



**Advisory Committee on  
Assisted Reproductive Technology**

**Guidelines for the Posthumous Use of  
Gametes, Reproductive Tissue, and  
Embryos**



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# Preamble

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## ACART can issue guidelines

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 (section 35(1)(a) of the HART Act, including in respect of gametes derived from deceased people – section 38(c) of the HART Act).

ACART considers that the use of a deceased person's stored embryos and/or gametes is an established procedure only when the deceased person gave fully informed and specific consent to the use after their death. This includes situations where gametes were retrieved and stored before a person's death.

ECART approval is always required for use in cases where gametes were retrieved posthumously. Where there is insufficient evidence of consent from the deceased for posthumous use, the procedure cannot be approved.

## Guidance on terms used

In these guidelines, unless specified otherwise, words should be interpreted in accordance with definitions given in the Interpretation Act 1999, HART Act and the HART Order.

## Scope of the guidelines

These guidelines set out the requirements that ECART must ensure are met if a person applies to ECART for permission to use the gametes or reproductive tissue of a deceased person, or embryos formed from that person's gametes, to create offspring.

A High Court judge may choose to consider these guidelines when assessing an application to authorise the retrieval of gametes or reproductive tissue from a recently deceased person.

If the gametes or reproductive tissues were retrieved after death, ethical approval for use would only be permitted if ECART were satisfied that the person from whom the gametes or reproductive tissue were extracted had consented, before death, to the specific use of those gametes after death.

### *Specific use*

The HART Order uses the phrase 'specific use' in connection with the deceased person's consent. For ACART's purposes, 'specific use' means that the deceased person gave informed consent for a specific person(s) to use their gametes after their death.



## Principles

When considering an application to carry out any of the following procedures, 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.



# Provisions that apply to all procedures covered in these guidelines

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## Posthumous use of embryos, gametes or reproductive tissue

### *Consent requirements*

**ECART must be satisfied that the following requirements have been met.**

1. The person from whom the gametes or reproductive tissue were extracted, or from whose gametes the stored embryos were formed, consented before their death to the specific use of those gametes, embryos or reproductive tissue after their death.
2. The consent to posthumous use for creating offspring must be for a specific person(s) who will be the intending parent(s).
3. Neither the deceased nor the intending parent(s) have been subject to undue influence.
4. The intending parent(s) and the deceased considered and understood the potential social and psychological risks to the child(ren) and demonstrated why the risks are justified.
5. Consent to posthumous use is valid, taking into account the time since consent was given and any changes in circumstances since an individual consented to posthumous use.

### *Notes*

Ethical approval is always required for the use of posthumously retrieved gametes and reproductive tissue.

If assisted reproductive procedures or research that require ECART approval were involved, such as surrogacy or within-family gamete donation, the relevant guidelines would also apply.

ECART has the discretion to decide what constitutes sufficient evidence of consent for posthumous use and whether any particular request under consideration is valid.



## *Counselling requirements*

**ECART must be satisfied that all the following requirements have been met.**

1. The intending parent(s) and any other relevant parties have received counselling in accordance with the current standards for fertility services.
2. Counselling will be available to all relevant parties before and after pregnancy is achieved.
3. The interests and wellbeing of offspring is a consideration in all decision-making.
4. The counselling has covered the fact that any resulting children may only have one, or no, living genetic parent.
5. The counselling is culturally appropriate.
6. The counselling has included the whānau or extended family of the intending parent(s) where desired by the intending parent(s).
7. The counselling has provided for the inclusion of any existing children of the intending parent(s) and other relevant parties.
8. The counselling has included implications counselling for all relevant parties, and in the opinion of the counsellor, the parties have considered:
  - a. the wellbeing of any resulting offspring, including the right of children to know about their posthumous conception and/or birth from an early age
  - b. requirements for information sharing under the HART Act
  - c. any specific issues that might affect the health and wellbeing of all parties, especially the offspring
  - d. issues and cultural considerations related to use, storage and disposal of gametes, embryos and reproductive tissue
  - e. the relevant parties' reasons for wishing to use posthumously derived (when relevant) gametes to create a child
  - f. the advisability of waiting before having a child, to allow time for a grieving process that can ensure considered decision-making
  - g. the relevant parties' current and possible future feelings about posthumous reproduction.



### *Legal advice requirements*

**ECART must be satisfied that the following requirement has been met.**

1. The counselling has encouraged the intending parent(s) to seek independent legal advice, in particular to ensure that the intending parent(s) understand the legal status of any resulting child or implications for inheritance rights, the child's birth certificate and other family relationships.

### *Health/medical advice requirements*

**ECART must be satisfied that both the following requirements have been met.**

1. All relevant parties have received independent medical advice.
2. Medical reports show that the relevant parties have been informed of the health implications of the procedure(s).





# Additional provisions that apply to specific procedures

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## Posthumous reproduction and minors

For the purpose of these guidelines:

- a. a 'minor' means an individual aged under 16 years (consistent with the HART Act)
- b. gametes obtained from minors may only be used by the individual from whom the gametes were obtained
- c. if a minor has frozen gametes or reproductive tissue and dies before they can use those gametes or reproductive tissue, such gametes or reproductive tissue are not able to be used by anyone else.

## Posthumous reproduction using donated gametes

For the purpose of these guidelines, donated gametes may be used posthumously in cases where the donor gave consent to specific use of their gametes after their death.