



Advisory Committee on Assisted Reproductive Technology

Guidelines on Surrogacy involving Assisted Reproductive Procedures

Issued to the Ethics Committee on Assisted Reproductive Technology on 12 December 2013 and in effect from 16 December 2013.

Guidelines on Surrogacy involving Assisted Reproductive Procedures

The Advisory Committee on Assisted Reproductive Technology is appointed by the Minister of Health with functions including the issuing of guidelines on any matter in relation to any kind of assisted reproductive procedure (s 35(1)(a) of the Human Assisted Reproductive Technology Act 2004 (the HART Act)).

Preamble

Surrogacy as intended in these guidelines is the procedure of facilitating the birth of a baby through a surrogate/birth mother gestating the pregnancy.

These guidelines cover only surrogacy which involves the use of an assisted reproductive procedure, where an embryo transferred to the surrogate mother may be:

- created from the gametes of two intending parents, or
- created from the gametes of one intending parent and the gametes of a third party.

Surrogacy is ethically and legally complex, and involves risks for the adult parties and resulting children.

- For the surrogate, there are risks to health and wellbeing associated with pregnancy, childbirth and relinquishment of a child to another person or couple. She also bears the risks that the intending parent(s) may change their mind about parenting a resulting child, or that the Family Court may not grant an adoption order in favour of the intending parent(s).
- For the intending parent(s) there is a risk that the surrogate may change her mind about relinquishing a resulting child, or that the Family Court may not grant an adoption order in their favour.
- For a resulting child, there is a risk that he or she may become the subject of a dispute if the relationship between the surrogate and the intending parent(s) breaks down.

The guidelines therefore require the Ethics Committee on Assisted Reproductive Technology (ECART) to be satisfied that there is a need for surrogacy, and that the proposal is justified in light of the associated risks.

This approach is consistent with Purpose (a) of the HART Act: to secure the benefits of assisted reproductive procedures, established procedures, and human reproductive research for individuals and for society in general by taking appropriate measures for the protection and promotion of the health, safety, dignity, and rights of all individuals, but particularly those of women and children, in the use of these procedures and research.

Two of the principles of the HART Act further underline the need to protect children and women:

- Principle (a): the health and wellbeing of children born as a result of the performance of an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure
- Principle (c): while all persons are affected by assisted reproductive procedures and established procedures, women, more than men, are directly and significantly affected by their application, and the health and wellbeing of women must be protected in the use of these procedures.

Nothing in these guidelines is intended to discriminate on the basis of sex, sexual orientation or gender identity.

Guidance on terms used

In these guidelines, unless the context indicates otherwise, words should be interpreted in accordance with definitions given in the HART Act and the Human Assisted Reproductive Technology Order 2005.

Applications that fall under more than one of ACART's guidelines

Where applications to ECART fall under more than one of ACART's guidelines, these guidelines should be read in conjunction with ACART's advice to ECART *Advice on applications that fall under more than one of the guidelines issued by the Advisory Committee on Assisted Reproductive Technology*. The Advice is in effect from 16 December 2013 and is available on ACART's website at www.acart.health.govt.nz.

Guidelines

1. When considering an application for surrogacy involving an assisted reproductive procedure, ECART must be guided by the principles of the Human Assisted Reproductive Technology Act 2004:

Principles

All persons exercising powers or performing functions under this Act must be guided by each of the following principles that is relevant to the particular power or function:

- (a) the health and wellbeing of children born as a result of the performance of an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure;
- (b) the human health, safety, and dignity of present and future generations should be preserved and promoted;
- (c) while all persons are affected by assisted reproductive procedures and established procedures, women, more than men, are directly and significantly

affected by their application, and the health and wellbeing of women must be protected in the use of these procedures;

- (d) no assisted reproductive procedure should be performed on an individual and no human reproductive research should be conducted on an individual unless the individual has made an informed choice and given informed consent;
- (e) donor offspring should be made aware of their genetic origins and be able to access information about those origins;
- (f) the needs, values, and beliefs of Māori should be considered and treated with respect;
- (g) the different ethical, spiritual, and cultural perspectives in society should be considered and treated with respect.

2. When considering an application for surrogacy involving an assisted reproductive procedure:

(a) ECART must determine that:

(i) where there is one intending parent, he or she will be a genetic parent of any resulting child, or

(ii) where there are two intending parents, at least one will be a genetic parent of any resulting child;

and

(iii) there has been discussion, understanding, and declared intentions between the parties about the day-to-day care, guardianship, and adoption of any resulting child, and any ongoing contact; and

(iv) each party has received independent medical advice; and

(v) each party has received independent legal advice; and

(vi) each party has received counselling in accord with the current Fertility Services Standard;

(b) ECART must be satisfied that:

(i) the proposed surrogacy is the best or only opportunity for an intending parent, or at least one intending parent in a couple, to be the genetic parent of a child because, for example, an intending parent is:

- unable to gestate a pregnancy; or
- unable to conceive a child for medical reasons; or
- unlikely to survive a pregnancy or birth; or
- likely to have her physical or psychological health and wellbeing significantly affected by a pregnancy or birth; or
- likely to conceive a child who is unlikely to survive the pregnancy or birth or whose health would be significantly affected by the pregnancy or birth; and

- (ii) the surrogacy is not for reasons of personal or social convenience; and
 - (iii) the risks associated with a surrogacy for the adult parties and any resulting child are justified in the proposal. These risks are:
 - risks to the health and wellbeing of the intending surrogate, including
 - risks associated with pregnancy, childbirth and relinquishment of a resulting child to the intending parent(s);
 - the risk that the intending parent(s) may change their mind about parenting a resulting child;
 - risks to the health and wellbeing of the intending parent(s), including that the surrogate may change her mind about relinquishing a resulting child; and
 - risks to the health and wellbeing of a resulting child, including becoming the subject of a dispute if the relationship between the surrogate and intending parents breaks down.
- (c) In addition to the risks identified in (b)(iii) above, ECART must take into account the following relevant factors:
- (i) whether the intending surrogate has completed her family;
 - (ii) whether the relationship between the intending parent(s) and the intending surrogate safeguards the wellbeing of all parties and especially any resulting child;
 - (iii) whether legal reports indicate that the parties clearly understand the legal issues associated with surrogacies;
 - (iv) whether counselling has:
 - included implications counselling for all parties
 - included joint counselling for all parties
 - been culturally appropriate
 - provided for whānau / extended family involvement
 - provided for the inclusion of any children of the parties;
 - (v) whether counselling will be accessible to all parties before and after pregnancy is achieved; and
 - (vi) whether the residency of the parties safeguards the wellbeing of all parties and especially any resulting child.