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# BILLS DIGEST

Digest No. 1737

## Human Assisted Reproductive Technology (Storage) Amendment Bill 2009

<b>Date of Introduction:</b>	24 November 2009
<b>First reading:</b>	08 December 2009
<b>Portfolio:</b>	Justice
<b>Select Committee:</b>	Health
<b>Published: 01 February 2010</b>  by <b>John McSoriley</b> BA LL.B, Barrister  Legislative Analyst  P: (04) 471-9626 (Ext. 9626)  F: (04) 471-1250	<p>Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.</p> <p>Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.</p>

### Purpose

The main aim of the Bill is to amend the Human Assisted Reproductive Technology Bill 2004 (the Act) to make it clear that gametes and embryos stored before that Act came into effect in 2004 must be disposed of before the expiry of 10 years from that date or such later date approved by the ethics committee.

Background considerations in relation to the subject matter of this Bill were discussed in Bills Digests prepared during the passage of the Act. See [Bills Digest No 972](#) (in particular), [Bills Digest No 1133](#) and [Bills Digest No 1163](#).

## Background

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In a recent media release<sup>1</sup> Hon Simon Power, the Minister of Justice said that the Bill would clarify that the 10-year storage limit started from 2004 "as was always intended". The Minister said that " ... this means that sperm, eggs, and embryos stored before 2004 can be stored until 2014. If fertility clinics have clients who wish to extend storage beyond 2014, they will require approval from the ethics committee before the 10-year storage limit is up. It has generally been believed that the Act's 10-year limit would take effect only from 2004 when the Act came into force. Subsequent legal advice has raised concerns that the 10-year limit starts whenever a human sperm, egg, or embryo is stored, meaning that any person who stores sperm, eggs, or embryos for more than 10 years is in breach of the Act. This Government believes it would be unfair to require fertility clinics to destroy the sperm, eggs, or embryos that have been stored for more than 10 years, when they have acted in good faith and reasonably believed they could be stored until 2014".

The provision in point is Section 10 of the Act, which is paraphrased as follows:

No person may keep a human in vitro gamete or a human in vitro embryo (being an embryo whose development has been suspended) that has been stored for more than:

- a period of 10 years; or
- such longer period approved by the ethics committee.

Persons who contravene the section are liable on summary conviction to a fine not exceeding \$20,000.

Section 5 of the Act (the interpretation section of the Act) defined the term "gamete" as:

- an egg or a sperm, whether mature or not; or
- any other cell (whether naturally occurring or artificially formed or modified) that ... contains ... only 1 copy of all or most chromosomes ... and ... is capable of being used for reproductive purposes.

Section 5 also defines the term "in vitro" as: " ... in relation to an embryo, a foetus, gamete, or cell means an embryo, a foetus, gamete, or cell that is outside a living organism".

The purpose provision of the Bill sets out its purpose as follows:

- " ... for the purpose of the prohibition against storing a human in vitro gamete or a human in vitro embryo for longer than the applicable period, no account may be taken of any period in which the gamete or embryo was stored before the commencement, on 22 November 2004, of that prohibition;
- " ... the advisory committee may issue or give guidelines and advice to the ethics committee on the matters to be taken into account in considering whether to approve a longer period for the storage of a human in vitro gamete or a human in vitro embryo;
- " ... a longer period for the storage of a human in vitro gamete or a human in vitro embryo may be approved only if the giving of an approval of that kind is covered in, and the ethics committee is satisfied that the proposed approval is consistent with, relevant guidelines and advice issued or given by the advisory committee" (*Part 1, Clause 4 (the purpose clause)*).

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<sup>1</sup> Media Release, Hon Simon Power, *Ten-year storage limit on sperm, eggs, embryos clarified*, 24 November, 2009.

## Main Provisions

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### Storage not for more than 10 years

Section 10(1) of the Act prohibits storage of a human in vitro gamete or a human in vitro embryo (being an embryo whose development has been suspended) for longer than the applicable period (10 years or, if the ethics committee has, before the expiry of that 10-year period, approved a longer period in respect of the gamete or embryo, the longer period approved by the ethics committee).

The Bill provides that, in relation to any storage of a human in vitro gamete or a human in vitro embryo (being an embryo whose development has been suspended) before the commencement of the Act on 22 November 2004, the applicable period of 10 years for which such gamete or embryo is to be stored is to be treated as beginning on that date. Therefore, the period of storage before 22 November 2004 is to be disregarded in calculating the period for which that gamete or embryo has been stored (*Part 2, Clause 5, amending Section 10 of the Act by inserting new subsection (1A)*).

### Ethics committee to follow guidelines in approving longer period

The Bill also provides that the ethics committee may not approve a longer period than 10 years for the storage of a gamete or embryo unless the giving of an approval for those purposes is covered in, and the ethics committee is satisfied that the proposed approval is consistent with, relevant guidelines or advice issued or given by the advisory committee (*Part 2, Clause 5, amending Section 10 of the Act by inserting new subsection (1B)*).

### Guidelines

Section 35(1)(a) provides that one of the functions of the advisory committee is to issue guidelines and advice to the ethics committee on any matter relating to any kind of assisted reproductive procedure or human reproductive research and to keep such guidelines under review.

The Bill ensures that the advisory committee's functions under Section 35(1)(a) include the issuing or giving of guidelines and advice to the ethics committee on the matters that the ethics committee must take into account in considering whether to approve, for the purposes of Section 10(1)(b), a longer period than 10 years for the storage of a human in vitro gamete or a human in vitro embryo (*Part 2, Clause 6, amending Section 35(1) (a) by inserting "or give" after "issue" and by inserting new subsection (1A)*).

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