Queensland
Government

Department of Health

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Mr Trevor Ruthenberg MP
Chair
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Ruthenberg

Thank you for your letter dated 31 October 2014, regarding questions on notice taken at the Health and Community Services Committee's (the Committee) recent public hearing on the Health Legislation Amendment Bill 2014. Mr Ian Maynard, Director-General, Department of Health, has asked that I respond on his behalf.

I am pleased to attach a response to the questions on notice which were raised by the Committee in the above letter and during the public hearing on 29 October 2014.

I trust this information will assist the Committee in its examination of the Bill.

Yours sincerely

[redacted]

Dr Michael Cleary
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6 / 11 / 2014

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Health Legislation Amendment Bill 2014
Questions on Notice from the Health and Community Services Committee

Question	Reference	Response
What consideration has the department given to the impact of section 41 of *Transplantation and Anatomy Act 1979* on patients seeking or receiving fertility treatment?	Letter	The Department of Health (the Department) has considered the impact on patients seeking or receiving fertility treatment and who wish to advertise for a gamete donor. The Department identified that timely approval of application is required. To minimise potential impact on patients, the Department has developed a list of criteria that is used to assess advertisements, and has made this list available to any person who applies for approval of advertisement. The Department also works to adapt proposed advertisements to better meet the criteria before forwarding the advertisements to the Minister for consideration. This has reduced the time taken for approval. The Department intends to write to Assisted Reproductive Technology (ART) providers in Australia to advise that if a patient intends to advertise for gamete donors in Queensland, requesting that the provider inform the patient of the requirement for their advertisement to be approved by the Minister for Health under the *Transplantation and Anatomy Act 1979*.
What other options has the department considered for the regulation of non-commercial advertising for egg and sperm donors?	Letter	The Bill as tabled in Parliament by the Minister enables delegation of the Minister's power to make decisions under section 41.
What measures will be put into place within the department, if the Minister does not repeal section 41 of the *Transplantation and Anatomy Act 1979*, within the Bill with regards to ensuring the continuing availability of donor eggs and donor sperm to affected families in Queensland?	Letter	This section of the Act covers advertising organs and tissues. As the question requires a policy decision it may be appropriate to refer this matter to the office of the Minister for Health.
Assuming that there may be a greater demand for advertising approvals and a potential reduction in the availability of donors, what will the Minister and department do to ensure that not only does this not occur, but is significantly reduced?	Letter	As this question seeks advice from the Minister, it would be appropriate to direct this matter to the office of the Minister for Health. The Department has considered the impact of section 41 of the *Transplantation and Anatomy Act 1979* on patients and donors. As detailed above, the processes as outlined will be used to enable the advertisements to be submitted for approval in the shortest time possible. Donors can be assured that any advertisement in Queensland for donor gametes has been subject to an appropriate assessment.
Is it the Department's view that there should be an amendment, given that section 41 has not been administered over the last 35 years?	Transcript, page 20, para 7	The *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003* prohibits commercial trade in tissue, as does Part 7 of *Transplantation and Anatomy Act 1979*. The *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003* regulates the practice of ART, but not the activities prior to the ART process, including advertising for

Question	Reference	Response
		egg and sperm donors which is covered under the Transplantation and Anatomy Act 1979. There is no evidence that additional legislation regulating advertising for donor gametes in Queensland is required. To streamline the process, the Department of Health has developed criteria which it uses to assess advertising. This is provided to any person seeking assistance. Four jurisdictions (Queensland, South Australia, Victoria and Western Australia) regulate advertising of human tissue. Any change to section 41 would be guided by government policy decisions.
Can the Department advise if section 41 has been regulated and who has made the decision and how many?	Transcript, page 20, para 7	There have been no prosecutions related to section 41. The Department has written to all ART providers to inform them of their obligations under the *Transplantation and Anatomy Act 1979* in relation to section 41. The Department acts on requests for approval of advertisements, and acts on complaints.
Has the Department considered how the Judicial Review Act would apply to an officer who makes a decision in relation to section 41? For example, the requirement for a statement of reasons, either within that original decision or further on if a statement of reasons was requested under the Judicial Review Act; and that the appeal would be made to the Supreme Court.	Transcript, page 21, para 3 Transcript, page 21, para 7	The Department has developed advertising criteria that are used to assess advertisements. The criteria covers only relevant matters that the decision-maker must take into account to approve or decline an advertisement under section 41. The criteria is provided to applicants. The Department has worked with providers in the development of the advertisement to ensure compliance with the identified criteria and subsequent approval. There have not been any appeals in relation to decisions because the Department works collaboratively with parties to assist them to formulate appropriate advertisements.
Why is a personal vaporiser not captured under the Therapeutic Goods Administration (TGA) regulations?	Transcript, page 21, para 9 Transcript, page 22, para 6	The TGA assesses, monitors and evaluates products with a therapeutic purpose based on the following uses: a) Preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury. b) Influencing inhibiting or modifying a physiological process. c) Testing the susceptibility of persons to a disease or ailment. d) Influencing, controlling or preventing conception. e) Testing for pregnancy. f) Replacement or modification of parts of the anatomy. Unless they make a health claim (e.g. assistance with quitting smoking or reducing nicotine addiction), personal vaporising devices are not required to comply with TGA requirements. In Queensland, personal vaporising devices that do not make health claims are consumer goods and as such have to meet requirements under the *Fair Trading Act 1989*.

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Why is a personal vaporiser not captured under the legislation that applies to ice pipes?	Transcript, page 22, para 1	Under the *Tobacco and Other Smoking Products Act 1998* an "ice pipe" is a prohibited product defined as 'a device capable of being used for administering a dangerous drug by the drawing of smoke or fumes resulting from heating or burning the drug, in the device, in the drug's crystal, powder, oil or base form.' The definition of "bongs" is the same, but includes drawing through water or another liquid in the device. These definitions are designed to specifically capture devices used for consumption of illicit drugs like methamphetamine and cannabis. The purpose of the definition of personal vaporisers in the proposed amendments to the *Tobacco and Other Smoking Products Act 1998* is to capture those devices, commonly known as electronic cigarettes that can resemble and are used like regular cigarettes. These devices produce vapour-like smoke and health effects of use and exposure remain unknown and of concern to public health. The intention of the legislation is not to prohibit these products (other than restrictions that already apply to those that may contain liquid nicotine under the *Health (Drugs and Poisons) Regulation 1996*), but to place restrictions on where they can be used in public, prevent their sale to children under 18 years and prohibit their advertising, promotion and display at point-of-sale.