckingham was appointed to ACART in November 2010 for three years.

Karen is a graduate of the Auckland School of Medicine and trained as an obstetrician and gynaecologist in both New Zealand and the United Kingdom. She worked as a senior lecturer at the University of Auckland from 2003 to 2008 and as a consultant obstetrician and gynaecologist for the Auckland District Health Board from 2003 to 2012. For the past 12 years she has worked mainly in the field of reproductive endocrinology and infertility. She now works in private practice for Repromed and Auckland Gynaecology Group.

Karen has held a wide range of clinical, teaching and research roles in New Zealand and overseas. Her research interests include recurrent pregnancy loss, polycystic ovarian syndrome and antiphospholipid antibodies in infertility.

She lives in Auckland with her husband and three young children.

Alison Douglass

Ms Alison Douglass was appointed to ACART in May 2011 for three years.

Alison is a barrister, practising out of Wellington and Dunedin. She has been a practising lawyer since 1985, and specialises in health and disability law. Prior to moving to the independent bar in 2008 Ms Douglass was a partner, then consultant, to a Wellington law firm, Tripe Matthews and Feist. She completed an LLB at Canterbury University (1984) and a Master of Bioethics and Health Law at University of Otago (1999).

Ms Douglass is currently Co-Chair of the ACC Research Ethics Committee and Convenor of the New Zealand Law Society Health Law Committee, which provides submissions on health law reform. She was the legal member to the Interim, then National Ethics Committee on Assisted Human Reproduction (1993–2002) prior to the enactment of the HART Act in 2004, and is a former Chair of the Wellington Ethics Committee. She has worked part time as a senior lecturer in health law and bioethics at the University of Otago, Wellington.

Ms Douglass has published journal articles on assisted reproductive technology and in 2006 prepared the *Report on the Regulatory Framework Governing Assisted Reproductive Technologies in New Zealand* for the Ministry of Health.

She lives in Dunedin and is married with three children.

Cilla Ruruhira Henry QSM

Cilla Henry was appointed to ACART in July 2007, and will have completed two terms when she retires as a member in November 2012.

Cilla grew up under the mantle of the Kīngitanga movement, deeply entrenched in Waikato kawa (protocol) and tikanga (teachings). Her hapū connections are Ngāti Wairere and Ngāti Hako Hauraki.

Cilla is a Te Kauhanganui tribal representative, Hukanui Marae; a Māori Specialist Consultant in the bicultural therapy model (BTM) for the Department of Corrections Psychological Services, Hamilton, working with Māori inmates at Waikeria Prison; a trustee of Raukura Waikato Social Services; and a Consumer Representative for the Ministry of Consumer Affairs.

She is also a member of the National Council of Women and the Māori Women's Welfare League and a representative on the Care and Protection Panel for Children and their Families (Child, Youth and Family). Cilla is passionate about the care, protection and wellbeing of children. She was appointed a justice of the peace in 1996 and received the Queen's Service Medal for public service in 2003.

Nikki Horne

Nikki Horne was appointed to ACART in November 2010 for two years.

Nikki is a member of Fertility New Zealand, the national group for consumers of fertility services. She has served as a committee member of the Auckland Group for four years, and her specific roles have included facilitating consumer contact support groups and clinic liaison.

Nikki currently works part time as the business support manager at Career Analysts in Auckland. Before this role she worked for eight years as event manager for Obex Medical Ltd. Her time there included managing all events, conferences and functions for the company across a broad range of medical specialties, including embryology.

Nikki is married with two daughters, both born after years of IVF treatment and recurrent miscarriage. After completing her family Nikki was an egg donor for another couple.

Michael Legge

Associate Professor Michael Legge was appointed to ACART in October 2011 for one year.

Michael recently retired as Associate Professor of Biochemistry, Associate Dean of Medical Education and Director of Medical Laboratory Science at the University of Otago, and holds an Honorary Associate Professorship with the university. He was previously National President of the Infertility Society of New Zealand (1995–1998). He is a member of the European Commission Ethical Review Panel (2006–present), the European Commission Life Science Expert Panel (2003–present) and the University of Otago Human Ethics Committee (2000–2011).

Michael completed a PhD in Experimental Embryology at the University of Essex (1988) and a Bachelor of Science in Mammalian Physiology at Southbank University, United Kingdom (1972). He also completed a Fellowship with the Royal College of Pathologists Australasia (2010), and is a fellow of both the New Zealand Institute of Medical Laboratory Sciences (1978) and the Institute of Biomedical Sciences United Kingdom (1973).

Judy Turner

Mrs Judy Turner was appointed to ACART in October 2011, for one year.

Judy is currently Deputy Mayor of Whakatane District Council (2011–present). Prior to this, she was a contractor in the community and charitable sector, and was previously a Member of Parliament (2002–2008). She is currently a trustee for the Life Education Trust (Eastern Bay of Plenty), a trustee for Habitat for Humanity (Eastern Bay of Plenty), and an Advisory Board member for Whakatane Youth Engagement Services, to name a few positions. She is also deputy leader of United Future.

Submission form

Please provide your contact details below.

Name:	
If this submission is made on behalf of an organisation, please name the organisation:	
Please provide a brief description of the organisation if applicable:	
Address/email:	
Interest in this topic (eg, user of fertility services, health professional, member of the public):	

We will place all submissions on ACART's website, except where we are asked that submissions be withheld in full or part for reasons of confidentiality. We will remove contact information from all submissions.

☐ I **request** that my submission be withheld in full or part from publication on ACART's website (if you wish a part to be withheld, please clearly indicate which part).

Please note that all submissions may be requested by any member of the public under the Official Information Act 1982 (the Act). If there is any part of your submission that you consider should be properly withheld under the Act, please make this clear in your submission, noting the reasons.

If information from your submission is requested under the Act, the Ministry of Health (the Ministry) will release your submission to the person who requested it. The Ministry will remove your name and/or contact details from the submission if you check one or both of the following boxes. Where a submission is made on behalf of an organisation, the Ministry will not remove the name of the organisation.

☐ **I do not** give permission for my name to be released to persons under the Official Information Act 1982.

☐ I **do not** give permission for my contact details to be released to persons under the Official Information Act 1982.

We will acknowledge all submissions. A summary of submissions will be sent to those who request a copy. The summary will include the names of everyone who made a submission, except where individuals have asked for personal details to be withheld.

Do you wish to receive a copy of the summary of submissions?

☐ Yes ☐ No

Questions about the proposed amendments to the guidelines

Question 1

Do you agree with ACART's conclusions that:

- the surrogacy guidelines currently discriminate on the basis of sex and sexual orientation, and
- the discrimination is not justified in light of the principles of the Human Assisted Reproductive Technology Act 2004?

Yes ☐ No ☐

Please give reasons for your views.

Question 2

Do you agree with ACART's view that surrogacy should be used only where there is a need, and not for convenience?

Yes ☐ No ☐

Please give reasons for your views.

Question 3

Do you have any other comments on ACART's proposed amendments to the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services*?

Question 4

Do you agree with ACART's proposal that single men and male couples applying to ECART to enter a surrogacy arrangement should also be able to apply to use eggs donated by a family member?

Yes ☐ No ☐

Please give reasons for your views.

Question 5

Do you agree with ACART's proposal that single women and lesbian couples should be able to apply to ECART to use sperm donated by a family member without needing a medical justification?

Yes ☐ No ☐

Please give reasons for your views.

Question 6

Do you agree with ACART's view that the use of eggs or sperm donated by a family member should be possible only where intending parents do not have their own eggs or sperm, or if they do, that there is a medical reason for them not to use their own eggs or sperm?

Yes ☐ No ☐

Please give reasons for your views.

Question 7

Do you have any other comments or suggestions about either the proposed amendments to the guidelines or the associated discussion?