

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

**Notes of meeting with Fertility New Zealand members, Auckland**

**7 August 2012**

**Present**

Dr John Angus, Chair, ACART

Associate Professor Andrew Shelling, Deputy Chair, ACART

Nikki Horne, member, ACART

FertilityNZ Auckland members –Mailene Tubman, Nicola Bitossi, Nicole Evans

**In attendance**

Stella Li, ACART Secretariat

The points below reflect comments by one or more attendees, and do not reflect formal agreement by the meeting as a whole.

**General feedback**

- Attendees appeared to be in consensus about all proposed amendments to the surrogacy guidelines and family eggs or sperm donation guidelines.
- Agreed with ACART's conclusion that the current surrogacy guidelines discriminate on the basis of sex and sexual orientation, and the discrimination was not justified in light of the principles of the Human Assisted Reproductive Technology Act 2004 (HART Act).
- Endorsed the view that surrogacy should not be used for reasons of convenience.
- Sound practice for gestational surrogacy involving fertility services to require ECART approval.
- Agreed 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.
- Agreed 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 medical justification.
- Agreed with ACART's view that the use of eggs or sperm donated by a family member should be possible where intending parents do not have their own eggs or sperm, or if they do, that there is a medical reason for them not using their own eggs or sperm.
- Content of consultation document was good despite being dense.

## **Surrogacy guidelines**

- Attendees accepted that ACART's current guidelines did not intend to exclude gay men. They supported the change in language from "intending mother" (which inherently excluded men from using surrogacy) to "intending parent".
- Attendees supported the guidelines including an explicit statement excluding the use of surrogacy for convenience. Attendees were of the view that surrogacy for this reason was an increasing overseas trend.
- The majority of attendees considered mental health issues such as post natal depression to be a medical condition which satisfied the 'eligibility' criteria. They believed ECART's case-by-case determination would provide clarification given the range of conditions and severity in mental health. However, one attendee did not agree that post natal depression satisfied the criteria because she argued that it is not a purely hormonal reaction. She was of the view that surrogacy on such grounds risks falling into the category of surrogacy for convenience.
- The guidelines are specific to the involvement of fertility service providers in surrogacy arrangements. It is likely that the majority of traditional surrogacy arrangements do not involve fertility services providers and are therefore not covered by the guidelines. Attendees agree with ACART's position that the proposed guidelines may encourage people to approach clinics, and thus benefit from the support and services offered. This includes access to experienced infertility counsellors, specialised in surrogacy issues.
- Attendees recognised that the changes would cover a wider group of people, and therefore offer the surrogate greater protection, particularly from coercion.

## **Family eggs or sperm donation guidelines**

- Single men and male couples should not be precluded from using eggs donated by a family member in a surrogacy arrangement.
- Under the current guidelines, single men and male couples cannot meet the eligibility criteria because they do not have a 'medical condition'. This was considered unfair given this group's 'medical condition' was an inability to produce eggs, and this created an impossible standard.
- Attendees considered the convenience argument in terms of whether there needs to be a medical reason for intending parents to use family donated eggs or sperm instead of their own. They were concerned about who may be harmed if family donation was done out of convenience, and were of the view that, given the risks involved (particularly to the donor), family donation should be used only where medically necessary.
- However, it was rare for assisted reproductive technology to be used in circumstances where someone opts out of using their own viable gametes for non-medical reasons. Only one example was brought up. This involved a man's request for donated sperm (despite his own sperm being healthy and viable), because he did not want his future child to inherit his big nose, about which he had been teased about while growing up.