

Fertility fact sheet

Embryo storage and separation

What happens to embryos if you separate?

Fertility Associates has a consistent and simple approach to IVF consent, which is that the person(s) who consented to create an embryo must also consent to the use or discarding of embryos. This approach applies to all couples using any combination of their own sperm, own eggs, donor sperm or donor eggs.

Our consent forms cover this issue in IVF consent and similar consent forms for other types of IVF treatment.

We know that separation can be a difficult time and deciding what to do with stored embryos can cause further distress. Our role is to look after your stored embryos until you have decided what to do. Our counsellors are available, and we can also suggest counsellors external to the clinic. Counselling fees are additional.

All embryo storage has a maximum limit of 10 years imposed by the HART Act unless an extension for storage is granted by an Ethics Committee (ECART). Even if former partners disagree about future use of the embryos, one partner can apply to ECART for an extension, which is not guaranteed. ECART can give an extension for storage but this is separate from consent to use or discard.

Sometimes people ask: can my ex-partner become a donor retrospectively, so the provisions of the Status of Children Act about donors having no rights and responsibilities for parenting can now apply to my embryos? This is not an option, since the HART Act and the regulations the clinic follows require specific work up of donors before their sperm or eggs can be used, including donor-specific screening and counselling.

You may also need to think about any donor sperm or donor eggs that you may have reserved. For instance, if the donor has stipulated their sperm or eggs can only be used by a married couple you may no longer have access to the donor if you become single.

Donors do not have any rights or influence over embryos once created using their sperm or eggs. Donors will only be contacted for their consent for storage beyond 10 years if this is required by ECART or if a person or a couple want to donate embryos created using donated sperm or donated eggs.



Former partners may continue to access any donated sperm or eggs that have been reserved for them, subject to donor restrictions, such as restrictions on marital status or similar.

Disagreement on what to do with embryos

Former partners must agree on the use or disposal of the embryos. The clinic will not act as a mediator for former partners. Until there is a mutual agreement, the clinic will continue to store embryos and one of the former partners must pay storage fees. Storage fees cover the physical and administrative costs associated with storage. Fertility Associates reserves the right to use agencies to collect outstanding debts: this is covered in information given at patient registration.

Discarding of embryos

Most separated couples decide that discarding their embryos is the way forward to complete their fertility journey as a partnership. Each party will be sent a consent to discard form to be filled in and returned to us, which includes options whether the embryos should be disposed of by the clinic or returned to one of the parties.

We cannot discard the embryos and release them without both partners signing a consent form to discard and agreeing to the same option for disposal. If this cannot be agreed on, Fertility Associates will dispose of the embryos at their HART expiry date.

If we receive consent to discard from one former partner, we will inform the other former partner. A consent to discard will be sent if they choose this option, but we will not follow up if they do not respond. Storage charges are applicable until consent to discard is received from both former partners.

Options to use embryos

When separation is amicable, former partners may agree to using stored embryos for one of them to try to conceive a child. In this instance there are two approaches:

1. Both people sign the consent form for each thaw cycle as it occurs. This will involve some contact with the clinic for the former partner, which might be a call to check consent.
2. Sometimes signing a consent form for each treatment cycle by a former partner is awkward or hard to organise. FA offers the option of the person not receiving the embryos to sign an enduring consent form that covers multiple thaw cycles. People occasionally add specific conditions to an enduring consent form. If you do this, then you, and not the clinic, are responsible for monitoring and abiding by the conditions. If you want to end enduring consent, you must inform the clinic in writing.



Whichever approach you take, we ask both partners to undergo counselling separately to discuss implications of using the embryos in these circumstances.

We also advise both partners to seek independent legal advice about rights and responsibilities towards any child, such as support, access, and what goes on the birth certificate. It is wise to record decisions in a binding legal agreement. There are lawyers who specialise in the legal aspects of reproductive technology who can give you knowledgeable advice.

Embryo donation

Embryo donation may be an option if former partners both agree to this and are happy to be involved together in the full embryo donation process.

Donation of embryos created with donated sperm or eggs will not be possible if the sperm or egg donor has reached the maximum number of recipients already. The embryo donation process is set by ECART and includes joint counselling of the people who created the embryos, as well as joint counselling with potential recipients. It can take some time to find potential recipients to receive donated embryos. Storage fees need to be paid until ECART gives approval for donation.

Fertility facts

- Over the years, more than 45,000 couples have had IVF at FA clinics;
- Inevitably some have separated while they still have embryos stored;
- When partners who created an embryo separate, both must consent to using or discarding of any embryos.

Further information

You can find more information on ending your embryo storage and extended storage on our website: <https://www.fertilityassociates.co.nz/frozen-storage-eggs-sperm-an-embryos>

You can also find more information on embryo donation on the website: <https://www.fertilityassociates.co.nz/donating-your-embryos>

Please book an appointment with your local clinic to talk to a counsellor to discuss your embryo storage or embryo donation.