

Feedback form

Please provide your contact details below.

Name	John Peek on behalf of Fertility Associates
If this feedback is on behalf of an organisation, please name the organisation	Fertility Associates
Please provide a brief description of the organisation (if applicable)	Provider of fertility services, performing about 70% of all ART in NZ
Address/email	jpeek@fertilityassociates.co.nz
Interest in this topic (eg, user of fertility services, health professional, researcher, member of public)	Provider of fertility services

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Question 1: Rescinding the biological link policy

Refer to section 3.

ACART is proposing that:

- the guidelines should no longer require intending parents to have a genetic or gestational link to a resulting child
- instead the guidelines should require ECART to be satisfied that where intending parents will have neither a genetic nor a gestational link to a resulting child, the lack of such links is justified.

(a) Do you agree?

Yes ☒ No ☐

(b) Do you believe there are cultural implications associated with the proposed removal of the biological link policy?

Yes ☒ No ☐

If so, please describe these implications.

Children may be brought up in families who have no or incomplete understanding of the culture of the donor(s). Some societies base inheritance laws on blood lines and not legal family connections.

Please give reasons for your views.

For reasons as described in consultation document, this is a logical change. It removes a discriminatory position and potentially removes the requirement to travel overseas for treatment. Our society already supports adoption, which allows parenting of children with no biological link to the parents.
Laws in New Zealand permit inheritance rights which are not based on blood lines.

Question 2: Access to information held on birth certificates

Refer to section 3.

ACART is interested in hearing views about potential strategies to strengthen a donor offspring's access to information about their origins, which is held on their birth certificate.

Do you have suggestions?

Yes ☒ No ☐

Please give reasons for your views.

FA fully supports the 2005 Law Commission recommendation to add an explanatory note to birth certificates of children. We support allowing parents' choice to annotate their child's birth certificate to record the use of donated gametes or embryos in conception, and surrogacy for gestation.

It would be useful to clarify the purposes of a birth certificate in the 21st century. The legal purpose of a birth certificate is to register the existence of a child, and therefore is an identity document. It is also used to record parentage. Before ART, parentage assumed biological motherhood, with fatherhood attributed. An explanatory note could follow the structure of the BDM 400 form to show the participation of each party mentioned (eg. Legal parent(s) at birth, person providing sperm, person providing egg, person providing gestation)

We think the abbreviated form of the birth certificate, used to show evidence of age (eg. enrolling children in sports teams), should not have the explanatory note.

Question 3: Format of the proposed guidelines

Refer to section 4.1.

ACART is proposing to issue one set of guidelines to ECART that encompass family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic-assisted surrogacy.

Do you agree with the format of the proposed guidelines?

Yes

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No

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Please give reasons for your views.

One set of guidelines would promote consistent language and likely reduce repetition

Question 4: Justification to use a procedure

Refer to section 4.2.

ACART is proposing that ECART should be satisfied the proposed procedure is the best or only opportunity for intending parents to have a child and the intending parents are not using the procedures for social or financial convenience or gain.

Do you agree?

Yes

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No

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Please give reasons for your views.

In general, this is supported but there is concern that deciding whether a procedure is the "best" option is open to interpretation – best for whom and in whose opinion? FA believes that the participants' views should have a high ranking, and that 'best' should encompass social as well as medical aspects. FA is also concerned that views on what is 'best' may vary according to the composition of ECART and the views of the ECART committee members at the time.

Question 5: Consent by gamete and embryo donors

Refer to section 4.3.

ACART is proposing that, where a procedure will involve the use of an embryo created from donated eggs and/or donated sperm, the gamete donor(s) must have given consent to the specific use of their gametes:

- at the time of donation; or
- when a procedure using such an embryo is contemplated.

In either case, the affected parties should receive counselling on the implications of using gametes before the gamete donor gives specific consent.

If consent is given, the gamete donor can vary or withdraw their consent only up until an embryo is created (in cases where consent is given before the embryo is created).

In addition, where a procedure will involve the use of a donated embryo, the person(s) for whom the embryo was created must give consent to the specific use of the donated embryo:

- at the time of donation; or
- when a procedure using such a donated embryo is contemplated.

Once an embryo is created, the decision to vary or withdraw consent up to the time the embryo is transferred to the womb should remain with the people for whom the embryos were created.

Do you agree?

Yes

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No

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Please give reasons for your views.

Clinics have always explained to gamete donors that they may vary or withdraw consent only until the point that sperm is added to eggs and an embryo is created.
Consent may be given at the time of donation for future use of resulting embryos and this is discussed in implications counselling.

Question 6: Taking account of potential coercion

Refer to section 4.4.

ACART is proposing that ECART should take account of any factors in a relationship that might give rise to coercion or unduly influence a donor's or surrogate's consent to take part in a procedure.

Do you agree?

Yes

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No

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Please give reasons for your views.

FA supports strengthening this consideration. Coercion may be more probable with intergenerational donation. However, coercion is not limited to with-family donation. We would like the option of being able to submit any planned treatment to ECART for advice, not just donation involving family members.

Question 7: Limit to number of families with full genetic siblings

Refer to section 4.5.

ACART is proposing that full genetic siblings should continue to be limited to no more than two families.

Do you agree?

Yes

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No

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Please give reasons for your views.

FA supports the current limit of two families with full genetic siblings. Donations involving full genetic siblings in different families are particularly complex and challenging for families and children.

Question 8: Legal advice

Refer to section 4.6.

ACART is proposing that ECART must be satisfied that:

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

Do you agree?

Yes

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No

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Please give reasons for your views.

The current requirement for legal advice in embryo donation seems to add little value for many donors and recipients, and is costly.

For ACART's interest, the area which most often requires legal advice is outside ECART's guidelines, which is when a couple's relationship ends, and the woman wants to use stored embryos.

Question 9: Regulation of all family gamete donations

Refer to section 5..

ACART is of the view that all family gamete donations through a fertility services provider should be regulated by guidelines and thus require ECART approval.

Do you agree?

Yes

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No

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Please give reasons for your views.

FA supports matching regulation to potential for coercion, rather considering that all within family donation has the same risk level. We support the need for ECART to review within-family donations when cross-generational donation is proposed, and in any planned donation where the clinic considers there is a higher risk or potential evidence of coercion.

If the current exception for donations by cousins and siblings continues, we would like to see the legal definitions widened to include in-law and step relationships.

All donation occurs within a framework of compulsory counselling by counsellors with training and experience in ART and gamete and embryo donation.

During discussion with ACART members, we raised the concept of a framework for rating risk, and that an ECART application should be needed only when the risk rating passed a certain threshold. Assessment of risk according to particular circumstances is an increasingly common approach in health and safety and other areas.

Question 10: Donation of embryos created from donated gametes

Refer to section 6.1.

ACART is proposing that the guidelines should enable ECART to approve the donation of embryos created from donated eggs and/or donated sperm, provided ECART takes account of the potential complexity of resulting relationships and the gamete donors have given specific consent to the procedure.

Do you agree?

Yes

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No

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Please give reasons for your views.

FA does not support the on-donation of embryos created using donor gametes. We believe that the increased complexity will not be in the best interests of resulting children. Children may find it harder to understand their conception story, may have negative feelings about the on-donation and may find it more difficult to gain information and contact with those to whom they are genetically linked.

The impetus to consider donation in this group is often prompted by wanting to do something useful and meaningful with the embryos – the option of donation for research or training would meet many of these people's needs. We would like to differentiate research from training, since public and patient perception may be different. At present, embryologists can only practice techniques on non-viable embryos before they perform the same technique as part of treatment; training using unwanted embryos before they are discarded may be an alternative in some circumstances.

Question 11: Embryo on-donation and re-donation

Refer to section 6.2.

ACART is proposing that surplus donated embryos:

- should not be able to be on-donated by the recipients
- but can be returned to the donors, in accordance with any agreement between the parties, for re-donation to another party, subject to a new approval by ECART.

Do you agree?

Yes

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No

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Please give reasons for your views.

This appears to be the status quo. Surplus embryos may be returned to the donors for their personal use or disposal, or for a new donation if there was no child born to the recipients of the initial donation.

Question 12: Clarification of the status of embryo donation in the regulatory framework

Refer to section 6.3.s

ACART is of the view that the regulatory framework should clarify that:

- all embryo donation cases are regulated by guidelines and thus require approval by ECART
- embryo donation does not include cases where an embryo created for a couple is used by one of the couple in a new relationship with the informed consent of the previous partner.

Do you agree?

Yes

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No

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Please give reasons for your views.

FA supports this clarification.

Question 13: Regulation of all clinic-assisted surrogacies by guidelines

Refer to section 8.

ACART proposes to recommend that all clinic-assisted surrogacy cases be regulated by guidelines and thus require ECART approval.

Do you agree?

Yes

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No

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Please give reasons for your views.

FA clinics have a policy requiring ethical review of all surrogacy cases where the surrogate's own eggs are to be used, and a non-binding opinion is sought from ECART in these cases. FA supports making ECART approval a requirement for any surrogacy treatment. It is our view that cases where the surrogate's own eggs are used are among the most challenging and risky surrogacy cases.

Crown Law's view that IUI surrogacy is legally donor insemination needs to change.

Question 14: Any other comments

Do you have any other comments about the proposals in this document?

The summary of the proposed amended guidelines on pages 2-7 of the consultation document includes a statement at the top of page 5 that 'all parties have received independent medical advice'.

FA would like to point out that independent medical advice should not necessarily mean that different parties must be under the care of different doctors. FA has found that patients often receive better continuity of care and more coordinated treatment when the same doctor looks after all parties. The same can apply to counselling. Modern donor treatment can be logistically complex, for instance, we have recently treated a gay male couple having surrogacy where the men, the egg donor and the surrogate all lived in different cities.

During discussion with members of ACART, we raised the concept of ACART providing voluntary guidelines to help clinics and consumers in some areas where ECART approval is not required under the HART Act, for instance using embryos after a couple has separated.