

19

Submission form

Please provide your contact details below.

Name:	Professor Bill Atkin
If this submission is made on behalf of an organisation, please name the organisation:	
Please provide a brief description of the organisation if applicable:	
Address/email:	Faculty of Law, Victoria University of Wellington, PO Box 600 Wellington bill.atkin@vuw.ac.nz
Interest in this topic (eg, user of fertility services, health professional, member of the public):	As an academic and a former member of the Ministerial Committee on Assisted Reproductive Technologies (MCART) (1993-4)

We will place all submissions on ACART's website, except where we are asked that submissions be withheld in full or part for reasons of confidentiality. We will remove contact information from all submissions.

☐ I **request** that my submission be withheld in full or part from publication on ACART's website (if you wish a part to be withheld, please clearly indicate which part).

Please note that all submissions may be requested by any member of the public under the Official Information Act 1982 (the Act). If there is any part of your submission that you consider should be properly withheld under the Act, please make this clear in your submission, noting the reasons.

If information from your submission is requested under the Act, the Ministry of Health (the Ministry) will release your submission to the person who requested it. The Ministry will remove your name and/or contact details from the submission if you check one or both of the following boxes. Where a submission is made on behalf of an organisation, the Ministry will not remove the name of the organisation.

☐ I **do not** give permission for my name to be released to persons under the Official Information Act 1982.

☐ I **do not** give permission for my contact details to be released to persons under the Official Information Act 1982.

We will acknowledge all submissions. A summary of submissions will be sent to those who request a copy. The summary will include the names of everyone who made a submission, except where individuals have asked for personal details to be withheld.

Do you wish to receive a copy of the summary of submissions?

☒ Yes

☐ No

Questions about the proposed amendments to the guidelines

Question 1

Do you agree with ACART's conclusions that:

- the surrogacy guidelines currently discriminate on the basis of sex and sexual orientation, and
- the discrimination is not justified in light of the principles of the Human Assisted Reproductive Technology Act 2004?

Yes ☒ No ☐

Please give reasons for your views.

MCART back in the '90s considered that it was wrong to discriminate on the grounds of sexuality and this was supported by legal and ethical analysis at the time, including that of the Human Rights Commission. Community values have changed even since then, with the vote on the first reading of the marriage equality Bill being evidence of how far New Zealand has come. If same-sex couples can enter a civil union, even more so if they can marry, no plausible reason exists for denying them the opportunity of taking advantage of the procedures and safeguards in the HART Act. I agree with the analysis in the ACART consultation document of the statutory principles found in the HART Act.

Question 2

Do you agree with ACART's view that surrogacy should be used only where there is a need, and not for convenience?

Yes ☒ No ☐

Please give reasons for your views.

The arguments in support of this position are much harder to make compared to question 1. An analysis of the HART principles may well lead to a contrary conclusion. For example, why is surrogacy based on convenience contrary to the child's wellbeing any more than surrogacy based on medical need? In either case, the child is ostensibly destined for a loving home and family. Surrogacy for convenience advances the concept of autonomy. We are not talking about commercial surrogacy, but altruistic surrogacy, and so the notions of treating the child like a commodity to be bought and sold do not apply. Etc. Despite all this, I do not believe that the New Zealand community has really addressed this question or is ready to accept surrogacy for convenience. The sense that, in the interests of human dignity, we should use natural processes where possible and artificial ones only where safety and need provide a justification is a strong one. Arguably an element of dehumanisation occurs where surrogacy is resorted to primarily for individualistic reasons.

Question 3

Do you have any other comments on ACART's proposed amendments to the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services*?

Question 4

Do you agree 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?

Yes ☒ No ☐

Please give reasons for your views.

The reasons are essentially the same as above under question 1. However, a man should not be able to use eggs of, for example, his mother. This is quasi-incestuous. This point is covered in the guidelines as I read them.

Question 5

Do you agree 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 a medical justification?

Yes ☒ No ☐

Please give reasons for your views.

Such women by necessity rely someone else's sperm. To exclude family members has no obvious justification, so long as the relationship is not quasi-incestuous. One might rightly hesitate to allow a woman to be inseminated with, say, her father's sperm. As noted in question 4, the guidelines appear to cover this point.

Question 6

Do you agree with ACART's view that the use of eggs or sperm donated by a family member should be possible only where intending parents do not have their own eggs or sperm, or if they do, that there is a medical reason for them not to use their own eggs or sperm?

Yes ☒ No ☐

Please give reasons for your views.

See comments under question 2, which largely apply here. In addition reasons based on genealogy and whakapapa tend to support ACART's view.

Question 7

Do you have any other comments or suggestions about either the proposed amendments to the guidelines or the associated discussion?