



Statutory Interpretation: Queensland Court of Appeal confirms prisoners cannot access egg freezing in custody

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The Queensland Court of Appeal has clarified that prisoners cannot access egg freezing while in custody - confirming a broad interpretation of “assisted reproductive technology” under the Corrective Services Act 2006 (Qld). This means that a prisoner cannot undergo egg extraction and freezing while in custody.

The decision in [Smith v Chief Executive, Queensland Corrective Services \[2026\] QCA 99](#) is significant not only in the corrections context, but more broadly as an example of how courts approach statutory construction, particularly where undefined terms, legislative purpose, and human rights considerations intersect.

Why this decision matters

Although the factual context is unusual, the decision provides important guidance for agencies and decision-makers dealing with broadly expressed statutory powers and prohibitions. The case provides a useful reminder of three important principles of statutory interpretation:

- Decision-makers should expect undefined statutory terms to be interpreted broadly where the ordinary meaning, context, and statutory purpose align.
- Explanatory materials can carry real weight where they reveal a clear legislative policy.
- Human rights-based interpretive provisions do not compel a different outcome where a court considers the statutory meaning to be clear.

These issues arise regularly in regulatory and public sector decision-making.

Background: the egg freezing application

Ms Smith, aged 33 at the relevant time, was serving a 10-year sentence for trafficking in a dangerous drug. Medical evidence indicated that delaying pregnancy until her release (at age 39 or 41) would reduce her prospects of conceiving and increase age-related reproductive risks.

To preserve her fertility, Ms Smith applied to Queensland Corrective Services (QCS) for permission to undergo oocyte cryopreservation (egg freezing) while in custody. Importantly, she did not seek to fertilise or implant the eggs during her sentence; rather, she intended to use them after her release.

QCS refused the application on the basis of s 22(2) of the Corrective Services Act 2006 (Qld), which provides that a prisoner must not:

- participate in assisted reproductive technology; or
- apply for approval to participate in assisted reproductive technology.

The Act does not define “assisted reproductive technology”. The central issue on appeal was therefore whether egg extraction and freezing fell within that prohibition.

The statutory issue: Did egg freezing fall within the ban on assisted reproductive technology?

Ms Smith argued that egg freezing was merely a preparatory step, distinct from procedures such as in vitro fertilisation (IVF) or artificial insemination, which directly result in pregnancy.

On that basis, she contended that the prohibition in s 22(2) should be read more narrowly so as not to extend to egg freezing.

The Court’s reasoning

The Court of Appeal rejected that argument and upheld the refusal.

Ordinary meaning and context

The Court held that the phrase “assisted reproductive technology” should be given its ordinary meaning, which was sufficiently broad to include:

- hormone stimulation,

- egg retrieval,
- laboratory handling of eggs, and
- cryopreservation.

Those steps were properly understood as part of a sequence of technological processes undertaken to assist reproduction, even if they did not themselves result in immediate conception.

Legislative purpose

The Court placed significant weight on legislative purpose, reflected in the Corrective Services Act, emphasising that imprisonment necessarily limits certain rights and entitlements.

The Explanatory Notes to the legislation reinforced that the prohibition was intended to be clear and comprehensive, and to avoid requiring corrective services authorities to make evaluative judgments about:

- whether particular prisoners should be permitted to procreate while in custody; or
- their suitability to parent.

Against that background, the Court considered a broad construction of the provision to be consistent with legislative intent.

Why the Human Rights Act argument failed

Ms Smith also relied on s 48 of the Human Rights Act 2019 (Qld), which requires statutory provisions to be interpreted, so far as possible consistently with their purpose, in a way that is compatible with human rights.

The Court rejected that argument, holding that the Human Rights Act does not permit an alternative interpretation where the statutory meaning is clear.

It held that the interpretive obligation in s 48 only operates where there is a choice between competing constructions. On its reading of s 22(2), there was no such choice available.

Accordingly, there was no alternative interpretation that would exclude egg freezing from the statutory prohibition.

Practical implications for Queensland decision-makers and others agencies

For practitioners, government agencies, and decision-makers, the decision highlights several practical points:

1. Broad construction of statutory prohibitions

Courts may interpret prohibitions expressed in general terms expansively, particularly where doing so aligns with the statutory purpose and scheme.

Accordingly, decision-makers should proceed on the basis that broadly framed prohibitions may extend to preparatory or ancillary conduct, particularly where this aligns with legislative purpose.

2. Importance of legislative purpose and context

Even in the absence of a definition, the purpose and context of the legislation may strongly influence the meaning attributed to key terms.

3. Role of explanatory materials

Explanatory Notes and similar materials can play a significant role in confirming the scope and intent of a provision, especially where they articulate a clear policy position.

4. Limits of human rights-compatible interpretation

The Human Rights Act 2019 (Qld) does not permit courts to adopt a preferred interpretation where the statutory text and purpose are, in their view, clear and unambiguous.

A narrow view of broadly framed statutory prohibitions can expose decision-makers to legal challenge. Conversely, an overly expansive approach without clear reasoning may also be vulnerable. This decision highlights the importance of grounding statutory interpretation in text, context, and purpose.

From our experience, the best approach when applying broadly framed statutory prohibitions is for decision makers and agencies to clearly document their assessment of:

- the ordinary meaning of the provision;
- how that meaning fits within the statutory scheme; and
- the legislative purpose supporting that construction.

Conclusion

The Court of Appeal held that egg extraction and freezing fall within the meaning of “assisted reproductive technology” for the purposes of s 22(2) of the Corrective Services Act 2006 (Qld). As a result, Ms Smith was not permitted to undergo the procedure while in custody, and her appeal was dismissed.

More broadly, the decision reinforces that where statutory text and purpose point clearly in one direction, courts will adopt a broad and purposive construction - even in the face of competing human rights considerations.

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