

## Fertility fact sheet: Considering posthumous reproduction

Posthumous reproduction is when someone uses gametes or embryos from a deceased person to try and have a child with the help of fertility treatment.

When you sign treatment or storage consent forms with Fertility Associates, we ask you to decide what should happen to your frozen material in the event of your death. While the decisions may not be legally binding, they are designed to record your intentions.

Decisions around posthumous reproduction may be difficult and there are many important considerations. The information on this page is designed to help you make an informed choice and give informed consent.

### Background

The Advisory Committee on Assisted Reproductive Technology (ACART) issues guidelines and advice to the Ethics Committee on Assisted Reproductive Technology (ECART) on procedures that require case by case ethics approval. ACART is guided by the principles of the Human Assisted Reproductive Technology (HART) Act 2004.

In July 2024 ACART issued the 'Guidelines for the Posthumous Use of Gametes, Reproductive Tissue and Embryos'. The guidelines take into account a range of cultural, ethical and legal matters when considering the use, storage, and disposal of eggs from a deceased woman, sperm from a deceased man, or embryos formed from the gametes of a person who is now deceased.

### What are your options when considering posthumous reproduction?

#### Dispose of your frozen material

- ♥ Fertility Associates will usually wait to proceed with the disposal of your frozen material for at least 6 months after your death.

#### Keep your frozen material in storage and make the material available to a named person(s)

- ♥ The named person:
  - must be someone that intends to parent a child created using your frozen material.
  - cannot on-donate your frozen material (transfer ownership or use of your material) to anyone else.
- ♥ The use of your frozen material after your death may require approval from ECART, depending on the laws and guidelines in place at the time. ECART approval for use will be required when procedures that presently require ECART approval will be involved (e.g., surrogacy, within-family donation, use of both donated eggs and donated sperm).
- ♥ If the named person is not your partner, this would be considered donation and ACART have specific guidelines for donation (including mandatory counselling and additional screening requirements).
  - To increase the possibility that your consent for the posthumous use of your frozen material can proceed in the event of your death, you must complete the required counselling and screening for donors. It is your responsibility to arrange this by contacting your local clinic. There will be additional fees.

### Time limits for storage of frozen material

The storage of frozen material is governed by the HART Act, which sets an initial 10-year limit on the storage of frozen material. To continue storage after this date, approval from ECART is required. In the event of your death, the named person on your consent form will be able to apply to extend the storage of your frozen material and we would therefore recommend that you indicate your wishes for this in your consent form.



## What do you need to consider?

### Psychological and social implications of leaving material for use posthumously

Deciding whether to consent to leave reproductive material for use after your death can evoke a range of emotions, including hope, anxiety, confusion or uncertainty. Some individuals find comfort in knowing that their partner could continue treatment in their absence and continue their reproductive plans, others may experience distress at the thought of children being conceived without being a presence in their future lives. While it's difficult to think about how you may feel in the future, it's helpful to pause and consider the broad implications of this decision.

When deciding to leave stored gametes or embryos to another person, it's important to consider the psychological and social implications attached to this. These implications may relate to yourself, the person you are leaving the material to, your wider family and most importantly to the wellbeing of a resultant child.

#### Implications for partners

If you are in a relationship and considering consenting to a partner using stored material in the event of your death, it's important to discuss this decision together and consider each other's perspectives. You may consider that your partners social situation may change following your death and using your posthumous material may lead to them parenting a resultant child with a new partner.

While it's difficult to forecast how someone may feel using posthumous reproductive material, you may consider that this could raise a sense of responsibility for the recipient, a comfort, or potentially an emotional burden regarding parenthood in your absence.

#### Implications for family

Posthumous reproduction is a pathway that impacts more than the people undergoing treatment. Family members of the deceased may have differing views on the ethical and emotional implications of posthumous conception, which could lead to conflicts or legal complexities.

Grandparents to a child born, siblings of the deceased, and other relatives may have differing opinions about posthumous reproduction with some families embracing the idea of continuing the genetic lineage of a loved one, while others may feel discomfort about using the deceased's gametes in their absence. Conflicts can arise if relatives feel a decision to use this material does not align with the deceased's wishes, family values or there are conflicts about future contact with a resultant child.

Posthumous reproduction may be occurring during a time of intense grief, following the passing of a loved one. While use of this material to have a child can provide a comfort in some instances, there is also the possibility of reignited or complicated grief for all involved.

#### Implications for the psychological and social wellbeing of the child

A child conceived posthumously may have unique experiences related to identity, grief, attachment and connection to you as their deceased parent.

It is important to consider how a resultant child's emotional and social wellbeing might be supported, including access to information about their origin, understanding of their connection to you and potential contact with your extended family.

A child conceived through posthumous reproduction will have questions about their origin and the decision making that occurred before their conception. It is possible that this pathway may impact on their self-identity as they navigate their understanding of their origin or inability to connect with a deceased parent.

Children born through posthumous reproduction do not meet one of their biological parents, which could affect their sense of attachment and security.

Children may experience grief for a parent they never knew but feel a connection to, or a confusion or guilt response in not feeling a connection to a deceased parent who they have not met.



It's possible that a child may experience a sense of responsibility to uphold a deceased parent's legacy.

As the child grows older, it will be important that they are supported to develop a language to share this story with peers, family or others and be able to feel confident in their comprehension of this history and their origins.

It's important to note that currently there is very little literature on the emotional or psychological outcomes for children who are conceived through posthumous reproduction.

## **Counselling**

You are welcome to make an appointment with a Fertility Associates counsellor to discuss your posthumous reproduction decisions.

To meet the conditions for donation, counselling is required to have been completed if you choose to leave your frozen material to someone other than your partner in the event of your death. It is your responsibility to contact your local clinic to arrange this.

For patients not using donor gametes/embryos, counselling fees will apply as this is not part of the included counselling session.

## **Patients under the age of 16 at the time of freezing**

Currently the law does not allow samples frozen when you were a minor (under 16 years of age) to be used by someone else in the event of your death. We would recommend completing a new consent form after you are 16 years of age as the law and guidelines may change in the future.

In the event of your death, your samples will be removed from storage for disposal. You do have the option to have your frozen material returned to your family (the material will not be viable) after it has been removed from storage.

## **Donated material and posthumous reproduction**

Clinic and personal donors can consent to recipients continuing to use their donated samples in treatment in the event of the donor's death. Fertility Associates takes a child-centric approach to posthumous reproduction and the use of donated material posthumously will only be approved if a sibling already exists or if the recipient can demonstrate an opportunity for connection with the family of the donor. Recipients with clinic donors are recommended to link with their donor after the birth of child so that specific named consent can be given (donor linking fees apply).