

Assisted Reproductive Technology 2024

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Committee Secretary
Community Safety and Legal Affairs Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: CSLAC@parliament.qld.gov.au

Dear Committee Secretary

Assisted Reproductive Technology Bill 2024

Thank you for the opportunity to provide feedback on the Assisted Reproductive Technology Bill 2024 (**the Bill**).

This response has been compiled with the input of our members with expertise in this area.

QLS takes the opportunity to commend Queensland Health (**the Department**) for consideration and incorporation of stakeholder feedback into the Bill. This process has led to a workable piece of legislation.

QLS supports greater national consistency in regulating assisted reproductive technology (**ART**) services to avoid "jurisdiction shopping" and inconsistencies across state borders which may impact the business efficacy of ART service providers and ultimately access to services. This is particularly important where ART services work across jurisdictions and across systems of regulation.

QLS is largely supportive of the Bill which seeks to establish a framework to regulate ART services and a donor conception information register. Whilst a national donor register is outside of scope, we suggest a national register should also be considered to ensure that the legislative limit on the number of donor-related families is workable in practice.

QLS welcomes the repeal of section 45A of the *Anti-Discrimination Act* 1991 to ensure that ART providers cannot discriminate on the basis of sexuality or relationship status in the provision of ART.

QLS also welcomes the concurrent implementation of a donor conception information register in Queensland.

Our submission is limited to the following aspects of the Bill:

- The need for greater clarity with respect to the transitional provisions and chief executive approval processes;
- Clause 20 Withdrawal or variation of consent; and

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- Clause 47 Voluntary provision of information by parties to private donor conception procedures.

We also recommend the Committee have regard to:

- Recommendations arising from the Health Ombudsman's 'Investigation of ART providers in QLD Final Report' published on 1 July 2024;
- The inclusion of a statutory review period in the legislation to ensure there are no unintended impacts arising from the reforms; and
- Additional funding needs for QCAT to account for its expanded jurisdiction under the Bill.

Transitional provisions

QLS considers there are aspects of the transitional provisions which should be clarified.

Clause 148 (Embryo not yet used for ART procedure) of the Bill provides a transitional arrangement for embryos not yet used before commencement if the embryo could not be used because it would breach the time limit for use or breach the limit on the number of donor-related families under the Bill. In making the decision, the chief executive is to have regard to the period since the gamete was obtained and the number of existing donor-related families related to the donor of the gamete.

There is no detail about the authorisation process in the Bill.

Clarity with respect to the transitional arrangements, including any authorisation processes is critical to mitigate any risk of embryos or stored gametes being mistakenly destroyed due to the changes proposed under the Bill.

In this regard, we also note the submission of Rainbow Families Queensland¹ to the inquiry which raises concerns about the potential impact of the transitional provisions for patients whose embryos were created before the commencement date and prefers the ACT legislation in this regard.

Chief executive approval process

Similarly, under Clause 27 of the Bill, an ART provider must not, without the written approval of the chief executive, use a donated gamete or a donated embryo in an ART procedure if it was obtained more than 15 years before the procedure.

The chief executive may give approval if satisfied there are reasonable grounds for doing so. Potential penalties apply for not disposing of any donated gamete or embryo if this section prohibits its use in an ART procedure.

QLS considers the ACT provisions may allow for greater clarity with respect to the written approval process.

¹ <https://documents.parliament.qld.gov.au/com/CSLAC-40FE/ARTB2024-D9F4/submissions/00000001.pdf>

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For example, section 39 of the *Assisted Reproductive technology Act 2024* (ACT) (Donated gametes or embryos – time limits on use) enables the director-general to authorise ART treatment and to make guidelines (a notifiable instrument) in relation to the giving of such authorisation.

The Rainbow Families Queensland submission also highlights the importance of such decisions being made promptly and recommends amendments where a person already has a child with the same donor.

QLS recommends further consultation to ensure approval processes are sufficiently clear and to respond to the concerns raised by Rainbow Families Queensland with respect to the application of the time limit in certain circumstances.

Clause 20 Withdrawal or variation of consent

Clause 20 provides that a gamete provider may modify or withdraw their consent at any time until:

- for a donated gamete (other than a gamete that becomes a donated gamete only after being used to create an embryo) – the gamete is placed in a person's body or an embryo is created from the gamete; or
- for a gamete used to create a donated embryo – the embryo is implanted in a person's body; or
- in any other case (such as a person seeking an ART procedure using their own gametes or embryo) – the gamete, or an embryo created from the gamete, is placed or implanted in a person's body.

Section 5.12 of the 'Ethical guidelines on the use of assisted reproductive technology in clinical practice and research' (**Ethical guideline**) recognises the right of individuals or couples to withdraw or vary their consent 'at any time before the treatment cycle of the recipient commences'.²

To provide certainty for all parties, QLS suggest the legislation should align with the existing Ethical guideline and provide that consent may be modified or withdrawn at any time before the treatment cycle commences.

Clause 47 Voluntary provision of information by parties to private donor conception procedures

Clause 47 enables the parties to a private donor conception procedure to provide the registrar with relevant information relating to the birth of a donor-conceived person as a result of the procedure.

Section 47(2) requires the written consent of all the parties to the procedure.

We understand there are a number of circumstances where it may be very difficult to obtain the donor's consent. Under the Bill, this will act as a barrier to providing any information to the registrar.

² <https://www.nhmrc.gov.au/about-us/publications/art#block-views-block-file-attachments-content-block-1>.

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Section 56 of the *Assisted Reproductive Technology Act 2024* (ACT)³ allows a parent of a donor conceived person to give information for inclusion in the donor register but maintains the requirement for consent in respect of information about the donor.

QLS considers that the ACT model is preferable in this regard.

Health Ombudsman final report

QLS notes the Health Ombudsman's 'Section 81-Investigation of ART providers in QLD Final Report' (**the Health Ombudsman's final report**) was published on 1 July 2024.

It is preferable to consider legislative reform holistically to avoid unnecessary complexity and duplication.

We recommend the Department have regard to recommendations arising from the Health Ombudsman's final report.

Statutory review period

QLS supports the implementation of a statutory review period to consider the impact of the legislative response. This will necessarily include any unintended ART access and financial impacts.

QCAT External review

Lastly, QLS notes the Bill expands the review jurisdiction of QCAT with respect to reviews of decisions of the Registrar related to information in the Register on a matter and for the correction of information in the Register.

QLS maintains its support for the appropriate funding of QCAT which must include additional funding for any expansion to its jurisdiction.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED].

Yours faithfully



Rebecca Fogerty
President

³ <https://www.legislation.act.gov.au/a/2024-7/>