

# HARRINGTON FAMILY LAWYERS

Our Ref: Stephen Page

3 October 2014

Attention the Hon. Trevor Ruthenberg MP  
Chair  
Health and Community Services Committee

[hcsc@parliament.qld.gov.au](mailto:hcsc@parliament.qld.gov.au)

Dear Mr Ruthenberg

I am making a submission about the proposed *Health Legislation Amendment Bill 2014*. My submissions relate only to the amendment of the *Transplantation and Anatomy Act 1979*. I have read and endorse the submissions of Dr Molloy, which are eminently sensible.

I am a prominent, if not the leading, surrogacy lawyer in Australia. I am:

- One of two international representatives of the American Bar Association's Artificial Reproductive Technologies Committee
- One of three Australian members of the International Surrogacy Forum
- The chair of the Surrogacy Australia legal committee
- The first (and currently only) international fellow of the American Academy of Assisted Reproductive Technology Attorneys (AAARTA)

I have acted for clients concerning fertility/surrogacy matters in every State and Territory in Australia, and at last count 16 countries overseas. I gave evidence at the Tasmanian Upper House surrogacy inquiry. My evidence was endorsed by the Committee and resulted in sensible changes being made to that State's Surrogacy Bill.

My submissions are made by me, and not on behalf of the organisations of which I am a member.

I apologise that the submission is being made just before the cut off. I only learnt this afternoon about the proposed amendment, which is particularly surprising because this is an issue I identified last year, which resulted in the Minister's office being contacted, which in turn prompted the Director-General of Queensland Health to write to all Queensland IVF units. In turn, I wrote to the Minister about this issue in May this year. I have not yet had the courtesy of a response to my letter, not even to say that it has been received. As a result I wrote to my local Member, Mr Cavallucci, to see if I could have the courtesy of a response. That letter was sent by Mr Cavallucci to the Minister, but I am still waiting a response. A copy of my letter to the Minister is attached.

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In my view section 41 of the *Transplantation and Anatomy Act 1979* is poorly drafted. It does not give the Minister power to regulate the advertising of sperm donors, though the Director-General believes otherwise. It imposes an unnecessary bureaucratic approval process that ultimately increases costs, with little real public benefit.

Indeed, if anything there is a public detriment by the advertising requirement remaining in place. There is a terrible shortage of egg and sperm donors in Australia. Everything must be done to enable more people to donate. Australians have the worst waiting time in the Western world for egg donations- which from IVF doctors I have spoken to varies from 6 months to 7 years! In frustration, intended parents have gone overseas to access eggs and sperm- in places as diverse as Argentina, Greece, Cyprus, the Ukraine, Spain, India, Thailand and the United States. We should as a society be removing barriers to enable doctors to advertise to attract both egg and sperm donors, and removing red tape, while keeping the sensible licensing regime for IVF units.

While surrogacy has attracted plenty of media attention, the pain for intended parents who cannot obtain eggs or sperm to enable them to achieve their most cherished dream of parenthood, is a very real pain- one that I confront every week.

I request to give evidence as to section 41 of the *Transplantation and Anatomy Act 1979*. I wish to help the Parliament in any way that I can.

Yours faithfully



**Stephen Page**  
**Harrington Family Lawyers**  
*Accredited Specialist Family Law*  
**Email:** 



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Our Ref: SRP:lp:

16 May 2014

The Hon Lawrence Springborg MP  
Minister for Health**By email:** [health@minsterial.qld.gov.au](mailto:health@minsterial.qld.gov.au)

Dear Mr Springborg

**Advertising for Egg and Sperm Donors by IVF Clinics**

I am a surrogacy and family lawyer in Brisbane. I am aware that a view has been expressed by Queensland Health that IVF clinics must obtain your approval under section 41 of the *Transplantation and Anatomy Act 1979* to advertise seeking any gamete donations.

This view is, with respect incorrect as a matter of law.

Section 41 of the Act makes it an offence to advertise for the buying of human tissue or the right to take tissue from the bodies of persons unless the proposed advertisement has been approved by you as the Minister and contains a statement to that effect.

It is clear on a reading of that Act that *tissue* includes eggs and sperm.

The key phrase in the section is "*the right to take tissue from the bodies of persons*". Breaking down that phrase it is clear:

- In effect only doctors have the *right* to take tissue, therefore so far as intended parents are concerned, there is no prohibition on advertisements by intended parents seeking egg and sperm donors;
- Tissue includes eggs and sperm;
- There is a requirement to *take tissue from* the bodies of persons.

Therefore, with the comparative exception of men who have undertaken vasectomy there is on its face a requirement to obtain Ministerial approval for egg donors but there is *not* a requirement to obtain ministerial approval for advertising for sperm donors. To put it bluntly, sperm is ejaculated from the body following masturbation. It is not *taken* from the body. It's already left. Eggs, however, are removed from the body in an invasive procedure much as other tissue might be *taken* from a body.

I am seeking confirmation from you that Ministerial approval for advertising by IVF clinics for sperm donors is **not** required.

Yours faithfully



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