

**EMERITUS CHIEF RABBI OF WESTERN AUSTRALIA
RABBI DAVID FREILICH OAM**



Maureen Harris
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Department of Health
Reproductive Technology Unit
Patient Safety & Clinical Quality
189 Royal Street
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Dear Maureen

Review of the Human Reproductive Technology Act 1991 and the Surrogacy Act 2008

Before beginning this submission, I want to say something about science. Science at its best is in the blessing that it facilitates in saving life and helping humankind and at the same time it must honour the dignity of the human being. Many people are anxious about science and its power to destroy. In the Jewish religion it is noted that the first chapter of Genesis describing creation begins with the second letter of the Hebrew alphabet. The Ten Commandments however, begins with the first letter of the alphabet. This according to the rabbinic sages indicates to us that even the greatest act of creation is secondary to the uses to which we put it. Every technology, even when it comes to human reproductive technology – every technology can be used for good or evil which is why the greater our scientific knowledge the stronger must our ethics be.

It is in this light, that I give the following recommendations: -

a) Artificial insemination

Using the sperm of a donor (AID) other than the husband is considered by Jewish rite to be strictly prohibited for a variety of reasons including the possibility of incest, confused genealogy and the problems of inheritance. The use of sperm from the husband (AIH) is permissible if there is no other method possible for the wife to become pregnant.

b) Medical research on abortus

As far as medical research on a spontaneously or therapeutically aborted foetus is concerned there is a simple rule depending on whether the foetus is alive or dead. If the foetus is alive then it is not permitted to perform the medical research. If the foetus is dead it is permitted. If the foetus is alive although not viable because of prematurity or malformation it is still considered to be a living person in all respects. Any research activities that might shorten the life of the foetus are prohibited by Jewish rite. If the abortus is dead as defined by Jewish rite which means the absence of respiration and absence of cardiovascular pulsation, then because there is no biblical requirement for burial, medical research can be carried out on the foetus anyway without any objection by the Jewish faith. However, it is desirable to secure the foetus for burial in order to preserve the dignity of humankind as we are all created in the image of G-d, as well as showing sanctity of human beings. Since there is no absolute Jewish requirement for burial, medical research may be carried out on the dead foetus without any objection by the Jewish faith.

c) In regard to storage of gametes and embryos, some Jewish rabbinic opinions state that IVF is only permitted if all fertilised eggs are implanted. However, the implantation of 5, 6 or 7 pre-embryos could severely

jeopardise the prospects of a successful pregnancy. The development of pre-embryo freezing means that fertilised ova can be stored for future use. The question is what is to be done with these fertilised ova if they are not required? Issues concerning the destruction of embryonic or foetal life fall within the same guidelines in Jewish rite as strictures against abortion. Abortion is not sanctioned by Judaism unless it is going to affect the health of the mother either physically or in some cases emotionally and mentally. Of course, since the gametes or embryos are external to the mother their destruction would not affect her physically. The gametes or embryos which are less than 40 days old, can according to Jewish tradition be more easily terminated. The rabbinic sources refer to a pre-embryos less than 40 days old as, "mere water". If genetic testing uncovers a defect which would justify abortion of a pre-forty day embryo, destruction of the pre-embryo may be permitted. A number of rabbinic sources have gone further and allowed the virtual indiscriminate discard of surplus embryos, even where actual abortion of a transplanted "less than 40 days" embryo would not be justified. This pre-embryo can be treated even more leniently as it is not in an environment in which it will be able to be brought to term and live.

- d) In the case of host-surrogate mothers, most rabbinical authorities regard a host surrogate mother as the actual mother. This being the case, it would not be incestuous for the children of that host surrogate mother to marry other offspring of the egg donor but not of the host mother.
- e) In the case of choosing the sex of a baby, this is seen as interfering with the natural order of the world. The divine source, whatever you may classify it as, controls the checks and balances of the world. As I mention at the beginning of this submission, science is a great thing but it must be tempered by respect for divine order. It is not for us to interfere with the divine plan in population development.
- f) As far as confidentiality of information is concerned it is important that those born from AID (donor sperm) know who their biological father is to prevent incestuous relationships in the future.
- g) As far as use of data for research is concerned, once this data has been obtained, it may be used even if obtained by possible unethical means. As abhorrent as this seems, there are religious authorities that allow the use of data, however obtained, to benefit humankind. Importantly this is only ex post facto. One should not deliberately obtain such data from unethical means but once the data has been obtained it may be used.

There is so much that I, as a representative of the Jewish community, would like to contribute to the review of the Human Reproductive Technology act 1991 but feel trying to condense it in a written submission is almost impossible. I would welcome the opportunity to express thoughts on this on behalf of the Jewish community to any committee dealing with it. We very much appreciate your consideration in allowing our community to express its thoughts on this act. But also understand that ultimately it is a democratic process of making decisions regarding this act that should and must prevail.

With manifold blessings.



David Freilich OAM
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On Behalf of the CCJWA