

**SUBMISSION TO THE HEALTH AND COMMUNITY SERVICES COMMITTEE****REF: 11.1.28****HEALTH LEGISLATION AMENDMENT BILL 2014**

BY: THE QUEENSLAND FERTILITY GROUP

CONTACT Dr David Molloy Medical Director

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55 Little Edward St, Spring Hill

Health and Community Services Committee

Parliament House

George St

Brisbane 4000

Attention: The Hon Trevor Ruthenberg MP (Committee Chair)

Dear Sir

Thank you for asking the Queensland Fertility Group to comment on proposed changes to go before Parliament. We have particular interest in amendments to the:

***Transplantation and Anatomy Act 1979*** to facilitate national blood supply arrangements, facilitate legitimate trade in tissue-based therapeutic products, **allow the Minister to delegate functions under the Act**, and clarify that the *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003* prevails to the extent of any inconsistency between the two Acts.

This amendment allows a delegate of the Minister to regulate and approve advertising in Queensland in relation to donor gametes and relates to Section 41 of the Transplantation and Anatomy Act 1979. QFG and the IVF units generally cannot support this amendment. In submissions to The Minister and Department dated 5th June 2014 and 7/8/2014, we argued that this section of the Act should be deleted rather than amended. I attach a copy of the letter dated 5/6/14 which sets out in detail our concerns re the Government regulation of advertising in relation to reproductive medicine.

Arguments in support of removal of this Section included:

There is no evidence that advertising in relation to donor gametes in Queensland needs such regulation.

Most advertising is now web and electronically based making its access and distribution in Queensland almost impossible to police and control.

Significant numbers of advertisements are community and patient generated, not corporate.

Advertising is not defined in the Act.

Acceptable and non-acceptable advertising is not defined in the Act.

The majority of Australian States and jurisdictions do not regulate advertising for donor gametes.

The provision of donor gametes is an essential tool for patients with significant and serious infertility.

ART units in Queensland and Australia would therefore request that repeal of the Section 41 of the Act may be in the best interests of patients in Queensland. Infertility affects 10-15% of the adult population. Decisions which affect a patient's access to treatment cause concern in the community amongst that large patient group and their wider families.

The second amendment aligning the T&A Act with the Federal Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003 (RIHEPHCRA Act), is broadly supported.

However it must be pointed out that the Federal Act which was introduced into law after extensive research and consultation did not include a need to regulate advertising.

I write as Clinical Director of Queensland Fertility Group which is Queensland largest and first ART unit and as Chair of the IVF Directors Group in Australia and New Zealand. QFG has worked extremely productively and co-operatively with the State Government and Queensland Health for many years in matters relating to assisted reproduction technologies.

I was asked to assist the enquiries of Parliamentary committees on a number of occasions including the Stem Cell legislation in 2007 and the recent Surrogacy amendments in 2011/2012. I was closely involved with The Attorney General's department on surrogacy reform and believe that we were able to help the government of the day avoid a significant number of difficulties in this demanding and complex legislation.

I would request the opportunity to give evidence to the Committee in relation to Section 41 of the Transplantation and Anatomy Act 1979.

The QFG and I welcome the opportunity to assist the Parliament in any way possible.

Dr David Molloy

**LETTER TO MINISTER SPRINGBORG 5/6/2014 ATTACHMENT**

5th June 2015

The Honourable Lawrence Springborg  
Minister for Health  
GPO Box 48  
BRISBANE QLD 4001.

Dear Minister

I write as Clinical Director of Queensland Fertility Group which is Queensland largest and first ART unit.

We have worked extremely productively and co-operatively with the State Government and Queensland Health for many years in matters relating to assisted reproduction technologies. I was asked to assist the enquiries of Parliamentary committees on a number of occasions including the Stem Cell legislation in 2007 and the recent Surrogacy amendments in 2011/2012.

I was closely involved with The Attorney General's department on surrogacy reform and believe that we were able to help the government of the day avoid a significant number of difficulties in this demanding and complex legislation.

I write in response to a letter from The Director General of Queensland Health dated 8th May 2014 (file reference DG073847) in relation to the advertising of oocyte and sperm (Gamete) donation.

Revival or recognition of Section 41 of the Transplantation and Anatomy Act (1979) making it an offence to advertise in relation to donor sperm and donor eggs without your approval came as a surprise. The Act is now 35 years old and I am not aware of any revision in that time. Section 41 seems to have flown below the radar for all of that time. The provision does seem onerous in that the Minister has to sign off all such advertising in relation to the transfer of human tissue of any sort. ART programmes obviously have busy practices in relation to the use of both donor eggs and donor sperm. We are particularly affected by this provision. We also suggest that in view of the large amount of activity in this area in modern assisted reproduction it is a very significant task for the Minister to be responsible for all

advertisements and difficult to police. It is our view that the Act may need modernizing and alternatives sought. If this were to be the case we would be happy to assist in this process.

Advertising has undergone radical changes since the Act was promulgated in 1979. Now, the most common sort of advertising for donor sperm and eggs is often through the internet. It is true that ART units such as ourselves do use the internet to provide advertising and education for patients who may wish to access donor gametes. However, significant web based advertising is also generated by individual patients who wish to access egg and sperm donors.

ART units who care for patients with infertility problems have undergone significant restructuring in Australia in recent times. There are several quite large national ART units. Our own unit is the largest in Australia and has clinics which stretch from Townsville to Melbourne. Being an organisation of some size, a significant amount of our advertising is generated out of our clinics in Sydney and Melbourne. This is generic advertising which is not particularly state based but creeps across the Queensland border particularly on the web. It is unclear from the 1979 Act if an advertisement generated in Sydney or Melbourne and accessed by a computer in Queensland falls under the remit of the Act requiring Ministerial approval.

The web provides a mechanism for interstate chat rooms, blogs and defacto advertising between patients, patient support groups and patient action groups as individual patients ask for assistance with the supply of donor gametes. This activity probably falls within the remit of advertising as defined under section 41 of the Act. Is it possible to police such patient or community organisation activity.

Advertising takes many forms. It is not rare for a Clinical Director of a programme such as myself, to do various interviews where requests are made for persons to donate gametes. This is rather like the blood bank advertising for donors when they are short of blood. Under the circumstances I am concerned that a relatively innocent press interview where a plea is made for assistance can also be construed as an advertisement that would need to be sanctioned in advance by the Minister.

There are problems with section 41 of the Act in that it fails to define what is acceptable or unacceptable in terms of advertising for donor material. If the Act requires Ministerial approval for advertising, should the Act also define what an ideal advertisement is or at least what conditions would make an advertisement unacceptable to the Minister. If the Act does not do this would the Minister or his Department be able to provide us with guidance as to what might constitute an unacceptable advertisement

Support for altruistic donation remains strong and the direct purchase of tissue should remain illegal. Having said that, the Australian Health and Ethics Committee is reviewing its stance on this matter and will no doubt report later this year or in early 2015 their views on this controversial issue.

This is clearly a difficult area. It is encouraging to note that section 41 of the Act has really not been policed for 35 years. Very few doctors in ART units were aware of section 41 of the Act and indeed the Department and the Ministers of the time during that 35 year period have not been vetting any advertisements for any donated tissue. I would stress that this is not a deliberate flouting of the law by any doctors or ART units in this State as far as I am aware.

During the time that Section 41 was not policed, I am aware of no cases where advertisements in relation to donor egg or sperm have caused any offence or been subject of any complaint. This is evidence that the industry has been able to regulate itself in an appropriate and ethically correct way without the need for Ministerial overview. Regulation for ART units is provided nationally through the NHMRC ethics committee and the Reproductive Technology Accreditation Committee (RTAC) which licences units on a three year basis. The NHMRC is intimately associated with RTAC regulation as the Federal Stem Cell Act recognises RTAC as the regulating body. Within the RTAC regulations there are guidelines and checks on advertising by units to make sure that is both truthful, accurate and in the patient's interests.

Under the circumstances it maybe time to review section 41 of the 1979 Transplantation and Anatomy Act.

Repeal or removal of this section would seem to be a sensible solution.

Another solution maybe to remove Section 41 but to define within the Act what might constitute unacceptable behaviour in terms of an advertisement. Audit bodies would therefore have a basis for acting on a complaint about a particular advertisement which was either inaccurate or inappropriate under the Act.

Enforcement of Section 41 of the 1979 act will put at risk not only practitioners who provide ART services and their organisations but also patients and individual citizens who are engaging in a mutually consented beneficial service. I would request the opportunity to meet with the Minister to discuss both potential repeal and interpretation of the act. Our unit and I personally would be delighted to co-operate with your office to try and resolve this issue in the most positive and efficient way possible.

Yours sincerely

Dr D Molloy

CC: Ellen Hawes  
Director, Blood Tissue and Organ Team, Dept Health

Ian Maynard  
Director General, Dept Health