



**Advisory Committee on  
Assisted Reproductive Technology**

**Summaries of  
the regulation of assisted reproduction  
in New Zealand  
and  
the legal, ethical and cultural issues often  
involved in assisted reproduction**

# Contents

<b>1</b>	<b>Regulation specifically for assisted reproduction in New Zealand .....</b>	<b>3</b>
A.	The Human Assisted Reproductive Technology Act 2004 .....	3
B.	The Human Assisted Reproductive Technology Order 2005 .....	4
C.	ACART's functions.....	4
	• ACART issues guidelines to ECART .....	5
	• ACART provides specific advice .....	6
<b>2</b>	<b>Other regulation relevant to assisted reproduction in New Zealand.....</b>	<b>7</b>
A.	Code of Health and Disability Services Consumers' Rights .....	7
B.	The Status of Children Act .....	7
C.	Standards for fertility services .....	7
<b>3</b>	<b>Legal, ethical and cultural issues involved in assisted reproduction .....</b>	<b>9</b>
A.	Cultural considerations .....	9
B.	Te Tiriti o Waitangi / The Treaty of Waitangi. ....	9
C.	Disability perspective .....	10
D.	ACART's ethical framework .....	10
	<b>Appendix: ACART's membership .....</b>	<b>11</b>

# 1 Regulation specifically for assisted reproduction in New Zealand

---

## A. The Human Assisted Reproductive Technology Act 2004

1. The Human Assisted Reproductive Technology Act 2004 (the HART Act) is the key piece of law that regulates assisted reproductive technology and human reproductive research in New Zealand. Among its functions, the HART Act creates the framework for determining which assisted reproductive procedures may be performed in New Zealand, and prohibits certain specific actions from ever being undertaken (such as forming a cloned embryo). To give effect to this framework, the HART Act also establishes the Advisory Committee on Assisted Reproductive Technology (ACART) and the Ethics Committee on Assisted Reproductive Technology (ECART).
2. ACART's functions under the HART Act include providing information, issuing guidelines, and giving advice to ECART. ACART may also, if it thinks fit, provide recommendations to the Minister of Health on matters associated with assisted reproduction and research into human reproduction. (The composition of ACART is presented in the appendix.)
3. In performing its functions, ACART is guided by the principles in section 4 of the HART Act. This states that:

“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.”

## **B. The Human Assisted Reproductive Technology Order 2005**

4. The HART Order was passed under the HART Act. It lists fertility procedures that do not require approval from ECART because they are 'established procedures': that is, procedures that are done routinely during the course of fertility treatment, and are not considered to require ethical approval on a case by case basis. Guidelines issued by ACART do not apply to established procedures.
5. The HART Order excludes some circumstances from being established procedures. This is because such procedures are generally considered to be more ethically complex and so require individual ethical approval from ECART.

## **C. ACART's functions**

6. One of ACART's primary functions, as set out in the HART Act, is to issue guidelines and give advice to ECART on any matter relating to any kind of assisted reproductive procedure or human reproductive research. This includes issuing guidelines and giving advice to ECART on extensions to storage limits of frozen gametes and embryos. In performing this function, ACART is required to keep such guidelines and advice under review.
7. ACART is also required to provide the Minister of Health with advice on aspects of, or issues arising from, assisted reproductive procedures or human reproductive research. This may include (but is not limited to) providing advice on whether:
  - a. the HART Act or another enactment should be amended to prohibit or allow any particular kind of assisted reproductive procedure or human reproductive research
  - b. any kind of procedure or treatment should be declared an established procedure, on the basis of the information, assessment, advice, and ethical analysis required to declare a procedure to be an established procedure under section 6 of the HART Act
  - c. any established procedure should be modified or should cease to be an established procedure
  - d. a moratorium should be imposed on any kind of assisted reproductive procedure or human reproductive research
  - e. regulations should be made under section 76 of the HART Act to regulate the performance of any kind of assisted reproductive procedure or the conduct of any kind of human reproductive research.
8. ACART must liaise with ECART on matters relating to assisted reproductive procedures or human reproductive research; consult with any persons who, in the opinion of ACART, are able to assist it to perform its functions; and carry out any other function that the Minister of Health assigns to ACART by written notice.

9. For the purposes of performing the above functions, ACART must monitor:
  - a. the application, and health outcomes, of assisted reproductive procedures and established procedures
  - b. developments in human reproductive research.
10. ACART should also monitor the decisions of ECART to ensure that they fall within the guidelines as intended by ACART. If, after consideration of one of ECART's decisions, ACART considers that the decision falls outside of its guidelines, ACART should inform ECART of this.
11. When considering these matters, ACART refers to its [ethical framework](#), which incorporates the principles of the HART Act and generally accepted ethical principles. The ethical framework considers the welfare of those affected by the procedure and the autonomy of those involved, as well as altruism, social trust and responsibility, the special status of the embryo, justice and equality.<sup>1</sup>

## ACART issues guidelines to ECART

12. ACART issues guidelines to support ECART to make decisions on assisted reproductive procedures — that is, procedures that are not 'established' procedures.
13. ACART may issue guidelines to ECART only after:
  - a. giving interested parties and members of the public the opportunity to make submissions on the basis of a discussion paper or an outline of the proposed guidelines
  - b. taking any such submissions into account, and
  - c. consulting on the proposed guidelines with the Minister of Health.
14. When ACART issues guidelines to ECART, it must:
  - a. give copies of the guidelines to the Minister, the Director-General of Health, to ECART, and to providers; and
  - b. publish the guidelines on the internet and in any other publications (if any) that the Committee thinks appropriate; and
  - c. give public notice of the issue of the guidelines by publishing in any publication that it considers appropriate for the purpose a notice that states:
    - o the date and subject matter of the guidelines
    - o the internet website on which they are published.

---

<sup>1</sup> A copy of ACART's ethical framework can be found at the ACART website: [www.acart.health.govt.nz](http://www.acart.health.govt.nz)

## ACART provides specific advice

15. ACART must, within time frames agreed with the Minister, provide the Minister with information, advice, and if it thinks fit, recommendations on the following matters in relation to the use of gametes and human embryos in human reproductive research:
  - a. cloned embryos
  - b. donations of human embryos
  - c. genetic modification of human gametes and human embryos
  - d. human gametes derived from foetuses or deceased persons
  - e. hybrid embryos
  - f. requirements for informed consent
  - g. the import into, or export from, New Zealand of in vitro human gametes or in vitro human embryos.
16. ACART must provide the Minister with information, advice and, potentially, recommendations on the following matters:
  - a. donations of human embryos
  - b. in vitro embryo splitting
  - c. gametes derived from deceased persons
  - d. requirements for informed consent
  - e. selection of embryos using preimplantation genetic diagnosis
  - f. the import into, or export from, New Zealand of *in vitro* donated cells or in vitro donated gametes.
17. ACART may give advice on the above areas only after it has consulted the public using a discussion document and having taken any submissions into account.
18. ACART must keep its guidelines and advice under review and up to date with changing technology, law and social norms.

## 2 Other regulation relevant to assisted reproduction in New Zealand

---

### A. Code of Health and Disability Services Consumers' Rights

19. While the Code does not specifically refer to assisted reproductive technology, any regulations or guidelines covering assisted reproductive technology must be consistent with the Code.

### B. The Status of Children Act

20. The Status of Children Act 1969 determines who a child's parents are at the child's birth. Under that Act, a child conceived naturally by a man and a woman is deemed to be the child of the father and the mother. Both the father and the mother will be named as the parents on the child's birth certificate under the Births, Deaths, Marriages, and Relationships Registration Act 1995.
21. When a child is born to a woman who has a female partner, those women will be named as parents on the birth certificate. When a woman has a child using fertility treatment with no partner (sole parent) then she is the only named parent on the birth certificate.
22. When a child is conceived by means of an assisted reproductive procedure using donor eggs or embryos, the birth mother is still deemed to be the mother of the child. If the birth mother has a partner at the date of conception and that partner consented to the reproductive procedure, the partner is deemed to be the child's other parent. If the birth mother has no partner, or the partner did not consent to the procedure, the woman will be deemed to be acting alone and the child's birth mother will be the child's only parent.
23. When a surrogate gives birth to a baby intended for others, the intending parents need to adopt the child, with agreement of the birth mother, to confirm their parentage. Other laws about immigration and citizenship apply in surrogacy cases that are international, which is why legal advice is required for all participants (birth mothers and their partners, and intending parents) when surrogacy is used to form families.
24. At the time of writing this document, immigration processes were different to usual because of border closures due to the covid-19 pandemic. The following website contains relevant information for those wishing to adopt a child born overseas.  
<https://www.districtcourts.govt.nz/covid-19-information/family-court-covid-19-protocol-for-the-adoption-of-new-zealand-surrogate-babies-born-overseas/>

### C. Standards for fertility services

25. Providers of fertility services are required to meet the *Fertility Services Standard NZS 8181:2007* (the Standard). As of 2020, the Standard was under review, in tandem with the four *Health and Disability Services Standards*, with a view that the documents will be merged into one.

26. The Standard defines the quality and safety requirements for the provision of fertility services in New Zealand. This standard covers consumer rights, organisational management, continuum of service delivery and safe and appropriate environment.



### 3 Legal, ethical and cultural issues involved in assisted reproduction

---

#### A. Cultural considerations

27. New Zealand is culturally and ethnically diverse, and ACART takes this into account when developing advice or guidelines. Principle 4(g) of the HART Act requires the different ethical, spiritual and cultural perspectives to be considered and treated with respect in the context of assisted reproduction.
28. For Māori in particular, the recognition of the importance of relatedness and connection to others, expressed through values such as whānau (family), whakapapa (genealogy) and whanaungatanga (kinship), is relevant to gamete and embryo donation and fertility treatment in general. Māori have been influential in shaping non-Māori views on the significance of whakapapa, and this has arguably led to New Zealand having a more open attitude to the knowledge of genetic parentage than exists in some other countries.<sup>2</sup>
29. Principle 4(f) of the HART Act requires the needs, values and beliefs of Māori to be considered and treated with respect. This is further developed in the fertility standard (1.1.2), which requires consumers who identify as Māori to have their health and disability needs met in a manner that respects their individual values and beliefs.
30. In Māori culture, an individual can be understood only in relation to their social and cultural contexts and relationships.<sup>3</sup> Principles central to these relationships include interdependence, connectedness and whānau commitment. One's decision-making influences the whānau, hapū and iwi. Care must be taken when considering how practices will impact on whakapapa — honouring both ancestors and descendants. ACART is careful to ensure Māori are able to express their culture while supporting the legal, autonomous rights of individuals.

#### B. Te Tiriti o Waitangi / The Treaty of Waitangi.

31. As a committee appointed by the Cabinet Appointments and Honours Committee, ACART has a responsibility to contribute to the Crown meeting its obligations under Te Tiriti o Waitangi /The Treaty of Waitangi. ACART, within its roles set out under the HART Act, contributes to the Ministry of Health's efforts to ensure good health outcomes for New Zealanders, including living longer, healthier and more independent lives. ACART endeavours to adhere to, or work in the spirit of, the goals set out by the Ministry of Health obligations under the treaty.

---

<sup>2</sup> Dyal L, Keith J. 1994. Analysis of written submissions made to Ministerial Committee on Assisted Reproductive Technologies. In B Atkin and P Reid, *Assisted Human Reproduction: Navigating our future*. Wellington: Ministry of Justice. URL: [www.moh.govt.nz/notebook/nbbooks.nsf/0/8E8C59B6E4F845EE4C2565D70018BEB1](http://www.moh.govt.nz/notebook/nbbooks.nsf/0/8E8C59B6E4F845EE4C2565D70018BEB1) (accessed 27 July 2017)

<sup>3</sup> Houkamau CA, Sibley CG. 2010. The multi-dimensional model of Māori identity and cultural engagement. *New Zealand Journal of Psychology*, 39(1), page 12

## **C. Disability perspective**

32. People with disabilities/impairments are entitled to the same consideration as all people in fertility treatment. The Human Rights Act 1993 prohibits discrimination against individuals on the basis of disability. Furthermore, New Zealand is a signatory to the United Nations Convention on the Rights of Persons with Disabilities, that requires people with disabilities to have access to information on the same basis as all members of society. Failure to provide information in accessible formats to people with disabilities may therefore be seen as a form of discrimination.

## **D. ACART's ethical framework**

33. When considering assisted reproductive procedures and research, ACART refers to its ethical framework to ensure it considers all relevant ethical and moral matters in each case.<sup>4</sup> Because there is a range of political, social and ethical views on each type of assisted reproductive procedure or research, ACART needs a comprehensive and consistent way of taking account of these when developing advice to the Minister and guidelines.

### **The principal aims of the framework**

34. The principal aims of ACART's ethical framework are to:
- a. set out the moral principles that guide ACART's deliberations and consequently frame the guidelines and advice it develops
  - b. help ACART make explicit the moral principles underpinning its guidelines and advice and the approach it takes to ethical deliberation.
35. The framework discusses each of the principles of the HART Act, stated above (in paragraph 3) and several ethical matters that need to be considered when assessing assisted reproduction and research. These ethical matters are: (a) altruism, (b) social trust and responsibility, and the (c) welfare of those persons affected by the procedure, (d) autonomy of those involved, (e) special status of the embryo, and (f) justice and equality. A link to the framework is in the footnote below.

---

<sup>4</sup> The Ethical Framework: <https://acart.health.govt.nz/publications-and-resources/acart-publications/ethical-framework-acart>

## Appendix: ACART's membership

---

ACART's membership must include:

- one or more members with expertise in assisted reproductive procedures
- one or more members with expertise in human reproductive research
- one or more members with expertise in ethics
- one or more Māori members with expertise in Māori customary values and practice and the ability to articulate issues from a Māori perspective
- one or more members with the ability to articulate issues from a consumer perspective
- one or more members with the ability to articulate issues from a disability perspective
- one or more members with the ability to articulate the interests of children who, at the time of his or her appointment, holds the office of Children's Commissioner or is a representative or employee of the person who holds that office
- one or more members with expertise in relevant areas of the law.