



Human Cloning And Other Prohibited Practices Bill,

Research Involving Human Embryos (New South Wales) Bill.

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [6.07 p.m.]: I move:

That these bills be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Human Cloning and Other Prohibited Practices Bill and the Research Involving Human Embryos (New South Wales) Bill. These bills are the New South Wales component of the nationally consistent scheme to regulate research involving excess human embryos and to prohibit human cloning agreed to at the Council of Australian Governments meeting on 5 April 2002.

New South Wales does not have a legislative framework governing this morally and ethically complex field of scientific endeavour. These bills create one. This is important because medical technology is bringing us closer to techniques and discoveries that were previously in the realm of science fiction. These bills draw the line at what is acceptable scientific practice and what is not.

Most honourable members would be aware of the Premier's strong commitment to ensuring that research which may lead to the discovery of treatment and cures for diseases and other degenerative illnesses such as diabetes, Alzheimer's, cystic fibrosis, spinal cord injuries, burns and certain cancers can continue in this State.

The Premier has also stated that, wherever possible, governments have the responsibility to act to alleviate human suffering and to preserve human dignity. To this end, New South Wales has taken a leadership role among the States to ensure that important medical research can be carried out within an appropriate and considered framework of regulation.

The Government's commitment to the nationally consistent scheme for the regulation of research involving human embryos and the prohibition of human cloning, agreed to at the COAG meeting on 5 April 2002, has been informed by close analysis of the central ethical, social, legal and moral issues that are relevant to this matter.

The Government consulted key stakeholders in the scientific community to properly canvass the challenging issues associated with this rapidly developing area of science. In March 2002 the Premier met with leading New South Wales scientists, many of whom were conducting research in fields other than stem cell science. He found that their conviction in the potential of embryonic stem cell research, the need to keep all research pathways open, and their concern and commitment to helping the community was compelling.

Equally compelling was the view that a nationally consistent regime had the potential to foster the sharing of ideas and generate research collaborations, and possibly hasten the day when new therapies and cures would be available to combat life-threatening diseases.

Many parents and families in New South Wales support our commitment to introduce this legislation. They also believe in the potential of this research to bring significant health benefits to their loved ones. The regulatory framework agreed to at the COAG meeting, and to be implemented in New South Wales by these bills, balances the need to enable potentially life-saving research with the oversight and sanctions necessary to address concerns in our community. That is why the New South Wales Government agreed to the scheme.

The Commonwealth Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos Act 2002, which provide the framework for the national scheme, were assented to on 19 December 2002. The New South Wales Government and other States and Territories were involved in extensive consultation on the Commonwealth bills, providing input into the examination of issues affecting the development and implementation of a national scheme and how this can best be facilitated.

A key concern in this process was to ensure that the resulting legislation maintained fidelity to the principles

agreed to at the COAG meeting. These principles were that human cloning and other unacceptable practices associated with the use of assisted reproductive technologies [ART] must be prohibited, but research using early stage excess ART embryos, which would otherwise be discarded, must be allowed to continue within a rigorous regulatory framework. Currently in New South Wales, ART is conducted under a self-regulatory framework through the Reproductive Technology Accreditation Committee and the National Health and Medical Research Council ethical guidelines.

The two New South Wales bills being introduced today will add a legislative dimension to this scheme. They will also ensure national consistency in accordance with the COAG principles. The bills are consistent with the Commonwealth legislation. Notably, the New South Wales bills mirror the split format of the Commonwealth legislation.

The Research Involving Human Embryos (New South Wales) Bill applies the Commonwealth embryo research laws as laws of this State, and implements a scheme that is to be administered, enforced and monitored by the Commonwealth. This means that the Commonwealth Research Act is treated as an Act of this State and any amendments made to that Act automatically become law in New South Wales. Specifically, this means that the National Health and Medical Research Council Licensing Committee established under the Commonwealth Act has powers and functions in New South Wales law and will be the only body issuing licences for the use of excess ART embryos in New South Wales.

Once the research bill comes into operation it will be an offence under New South Wales law to use an excess ART embryo if the use is not authorised by a licence or if the use is not an exempt use. The legislation also provides that until 5 April 2005, or unless the COAG agrees to an earlier date, only embryos created prior to 5 April 2002, and deemed excess, will be available for research purposes. The only activities to be allowed without a licence in relation to excess embryos are storage, removal from storage, or transport of an excess embryo; observation of an excess embryo; allowing the excess embryo to succumb; and certain diagnostic investigations using embryos not suitable for implantation. The types of research to be allowed by the legislation include derivation of embryonic stem cells and associated research activities, and research designed to increase the possibility of creating a viable pregnancy for an infertile woman. Offences, including breach of a licence, will attract penalties of up to five years imprisonment.

The New South Wales Human Cloning and Other Prohibited Practices Bill does not apply the Commonwealth Cloning Act in the manner of the New South Wales Research Bill, because it contains a large number of serious criminal offences that require detailed articulation as laws of this State. Instead, it enacts its own offences that mirror the offences in the Commonwealth Act, thereby adopting in this State a uniform Australian approach to the prohibition of human cloning and certain other practices associated with reproductive technologies.

The New South Wales Government, like most members of our community, is strongly opposed to human cloning. Accordingly, the bill makes human cloning an offence and provides a maximum prison term of 15 years for any person who creates a human embryo clone.

Serious penalties are also imposed for a number of other activities that are considered scientifically or ethically unacceptable. They include intentionally creating a chimeric and/or hybrid embryo. By way of explanation, this includes activities such as introducing a cell from an animal into a human embryo or combining a human egg and animal sperm, or vice versa. Other activities include developing a human embryo outside the body of a woman for more than 14 days, and intentionally altering the genome of a human cell so that the alteration is heritable. These offences incur a penalty of up to 10 years imprisonment.

Together, the Human Cloning and Other Prohibited Practices Bill and the Research Involving Human Embryos (New South Wales) Bill provide a clear message of the Government's commitment to enacting a rigorous legislative framework. Further, this legislation remains faithful to our strong commitment to medical research and to ensuring that its potential benefit to all members of our community can be realised.

Law makes sense of social complexity; it communicates what is unacceptable behaviour and what is not; it gives us certainty. This legislation does precisely that. It ensures that the community's interests and values are being wisely safeguarded and fairly served through the provisions in these bills.

In summary, it is necessary to introduce New South Wales complementary legislation to prohibit unacceptable activities such as human cloning; to respond to community concerns that we regulate scientific research, and the use of excess ART human embryos; to maximise our chances of finding cures and therapies for diseases by allowing potentially life-saving research involving excess human embryos which would otherwise be discarded to continue; and to ensure a nationally consistent approach to these important matters, as agreed in April last year.

It is important to emphasise that although the Commonwealth legislation covers the greater part of research activities in Australia, New South Wales legislation is required to cover constitutional gaps, provide uniform regulation, and avoid uncertainty about the application of the regulatory scheme. The proposed legislation provides a balance.

It protects community standards, acknowledges the ethical dimension of this debate, and allows innovations that preserve human dignity. It also keeps open an important research pathway to therapies and cures for debilitating and life-threatening diseases and conditions such as diabetes, Alzheimer's disease and Parkinson's disease. In my view New South Wales has a clear and compelling obligation to support the national scheme to regulate research involving embryos and prohibit human cloning. To do otherwise would be counter to the political, economic, social and scientific interests of this State. I commend the bills to the House.

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