

Submission form

Please provide your contact details below.

Name:	John France, PhD, DSc, FAACB
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:	
Interest in this topic (eg, user of fertility services, health professional, member of the public):	Health Professional (Retired)

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.

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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.

The proposed changes to the surrogacy guidelines raises conflicting issues in law and ethics. The Human Rights Act (1993) prohibits discrimination on the grounds of sexual orientation. The Act also prohibits discrimination with respect to pregnancy and childbirth. Though, when Parliament approved the Act it is unlikely they considered the possibility of the ramifications leading to the present guidelines review. Legally as the Act stands, the current guidelines can be considered discriminatory on the basis of sex and sexual orientation. Nevertheless, a broader perspective taking into account the safety and well-being of children as well as the provisions of the Adoption Act 1955 (see Question 3) raises other relevant issues which when set alongside the claim of discrimination, provide a strong counter-claim to the argument for changing the guidelines. These issues involve more than those just associated with surrogacy and the Question needs to be considered in the wider context.

While often minimised, human rights are strongly associated with responsibilities and no more so than in the having and caring of children. Society and nature agree that the best environment for raising a child is in a loving and caring family relationship provided by a mother and father. Studies may claim that children raised by parents in a same sex relationship are unaffected and are as happy and normal as those raised by parents in a heterosexual relationship, however, such studies are relatively new and we must wait for the findings of objective longer term studies. The more serious ethical issues occur with single parenting and here we should discern between the situations by which a person becomes a single parent. When this occurs through divorce, the State, through the Family Court system, ensures any children are cared for in the best responsible environment. When a single woman has an unplanned pregnancy, the State provides financial support and oversight for the raising of the child. When a single parent situation arises through death of one of the parents, support is commonly provided by the extended family, community at large and also, where needed, the State. When a single person decides by choice to have a child, I believe Society is entitled to ask if this person is able financially and socially to undertake responsibility for the raising of the child. It would be unethical, in my view, for this person to look to Society and the State for support financially through parental leave and the Domestic Purposes Benefit. Would this not, legally speaking, constitute a part of the State welfare system?

The requirement for a surrogate to carry and nurture the pregnancy for two gay men in a relationship or a single man desiring to parent a child raises the question of exploitation of the woman concerned. Pregnancy involves some risks to the health of mother and child. Bonding between birth mother and child cannot be ignored and is still recognised in law. The requirement for a surrogate here is quite different from the situation with a heterosexual relationship where for serious health or physical reasons the woman partner cannot undertake a pregnancy. The requirement here involves a deliberate choice with regard to parenting outside of the accepted best environment for raising a child.

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.

While I do not support the use of surrogacy, I absolutely agree with ACART's view that it should only be used when there is a need and in my view that need should only apply when the woman partner in a heterosexual relationship is unable to carry a pregnancy because of serious health or physical reasons. The potential health risks to mother and baby associated with pregnancy far outway convenience as a reason for justifying surrogacy.

Question 3

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

The present laws governing adoption in New Zealand preclude a gay couple from adopting a child. It should be asked, pending any possible change in this aspect of the Adoption Act, whether the proposed amendments are a means to circumvent the law, though, I don't believe this is the intention of the amendments. Is the use of a surrogacy arrangement by a gay couple appropriate or ethical at this time given they will not be able to adopt the child. Interestingly, a gay individual can adopt.

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.

I can't answer yes or no to this Question. As I have stated previously, I do not support a surrogacy arrangement for single men and male couples or even for heterosexual couples for that matter. If it becomes an accepted arrangement for a single man, in order to minimise the risk of genetic disorders in the resulting child, the egg should be donated from outside his family. The answer to this part of the Question is "no". For a male couple it would be appropriate in terms of family involvement if the egg was donated by a member of the family of the man who is **not** providing the sperm. And again the same reason of minimising the risk of genetic disorders applies. The egg should **not** come from the family of the man providing the sperm. The answer to this part of the Question is a "qualified yes".

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.

Again, I can't give a definitive answer to this Question. For healthy women who have normal reproductive potential the requirement for a medical justification is obviously unnecessary. For a single woman, the increase in the potential risk of genetic disorders for the resulting child precludes the donation of sperm from a member of her family. For a lesbian couple, again to minimise the risk of genetic disorders, sperm should be donated from a family member of the woman who is **not** providing the egg.

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.

Yes, otherwise the principle in ACART's Surrogacy Guidelines that at least one intending parent must be a genetic parent of a resulting child becomes redundant. This is an important principle which should not be ignored as it impacts on the child parent relationship as well as the wider family relationships. It is a principle that is held for the health and welfare of a child. It is particularly relevant to the question "who am I?".

Question 7

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

While I do not support the practice of surrogacy in our fertility services, I accept that it is an existing arrangement. I think the existing ACART Guidelines are appropriate and do not require amending. It seems to me amendments have been forced on ACART on legal grounds based on discrimination. Furthermore, at present, gay couples in New Zealand are precluded from adopting children. Whether this preclusion continues or is overturned depends on the outcome of Private Members' bills that will be considered by Parliament in the coming months. In the meanwhile, ACART should at least delay a decision on the proposed amended guidelines until the matter of gay adoption is clarified. The amendments with regard to gay couples are in conflict with the current Adoption Act.

As stated in my response to Question 1), I have particular concerns about the health and welfare of the child born by choice for a single parent, female or male. Extended family involvement and support would be critical to the safe upbringing of such a child. Financially, the parent should be able to fully support the raising of the child. I think it would be unethical and a part of the welfare system for the parent to expect the State to provide funding support for the fertility services and ongoing upbringing of the resulting child. ECART should ensure these provisos are covered when giving approval.

The ACART Guidelines are not directive enough when relating to gamete donation by a family member. They should stipulate that for a couple any family donation should involve the family of the partner who is not providing a gamete for the fertility procedure. For a single person, gamete donation should not involve his or her family. This would limit the relevance of the present guideline to a couple relationship in which both intending parents do not have their own eggs or sperm. In this situation surely adoption is more appropriate.

Finally, while ACART's guideline on gamete donation by a family member excludes immediate family, I consider it should be more restrictive and should extend to include first cousins. Some legal systems and religions prohibit first cousins from marrying on grounds of consanguinity. Though the risk of a child having a genetic disorder is lower in a second cousin relationship it is still higher than for the general population. ACART, I suggest should revisit its guidelines on family donations of gametes and amend them accordingly.