

Frozen in time: Clarifying laws on IVF embryo use and destruction

May 13 2013, by Jenni Millbank



Embryos matter because of what they mean to those for whom they were generated. Credit: UTS

Over the past two decades, the frozen preservation of embryos has become routine practice in IVF. What currently happens to embryos next is controlled by overlapping and complicated rules that confuse and disempower IVF users.

Several embryos are usually produced in an IVF cycle but only one, or at most two, are transferred at one time to minimise the chance of [multiple births](#). Additional embryos are then stored at clinics for use in future transfer cycles.

Very few, if any, patients envisage an extended period of storage for these remaining embryos, which is done for a number of reasons. A couple may be undecided about whether they want to have more children, for instance, or want to wait a while before having another child. A spontaneous [pregnancy](#) may follow IVF treatment or a couple may not be able to decide on how the stored embryos should be used or whether they should be disposed of.

As a result, more than 120,000 [human embryos](#) are now in storage across Australia. While the majority will be used in future [IVF cycles](#), many thousands will never be needed, leading to difficult choices for parents. Over the past decade in Victoria alone, over 20,000 embryos were discarded as a result of mandatory storage limits set by law.

We undertook the Enhancing Reproductive Opportunity project to find out whether IVF patients felt they were able to make the decisions they wanted to make about the use or disposal of their stored embryos.

The project drew on the experiences of more than 400 past and present IVF patients from more than 20 clinical sites across Australia. It spans two decades of experiences covering matters such as storage limits, use after the death of a partner and embryo donation for reproduction.

Our sole inclusion criterion was that an individual or couple had engaged in IVF treatment and stored embryos. Our feminist-oriented approach is particularly mindful of the greater physical risks and [emotional toll](#) experienced by women involved in IVF, as well as women's more limited reproductive years in contrast to men. Unlike most such research, which

is focused on embryo donation for research, our work asks whether people were able to make the family formation decisions they desired.

We found that current IVF rules on issues such as storage limits and destruction practices are intrusive and disrespectful. Mandatory time limits in some states compel destruction of stored embryos after ten years, for instance, while rules in other states prevent a surviving partner from deciding on the use or donation of embryos.

Policies and practices in modern-day IVF don't do enough to acknowledge the emotional significance of embryos, particularly to women who undergo a painful and invasive procedure to create them.

One of our interviewees, Danielle, said:

"What I would like to see happen is a more empathetic understanding that embryos come with a set of emotions and meanings attached outside of fertility, outside of science; because we can't predict how people will feel about their embryos, that we have to respect individual responses. Clinics have to be sufficiently flexible to accommodate individual needs and to understand the meanings that people attach to gametes."

We don't believe that embryos should be granted a moral or legal significance in and of themselves as distinct entities. Rather, their value is relational – embryos matter because of what they mean to those for whom they were generated. This meaning is intensely personal, and infinitely variable.

We would like to see a framework of law, policy and practice capable of honouring this meaning as much as is possible.

The focus of government regulation of IVF to date has largely been on the prohibition of negative or undesired practices. We think that this

needs to change. The focus of external agencies should be to facilitate positive practices, by such actions as giving information to enable informed consent and external provision of support services.

We propose a separation of responsibilities between fertility clinics and government agencies, with key information, advice, support and dispute resolution services being provided independently of clinics.

Human embryos have different meanings to different people, but it's clear that they matter most to the women who underwent IVF to create them. Surely, the law should respect this and only intrude into decisions about stored [embryos](#) made by women and their partners when there's a clear need to do so.

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