



## Australian Government

### National Health and Medical Research Council

# Payments to gamete donors by Australian ART clinics

The National Health and Medical Research Council (NHMRC) is aware that a number of ART clinics in Australia are offering set payments to gamete donors. The purpose of this information is to remind clinics of the requirements under Commonwealth legislation regarding payments for human gametes.

The Embryo Research Licensing Committee of NHMRC has responsibility for monitoring compliance with the *Research Involving Human Embryos Act 2002* (the RIHE Act) and the *Prohibition of Human Cloning for Reproduction Act 2002* (the PHCR Act), which regulate practices associated with reproductive technology. There are severe penalties for breaching either Act, including in relation to obtaining donor gametes in Australia. In particular, section 21 of the PHCR Act states that:

*(1) A person commits an offence if the person intentionally gives or offers valuable consideration to another person for the supply of a human egg, human sperm or human embryo.*

*Maximum penalty: Imprisonment for 15 years*

*(2) A person commits an offence if the person intentionally receives, or offers to receive, valuable consideration from another person for the supply of a human egg, human sperm or human embryo.*

*Maximum penalty: Imprisonment for 15 years*

*(3) In this section:*

**Reasonable expenses:**

- (a) in relation to the supply of a human egg or human sperm- includes, but is not limited to, expenses relating to the collection, storage or transport of the egg or sperm; and*
- (b) in relation to the supply of a human embryo:
  - (i) does not include any expenses incurred by a person before the time when the embryo became an excess ART embryo; and*
  - (ii) includes but is not limited to, expenses relating to the storage or transport of the embryo.**

**Valuable consideration**, in relation to the supply of human egg, human sperm or human embryo by a person, includes any inducement, discount or priority in the provision of a service to the person, but does not include the payment of reasonable expenses incurred by the person in connection with the supply.

In addition, the *Ethical guidelines on the use of assisted reproductive technology in clinical practice and research, 2007* (the ART guidelines) refer to the reimbursement of gamete donors. In Part B of the guidelines, section 6.5 states that:

*Gamete donation should be altruistic. Commercial trading in human gametes and/or use of direct or indirect inducements must not be undertaken...*

In reference to research, section 17.21.2 of Part B of the ART guidelines states that:

*There should be no payments or other inducements for the donation of gametes... The reimbursement for reasonable out-of-pocket expenses associated with the procedures is acceptable. In research to which these guidelines apply, reimbursement does not cover compensation, including compensation for time.*

What amounts to *reasonable expenses* incurred in donating will vary between individuals, depending on their circumstances. Payment of a predetermined amount to all donors, without any consideration of individual circumstances, may constitute *valuable consideration* if the amount exceeds the *reasonable expenses* incurred by the individual during the donation process. Clinics may be at risk of breaching the PHCR Act if they provide *valuable consideration* for human gametes.

Furthermore, the Reproductive Technology Accreditation Committee (RTAC) *Code of Practice for Assisted Reproductive Units 2015* requires ART clinics to comply with the ART guidelines in relation to the use of donated gametes (criterion 12) as well as more generally (criterion 1).

Please note that this correspondence is provided for your information and does not constitute legal advice. If you have any concerns about compliance with the legislation, you should seek advice specific to your circumstances.

NHMRC recognises the need for gamete donation in Australia, and understands the desire to improve access to Australian donors. However, it is important that any relevant processes to do so are compliant with Australian law and practice.

If you require any clarification please do not hesitate to contact Embryo Research on (02) 6217 9468 or via e-mail at [embryo.research@nhmrc.gov.au](mailto:embryo.research@nhmrc.gov.au) .



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