

Human Cloning and Other Prohibited Practices Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament. The *Research Involving Human Embryos (New South Wales) Bill 2003* is cognate with this Bill.

Overview of Bill

The object of this Bill is to adopt in this State a uniform Australian approach to the prohibition of human cloning and certain other practices associated with reproductive technology. This Bill:

- (a) makes it an offence (punishable by 15 years imprisonment):
 - (i) to intentionally create a human embryo clone, or
 - (ii) to intentionally place a human embryo clone in the body of a human or animal, and
- (b) creates a number of other offences (punishable by 10 years imprisonment) that prohibit practices associated with reproductive technology.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 states the object of the proposed Act (which is principally to adopt in this State a uniform Australian approach to the prohibition of human cloning and certain other practices associated with reproductive technology).

Clause 4 defines expressions used in the proposed Act, including **human embryo clone**, which means a human embryo that is a genetic copy of another living or dead human.

Part 2 Prohibited practices

Division 1 Human cloning

Clause 5 makes it an offence (punishable by 15 years imprisonment) to intentionally create a human embryo clone.

Clause 6 makes it an offence (punishable by 15 years imprisonment) to intentionally place a human embryo clone in the body of a human or an animal.

Clause 7 provides that it is not a defence to an offence under clause 5 or 6 that the human embryo clone did not or could not have survived.

Division 2 Other prohibited practices

Clause 8 makes it an offence (punishable by 10 years imprisonment) to intentionally create a human embryo by a process other than the fertilisation of a human egg by human sperm. This prohibits an embryo being created by embryo splitting, by parthenogenesis, by somatic cell nuclear transfer or by any other technique that does not involve fertilisation of a human egg by human sperm.

The clause also makes it an offence to intentionally develop a human embryo created by a process other than the fertilisation of a human egg by human sperm.

Clause 9 makes it an offence (punishable by 10 years imprisonment) to intentionally create a human embryo outside the body of a woman unless the person's intention in creating the embryo is to achieve pregnancy in a particular woman.

It is therefore an offence to create a human embryo outside the body of a woman for a purpose such as for use in research or to derive embryonic stem cells for potential therapeutic use.

Clause 10 makes it an offence (punishable by 10 years imprisonment) to

intentionally create a human embryo containing genetic material provided by more than 2 persons. It is also an offence to intentionally develop such an embryo.

One of the effects of this clause is to ban a relatively new ART technique known as cytoplasmic transfer.

Clause 11 makes it an offence (punishable by 10 years imprisonment) to intentionally develop a human embryo outside the body of a woman for a period of more than 14 days. This period does not include any time that the embryo's development is suspended whilst in storage (for example while the embryo is frozen).

In practice, this means that a human embryo created by assisted reproductive technology must be implanted, stored or allowed to succumb (if unsuitable for implantation or excess to the needs of the couple for whom the embryo was created) before the 14th day of its development.

Clause 12 makes it an offence (punishable by 10 years imprisonment) to use precursor cells taken from a human embryo or a human foetus with the intention of creating a human embryo. It is also an offence to intentionally develop a human embryo so created.

Clause 13 makes it an offence (punishable by 10 years imprisonment) to alter the genome of a human cell in such a way that the alteration is heritable if the person altering the genome intended the alteration to be heritable by the descendants of the human whose cell was altered. This clause bans what is commonly referred to as germ line gene therapy.

Clause 14 makes it an offence (punishable by 10 years imprisonment) to remove a human embryo from the body of a woman with the intention of collecting a viable human embryo. This clause bans the practice sometimes referred to as embryo flushing. Embryo flushing is commonly used in animal husbandry and while there have been no recent reports of it being used in relation to humans there is a concern that a healthy human embryo could be removed from a woman's uterus before it implants so that it could be used for research or for transfer to another woman.

Clause 15 makes it an offence (punishable by 10 years imprisonment) to intentionally create a chimeric embryo or to intentionally create a hybrid embryo. The Bill defines these terms as follows:

chimeric embryo means:

- (a) a human embryo into which a cell, or any component part of a cell, of an animal has been introduced, or
- (b) a thing declared by the regulations to be a chimeric embryo.

hybrid embryo means:

- (a) an embryo created by the fertilisation of a human egg by animal sperm, or
- (b) an embryo created by the fertilisation of an animal egg by human sperm, or
- (c) a human egg into which the nucleus of an animal cell has been introduced, or
- (d) an animal egg into which the nucleus of a human cell has been introduced, or
- (e) a thing declared by the regulations to be a hybrid embryo.

This clause does not prohibit the creation of transgenic animals. Transgenic animals are created through the insertion of one or more foreign genes (including human genes) into an animal embryo.

Clause 16 makes it an offence (punishable by 10 years imprisonment) to intentionally place a human embryo in an animal or in the body of a human other than in the human female reproductive tract. It is also an offence to place an animal embryo in a human for any period of gestation.

Clause 17 makes it an offence (punishable by 10 years imprisonment) to intentionally place an embryo in the body of a woman knowing that, or reckless as to whether, the embryo is a prohibited embryo.

In this clause, **prohibited embryo** is defined to mean any of the following:

- (a) a human embryo created by a process other than the fertilisation of a human egg by human sperm,
- (b) a human embryo created outside the body of a woman, unless the intention of the person who created the embryo was to attempt to achieve pregnancy in a particular woman,
- (c) a human embryo that contains genetic material provided by more than 2 persons,
- (d) a human embryo that has been developing outside the body of a woman for a period of more than 14 days, excluding any period when development is suspended,
- (e) a human embryo created using precursor cells taken from a human embryo or a human foetus,
- (f) a human embryo that contains a human cell whose genome has been altered in such a way that the alteration is heritable by human descendants of the human whose cell was altered,
- (g) a human embryo that was removed from the body of a woman by a person intending to collect a viable human embryo,
- (h) a chimeric embryo or a hybrid embryo.

Clause 18 makes it an offence (punishable by 10 years imprisonment) to intentionally give or receive (or to offer to give or receive) valuable consideration for the supply of a human egg, human sperm or a human embryo, other than reasonable expenses incurred by the person in connection with the supply.

Part 3 Miscellaneous

Clause 19 requires the Minister to review the proposed Act as soon as possible after the period of 2 years from the date of assent to the proposed Act. A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years. The Minister may undertake the review of the proposed Act at the same time as the review required by section 25 of the *Prohibition of Human Cloning Act 2002* of the Commonwealth, in which case the report on the outcome of the review of the proposed Act is to be tabled in each House of Parliament as soon as practicable after the Minister has completed the review.

Clause 20 enables the Governor to make regulations in connection with the proposed Act.