

Human Assisted Reproductive Technology (Storage) Amendment Bill

21 September 2009

THE ATTORNEY-GENERAL

Human Assisted Reproductive Technology (Storage) Amendment Bill (PCO 13909/1.5):

Consistency with the New Zealand Bill of Rights Act 1990

Our Ref: ATT395/117

1. I have considered the above Bill for consistency with the New Zealand Bill of Rights Act 1990. I advise that the Bill appears to be consistent with the Bill of Rights Act.
2. The Bill proposes to amend the Human Assisted Reproductive Technology Act 2004 to clarify that the period before the 2004 Act commenced will not be taken into account when calculating the ten year period for which human in vitro embryos or and gametes can be stored. The Bill also provides that any approval by the ethics committee for a longer period of storage must be covered by, and consistent with, relevant guidelines and advice issued or given by the advisory committee.
3. The Bill raises a possible issue with the right to freedom from discrimination on the grounds of disability as affirmed by s 19 of the Bill of Rights Act as the limitation period in which human embryos and gametes may be stored arguably has a differential effect on persons with fertility problems compared to those without fertility problems. However, as there is the ability to obtain approval for a longer period of storage the proposal has a mechanism to avoid disadvantage. Further, and in any event the limits on storage do not cause the type of disadvantage that s 19 aims to protect (being that arising from prejudice and negative stereotyping that perpetuates legal, social or political disadvantage faced by a marginalised group in our society). Accordingly, no *prima facie* limit on s 19 arises.
4. Even if the provisions were *prima facie* discrimination on the grounds of disability, it would be justifiable under s 5. Regulating the use of IVF treatment is an area in which governments are afforded a wide margin of appreciation, given the sensitive moral and ethical issues that arise in the context of ongoing technological developments [\[1\]](#).
5. In accordance with Crown Law practice, this advice has been peer reviewed by Victoria Casey, Crown Counsel.

Yours faithfully

Jane Foster
Associate Crown Counsel

Footnote:

1. *Evans v United Kingdom* (Application number 6339/05), European Court of Human Rights.

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