

Research Involving Human Embryos (New South Wales) Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Human Cloning and Other Prohibited Practices Bill 2003*.

Overview of Bill

The object of this Bill is to give effect in this State to a nationally consistent scheme for the regulation of activities involving the use of certain human embryos created by assisted reproductive technology.

For that purpose, the Bill:

- (a) applies the *Research Involving Human Embryos Act 2002* of the Commonwealth as a law of this State, and
- (b) makes provision to ensure that the Commonwealth Act and the applied laws of this State are administered on a uniform basis by the Commonwealth as if they constituted a single law of the Commonwealth.

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 regulation of activities involving the use of certain human embryos created by assisted reproductive technologies).

Clause 4 defines expressions used in the proposed Act.

Part 2 The applied provisions

Clause 5 applies the Commonwealth embryo laws (which are defined in clause 4 as the *Research Involving Human Embryos Act 2002* of the Commonwealth (the “Commonwealth Embryo Act”) and all regulations in force under that Act) as a law of this State.

In addition, the clause provides that the Commonwealth embryo laws so apply as if they extended to matters in relation to which this State may make laws, whether or not the Commonwealth may make laws in relation to those matters.

Clause 6 modifies the Commonwealth embryo laws for the purposes of the proposed Act by extending the operation of Part 3 of the Commonwealth Embryo Act to enable the monitoring powers of inspectors appointed under that Act to be used in relation to the *Human Cloning and Other Prohibited Practices Act 2003* of New South Wales and to make a conviction under that Act the basis for revoking a person’s licence. The regulations under the proposed Act may also modify the Commonwealth embryo laws for the purposes of the proposed Act (for example by providing that amendments to the Commonwealth Embryo Act do not apply automatically in New South Wales).

Clause 7 applies the *Acts Interpretation Act 1901* of the Commonwealth as a law of this State in relation to the interpretation of the applied provisions (which are defined in clause 4 as the Commonwealth embryo laws that apply as a law of this State because of clause 5).

In addition, the clause provides that the *Interpretation Act 1987* of New South Wales does not apply to the applied provisions.

Part 3 Functions and powers under applied provisions

Clause 8 provides that the NHMRC Licensing Committee established under the

Commonwealth Embryo Act and its Chairperson, members and other bodies and officers have the same functions and powers under the applied provisions as they have under the Commonwealth embryo laws.

Clause 9 provides that any delegation by the NHMRC Licensing Committee, its Chairperson or members under the Commonwealth Embryo Act is taken to have effect for the purposes of the corresponding provision of the applied provisions.

Part 4 Offences

Clause 10 states that the object of Part 4 of the proposed Act is to further the Act's object by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.

In addition, the clause gives examples of the purposes for which an offence is to be so treated.

Clause 11 applies the relevant Commonwealth laws as laws of this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth.

In addition, the clause provides that, except as provided by the regulations under the proposed Act, an offence against the applied provisions is taken to be an offence against the laws of the Commonwealth and not an offence against the laws of this State.

Clause 12 provides that a function or power in relation to an offence against the Commonwealth embryo laws conferred on a Commonwealth officer or authority by Commonwealth laws applying because of clause 11 is also conferred on the officer or authority in relation to an offence against the corresponding provision of the applied provisions.

Clause 13 provides that a person is not liable to be punished for an offence under the applied provisions if the person has been punished for the same offence under the Commonwealth embryo laws.

Part 5 Administrative laws

Clause 14 applies the Commonwealth administrative laws (which are defined in clause 4) as laws of this State to any matter arising in relation to the applied provisions, except as provided by the regulations under the proposed Act.

The clause further provides that a matter arising in relation to the applied provisions is taken to be a matter arising in relation to the laws of the Commonwealth, not this State.

In addition, the clause provides that any provision of a Commonwealth administrative law applying because of this clause that purports to confer jurisdiction on a federal court is taken not to have that effect. This is consistent with the High Court decision in *Wakim's case (Re Wakim; Ex parte McNally)* (1999) 198 CLR 511) that a State law cannot confer jurisdiction on the Federal Court.

Clause 15 provides that a function or power conferred on a Commonwealth officer or authority by a Commonwealth administrative law applying because of clause 14 is also conferred on the officer or authority in relation to a matter arising in relation to the applied provisions.

Part 6 Miscellaneous

Clause 16 provides that the proposed Act binds the Crown.

Clause 17 provides that the validity of a thing done for the purposes of the applied provisions is not affected only because it was done also for the purposes of the Commonwealth embryo laws.

Clause 18 provides that a reference in a Commonwealth law to any provision of a Commonwealth law is taken, for the purposes of clauses 11 and 14, to be a reference to that provision as applying because of that clause.

Clause 19 requires all money payable under the proposed Act and the applied

provisions to be paid to the Commonwealth.

Clause 20 empowers the Governor to make regulations for carrying out or giving effect to the proposed Act.

Clause 21 extends the definition of **relevant State Act** in section 3 of the *Federal Courts (State Jurisdiction) Act 1999* of New South Wales to include the proposed Act. In particular the amendment will enable regulations to be made under section 16 (2) of that Act to make modifications to the administration and enforcement of the applied Commonwealth laws as a consequence of any future decisions of the High Court with respect to the conferral of functions on Commonwealth officials in connection with co-operative Commonwealth/State legislative arrangements.

Clause 22 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 47 of the *Research Involving Human Embryos 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.