

19 April 2024

**Email to**: Donor-Conception@justice.qld.gov.au

# Submission to Department of Justice and Attorney-General regarding Donor Conception Information Register and birth certificates

Thank you for the opportunity to provide a submission in relation to the consultation paper on key features of the proposed legislation to establish the Donor Conception Information Register (the Register) in Queensland and proposed legislation regarding birth certificates of donor-conceived people.

Our submission is made on behalf of rainbow families across Queensland, with a focus on representing the voices of the LGBTQ+ community as well as those of our children, many of whom are donor conceived.

# About Rainbow Families Queensland (RFQ)

RFQ supports, celebrates, and advocates on behalf of LGBTQ+ parents and carers and their children, across Queensland. RFQ has a vision of a community where every family is included, respected, and valued. As a community organisation run on a volunteer basis by LGBTQ+ parents, we act as a support network for parents and carers as well as their children. We advocate on behalf of our community and are a strong and consistent voice for LGBTQ+ families to address discrimination, raise awareness and promote acceptance.

Families in which one or more parents or carers identify as LGBTQ+ are known as rainbow families.

Our families are created in many ways, including through donor conception, surrogacy, step-parenting, and co-parenting.

# Community survey on donor conception issues

In April 2022, RFQ surveyed our community and received responses from 112 participants regarding donor conception, including:

* 89 parents of donor-conceived child(ren)
* 16 intended parents of donor-conceived child(ren)
* 9 people who were pregnant/their partner was pregnant with a donor-conceived child
* 2 donors, and 1 intended donor[[1]](#footnote-2)

The full qualitative and quantitative survey results remain available at the following location: <https://docs.google.com/forms/d/1ANiq0rLpOACk5IIYL-ZAzE58diu9wUlOnSw76MASSPE/viewanalytics>

Due to the timeframes for this submission, RFQ has not had an opportunity to engage again with our communities on these specific issues.

# Legal Affairs and Safety Committee inquiry

In 2022, RFQ participated in the inquiry into *Inquiry into matters relating to donor conception information* (LASC Inquiry) in which we expressed our support for a donor registry in Queensland.

In our submission we stressed:

* the right to information for our children to receive relevant information about their donor and donor siblings when mature enough
* the need for increased resourcing for safe, LGBIQ+ inclusive and accessible counselling for everyone involved in donor conception, including when accessing registry information
* the importance of a balanced approach to ensure that donor conception service providers do not become overregulated to the extent that clinics will cease to operate or that donors will be deterred from participating in donor conception programs
* the right to information and right to privacy of our children regarding the information they choose to receive or impart about the fact of their donor conception and the identity of their donor and donor-siblings.

# Location of the Register and obligations on ART providers

RFQ supports the proposals to situate the registry within the RBDM and to require mandatory information to be provided following a live birth where conception occurred through an ART clinic. RFQ has no set view on the timeframe for this to occur but around 2 to 3 months seems reasonable.

# Information to be held on the Register

RFQ has no concerns with the mandatory and voluntary information proposed to be held in relation to donors, donor-conceived persons and donor-conceived person’s parents.

RFQ has previously expressed our support for the option of providing information voluntarily to the Register, including in the case of private arrangements. We share the LASC’s view expressed in the inquiry that mandatory reporting in this case would be impossible to enforce, and would overstep into private arrangements where it is totally inappropriate to do so (such as those between a known donor who has an ongoing relationship with the child and parents).

In terms of what verifying information may be accepted – nothing more onerous should be required than for those who register the birth of a child who is not donor conceived. People are taken at their word about who the genetic father of a child is when a birth is registered, and this information is never independently verified. For most children, a birth certificate would only ever be questioned during a dispute over child support when parentage is disputed. It is difficult to imagine a situation where a person would try to use that process to intentionally deceive the registry or a donor-conceived child, particularly because it’s information that has been voluntarily offered.

# Retrospective operation of the register

RFQ has no particular concerns about this issue, other than to note that the process of contacting donors who expected anonymity but whose identify will now be revealed will need to be conducted very sensitively. In our submission to the LASC we highlight the importance of properly funded counselling services, including for donors facing such situations.

We do not have any expertise in order to comment on children born before 2004. This was well before the establishment of our organisation. Most of our children have open-ID donors or known donors. We would defer to those who are donor-conceived adults on this topic.

# Access to information

RFQ supports the consent-based framework set out in the consultation paper, and considers that the information available to the various parties is appropriate. The proposals centre the donor-conceived person and provide them with autonomy and control over what information they choose to receive or impart (or nor receive or impart) about their donor or siblings.

The change in approach from the LASC recommendation of 18 years to 16 years is consistent with RFQ’s previous submissions on this topic. We believe that this supports the rights of the child to receive information at a time that they are mature enough to process this information.

In relation to medical information voluntarily provided, so long as it is made clear to the donor that the consequence of providing information is that it could be later shared with parties other than the donor-conceived person, there should be no impediment to providing this to parents of donor-conceived persons at any time. We must be able to receive vital medical information about our young children before they reach maturity – and therefore it is appropriate that we be provided with updated medical information as it arises.

At times this could influence decisions such as whether to use the same donor to conceive a sibling within the family unit – e.g. following the diagnosis of a serious condition that may be inheritable. If the medical information indicates that a donor is terminally ill and may pass away, then we must be able to share this information with our child as soon as the information becomes known to address a potentially emotionally harmful situation for a child.

# Birth certificates of donor conceived people

RFQ welcomes the proposals set out in the consultation paper on this topic that deviate from the recommendations of the LASC (recommendations 3.3 and 3.4) regarding the annotation of all current and new birth certificates. RFQ has advised the previous Attorney-General of our concerns with the LASC recommendations which were impractical, unworkable and would have unjustifiably compromised the privacy of our children.

We understand that the consultation paper proposes provisions similar to section 17B of the Births, Deaths and Marriages Registration Act 1996 (Vic). This will only require addendums to be issued if and when a donor-conceived person requests their birth certificate. The alternative would have been to recall all birth certificates for our children – a costly and resource-intensive process that could have caused distress to families and donor-conceived people.

Replicating the Victorian approach also avoids the situation where our children will have a birth certificate that looks obviously different from those who are not donor-conceived. As the child’s first (and often only) identity document, this will mean that third parties will not be privy to this information.

# Surrogacy considerations

Any law reform to regulate ART services and create a donor registry should incorporate regulation of surrogacy in Queensland. Currently, the *Surrogacy Act 2010* (Qld) provides an inadequate legislative and regulatory framework to appropriately safeguard the rights and interests of all parties involved in surrogacy, particularly the intended parent/s, surrogate and their family, and child.

The demand for surrogacy has significantly increased in Australia including from LGBTQ+ parented families. For gay men, surrogacy is the primary option to start a family. At the same time, the legislation remains outdated and does not provide an appropriate level of regulation or guidance to ensure surrogacy arrangements are safe and accessible.

Failure to include surrogacy laws within this phase of legislative reform would create inequality in the access to appropriate health services based on gender, and in our view would therefore be unfairly discriminatory. It would also create further fragmentation across the system, rather than ensure a cohesive approach. This would increase the regulatory burden on providers, and create risks and gaps in protections.

Without urgent updates to our surrogacy laws, intended parents often have no option but to engage in surrogacy agreements outside Australia. This exposes all parties to considerable health and legal risks.

Accordingly, we submit that the *Surrogacy Act 2010* should be included within the scope of this proposed reform.

# Independent review

RFQ has previously recommended that a review of a donor conception register be conducted after 5 years to consider the impact on donor supply. We again make this recommendation in relation to the proposed changes outlined in the consultation paper. This review should be a statutory review which is included in the legislation.

Thank you for considering this submission, and our team would be pleased to discuss any aspects of the submission further.

Yours sincerely

**Heather Corkhill**

**Rainbow Families Queensland Steering Committee**

1. Survey participants were able to select all that apply – some participants had experiences as both a donor and a parent of a donor-conceived child. [↑](#footnote-ref-2)