

## Health Legislation Amendment Bill (No. 3) 2025

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The Secretary  
Health, Environment and Innovation Committee  
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Dear Committee

### ***HEALTH LEGISLATION AMENDMENT BILL (NO 3) 2025***

Thank you for alerting me to the Bill and asking me to consider making a submission.

I write about two aspects of the Bill- proposed changes to the *Assisted Reproductive Technology Act 2024*, and to the *Transplantation and Anatomy Act 1979*.

#### **Proposed changes to the *Assisted Reproductive Technology Act 2024***

The proposed changes are of a technical nature. I support the changes, which are sensible. I would hope that the changes are enacted, and the relevant Regulations issued before 1 March 2026, so that there can be certainty for Queensland IVF clinics and their patients, as to what changes are being made and when.

Over the last year, despite the ART Review team at Queensland Health being very thorough in the preparation of the 2024 Bill, certain teething issues have arisen, which are sought to be fixed in this Bill:

1. The requirement to have certain prescribed information from pre-2024 donors as to their email address and mobile phone number meant that patients of Monash IVF and Queensland Fertility Group who had imported sperm from Xytex Sperm Bank in the United States were unable to access that sperm. This is because Xytex had contact information from the donors but not email addresses or mobile phone numbers. This issue has been addressed in the Bill by requiring there to be contact information, but not being so prescriptive about what contact information is required.
2. A number of clients of mine who have had donor sperm or embryos created from their eggs and donor sperm became concerned when they were told that the new regime under the *ART Act* (which was due to take effect in September 2025, and now deferred to March 2026)

meant that the sperm was acquired too long ago to allow it to be used. This issue has been addressed in the Bill by allowing for greater flexibility on this issue, by allowing for a review process through QCAT if the Director-General declines to extend the time, and not applying the time limit if the person had become pregnant already using gametes from that donor, as set out in new s.146.

3. Similarly, a patient who had a child pre-2024 from use of her egg and donor sperm but who had split up from her partner was told that she could not use the remaining embryo or sperm in storage. This was because she and her former partner would now be considered to be new families under the Act- and therefore over the family limit. New section 146 would enable use of the embryo and sperm in those circumstances.
4. ANZICA counsellors raised with me a concern that the Act will require counselling to be provided for the person provided with ART services and their spouse. When the parties have separated, their spouse would remain their spouse (and therefore have to be a party to counselling) if the couple were married or in a civil partnership. The evident difficulties would be:
  - a) Having separated, they have different aims in life, not the same aim.
  - b) Many separations involve domestic violence. A requirement to counsel both might put a perpetrator of domestic violence in close proximity with the victim. The penal (and therefore licensing) requirement mandating counselling for both may conflict with the terms of a Protection Order, a breach of which is also an offence.
  - c) For separated spouses, the mandated requirement would appear to be unlawful, as it would likely be in breach of s.22 of the *Sex Discrimination Act 1984* (Cth)<sup>1</sup>, and in conflict with s.46 of the *Anti-Discrimination Act 1991* (Qld). Both provisions prohibit discrimination in the provision of a service on the basis in the Commonwealth Act of marital or relationship status, and in the State Act as to relationship status<sup>2</sup>.

In various places, the Bill fixes this problem by excluding the separated spouse from the definition of spouse.

### **Proposed changes to the *Transplantation and Anatomy Act 1979***

These sensible changes allow blood to be removed, with consent, before death for the purpose of determining tissue donation viability.

I do not specialise in transplantation cases. I specialise in family and fertility law, including non-responsive and posthumous retrieval of sperm. Anything that can be done to give clarity to the viability of tissue for transplantation (with appropriate safeguards) before the immediate moment of removal is to be welcomed.

In recent posthumous sperm retrieval cases, some of the men have also been tissue donors. Therefore, holdups in the process of tissue removal can also impact the process of posthumous sperm retrieval, where time is of the essence. The proposed changes should make that process slightly easier and therefore should be welcomed.

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<sup>1</sup> A requirement under Victorian law that the spouse consent to treatment was held in breach of s.22 and therefore unlawful: *EHT18 v Melbourne IVF* [2018] FCA 1421. See also: *Pearce v South Australian Health Commission* [1996] SASC 6233; *McBain v Victoria* [2000] FCA 1009.

<sup>2</sup> S.7(b).

I am thankful for the work done by Dr Douglas Feinbloom of Caboolture Hospital (with assistance from Monash IVF and me) in putting together a short guide for donor teams when contemplating tissue removal for donation and posthumous gamete retrieval. I hope that that short guide makes the process of both easier and quicker and less stressful on the families concerned.

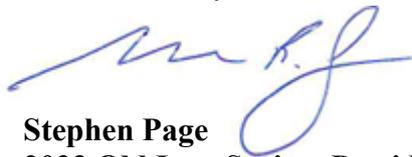
### **About me**

I am a dad through IVF, known egg donation and surrogacy in Queensland. I have been a solicitor for many years and have long practiced in fertility law. I have received a number of awards, including the 2023 Queensland Law Society President's Medal. I serve on a number of committees, both local and international, including as Secretary of the Fertility Society of Australia and New Zealand. I made submissions to the previous committees and the ART Review Unit of Queensland Health prior to the enactment of the *Assisted Reproductive Technology Act 2024*. I was present in the gallery when the *Assisted Reproductive Technology Bill 2024* was debated.

The views in this submission are mine and mine alone.

If asked, I am available to give evidence to the Committee on 19 November.

Yours faithfully



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**2023 Qld Law Society President's Medal Recipient**

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