



## Minutes of the Eighty-fourth Meeting of the Advisory Committee on Assisted Reproductive Technology

---

Held on 2 April 2020, online.

---

### **Present**

Kathleen Logan (Chair)  
Calum Barrett  
Jonathan Darby  
Colin Gavaghan (Deputy Chair)  
Sue McKenzie  
Karen Reader  
Analosa Veukiso-Ulugia  
Sarah Wakeman

### **Non-members present**

Tristan Katz, ACART Secretariat  
Martin Kennedy, ACART Secretariat  
Iris Reuvecamp, ECART Chair  
Hayley Robertson, ACART Secretariat

## 1. Welcome

1.1 The Chair opened the meeting at 9.30 am and welcomed the Committee members and guests. Iris Reuvecamp was the ECART member in attendance.

### 1.a Opening discussion

1.2 The Chair noted that due to the COVID-19 virus, the measures to control it, and the reprioritisation of resources at the Ministry of Health, ACART has been asked not to begin new work. Many Ministry staff are helping with the COVID-19 response and there is less capacity to support committees such as ACART.

1.3 Sarah told members that Fertility Associates is not starting new treatments and the only clinical activities that continue are those such as finishing ovarian hyperstimulation if already underway.

## 2. Apologies

2.1 None.

## 3. Approval of the agenda

3.1 Members approved the agenda.

### Action

- *Secretariat to place the April 2020 agenda on ACART's website.*

## 4. Declarations of Interests

4.1 No declarations.

## 5. Minutes of ACART's meeting of February 2020

5.1 The minutes were approved with no changes.

### Actions

- *Secretariat to place the February minutes on ACART's website, and share with ECART.*

## 6. Actions arising from the February meeting

6.1 Members noted the status of the actions.

- *Secretariat to draft a letter to Fertility Associates asking if they would share ethnicity data about patients with ACART. The letter needs to be circulated among the Committee for comment to ensure it contains the information required, such as whether data would be published by ACART.*
- *Secretariat to draft a letter to the Fertility Society of Australia asking if they would consider including ethnicity data about patients in their reports.*

## 7. Work programme status

7.1 Members noted the status of the work programme, and that the Secretariat are being asked to spend time on the response to COVID-19.

7.2 The Chair told members about her meeting with Associate Minister Salesa on 5 March. The Associate Minister had explained she supports the use of cryopreserved ovarian tissue in principle, and she has taken steps to have new members appointed to ACART. She has also advised the Chair that she will consider advice from the Ministry before responding to ACART about (a) human reproductive research and (b) the revised guidelines for donations and surrogacy.

## 8. Membership updates

8.1 As noted in item 7, above, Associate Minister Salesa, has said she will proceed with appointments.

## 9. Consultation on guidelines for posthumous reproduction

9.1 ACART agreed to shorten the Foreword of the consultation document. The Committee then considered the feedback from Associate Professor Neil Pickering who did an ethical review of the final draft, given the ethics representative position on ACART has been vacant for the past year.

9.2 Members discussed whether, after giving consent to the use of one's gametes after death, that consent can later be updated. It was confirmed that the consenting process at clinics does allow for consent to be amended, but that in practice this is rarely done. Members discussed whether gamete donors should be 'prompted' to update their consent, and it was agreed that this should be encouraged by clinics but does not need to be addressed in the guidelines.

9.3 ACART agreed that it is more appropriate to refer to considering the "interests" of all parties, rather than to considering their "best interests". This is because ECART's role is to considers all interests and weight them against each other.

9.4 In relation to paragraph 18, ACART discussed whether it makes sense for ethical issues to be raised for deceased donors.

9.5 ACART discussed the wording at paragraph 23, and agreed that the wording was confusing and should be shortened.

9.6 There was a discussion about the explanation of what is out of scope and why it is necessary to explain that posthumous retrieval and use of gametes from minors is not in scope.

9.8 ACART noted that inheritance rights could not be definitely determined in relation to children of deceased gamete or embryo providers, as there is no legal precedent in these cases.

9.9 The guidelines will apply to gametes retrieved after death, meaning that the use of donated gametes after death could be allowed but would need to be approved by ECART. Members discussed whether **donated** gametes could be used posthumously by individuals who have already used a donated gamete from the same person, for the purpose of making a genetically related sibling.

9.10 The Committee noted that it is still not certain whether ECART would have the authority to authorise the retrieval of gametes from a deceased individual, however agreed that the guidelines should provide for that possibility.

- 9.11 At paragraph 83, members agreed to refer to children's "well-being" rather than their 'best interests' which has a specific meaning in law.
- 9.12 Members discussed the concept of 'specific use'. It was questioned whether the **use** must be specific, or whether it is rather that **the person authorised** to use the gametes must be specifically named. It was agreed that consent should name a specific person, and would be for general use *unless* a particular use (i.e. type of procedure) was specified. Members noted that the term 'specific use' came from the HART order, which ACART intends to recommend changes to, and therefore should not be used in these Guidelines.
- 9.13 ACART discussed the degree to which ECART should be allowed to infer consent. It was agreed that ECART should be able to consider different kinds of evidence of consent, but that any form must still be evidence of consent, rather than other evidence from which consent can merely be inferred (such as future plans etc).
- 9.14 ACART discussed the purpose of section E, which outlines that consent to retrieval can be inferred from consent to posthumous use. It was agreed that the section is intended as guidance both to ECART and potentially to the High Court.
- 9.15 ACART agreed that the guidelines should require that the deceased was not subject to undue influence. 'Coercion' was previously referred to, but this was considered too high a bar.
- 9.17 ACART discussed the potential to release the consultation document with the draft Guidelines for consultation, given the government mandated lockdown. The Secretariat advised that the Ministry had requested that ACART begin no new projects during this period, and it would need to be clarified whether consultation would be considered as a new project or as continuation of work.

### **Actions**

- *Secretariat to make the proposed amendments.*
- *Chair to draft a position statement on the use of donated gametes or embryos from now deceased donors.*
- *Secretariat to clarify whether ACART can release the consultation document and draft guidelines for consultation.*

## **10. Consultation on the use of cryopreserved testicular tissue**

- 10.1 The Committee discussed the intention of the amendment, which is to clarify the definition of the use of cryopreserved testicular tissue.
- 10.2 ACART discussed the types of procedures which involve cryopreserved testicular tissue. Sarah Wakeman explained that, although freezing testicular tissue from pre-pubertal boys for the purpose is possible, it is not yet possible to successfully extract sperm for reproduction. There is evidence from primate studies that such a procedure may be possible in the future. Consequently, it is preferable that the guidelines do not make any restrictions on age, while also not endorsing the current extraction of sperm from pre-pubertal boys. The Committee agreed that a question

should be added to the consultation document about whether a restriction should be made on age, with information on the pros and cons.

- 10.3 Members noted that perspectives were needed on Māori cultural issues and ethics, which are currently not represented on the committee. It was agreed that independent input would be sought early in the process to ensure that these perspectives are taken into consideration.
- 10.4 Members agreed the definition of the use of cryopreserved testicular tissue, in the Introduction (at paragraph 8), needs to be clarified. In summary, the matter being addressed is that frozen testicular tissue is used in some fertility treatments but the use of that frozen tissue is not addressed in the HART Act or Order and so the legality of such uses are uncertain.
- 10.5 Members agreed that a diagram of the male reproductive system would be helpful in the consultation document to explain the clinical processes required.

#### **Action**

- *Secretariat to consider the ethical issues regarding whether an age restriction should be made on the retrieval and use of cryopreserved testicular tissue.*
- *Secretariat to circulate ACART's ethical considerations framework document.*

### **11. Consultation on the guidelines for extending the storage of gametes and embryos**

- 11.1 The Committee agreed that the reference to 22 November 2004 was no longer relevant.
- 11.2 It was suggested that a preamble be added to the consultation document explaining the cost involved in the procedures.
- 11.3 It was noted that question 1 in the draft consultation document (regarding ACART's policy position that once gametes have been used to create an embryo(s), the donors should not be able to change their minds about how the embryos will be used) had been consulted on previously, as part of the consultation for the Donation Guidelines, and was generally supported. However, members agreed that it would still be best to consult on removing the requirement for gamete donors to consent for the extended storage of formed embryos because *extending* the storage of gametes and embryos might not have been discussed when the gametes or embryos were originally donated.
- 11.4 It was suggested that ACART could simultaneously consult on other issues relating to the extended storage of gametes or embryos. These include:
- a general question asking if there were other changes that people would like to be made to the guidelines
  - whether the 10-year time period for consent is appropriate
  - whether a longer time period should be allowed for younger people e.g. those storing gametes early in life to preserve fertility before cancer therapy.

- 11.5 Members agreed that the consultation document should make clear that not all changes may be feasible at this point, as many changes would require changes to the Act and/or Order and therefore should be kept separate to question 1.

**Action**

- *Secretariat to update the consultation document*

**12. Monitoring: member reports**

- 12.1 Members had no updates on this occasion.

**13. Minutes from and report on ECART's meeting of 12 December 2019**

- 13.1 Members noted the applications and outcomes from the December meeting, and heard there were complications in a case of conditional gamete donation. It was noted that the ECART decided to seek legal advice on this issue.

**14. Correspondence and enquiries**

- 14.1 The Chair noted she had written to the Director General of Health about the Ministry's progress on matters ACART had advised on. The Director General had responded, outlining what the Ministry was working on and what it could not work on currently.

- 14.2 The Committee noted the Police response to the letter requesting vetting of embryo donors, which stated that vetting would continue in the interim.

**Extra item: general business**

- ACART discussed its reduced capacity, and the likelihood that the capacity of the secretariat would be reduced for up to a year due to the COVID-19 crisis. The priority of different pieces of work were discussed, and it was suggested that research on viable embryos may be the most important change that could be made if we could progress *new* work.
- The Secretariat stated that it had contacted the Ministry's communications team to have the forthcoming consultation, on the guidelines for posthumous reproduction, hosted on CitizenSpace.

**15. Governance — Chair's Report**

- 15.1 Members noted the report.

**16. Secretariat report**

- 16.1 Members noted the report.

**Extra item: ECART standard letter**

- The contents of ECART's standard approval letter were discussed, and specifically the condition that approval expires if the applicant becomes pregnant without the use of assisted reproductive procedures. It was noted that this does not come from any guidelines issued by ACART, and may need to be reviewed.

**17. ACART members at upcoming ECART meetings**

17.1 It was noted that due to the COVID-19 crisis, ECART's July meeting would be held virtually.

**Action**

- *Secretariat to contact all members to confirm attendance at the upcoming ECART meetings.*

**18. Conclusion of meeting and next meeting dates**

19.1 The upcoming ACART meetings are as follows and begin at 8.30am.

- Thursday, 11 June 2020. Online.
- Thursday, 13 August 2020. To be confirmed: may be held in Dunedin instead of Wellington, or online.
- Thursday, 15 October 2020. Wellington, or online.
- Thursday, 10 December 2020. Wellington, or online.

**Actions**

- *Secretariat to advise ECART of the upcoming meeting dates.*

19.2 The meeting closed at 2.30pm.