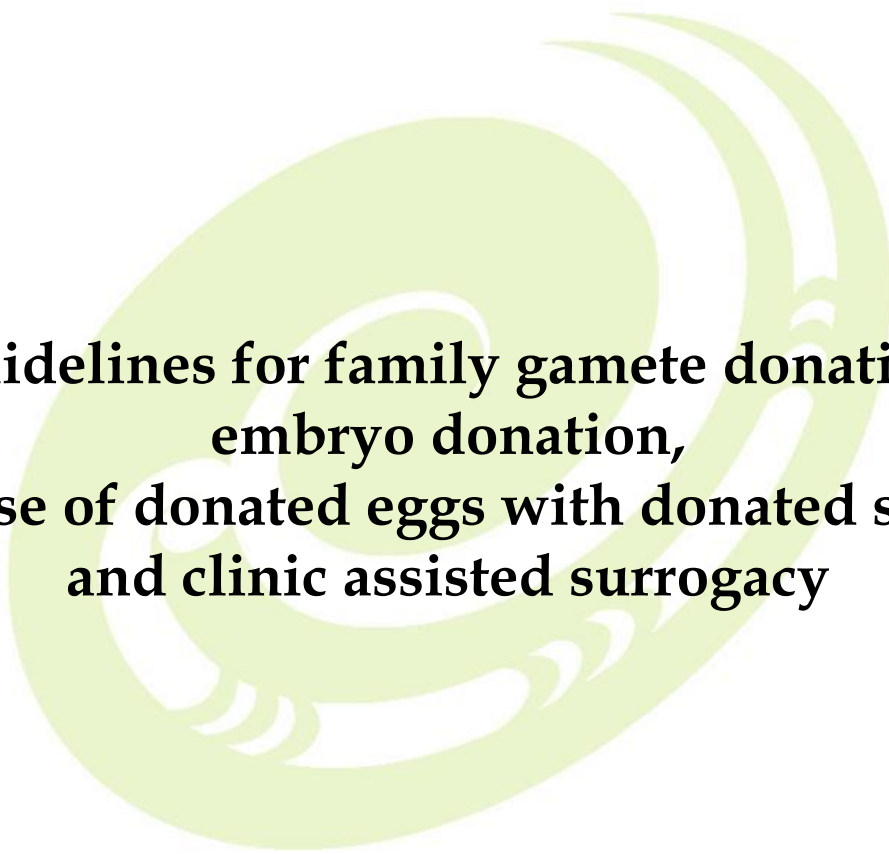


## **Advisory Committee on Assisted Reproductive Technology**



**Guidelines for family gamete donation,  
embryo donation,  
the use of donated eggs with donated sperm  
and clinic assisted surrogacy**

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# Preamble

## **ACART can issue guidelines.**

The Advisory Committee for Assisted Reproductive Technology (ACART) is appointed by the Minister of Health. One of its functions is to issue guidelines on any matter relating to any kind of assisted reproductive procedure (s 35(1)(a) of the Human Assisted Reproductive Technology Act 2004 (HART Act)).

## **Guidance on terms used**

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

## **Principles**

When considering an application to carry out any of the following procedures, the Ethics Committee on Assisted Reproductive Technology (ECART) must be guided by the principles of the HART Act. The principles state:

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 well-being 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 well-being 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.

## **Scope of the guidelines**

In these guidelines, ACART sets out the requirements for assisted reproductive procedures that require a party other than the intended parents (third party assistance) to contribute to family formation and where a fertility services provider is involved.

# Provisions that apply to all procedures covered in these guidelines

## A. General requirements

ECART must be satisfied that:

1. all relevant parties have consented to the procedure
2. the parties have not been subjected to any undue influence
3. full genetic siblings are produced in no more than two families (this does not preclude a donor from donating sperm or eggs separately to another couple or person)
4. the procedure is the best or the only opportunity for intending parents to have a child
5. the intending parents are not using the procedures for social or financial convenience or gain
6. the potential genetic, social, cultural and intergenerational aspects of the proposed arrangement safeguard the wellbeing of all parties and especially any resulting children
7. any relationships between the parties safeguard the wellbeing of all parties and especially any resulting children.

## B. Counselling requirements

ECART must be satisfied that counselling:

1. has been received by each party in accordance with the current Fertility Services Standard
2. will be available throughout the donation and/or treatment process
3. is culturally appropriate
4. has provided for whānau or extended family involvement
5. has provided for the inclusion of any existing children of the parties
6. has addressed any matters raised by donation(s) between family members
7. has included implications counselling for all parties, and parties have considered and, in the opinion of the counsellor, have understood:
  - a. the rights of offspring, including their rights to obtain identifying information about the donor
  - b. each other's needs and plans for continuing contact and information sharing

- c. any specific issues that might affect the health and wellbeing of all parties and especially the offspring
- d. the implications if offspring have medical conditions, disabilities or genetic disorders
- e. each other's attitudes to openness about donation, especially with the offspring
- f. the possibility that the birth mother (whether she is the intending mother or a surrogate) may terminate the pregnancy
- g. issues related to the use, storage and disposal of gametes and embryos
- h. requirements for information sharing under the HART Act
- i. their reasons for wishing to donate or receive gametes or embryos
- j. their feelings now and possible feelings in the future about donations
- k. the possibility of future contact with offspring, for themselves and their families, including any resulting children.

## C. Consent requirements

### Notes

For the purposes of these guidelines:

- a donor is as defined in the HART Act
- a recipient is the person or people who receive donated gametes or embryos with the intention of parenting the offspring
- a patient is as defined in the HART Order
- an original intending parent is the person or people who originally intended to parent the offspring that would be born from the use of the gametes or embryos.

When a person or people donated gametes or embryos before these guidelines were issued, and a procedure is now intended that had not been possible under the previous guidelines, the donors must give new consent.

### Consent requirements

ECART must be satisfied that:

1. where a procedure will involve the use of an embryo created from donated eggs and/or sperm, the gamete donor(s) consented to the specific use of their gametes at the time of donation or subsequently
2. implications counselling about the potential use of gametes was provided before the gamete donor consented
3. all parties understand that the gamete donor can vary or withdraw consent only up until an embryo is created (in cases where consent is given before the embryo is created)



4. where a procedure will involve the use of a donated embryo, the original intending parents (ie, the people who originally had the embryo created for themselves) must consent to the specific use of that embryo:
  - a. at the time of donation, or
  - b. if consent was not obtained at the time of the donation, when a procedure using such a donated embryo is contemplated<sup>1</sup>
5. where a procedure will involve the use of a re-donated embryo:
  - a. consent to the specific use of the embryo is needed from both the:
    - original intending parents whether or not they have had a child that would be a full genetic sibling to a child that would be born from the embryos that are now being donated, and
    - recipient(s) of the donated embryos if they have already had offspring that would be a full genetic sibling to a child that would be born from the embryos that are now being donated
  - b. that consent must be given:
    - at the time of donation, or
    - if consent was not obtained at the time of the donation, when a procedure using such a donated embryo is contemplated
  - c. a re-donation can only be made if either the original intending parent(s) or the recipients have not had offspring that would be a full genetic sibling to a child that would be born from the embryos (ie, the limit of two families that can have full genetic siblings applies)
6. all parties understand that, once an embryo is created, the original intending parents have the authority to vary or withdraw consent up to the time the embryo is transferred to the uterus. The recipients have the authority to consent to the embryo donation if all of the following conditions apply:
  - the original intending parents did not have a child that would be a full genetic sibling to a child born from the donated embryo
  - the original intending parents did not have any gametes in the embryos
  - the recipients who will now donate did have a child that would be so related.

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<sup>1</sup> This provision does **not** mean that gamete donors (or any other parties) have to give consent every time a recipient has an embryo transferred (after all parties have agree to the embryo donation).

## **D. Legal advice requirements**

ECART must be satisfied that:

1. where an application includes a surrogacy arrangement, each party has received independent legal advice
2. where an application does not include a surrogacy arrangement, each party has considered the option of seeking independent legal advice
3. any legal reports show that parties understand the legal implications of the procedure(s)

## **E. Health advice requirements**

ECART must be satisfied that:

1. all parties have received independent medical advice
2. health reports show the parties understand the health implications of the procedure(s).

# Additional provisions that apply to specific procedures

## F. Use of gametes donated between certain family members

ECART **must not approve** an application for donation where any resulting child would be formed by eggs and sperm respectively donated from close relatives who are genetically related. These relatives are:

- father and daughter
- mother and son
- brother and sister
- grandfather and granddaughter
- grandmother and grandson
- half-brother and half-sister
- uncle and niece
- aunt and nephew
- uncle and half-niece
- aunt and half-nephew.

### Requirements

ECART must be satisfied that:

1. the parties to the donation are not subject to undue influence
2. the health and wellbeing of the offspring and any other parties to the donation are not compromised by the procedure, including, for example, by intergenerational complexities
3. affected parties have received joint counselling
4. the relationship between the intending parent(s) and the other family members safeguards the wellbeing of all parties and especially of any resulting offspring.

### Notes

Ethical approval is not required for family donations where:

- for donated eggs, the donor is a sister or cousin of the recipient woman (where both are aged 20 years or older)
- for donated sperm, the donor is a brother or cousin of the recipient woman's spouse or partner (where both are aged 20 years or older)

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

If a clinic is unsure about a case, it can request an ethical review from ECART.

**The HART Order defines a family member, for the purposes of donation, as any other person who:**

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

## G. Embryo donation and use

### Notes

Embryo donation includes the:

- agreement to donate a stated number of surplus embryos
- transfer of an embryo into the uterus of the gestating woman (intending parent or surrogate).

Embryo **re**-donation is:

- the donation of embryos by the original intending parents to new recipient(s).

Embryo **on**-donation is:

- the donation of embryos by the recipient(s) of donated embryos.

Donated embryos may be re-donated by the original intending parents if:

- they have not had a child that would be a full genetic sibling to a child that would be born from the embryos that are now being donated, and the prior recipient(s) of the donated embryos have had offspring that would be full genetic sibling(s) to a child that would be born from the embryos, or
- they have had a child that would be a full genetic sibling to a child that would be born from the embryos that are now being donated, and the prior recipient(s) of the donated embryos have not had offspring that would be full genetic sibling(s) to a child that would be born from the embryos, or
- neither they nor the prior recipients have had offspring that would be full genetic sibling(s) to a child that would be born from the embryos.

Donated embryos may be on-donated by the recipients only if the:

- original intending parents have no gametes in the embryos and
- original intending parents did not have offspring using embryos that would be full siblings to those that would be born from the embryos being donated and

- recipients have had offspring using embryos that would be full siblings to offspring that would be born from the embryos being donated.

Any donation, re-donation or on-donation requires an application to ECART.

### Requirements

ECART must be satisfied that:

1. all affected parties understand that embryo donors can withdraw or vary consent up to the point of placing the embryo in the gestating woman's uterus
2. the embryo donors and recipients have received joint counselling relating to the implications of embryo donation
3. all affected parties have discussed, understood and agreed between themselves on matters relating to the use and storage of embryos and disposal of any unused embryos
4. if the original intending parents are donating the embryos for the first time, those embryos:
  - have been created for the fertility treatment of the donor(s)
  - are surplus to the needs of the donor(s); that is, they have completed their family or no longer intend to have children
5. if embryos are being re-donated, they fit the circumstances specified in Notes 4 and 5 above
6. recipients have been vetted by the Police.

## H. Use of embryos created from donated eggs in conjunction with donated sperm

### Note

Although donated eggs and donated sperm from the same two people may be used together to produce full genetic siblings in up to two families, neither donor is precluded from separately donating sperm or eggs to another couple or person.

## I. Clinic assisted surrogacy

### Notes

For the purpose of these guidelines:

- **surrogacy** describes a procedure facilitated by a New Zealand fertility clinic where a woman gestates an embryo for one or more intending parents
- a **surrogate** is a woman who becomes pregnant, and carries and delivers a child on behalf of one or more other intending parents.

Commercial surrogacy is prohibited under the HART Act.

A surrogacy arrangement is not enforceable by or against any person.

Any surrogacy that involves an assisted reproductive procedure requires an application to ECART.

Where a case involves established procedures, a clinic can still request an ethical review from ECART.

### **Requirements**

ECART must be satisfied that:

1. affected parties have discussed, understood and declared intentions between themselves about the day-to-day care, guardianship and adoption of any resulting child and any ongoing contact
2. the risks associated with a surrogacy for the adult parties and any resulting child are justified in the proposal. These risks include risks to the health and wellbeing of:
  - a. the intending surrogate, including risks:
    - associated with pregnancy, childbirth and relinquishment of a resulting child to the intending parent(s)
    - that the intending parent(s) may change their mind about parenting a resulting child
    - to the surrogate's reproductive capacity in the future
  - b. the intending parent(s) (and embryo donor if applicable), including risks that the surrogate changes her mind about relinquishing a resulting child
  - c. a resulting child, including risks that arise where that child becomes the subject of a dispute if the relationship between the surrogate and intending parents breaks down
3. the residency status and plans of the surrogate and intending parent(s) safeguard the health and wellbeing of the child, particularly in relation to being born in New Zealand
4. all affected parties have received joint and individual counselling
5. counselling will be made available to all parties before and after pregnancy is achieved
6. in the opinion of the counsellor, the health and wellbeing of the intending surrogate and any resulting offspring are adequately safeguarded
7. all affected parties have considered and, in the opinion of the counsellor, have understood:
  - a. each other's needs and plans for continuing contact
  - b. specific issues that might affect the health and wellbeing of all affected parties.