

Human Assisted Reproductive Technology (Storage) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Human Assisted Reproductive Technology Act 2004 (the **Act**) prohibits storage of a human in vitro gamete or a human in vitro embryo (being an embryo whose development has been suspended) for longer than the applicable period. The applicable period is 10 years or, if the ethics committee under the Act has, before the expiry of that 10-year period, approved a longer period in respect of the gamete or embryo, the longer period approved by the ethics committee.

This prohibition is in section 10 of the Act, which came into force on 22 November 2004. Contrary to the initial understanding of officials and fertility clinics, this prohibition applies to both—

- gametes and embryos of that kind storage of which began before 22 November 2004; and
- storage before 22 November 2004 of gametes and embryos of that kind.

Fertility clinics acting in good faith have therefore unknowingly acted in breach of the Act by storing gametes and embryos of that kind for longer than the applicable period. Fertility clinics will continue to act in breach of the Act unless it is amended or (which

was not intended, and is not proposed) they destroy immediately gametes and embryos of that kind.

There has also been uncertainty as to whether—

- the advisory committee under the Act may issue guidelines and advice to the ethics committee on the matters to be taken into account in considering whether to approve a longer period for the storage of a human in vitro gamete or a human in vitro embryo; and
- a longer period for the storage of a human in vitro gamete or a human in vitro embryo may be approved only if the giving of an approval of that kind is covered in, and the ethics committee is satisfied that the proposed approval is consistent with, relevant guidelines and advice issued or given by the advisory committee.

This Bill therefore amends the Act both to maintain, and to make clear, its initial policy intent.

Clause by clause analysis

Clause 1 states the Bill's Title.

Clause 2 relates to commencement. The Bill is to come into force on the day after Royal assent. (However, the amendment made by *clause 5(1)* has effect from the commencement, on 22 November 2004, of the prohibition against storing a human in vitro gamete or a human in vitro embryo for longer than the applicable period.)

Part 1

Preliminary provisions

Clause 3 ensures that the Bill amends the Human Assisted Reproductive Technology Act 2004. (A reference in this analysis to a provision is, unless otherwise stated, a reference to a provision of that Act.)

Clause 4 states the Bill's purpose, which is to ensure that,—

- (a) for the purpose of the prohibition against storing a human in vitro gamete or a human in vitro embryo for longer than the applicable period, no account may be taken of any period in which the gamete or embryo was stored before the commencement, on 22 November 2004, of that prohibition:

- (b) the advisory committee may issue or give guidelines and advice to the ethics committee on the matters to be taken into account in considering whether to approve a longer period for the storage of a human in vitro gamete or a human in vitro embryo:
- (c) a longer period for the storage of a human in vitro gamete or a human in vitro embryo may be approved only if the giving of an approval of that kind is covered in, and the ethics committee is satisfied that the proposed approval is consistent with, relevant guidelines and advice issued or given by the advisory committee.

Part 2

Amendments to principal Act

Clause 5(1) amends section 10 as from its commencement, on 22 November 2004. Section 10(1) prohibits storage of a human in vitro gamete or a human in vitro embryo (being an embryo whose development has been suspended) for longer than the applicable period (10 years or, if the ethics committee has, before the expiry of that 10-year period, approved a longer period in respect of the gamete or embryo, the longer period approved by the ethics committee). *New section 10(1A)*—

- relates to any storage of a human in vitro gamete or a human in vitro embryo of that kind before the commencement, on 22 November 2004, of section 10; and
- requires any storage of that kind to be disregarded in calculating, for the purposes of section 10(1), the period for which that gamete or embryo has been stored.

Clause 5(2) inserts a *new section 10(1B)*. *New section 10(1B)* prevents the ethics committee from approving a longer period for the storage of a gamete or embryo for the purposes of section 10(1)(b) unless the giving of an approval for those purposes is covered in, and the ethics committee is satisfied that the proposed approval is consistent with, relevant guidelines or advice issued or given by the advisory committee.

Clause 6 relates to the advisory committee's functions under section 35(1)(a). Those functions are to issue or give guidelines and advice to the ethics committee on any matter relating to any kind of assisted

reproductive procedure or human reproductive research and to keep such guidelines and advice under review. (The ethics committee is in performing its functions and exercising its powers required by section 29(a) to operate in accordance with any guidelines issued by the advisory committee.) *New section 35(1A)* ensures that the advisory committee's functions under section 35(1)(a) include the issuing or giving of guidelines and advice to the ethics committee on the matters that the ethics committee must take into account in considering whether to approve, for the purposes of section 10(1)(b), a longer period for the storage of a human in vitro gamete or a human in vitro embryo.

Hon Simon Power

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Human Assisted Reproductive Technology (Storage) Amendment Act **2009**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1**Preliminary provisions**

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3 Principal Act amended

This Act amends the Human Assisted Reproductive Technology Act 2004.

4 Purpose of this Act

The purpose of this Act is to ensure that,—

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(a) for the purpose of the prohibition against storing a human in vitro gamete or a human in vitro embryo for longer than the applicable period, no account may be taken of any period in which the gamete or embryo was stored before the commencement, on 22 November 2004, of that prohibition:

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(b) the advisory committee may issue or give guidelines and advice to the ethics committee on the matters to be taken into account in considering whether to approve a longer period for the storage of a human in vitro gamete or a human in vitro embryo:

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(c) a longer period for the storage of a human in vitro gamete or a human in vitro embryo may be approved only if the giving of an approval of that kind is covered in, and the ethics committee is satisfied that the proposed approval is consistent with, relevant guidelines and advice issued or given by the advisory committee.

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Part 2**Amendments to principal Act****5 Human in vitro embryos and human in vitro gametes not to be stored for more than 10 years**

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(1) Section 10 is amended as from its commencement, on 22 November 2004, by inserting the following subsection after subsection (1):

“(1A) In calculating, for the purposes of subsection (1), the period for which a human in vitro gamete or a human in vitro embryo has been stored, any storage of that gamete or embryo before 22 November 2004 must be disregarded.”

(2) Section 10 is amended by inserting the following subsection 5
before subsection (2):

“(1B) The ethics committee may approve a longer period in respect of the gamete or embryo for the purposes of subsection (1)(b) only if the giving of an approval for those purposes is covered in, and the ethics committee is satisfied that the proposed approval is consistent with, relevant guidelines and advice issued or given by the advisory committee.” 10

6 Functions of advisory committee

(1) Section 35(1)(a) is amended by inserting “or give” after 15
“issue”.

(2) Section 35 is amended by inserting the following subsection after subsection (1):

“(1A) To avoid doubt, the functions stated in subsection (1)(a) include the issuing or giving of guidelines and advice to the ethics committee on the matters that the ethics committee must 20
take into account in considering whether to approve, for the purposes of section 10(1)(b), a longer period for the storage of a human in vitro gamete or a human in vitro embryo.”