Health Legislation Amendment Bill (No. 3) 2025

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Health, Environment and Innovation Committee

Email: HEIC@parliament.qld.gov.au

Dear Secretary

SUBMISSION TO THE INQUIRY INTO THE *HEALTH LEGISLATION AMENDMENT BILL (No. 3) 2025*

Rainbow Families Australia welcomes and strongly supports the amendments to the *Assisted Reproductive Technology Act 2024* (the ART Act) contained in the Bill. We confine our comments to those provisions that address unintended consequences of the retrospective application of the ART Act, and that seek to promote equitable outcomes for families undergoing assisted reproductive treatment in Queensland.

In summary, the Bill introduces much-needed flexibility into the scheme introduced last year in Queensland. Rigid, blanket rules in the context of assisted reproductive technology inevitably lead to unfair or unintended outcomes for some families.

About Rainbow Families Australia

Rainbow Families is the leading voice for LGBTQ+ families in Australia. We are committed to supporting, connecting, celebrating, empowering and advocating for LGBTQ+ parents and their families at every stage of their lives.

We speak on behalf of and empower LGBTQ+ parents and their children, creating inclusive and safe services, spaces, programs and resources for rainbow families to thrive. As an equality-focused organisation, we engage with policy and research to fight systemic discrimination with love and affirming action.

In 2024, we proudly became a national organisation, joining together with Rainbow Families Queensland and other state-based groups to support more families across the country. In Queensland, our volunteer-led programs and policy work have supported many families navigating assisted reproductive treatment and donor conception processes.

Background

Rainbow Families has engaged closely with the development of Queensland's donor conception and assisted reproductive technology reforms since their inception.

In 2024, when the *Assisted Reproductive Technology Bill* was introduced, we raised early concerns about the retrospective operation of section 144. The provision requires that new regulatory obligations — including those relating to the collection and storage of donor identifying information — apply to donor gametes and embryos allocated or created before the Act commenced.

We cautioned that these provisions risked leaving families in legal limbo, particularly those seeking to transfer embryos already created, or to have a second child using the same donor. Despite being aware of similar challenges experienced in the ACT when their laws recently passed, the former government proceeded with the original drafting.

As predicted, in May 2025, patients across Queensland began receiving distressing notifications from their clinics advising that their treatment cycles could no longer proceed because the clinics could not meet the retrospective requirements. Families who had embryos in storage, or who were preparing for sibling pregnancies, suddenly found themselves unable to continue treatment.

Impact on families

The retrospective application of the law caused incredible distress to many families, particularly LGBTQ+ parents and solo parents by choice who often rely on imported donor gametes from international clinics.

Some families faced the prospect of being unable to use their existing embryos — embryos that, in many cases, represented their only remaining opportunity to have a genetically-related child. Others were told that, although their treatment had been planned for months, it could no longer proceed due to minor gaps in donor information such as a missing middle name or an unavailable email address.

Rainbow Families was contacted by parents who were anxious, exhausted and heartbroken. The uncertainty around whether their embryos could ever be transferred led to sleepless nights and profound fear that their long-planned families might never be completed.

Contact information rather than prescriptive information requirements

In practice, ART providers were finding that they were unable to continue treatment for patients, when it was identified that just one piece of contact information was unable to be collected e.g. a middle name, or email address. This has been an issue because donor sperm and eggs may have been obtained years before the Act commenced. To resolve this issue, we support changes to section 33 of the Act proposed by this Bill.

We do not consider that the Bill results in any weakening of protections for people who were born through donor conception. Rather, it replaces an overly prescriptive legislative scheme with one that remains robust and reasonable. The new requirement for clinics to obtain "contact information" maintains the intent of the Act — to ensure donor-conceived people can, if and

when they choose, access information about their donor —
while providing necessary flexibility for practical implementation.

These amendments reflect modern realities, where social media, voluntary registers, and direct-to-consumer DNA testing already make it easier than ever for donor-conceived people to find and connect with their donor or donor-siblings.

Whereas the Act as passed attempted to retrospectively apply prescriptive information collection requirements to existing patients, the Bill resolves this issue by disapplying those requirements for people who had already commenced ART treatment before the Act's commencement (refer to section 149). This is an important and compassionate amendment. It recognises that patients in Queensland were being turned away from treatment or having their cycles cancelled at the last minute through no fault of their own, an outcome entirely disproportionate to the intended goal of protecting donor-conceived children's right to information.

A case-by-case approach ensures empathetic and reasonable outcomes

While there are existing powers in the legislation for Queensland Health to provide case-by-case approvals in relation to time limit on use of donated gametes/embryos, and in relation to the family limit (for number of allocated families for a donor), it became clear that further discretion is needed to handle a variety of circumstances that were arising in practice.

Strict application was leading to very harsh outcomes, including that families could not create a further genetic sibling for their existing donor-conceived child, or had been deprived access to their own embryos.

To illustrate, below are two de-identified examples we provided to the Minister earlier this year:

> Anabel and Sally are a same-sex couple who have been trying to fall pregnant for the last decade. They have one embryo left. Anabel is no longer responding to egg stimulation medications, and so this embryo is her last opportunity to try for a biological child. The couple have been told by the clinic that they can no longer transfer their embryo in Queensland, and haven't been given any answer about whether they can transfer their embryo interstate. While the family limit has not been reached for this donor in Queensland, they can't travel for treatment in NSW since the donor limit of 5 families has been reached there already.
>
> Jo and Grace are two proud mums of a 9-month-old baby boy. Jo is ready to carry their second child and was booked in for treatment in August 2025. The couple got a call out of the blue from their IVF clinic saying that they can no longer use their embryos, who are potential direct siblings of their son. Jo and Grace were in a panic and didn't know what to do, and Grace even tried to reach

> the clinic in the USA to try to sort it out. They are feeling angry, distressed and have barely had any sleep since the phone call.

Queensland Health will have the discretion now needed to consider a range of factors in making these decisions - the potential impacts on existing and future donor-conceived people, parent/s and the donor, while still being guided by the overarching objects of the Act: to protect the welfare and interests of people using ART and those born as a result of it and regulate access to information about people born through ART.

Fixing the transitional problems

We strongly support new transitional provisions in sections 145-149, and the inclusion of a transitional regulation-making power to address any further unforeseen issues as the new scheme is rolled out. These provisions mean that the issues concerning our families about being no longer able to access their allocated donor gametes or embryos, or embryos created with donor gametes should be fully resolved.

Section 144 of the current Act has been the provision of most concern to Rainbow Families as it was so carelessly drafted. We appreciate the recognition in the Explanatory Notes that it created 'two classes of ART patients, and people born as a result.' We are satisfied with the outcome that the new, additional transitional provisions will prevail over this section to the extent of any inconsistency (as clarified through new section 152).

Recognising diverse family structures

As was identified by Rainbow Families and other stakeholders during the committee stage on the ART Bill last year, there was insufficient consideration of potentially harsh outcomes for families where one person re-partners and wishes to use the same donor. A hypothetical example is provided in the explanatory notes as follows:

> For example, a same sex couple may have a child using donor sperm. Following a breakdown of the relationship, if one of the parents wished to have a further child using the same donor, this would be treated as a separate family. If the 10-family limit had been reached, the person would be prohibited from using this donor again, despite the potential psychosocial benefits to the existing donor-conceived child of having a genetic sibling.

Again, this Bill provides more discretion to approve use beyond the 10-family limit, where it otherwise would be unduly harsh. We understand that approvals of this kind reflect what is already happening in current clinic settings where the industry is self-regulating at present. This change has no adverse effect on donor-conceived children, but rather, offers a potential benefit for one or more donor-conceived children. When all family members are known to each other from birth, there cannot be a reasonable concern about consanguinity either.

We also welcome the amendments to transitional provisions section 146 and 147, which correct an unfortunate exclusion affecting families who began their treatment before the commencement of the Act, created by using the term ‘a person’.

Amendments recognise that families take many forms and that the previous drafting could have prevented some people — particularly same-sex couples and families using surrogacy — from completing their families with the same donor.

We are pleased to see that the Bill now explicitly enables both partners in a couple, regardless of which partner carried the first pregnancy, to use remaining donated gametes or embryos to complete their family. This is a necessary and practical reform that reflects the diversity of modern families and ensures equitable treatment under the law. Rainbow Families argued for an amendment of this kind in 2024, and we commend the government for acting to remedy this gap.

Time limit of use of embryos and gametes

We also support the re-drafting of section 27, which requires Queensland Health approval to continue the use of embryos or gametes after 15 years of storage. A relevant example to illustrate how this could be problematic has been provided in the explanatory notes:

> By way of example, a woman may be diagnosed with cancer at age 18. To preserve her ability to have children in the future, the woman may use ART to create embryos with her eggs and donor sperm. The woman may not seek to use the embryos until many years into the future. Requiring her ART provider to apply for an approval for ongoing storage of her embryos beyond 15 years or for the provider to be subject to a disposal requirement may cause undue stress to the patient.

Another real example from a family known to Rainbow Families is provided below (names are de-identified):

> Sally is a 7 year old girl. She has 4 donor-siblings, 2 of which are known to her. Her donor-siblings are aged between 13 and 7 years old. Sally’s mum has 3 embryos in storage that would be direct genetic siblings for her. However, her mum has been contacted by the clinic saying that the 15 year mark is to be reached in January 2026. The mum of the oldest child (now aged 13) had a long time to decide whether to have a sibling for her child - because the sperm was allocated soon after the donation, 15 years ago. But Sally’s mum was allocated the donor years later, so in effect had only access to the donor for *7 years* (not 15 years). She doesn’t know whether she’s ready to have another child, but is feeling pushed into making the very hard decision about having a child before she feels ready, or having all her embryos destroyed.

Families have different experiences with the process of deciding what to do with additional sperm or gametes held in storage, but for a number of people, this process is very emotionally challenging, and needs to be done at the right time, in some cases after deep reflection and counselling. Some parents feel a strong emotional connection to embryos that represent potential siblings of their existing children, while others may not experience that sense of attachment at all.

The amendments to section 27 are therefore welcome. They ensure that clinics are not required to pressure patients into making decisions before they are ready, and the Bill also establishes a clearer process for handling refusals. Clinics will still need to communicate clearly with patients as the 15-year storage limit approaches, but families will now have the space and time to make these decisions thoughtfully, rather than being rushed into an immediate and potentially distressing choice about the disposal of embryos or donor gametes.

We recommend that clear guidance material be provided to both clinics and patients to help them navigate these provisions. Two key information points are essential to ensure patients are fully informed of their rights and options. Firstly, when patients are selecting a donor, clinics should be required to inform them how many years remain of the 15-year time limit for the use of that donor's gametes or embryos. Secondly, clinics should be required to provide written notification to families at least 9–12 months before the expiry of the 15-year limit, clearly explaining the implications of the time limit and what will occur if they seek treatment after that period.

Interaction of donor consent with approval process

We support clarification that specific consent need not always be obtained from the donor for exceeding the maximum number of families created by gametes or the maximum period of storage. While consent will still be obtained in the majority of situations, this will provide discretion for the chief executive to approve use, where it might prevent 'unfairly harsh'outcomes for patients. The Bill quite reasonably anticipates situations in which the donor is uncontactable after reasonable attempts to do so, and allows for dispensation of consent of the donor, but only after considering the terms of the consent given by the gamete provider.

The amendments are yet another important safeguard to ensure the legislation can operate flexibly and compassionately. We understand that during the consultation process some stakeholders have raised concerns that donor consent should never be overridden. On the other hand, concerns were raised by others that donors could unreasonably obstruct access to a person's embryos, even though they are partly the genetic material of the patient, and/or might be potential siblings for existing children. Overall, we think the amendments appropriately balance these considerations. Where a donor has given consent in accordance with section 18, it may be impractical in certain situations to require renewed or additional consent before the chief executive can consider an application to extend use of gametes. The Bill's approach respects the original consent provided by the donor, maintains regard for their expressed wishes, and enables the Act to respond to real-world situations in a practical and compassionate way.

Other natural justice improvements

As currently drafted, the law is opaque about the processes for review of decisions relating to family limit, time limit on use or information collection requirements - all of these could lead to very severe outcomes for families - including the loss of the potential to create or expand one's family. We support the changes to section 119 that allow for internal reviews of decisions. Internal reviews involve a more senior office than the decision at first instance, and are limited by 20 business days. Having a time limit is critical, since even one month of delayed treatment in the context of fertility treatment is significant.

However, we express our disappointment that these decisions are not supported by the option of an accessible external review process at QCAT, with the Explanatory Notes seeming to indicate this is to avoid an 'excessive burden' on the Tribunal system. Unfortunately, this will mean that the Supreme Court will likely hear these matters through judicial reviews, which is overall a worse use of resources for the government, and does not promote access to justice for affected patients.

Support for the amendments

While Rainbow Families supported many of the changes to the law last year, most of all to commence a donor conception register in Queensland, the drafting was plagued with problems that the government at that time seemed unprepared to resolve prior to passing it into law. Rainbow Families commends the Queensland Government for recognising the seriousness of these unintended consequences and acting swiftly to address them.

These changes restore fairness and certainty for affected families and clinics. They strike the right balance between safeguarding the rights of donor-conceived people to access information and ensuring that families (and especially existing donor-conceived children) are not unduly harmed by retrospective application of new laws.

Once again, we thank the Committee for the opportunity to provide a submission to the inquiry. Rainbow Families is available to provide further input or clarification if required.

Regards

Scott

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