Health Legislation Amendment Bill (No. 3) 2025

Submission No:	10
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Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

ARTFam
Assisted Reproductive Treatment
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ASMBC
Australian Solo Mothers By Choice
Est 2013

4 November 2025

To: the Hon. Robert Molhoek MP
Chair,
Health, Environment and Innovation Committee
Parliament of Queensland

Health Legislation Amendment Bill (No. 3) 2025* – Amendments to the *Assisted Reproductive Technology Act 2024

Thankyou for the opportunity to provide a submission to the Health, Environment and Innovation Committee on the *Health Legislation Amendment Bill (No. 3) 2025*, which amends a number of Act, including the *Assisted Reproductive Technology Act 2024* (Qld) (the **ART Act**).

We write on behalf of our organisation, **ART*Fam* Australia**, a newly established national not-for-profit organisation advocating for ethical, inclusive, and compassionate ART policy and donor conception support. ARTFam Australia was created to ensure that the voices of ART recipients, their families, surrogates and donors are heard in conversations about law reform and clinical practice. ArtFam continues the work of Australian Solo Mothers by Choice (**ASMBC**) — a national, 100% volunteer-run support network with over 4,000 members across Australia and New Zealand. ASMBC has supported women who are considering or are parenting solo via donor conception, for over a decade.

ARTFam Australia was consulted about the working draft of the Bill earlier this year and we provided our comments at that stage. We were supportive of the working draft and we welcome the further integration of stakeholder feedback reflected in the Bill that has been introduced to Parliament. We believe the Government has made a considerable effort to take account of our members' lived experiences as past and present ART recipients and parents of donor-conceived children and has addressed many of our members' concerns arising out of the recent implementation of the ART Act.

We do wish to bring one matter to the Committee's attention.

Proposed section 39B – additional, unnecessary donor consent?

We are pleased to see a clear mechanism in clause 14 of the Bill to allow the chief executive of Queensland Health to provide individual case-by-case approval for the use of donated gametes or embryos outside of the current time or family limits or where the

requisite information has not been collected from the donor. However, we are still concerned about a weakness in the new section 39B. The Bill provides as follows:

> ***"39B Chief executive may approve use of particular donated gamete or donated embryo—ss 25 and 27***
> *(1) This section applies for the purposes of section 25(2) or 27(1).*
> *(2) The chief executive may, on application by an ART provider, approve the use of a donated gamete or donated embryo in an ART procedure if the chief executive is satisfied—*
> *(a) either—*
> *(i) the gamete provider, or the gamete provider from whom a gamete used to create the embryo was obtained, has consented to the making of the application by the ART provider; or*
> *(ii) the ART provider has been unable to contact the gamete provider mentioned in subparagraph (i) despite taking reasonable steps to do so; and*
> *(b) there are reasonable grounds for using the donated gamete or donated embryo in the ART procedure ……."*

In clause 6, the Bill inserts a new section 18(3A) which indicates that the consent of a gamete provider to use a donated gamete or embryo is not required if the chief executive's approval is given under section 39B. This is appropriate if the chief executive is to weigh the interests of all affected parties and consider whether there are reasonable grounds to approve the use of the donated gamete or embryo.

ARTFam's concern is that, although the gamete provider's consent to use will no longer prevail, section 39B adds back a new, wholly unnecessary, procedural consent from a gamete provider – to the making of the application for chief executive approval. A gamete provider could refuse that consent at the outset of the process, thereby short-circuiting any consideration by the chief executive of the merits of the substantive application.

> **Example**: ARTFam is aware of a situation in Victoria in which a donor withdrew consent to use of their gamete in an existing embryo to complete a family with a third child, because (it is suspected) they disapproved of the age of the recipient parent at which the 3rd embryo would be implanted. The embryos had been created using the donor's gametes more than a decade earlier.

In Queensland, the ART Act already prevents a donor from limiting the use of the donated gamete or embryo in an ART procedure on the basis of a protected attribute of the

recipient, such as age (see section 18(3) of the ART Act). So withholding consent to use for a discriminatory reason would not be possible.

However, it would still be possible for a donor to simply refuse consent to the making of an application to the chief executive under section 39B(2)(a)(i). Neither the existing section 18(3) nor proposed section 18(3A) would have any effect on a donor's right to refuse consent to the making of an application under section 39B. They only deal with the donor's right to refuse consent to use the donated gamete.

Once the chief executive is "satisfied" that the donor did not consent to the making of the application, the application cannot progress. The substantive issue of whether the time limit or family limit should reasonably be extended and whether it would cause any person hardship would be stymied.

If these proposed amendments are made, and a similar factual situation occurred in Queensland as has already occurred in Victoria, the fact that the gamete donor may be refusing it because of the recipient's protected attribute would not be relevant under proposed section 39B(2)(a)(i). This re-introduces an undesirable imbalance of power between affected parties and undermines the effectiveness and impartiality of the chief executive's approval process. And if the donor's consent to use of the donated gamete or embryo is no longer required, then there is nothing substantive to be gained by requiring the donor's consent to making an application to the chief executive.

Proposed amendment of Bill to strengthen new section 39B

> **ARTFam Proposal:** Clause 14, in new section 39B (2)(a)(i), *omit*- "has consented to", *insert*- "is aware of".

To resolve this issue, we consider that the chief executive need only be satisfied that the gamete provider *is aware of* the application, rather than requiring their consent to the application. They may support or oppose the application but that view should not be determinative of it.

We do think the donor's views are a relevant part of the chief executive's considerations. It would therefore be important for the applicant to try to contact the donor and obtain their views about the substantive issue and their personal circumstances, so that the chief executive's decision balances the interests of all affected parties and avoids significant hardship to any one of them.

Transitional Provisions

Clause 42 of the Bill inserts new transitional provisions in the ART Act for gametes and embryos obtained or created before 19 September 2024, and removes the criminal sanctions for using such a gamete or an embryo if they do not meet the stricter standards around donor consents and collection of donor information. These clauses have been refined and expanded on since the working draft of the Bill. They appear comprehensive, supportive of continued gamete supply and responsive to the concerns of ART recipients like our members, whose planned cycles were badly affected this year by a sudden pause in IVF provider services. On their behalf, we wish to express our relief and gratitude that the time-sensitivity and importance of their treatment needs have been recognised.

We thank the Committee for its consideration and we will endeavour to be available to participate in any public hearings.

Yours sincerely

Michelle Galea

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Secretary, ART*Fam* Australia