



Government of **Western Australia**
Department of **Health**

POSTHUMOUS COLLECTION OF HUMAN GAMETES (EGGS AND SPERM) POLICY

Title: Posthumous Collection of Human Gametes (eggs and sperm) Policy

1. Background

Subject to the Minister for Health, the Chief Executive Officer (CEO) of the Department of Health (DOH) administers the *Human Reproductive Technology Act 1991* (HRT Act).

The HRT Act makes provision for the posthumous use, or other dealing in or disposal of human gametes (eggs and sperm). The provisions include certain consent requirements in relation to the collection of gametes.

Historically and currently, Legal and Legislative Services within the DOH provides legal support and advice to the Minister and the CEO as well as the Reproductive Technology Council (an advisory body to the Minister and CEO) on matters relating to human reproductive technology.

The specified role of Legal and Legislative Services includes to:

- Ensure that legal advice on human reproductive technology and surrogacy is applied in consistency with the DOH and Government policy.
- Coordinate and liaise between the DOH, the Minister's Office and statutory bodies within the WA health system on human reproductive technology and surrogacy matters.

The reason for this document and the intended purpose and outcomes is to have in place a system wide approach in relation to the reporting of and legal advice regarding the posthumous collection of human gametes.

2. Scope

This mandatory policy is binding on each Health Service Provider (HSP) to which it applies or relates.

3. Policy statement

Where a matter concerning the posthumous collection/removal of human gametes arises in a public hospital and/or the HSP becomes aware that legal proceedings are to be brought before a court to hear the matter (where the Minister for Health is a party to the action, including a defendant to the proceedings):

- The CEO of the DOH is to be **notified** by the HSP as soon as practicable, and
- Legal and Legislative Services are to act as **instructing officer** in such proceedings.

The basis for this is:

- To have in place system wide reporting of the posthumous collection of human gametes to the CEO who administers the HRT Act, subject to the Minister.
- Legal and Legislative Services provide legal support and advice to the Minister in connection with human reproductive technology and surrogacy, including circumstances where the Minister for Health is a party to such proceedings.
- To ensure that legal advice on human reproductive technology and surrogacy is applied in consistency with the DOH and Government policy.
- That Legal and Legislative Services coordinate and liaise between the DOH, the Minister's Office and statutory bodies within the WA health system on human reproductive technology and surrogacy matters.

4. Definitions

WA health system	The WA health system is comprised of the Department of Health, Health Service Providers (NMHS, SMHS, CAHS, WACHS, EMHS, Quadriplegic Centre and HSS) and to the extent that contracted health entities provide health services to the State, the contracted health entities.
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5. Roles and responsibilities

HSP's and Chief Executives are responsible for ensuring that the HSP's:

- Notify the CEO (DOH) of the proposed posthumous collection of human gametes and/or any legal proceedings in this regard, as soon as practicable, and
- Refer the matter on an urgent basis to Legal and Legislative Services for legal advice in order that Legal and Legislative Services may act as the instructing officer/s in any relevant legal proceedings.

6. Compliance

This mandatory policy is binding on those to whom it applies or relates.

7. Evaluation

Performance measures of this mandatory policy are to be carried out by the policy owner.

8. Relevant legislation

Human Reproductive Technology Act 1991

9. Authority

This policy has been approved and issued by the Director General of the Department of Health as the System Manager.

Title:	Posthumous Collection of Human Gametes (eggs and sperm) Policy		
Contact:	Director, Legal and Legislative Services Tel: 9222 4038 Email: legal.services@health.wa.gov.au		
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