

Minutes of the one hundred and tenth Meeting of the Ethics Committee on Assisted Reproductive Technology

20 February 2025

Held online on 20 February 2025

In Attendance

Jeanne Snelling	Chairperson
Analosa Veukiso-Ulugia	Member
Annabel Ahuriri-Driscoll	Member
Emily Liu	Member
Mania Maniapoto-Ngaia	Member
Mike Legge	Member
Richard Ngatai	Member
Peter Le Cren	Member
Jonathan Darby	Observer
Mrs Catherine Ryan	ACART member in attendance
Jonathan Darby	observer

ECART Secretariat

Apologies

Simon McDowell
Angela Ballantyne
Lana Stockman

1. Welcome

The Chair opened the meeting and welcomed all in attendance.

2. Karakia

Analosa Veukiso-Ulugia gave the opening Karakia.

3. Conflicts of Interest

No updates to the register and no declared conflicts of interest in relation to applications considered at this meeting.

4. Confirmation of minutes from previous meetings

The minutes from the 5 December 2024 meeting were confirmed.

5. Application 21906 for surrogacy involving an assisted reproductive procedure

Emily Liu opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation,*

the use of donated eggs with donated sperm and clinic assisted surrogacy, and the principles of the HART Act 2004.

Issues discussed included:

- The intending parents have one child conceived via IVF and the intending mother experienced pregnancy complications while carrying this child. Based on these complications she does not feel she can carry another child and this view is supported by specialists.
- The Committee were satisfied that the intended arrangement meets the requirement for the 'best or only opportunity for the intending parents to expand their family based on the fertility specialist and psychologist reports. These reports provide compelling information that, as a result of prior experiences, experiencing another pregnancy risks causing her severe psychological harm which is evidenced by her diagnosis of a recognised mental health condition.
- The surrogate couple have two children and consider their family to be complete. The surrogate's own pregnancies and deliveries are described as having been straightforward. She has been advised of the medical risks associated with a surrogacy pregnancy and has agreed on a delivery plan to help mitigate any risk to her and the potential child.
- The intending mother and the surrogate had a professional relationship which developed into a friendship prior to the intending surrogate offering to act as a surrogate for the intending parents. The relationship has grown to include their families and an open and ongoing relationship between the parties is described in counselling reports. They have also declared intentions to be open with any child born of this arrangement about the role the surrogate played.
- There does not appear to have been any undue influence in the surrogate's decision to offer; she appears to have made this freely.
- Both parties have had individual and joint counselling sessions and the reports submitted with this application set out a thorough consideration of the issues and implications canvassed during these sessions. The Committee was satisfied that the information in the reports showed that requirements of the ACART guidelines are met.
- Both parties have had independent legal advice. All parties understand the surrogates' rights regarding pregnancy. A testimonial guardian has been appointed.
- The process with Oranga Tamariki has commenced but the letter granting approval in principle has not yet been received.

Decision

The Committee decided to approve this application conditional on receiving the Oranga Tamariki letter of approval in principle for adoption.

Actions

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

6. Application 22045 for the creation of embryos from donated eggs and donated sperm between family members

Mania Maniapoto-Ngaia opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

Issues discussed included:

- The intending parents have had numerous unsuccessful attempts at IVF using their own gametes and therefore wish to proceed with donated ova.
- The intending mother is considered to have an advanced maternal age. She wishes to have a child with a genetic and cultural link. Therefore, while donor sperm is not clinically required, the intending sperm donor is a family member.
- The intending sperm donor and their partner do not have any children and do not intend to have children. They will be uncles to the intended child.
- The intending father has three children from a previous relationship, and they have been told about the intended arrangement. He is comfortable with the intended child not having a genetic link to him and supports the intended mothers wishes.
- The intending parents met the intending egg donor online, but they have since met in person and built a supportive relationship.
- The medical report for the egg donor does not raise any concerns and no hereditary conditions were disclosed.
- There is no evidence of coercion in relation to the donors' decisions to donate their gametes to the intending parents.
- Both intending donors and the intending parents have been advised of their rights in relation to the use, storage, and any on-donation of the gametes.
- Both intending donors have had genetic screening, and the intending egg donor carries genes for two recessive conditions, but the intending sperm donor does not carry the same genes. The sperm donor is of advanced paternal age and any known risks to the potential child associated with advanced paternal age have been outlined as discussed with him. It was not clear from the reports whether this information was shared with the intending parents. However, either way, the gamete provider (either sperm donor or intending father), would be of advanced paternal age.
- All parties have declared intentions to be open with any child born of this arrangement and the intending parents have discussed ways of introducing the child to the knowledge of the role the donors played in their conception.
- The egg donor and partner have their own children and consider their family to be complete. They have not yet discussed the proposed donation with their children and the Committee agreed that it would recommend that they seek support to introduce the children to the idea of their mother being an egg donor and of the potential for them to have half-siblings.
- The Committee discussed that the intending parents are electing to forego any biological connection with the intending father so that the intending mother might have one and, whether it considered this trade-off is warranted. The Committee was persuaded that the reasoning given was not against the interests of the potential child and that it could be in the child's best interests to share ancestry with the intending mother.

Decision

The Committee decided to **approve** this application, with a recommendation that the egg donor seeks counselling around support for her own children to prepare them in understanding their relationship to the intended child.

Actions

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

7. Application 22048 for surrogacy involving an assisted reproductive procedure

Richard Ngatai opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

Issues discussed included:

The Committee were satisfied that the intended arrangement offers the intending parents their only option to have a biological child, due to the intending mother not being able to carry a pregnancy for medical reasons. The intending parents are otherwise both generally well with no hereditary conditions identified.

- There is a within family aspect to the surrogacy with the surrogate being the sister of one of the intending parents.
- The surrogate and partner consider their family complete. The surrogate's own pregnancies were uncomplicated. The surrogate is described as being medically well. Given her pregnancy and birthing history any further risks could be well-managed.
- The reports submitted with this application describe a strong family and cultural relationship and a willingness to be open about the intended arrangement and to support each other with plans in place for the pregnancy, birth and post-birth. The counselling reports set out extensive discussion had around the relationships the parties and their family share and, how the parties will share the birth story and whakapapa links with existing children and with a child born of this arrangement.
- Both parties have received independent legal advice and have been advised in those sessions of their legal rights and obligations as set out in the legal and regulatory framework. The intending parents have identified a testamentary guardian to care for a child born of this arrangement in the unlikely event that they are not able to.
- Approval in principle for adoption has been granted by Oranga Tamariki.

Decision

The Committee decided to **approve** this application.

Actions

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

8. Application 22049 for surrogacy involving an assisted reproductive procedure

Peter Le Cren opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

Issues discussed included:

- The intending parents currently have no children and have undergone a long unsuccessful fertility journey, including IVF. It is unknown why fertility treatment has been unsuccessful.
- There are existing embryos created from the intending parents' gametes, ready for transfer to the surrogate. A child born of the intended arrangement would be the full biological child of the intending parents.
- The intending surrogate made the offer to be a surrogate, to the intending parents freely. Her motivation for offering to be a surrogate has been explored in counselling sessions. She has four children with her partner, and they consider their family complete, and she wishes to help her long-standing and close friend start her family. The reports submitted with this application describe a long-standing deep friendship with mutual support. Both parties have a strong network of people supporting them.
- The surrogate has experienced some mental health issues following one of her pregnancies. The reports support that this was linked to specific post-natal issues and would not be a concern if she is not raising the potential child. Based on the information provided in the reports submitted, the Committee was satisfied that post-natal issues would not pose a significant risk to the surrogate if she were to experience them after a surrogacy pregnancy.
- The parties have declared a commitment to being open with a child born of this arrangement about the role the surrogate played. They have told their wider families about the intended arrangement and have their support.
- There appears to be consistent understanding and expectations between the parties in relation to the pre, peri and post-natal periods and, a solid understanding of their rights and responsibilities in relation to the intended arrangement.
- There is no concern that the surrogate would not relinquish a child nor that the intended parents would not accept a child born of the intended arrangement. Oranga Tamariki have approved an adoption order in principle. Both parties have received independent legal advice, and the reports describe discussion about the essential matters and requirements of the regulatory framework.
- The Committee considered whether the reasons stated in the application for surrogacy along with the other potential fertility treatment options open to them would meet the 'best' opportunity test. The Committee agreed that while surrogacy might not be the only option open to the intending parents that, for the clinical reasons provided in the medical reports, surrogacy offers the intending parents' the best chance to have a child.

- Given the surrogate's history of delivery of her own children by caesarean-section, the Committee agreed to make approval of the intended arrangement conditional on her being referred for obstetric care, once pregnant, to help manage the risk of haemorrhage to her and the potential child.

Decision

The Committee decided to **approve** this application, conditional on the surrogate being referred, once pregnant, for obstetric-led care.

Actions

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

9. Application 22047 for surrogacy involving an assisted reproductive procedure with egg donation

Analosa Veukiso-Ulugia opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

Issues discussed included:

- The intending parents and surrogate have had a previous application approved by ECART with a different egg donor, however multiple embryo transfers were unsuccessful, so they have reapplied with a new egg donor.
- Given that the intending parents' IVF treatment has been unsuccessful, it has been clinically recommended that egg donation is the best option for them to have a child. The intending mother will require a hysterectomy for medical reasons. Therefore, surrogacy is the best and only option for the intending parents to have a child.
- The surrogate and the intending mother are cousins, and their families share a close relationship. The surrogate has completed her own family and is motivated to help the intending parents start their family. Due to the surrogate having previous caesarean-section deliveries of her own children, a birth would be a planned caesarean.
- The medical reports submitted with this application do not set out information about investigation on why the previous embryo transfers to the surrogate around 4-5 years ago were unsuccessful. She is now of advanced maternal age and the risk profile for her carrying a pregnancy would have changed since that time and time of the first application to ECART. The Committee noted that it would therefore make approval of this application conditional on receipt of an independent obstetric report that talks to the suitability of the surrogate and, that the report is shared with the intending parents.
- The egg donor is a clinic donor. She and her partner do not have any children. The egg donor's gametes have been donated to other families, and if the donations have resulted in a live birth, the child/ren would have whakapapa with the intending parents' potential child. The Committee agreed that it would note in its decision letter the need to flag this with the intending parents if it has not already been discussed.

- The egg donor has a mild congenital heart condition, which carries a low risk of inheritance. Therefore, a fetal echocardiogram is recommended for the surrogate during pregnancy, which ECART supports.
- All parties have attended counselling and are aware of the process and associated risks and, their rights and responsibilities within the regulatory framework of the intended surrogacy arrangement. The egg donor has not consented to on-donation of embryos.
- The intending parents and the surrogate parents have received independent legal advice. They have received advice about testamentary guardianship and wills in those sessions.
- The intending parents intend to adopt any child born of this arrangement and Oranga Tamariki have given approval in principle for adoption.
- All parties have declared intentions to be open with any child born of this arrangement about the roles the egg donor and surrogate played in their conception and birth story. The intending parents and surrogate parents have discussed how to do this in a culturally appropriate way including with their wider family. The egg donor has shared with her own family that she is a donor.

Decision

The Committee decided to **approve** this application **conditional** on receiving a specialist report confirming the suitability of the surrogate. ECART also noted that the medical report for the egg donor indicated she is a carrier of two conditions including cystic fibrosis and that the intending father should also be tested. It is unclear if this has been done. This approval is also conditional on ECART receiving notification that the intending parents have been made aware of this.

Actions

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

10. Application 22051 for surrogacy involving an assisted reproductive procedure

Mike Legge opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

Issues discussed included:

- The intending mother has had a hysterectomy, so surrogacy provides the best and only option for the intending parents to have a biological child.
- The intending surrogate is a friend of the intending mother, and they intend to continue a close relationship after the birth of a child and have declared intentions to be open with the resulting child about the role the surrogate played.
- Both parties have had individual and joint implications counselling. The intending surrogate and partner have not included their children counselling sessions to date due to their ages, but they intend to help them understand the intended surrogacy arrangement.
- The parties have been advised in counselling sessions about their rights relating to the use, discarding and on donation of the embryos.

- The intending surrogate is in good health and has had two successful pregnancies. She and her partner consider their family is complete.
- Pre, peri and post birth plans have been discussed in medical and counselling sessions. Preimplantation genetic testing for aneuploidy has been discussed in medical sessions as has the range of potential complications for the surrogate. There are no known genetic inheritable disorders, and the intending parents intend to have preimplantation genetic testing.
- The intending parents intend to adopt any child born of this arrangement and Oranga Tamariki has approved an adoption order in principle.
- Both parties have had independent legal advice in relation to the HART Act requirements and, also noted advice on making wills and appointing a testamentary guardian in the unlikely event the intending parents are unable to care for a resulting child. The intending parents have been advised to have a surrogacy agreement in place in the interest of transparent expectations and, at the same time they have been advised that such an agreement is unenforceable. The Committee noted advice included establishing a regular payment from the intending parents to the surrogate, which they agreed was not consistent with the provisions set out at section 14 of the HART Act. The Committee agreed to note this in its decision letter.

Decision

The Committee agreed to **approve** this application, subject to noting that legal advice given to the intending parents that they may pay a weekly or monthly payment may contravene the prohibition on giving or receiving valuable consideration for participation in a surrogacy arrangement (s 14 of the HART Act).

Actions

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the Committee's decision.

11. Application 20788 for surrogacy involving an assisted reproductive procedure

Jeanne Snelling opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

Issues discussed included:

- ECART first considered this application in 2024 and deferred it to request further information. The Committee considered the further information received at this meeting.
- The intending parents have had a lengthy fertility journey with multiple failed embryo transfers, which is why the Committee previously acknowledged that surrogacy is the best opportunity for them to have a biological child.
- The surrogate experienced intrauterine growth restriction in a previous pregnancy which resulted in a premature birth, and this would be a risk for future pregnancies. Therefore, obstetric care would be indicated. The intending parents are aware of this. The surrogate would also like an elective caesarean.

- ECART requested a specialist obstetric report explaining the cause of the surrogate's previous IUGR, as the original medical report submitted did not address this. ECART's deferral decision letter asked for the reasons why the surrogate had IUGR and what the future risk of recurrence would be.
- The report provided to ECART gave a prospective risk only and, did not definitively answer ECART's questions as the specialist did not have access to the intending surrogate's previous notes. Therefore, the specialist could only speculate as to why the condition occurred during her pregnancy.
- The specialist report made comment on future risk to the surrogate and potential child (that she has been made aware of) and made suggestions for how this could be managed including that she be referred to a high-risk pregnancy clinic for regular scans and monitoring.
- The Committee discussed whether the information provided is enough for the committee to approve the application. Based on the information before the Committee it deduced that the risk of IUGR recurring could be seen as being similar to that in the surrogate's previous pregnancy and, potentially could even be reduced given there will be access to more intervention during a pregnancy this time.

Decision

The Committee agreed to approve this application conditional on obstetric care and monitoring for the surrogate.

Actions

Secretariat to draft a letter from the Chair to the researchers informing the Co-ordinating Investigator and HDEC of the committee's decision.

12. Application 22133 for the donation of eggs between family members

Annabel Ahuriri-Driscoll opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

Issues discussed included:

- This application relates to a previous request for non-binding ethical advice.
- The egg donor who is also the surrogate is the sister-in-law of one of the intending parents. The intended arrangement also involves the donation of gametes from a brother-in-law to a sister-in-law, which is not an established procedure and therefore regulated under the ACART Guidelines.
- One of the changes in circumstances since the initial request for non-binding ethical advice is that the surrogate has had two deliveries by caesarean-section and so there is a focus in the application on the possible risks of a further caesarean-section delivery. The pregnancy and birth plan, which has also been discussed with the intending parents, would be for the surrogate to receive monitoring while pregnant and for a scheduled caesarean, which she has discussed with an obstetrician, who has provided medical approval.
- The intending parents live offshore and the surrogate lives in New Zealand. The reports submitted with this application describe the parties sharing a close

relationship despite the fact they currently live in different countries. The intending parents reported that they felt counselling was culturally appropriate as they were able to openly discuss tikanga and the importance of the whānau context.

- The intending parents have a child they formally adopted via a whāngai arrangement from the surrogate. A child born of this intended arrangement would have a biological link with the other intending parent. Through their whāngai arrangement they have experience of some of the nuances of surrogacy including relinquishment of a child, navigating the transition and best interests of the child. Also established during that experience was a narrative for the family and the child that will ensure the child's sense of identity and connection to biological parents and siblings.
- All parties have attended individual and joint implications counselling where they have discussed pre, peri and post birth support for the surrogate, their rights and responsibilities and the child's right to access information from the HART Register. They have also talked about being open to the possibility of donation of embryos to another whānau member.
- The existing children within the whānau are aware of the whāngai arrangement and of the intended surrogacy arrangement but are considered too young to attend counselling sessions.

The intending parents have received legal advice from a lawyer where they live. They intend to adopt any child born of this arrangement and, in the unlikely event that they could not care for the child, have agreed that the surrogate couple would be testamentary guardians. Oranga Tamariki have given approval in principle for adoption.

The Committee noted that a surrogacy arrangement that involves the use of an ARP (in this case within family gamete donation), is required to be considered and approved by ECART before treatment can start. In order to approve the surrogacy arrangement, ECART needs to consider legal reports for both parties. The original legal reports were submitted in 2019 with the original application. Given the length of time that has passed and that intending parents are offshore, the Committee agreed to request updated legal reports from both parties.

Decision

The Committee agreed to **approve** the within family gamete donation aspect of this application. The Committee agreed to approve the intended surrogacy arrangement conditional on being provided with updated legal reports for both parties.

Actions

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

11. Consideration of extended storage applications

12. Subcommittee for considering late submission of deferred decision responses

The Committee agreed to form a subcommittee including Jeanne Snelling, Peter Le Cren, Emily Liu and Mike Legge to consider two late submission deferrals prior to the next ECART meeting in April.

Actions

Secretariat to arrange a date for this meeting to occur.

Meeting close

Confirmation of next meeting on 11 April 2025.

Confirmation of ECART member in attendance at next ACART meeting on 27 February 2025, Lana Stockman.

Analosa Veukiso-Ulugia led the closing Karakia.