



10 August 2026

Department of Health
GPO Box 48
Brisbane, Queensland, 4001

Director-General
Queensland Health
33 Charlotte Street
Brisbane, Queensland, 4000

By email: ART@health.qld.gov.au (sent by email)

cc: health@ministerial.qld.gov.au
enquiries@health.qld.gov.au

Dear Director General,

Response to the Queensland Health's guidance concerning the interpretation of the *Assisted Reproductive Technology Act 2024 (Qld)* — Pride in Law

We write to express concerns surrounding the Queensland Health's guidance concerning the interpretation of the *Assisted Reproductive Technology Act 2024 (Qld)*.

Pride in Law is a national non-political LGBTIQ+ Law Association, aimed at connecting lesbian, gay, bisexual, transgender, intersex, queer and questioning, and asexual (LGBTIQ+) members of the legal community and their allies. Pride in Law is Australia's first and only National LGBTIQ+ Law Association, which is "*Law Focused, Pride Inspired*".

Since July 2017, Pride in Law has worked to provide visibility, education, and advocacy around LGBTIQ+ issues in the legal profession. We represent and promote legal professionals, increase community understanding of the law (particularly as it affects LGBTIQ+ individuals), help protect the rights of individuals, and advise the community about the benefits legal professionals can provide. Pride in Law also assists the public by advocating for improvements to laws affecting Australians.

This letter addresses the reported interpretation that a same-sex female couple who each conceive a child using the same sperm donor are regarded as two separate "families" for the purposes of donor limits.

Equality Before the Law

Queensland has made significant legislative progress in recognising and protecting diverse family structures. These diverse family structures were specifically recognised in the explanatory notes for the *Assisted Reproductive Technology Act 2024 (Qld)* (**ART Act**) where it was stated that assisted reproductive technology "helps those with fertility issues, genetic risks and diverse genders and sexualities who may not be able to conceive naturally". It further recognised that "[d]onor conception is a growing area of ART that supports LGBTIQ+ people, single women and couples experiencing infertility who would not be able to conceive without the use of donated gametes (sperm or eggs) or embryos".¹

¹ Explanatory Notes, *Assisted Reproductive Technology Bill 2024 (Qld)* at 1.

Treating a committed couple as two separate families solely because each partner carries a pregnancy risks creating an outcome that disproportionately affects same-sex female couples. Comparable barriers are not experienced by most opposite-sex couples who conceive without donor gametes. This impact on same-sex female couples was acknowledged in the ART Act's Statement of Compatibility with the *Human Rights Act 2019* (Qld) (**HRA**) as a limitation on recognition and equality before the law (section 15 of the HRA):

“The right to recognition and equality before the law in section 15 of the Human Rights Act may be triggered when a policy or statutory provision, while stated in neutral terms, has the potential to have a disproportionate impact on a group in the community or members of the community who have a particular attribute. The family limit for the use of donor gametes may therefore limit the right to recognition and equality before the law by disproportionately impacting single women and LGBTIQ+ couples.”²

Public policy should ensure that administrative guidance promotes substantive equality rather than unintentionally disadvantaging families because of their sexual orientation or method of conception. Failure to do so may not only disadvantage certain families, but infringe upon the human rights of Queenslanders, including:

- recognition and equality before the law (section 15 of the HRA);
- protection of families and children (section 26);
- privacy (section 25 of the HRA);
- access to health services (section 37); and
- freedom from discrimination (section 7 of the *Anti-Discrimination Act 1991* (Qld)).

Interpretation and legislative purpose

Section 25(1) prohibits the use of gametes or embryos where it would “result in more than 10 donor-related Australian families”. Section 25(6) of the ART Act expressly defines a “family” as “a parent, their spouse (if any) and their children” - that is, the meaning of “family” is inclusive, ungendered, and applicable to committed couples (noting that separated spouses or multiple spouses count as separate families: section 25(7)).

It is plain that section 25 of the ART Act prescribes a limit on gamete or embryo usage “in terms of families rather than the number of people who may use a donor’s gametes and embryos **so as not to disadvantage LGBTIQ+ couples where both partners wish to carry a pregnancy using the same donor**”.³ To construe the meaning of “family” otherwise would be a deliberate misinterpretation of the legislation, ignoring the clear textual and contextual features of the provision.

The purpose of donor limits is generally understood to reduce the likelihood of large numbers of donor-conceived genetic siblings within a community.

Where two children are intentionally conceived into the same household, raised by the same parents and form part of the same family unit, treating them as belonging to separate families does little to advance that objective.

Instead, such an interpretation may unnecessarily restrict family planning while producing outcomes that appear inconsistent with the broader intent of the legislation.

Administrative guidance should, wherever possible, adopt an interpretation that is compatible with these rights. Where multiple interpretations are reasonably available, Queensland Health should prefer the interpretation that least limits the rights of LGBTIQ+ Queenslanders while remaining consistent with the legislative framework.

Recognition of Modern Families

Australian law recognises that families are formed in many different ways. Children born into same-sex families should not be disadvantaged because both intended parents choose to experience pregnancy. The legal status

² Statement of Compatibility, *Assisted Reproductive Technology Bill 2024* (Qld) at 20.

³ Statement of Compatibility, *Assisted Reproductive Technology Bill 2024* (Qld) at 21 (emphasis added).

of those parents is determined by family law and Queensland legislation, not by the biological process through which conception occurs.

For the purposes of donor limits, Queensland Health should recognise the intended family unit, rather than treating each gestational parent as creating a separate family.

Practical Consequences

The reported interpretation has the potential to create significant practical consequences, including:

- limiting reproductive choices available to same-sex couples;
- requiring families to seek alternative donors where they had intended their children to share a genetic connection;
- creating uncertainty for fertility providers and patients;
- increasing emotional and financial burdens; and
- reducing confidence that Queensland's assisted reproductive framework treats all families equally.

Recommendations

Pride in Law respectfully recommends that Queensland Health:

1. Amend its guidance to recognise a couple and their children as a single family unit for the purposes of donor limits.
2. Ensure administrative guidance is consistent with the objects and purpose of the *Assisted Reproductive Technology Act 2024* (Qld).
3. Explicitly consider Queensland's obligations under the *Human Rights Act 2019* (Qld) when developing policy and guidance.
4. Consult with LGBTIQA+ organisations, fertility specialists, donor-conceived people, legal experts and affected families before finalising revised guidance.
5. Publish clear, accessible guidance to provide certainty for patients and fertility providers.

Conclusion

Queensland has an opportunity to ensure its assisted reproductive framework reflects both the letter and the spirit of the law.

LGBTIQA+ families deserve equal access to fertility treatment and confidence that administrative interpretations will not create unintended barriers to building their families.

Pride in Law welcomes continued consultation and would be pleased to contribute further to the review.

Thank you in advance for considering our letter. Pride in Law look forward to hearing from you. We hope our letter helps in building a more inclusive legal profession and society.

If you have any queries regarding the contents of this letter, please do not hesitate to contact me or our Pride in Law team by email to president.qld@prideinlaw.org.

Yours sincerely,



Courtney Thorne
QLD Chapter President
Pride in Law

E: courtney.thorne@prideinlaw.org



Flynn Harch
QLD Chapter Vice President
Pride in Law

E: flynn.harch@prideinlaw.org