

## Assisted Human Reproduction. A Review of the Ministerial Advisory Committee Report

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Mr Bill Atkin, Reader in Law at Victoria University of Wellington, and Dr Paparangi Reid, Health Researcher at the Wellington School of Medicine begin their executive summary of the above Report by noting that "Assisted human reproduction is an area of acute public interest". Throughout their report to the Minister of Justice they emphasise the need for public accountability, debate and discussion, and an accessible and accountable system in which the public can have confidence. To meet these needs the Report recommends a twofold approach.

First, it argues that the current system of review, made up of the Interim National Ethics Committee on Assisted Reproductive Technology (INECART) set up by the Minister of Health, and the Australian Reproductive Technologies Accreditation Committee (RTAC) which in association with the Royal New Zealand College of Obstetricians and Gynaecologists accredits programmes in New Zealand, provide appropriate professional self-regulation and ethical oversight. Neither of these bodies, however, meet advisory, liaison, educational nor general oversight functions, and they are "hidden from the sight of many people in the community". For these reasons, the Report recommends the setting up of a Council on Assisted Human Reproduction which would be appointed jointly by the Ministers of Justice and Health, after having taken advice on membership from Te Puni Kokiri and the Ministry of Women's Affairs.

If accepted the recommendation would mean the existence of a tripartite system of oversight. The clarifying of boundaries between the separate organisations along with the amount of time that would have to be spent on liaison activities raises doubts about the efficiency and effectiveness of the system. It is important to note that the Council will relate to the Departments of Justice and Health, the two Departments who have initiated action in this area. What is lacking is any recognition of the role of the Department of Social Welfare, although it does need to be acknowledged that the Commissioner of Children is referred to. Overall this report has a justice and health focus perhaps reflecting the disciplines of the committee members, along with present Departmental involvement.

The second means for ensuring more public accountability is the proposal that the Medical Practitioners Act

should contain a provision that nobody can practice assisted reproduction or set up a business or agency associated with assisted reproduction unless they come within the provisions of the Act.

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Such a system should provide for greater professional control and ensure the accreditation of providers. The Report notes that in its review of New Zealand practice it found that accredited providers of reproductive services "have been acting in a responsible manner".

The Report outlines the principles which guided the thinking of committee members, arguing that policy options need to be evaluated with reference to these principles.

Heavy use was made of the work and views presented in reports by other countries, particularly that of the recently released Canadian Royal Commission. The Committee established eight principles: respect for human life and dignity, autonomy, the Treaty of Waitangi/Te Tiriti o Waitangi, justice, the best interests of the offspring, the right to know genetic origins, accessibility, and quality services and accountability. The committee has succeeded in using these principles as its guiding force, although it does recognise that in a pluralistic society agreement on both principles and the policies emerging from them is likely to be elusive.

Media interest in the Report centred primarily on issues of who could have access to assisted reproductive services, ie lesbian couples, single persons, older women etc. Professionals working in the field had held high expectations for some clarity on these matters. In fact the clarity had come prior to this release of the Report in that the Human Rights Commission had stated that it was discriminatory to exclude anyone on the grounds of age, disability, sexual orientation, and family status. The Report devotes one chapter to the topic of discrimination and makes the point that

it is illegal to have blanket policies that exclude a class of people, eg single persons. This does not stop clinics from assessing individual persons or couples for health factors or for consideration of the welfare of the child. Professionals will be reassured about this conclusion, but that leaves open the basis on which assessments are to be made; by whom, and in what circumstances. No mention is made of what appeal procedures should operate for excluded couples or individuals.

Several matters in the Report reflect the commitment to the Treaty of Waitangi/Te Tiriti o Waitangi; the recommendation that there should be no commercialisation of gametes and embryos because they have mana, the emphasis on the need for identifiable semen donors and openness in the sharing of information (to protect

whakapapa needs), and the need to add a section to the Australian accreditation standards (RTAC) that apply to New Zealand.

The longest chapter in the Report is devoted to information exchange and the moves towards greater openness between the different parties involved in assisted reproduction. There is little doubt that New Zealand leads the world in its approach to this topic, in thinking, policy and practice. The Report endorses and reinforces the current position by recommending the setting up of a central register for the collecting of records on donation of gametes and embryos, and by arguing for the development of a special code under the Privacy Act to ensure donors are identifiable to the offspring in the future. The seriousness with which this issue is regarded is reflected in the fact that the code should incorporate procedures for endeavouring to obtain from past donors their consent to identification.

Surrogacy is discussed and the conclusion that is reached is that IVF compassionate surrogacy should not be objected to (thus disagreeing with the decision of INECART), that the professional control of providers should ensure commercial entrepreneurs and unqualified people do not engage in surrogacy and that monitoring of the area needs to be ongoing.

Research is also discussed with strong support being given for psychosocial research and the recommendation being made that it become unlawful to undertake research into cloning, animal/human hybrids, and the implantation of human and animal embryos in the opposite species.

The report includes an appendix which summarises and analyses the written submissions that were received by the Committee. While this is useful, it is somewhat frustrating not to know the numbers of submissions made on various matters, or who was making these submissions. The main Report frequently refers to "many", "some", in relation to the submissions and from this it is impossible to compare the "public interest" as reflected in these submissions with the Report's conclusions.

The Report is now with the Minister of Justice and it can be expected that the responses to it from the public and providers will have some impact on the action that is taken.

## Review

# The Report of the Ministerial Committee on Assisted Reproductive Technologies many questions - few answers

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**I**t is a massive task to come to grips with the legal and moral issues which so called "Assisted Reproductive Technologies" (ART) pose. Bill Atkin and Paparangi Reid are to be congratulated for producing a report which raises key issues, shows the different perspectives on them, provides information on current practice in New Zealand and discusses overseas responses. Disappointingly, the Report provides few answers.

### Why control ART?

The Report starts with the presumption that the use of artificial methods of human reproduction are a legitimate means of addressing

raise "deep metaphysical questions" for most people. The Report goes on to say issues of ART are issues for the whole community not just a section, because the interests of children, the promotion of human rights, and justice are all at stake. These are the bases upon which the Report argues that the state has a clear interest in regulating ART services.

### What is the appropriate control?

The recommendations of the Report are a politician's dream - no immediate legislative change is required, difficult issues are to be handed over to a new body (The Council on Assisted Human Reproduction) who will advise on

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problems of infertility. There is a strong argument to be made that it is no business of the state how a couple conceive their genetic child, whether "au naturale" or otherwise. After all, at this very moment many people whether intentionally or otherwise are conceiving children and the state does not regulate their activity. There is a distinction between assistance to have a child who is the genetic offspring of both parents who will rear that child, and assistance to have a child who is not the genetic offspring of the rearing parents. The Report writers gloss over this fundamental issue. The Report lumps them together because both use ART. A better approach, and one more sensitive to the issues, would have been to begin with a focus on children born to parents where one or both parents are not genetically related to the child. Instead, the prime focus of the Report is on the methods of ART. The Report says ART services give rise to fundamental questions about what it is "to be human" and

them. The Report says the Council does not even require legislation to be set up. The Report is vague on who should be on the Council, saying a "balance" between experts and lay people is essential. If ART really is a matter for the whole community, it is difficult to see how a body which is not legislatively accountable and which is separate from the political process really does achieve wide involvement and accountability. It's great news for politicians. They can point the finger at the Council if public opinion erupts. If ART really is about the interests of children, human rights and justice then surely legislative provision is essential. Legislation is part of the democratic process and it is binding on all.

Who should provide ART? The Report recommends tighter control on those who provide ART services. It is recommended that the revised Medical Practitioners Act contain provision that "nobody" can practice