



New South Wales

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

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Explanatory note

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.



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New South Wales

Research Involving Human Embryos (New South Wales) Bill 2003

No. , 2003

A Bill for

An Act to apply the *Research Involving Human Embryos Act 2002* of the Commonwealth as a law of this State; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Research Involving Human Embryos (New South Wales) Act 2003*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Object of Act

(1) The object of this Act is to adopt in this State a uniform Australian approach to the regulation of activities that involve the use of certain human embryos created by assisted reproductive technology.

(2) For that purpose, this Act:

- (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 law of this State are administered on a uniform basis by the Commonwealth as if they constituted a single law of the Commonwealth.

4 Definitions

(1) In this Act:

applied provisions means the Commonwealth embryo laws that apply as a law of this State because of section 5, including any modification under section 6.

Commonwealth administrative laws means the following Acts and regulations of the Commonwealth:

- (a) the *Administrative Appeals Tribunal Act 1975* (excluding Part IVA),
- (b) the *Freedom of Information Act 1982*,
- (c) the *Ombudsman Act 1976*,
- (d) the *Privacy Act 1988*,
- (e) the regulations in force under any of those Acts.

Commonwealth Embryo Act means the *Research Involving Human Embryos Act 2002* of the Commonwealth.

Commonwealth embryo laws means:

- (a) the Commonwealth Embryo Act, and
- (b) all regulations in force under that Act.

function includes duty.

modification includes additions, omissions and substitutions.

NHMRC Licensing Committee means the Embryo Research Licensing Committee of the NHMRC established under the Commonwealth Embryo Act.

- (2) If an expression is defined in the Commonwealth Embryo Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act.
- (3) In this Act, a reference to a Commonwealth Act includes a reference to:
 - (a) that Commonwealth Act, as amended and in force for the time being, and
 - (b) an Act enacted in substitution for that Act and, if it is amended, as amended and in force for the time being.

Part 2 The applied provisions

5 Application of Commonwealth embryo laws to this State

- (1) The Commonwealth embryo laws, as in force for the time being and as modified by or under this Act, apply as a law of this State.
- (2) Those Commonwealth embryo laws so apply as if they extended to matters in relation to which this State may make laws:
 - (a) whether or not the Commonwealth may make laws in relation to those matters, and
 - (b) even though the Commonwealth embryo laws provide that they apply only to specified matters with respect to which the Commonwealth may make laws.

6 Modification of Commonwealth embryo laws

- (1) The Commonwealth embryo laws are modified for the purposes of this Act by requiring a reference in section 26 (2) or 41 of the Commonwealth Embryo Act to the *Prohibition of Human Cloning Act 2002* of the Commonwealth to be read as including a reference to the *Human Cloning and Other Prohibited Practices Act 2003* of New South Wales.
- (2) The regulations under this Act may also modify the Commonwealth embryo laws for the purposes of this Act.
- (3) Without limiting subsection (2), the regulations may provide that the Commonwealth embryo laws apply under section 5 (1) as if an amendment to the Commonwealth embryo laws:
 - (a) made by a law of the Commonwealth, and
 - (b) specified in the regulations,had not taken effect.

7 Interpretation of Commonwealth embryo laws

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this State in relation to the interpretation of the applied provisions. That Act so applies as if the applied provisions were a Commonwealth Act or were regulations or other instruments under a Commonwealth Act, as the case requires.
- (2) The *Interpretation Act 1987* of New South Wales does not apply to the applied provisions.

Part 3 Functions and powers under applied provisions

8 Functions and powers of NHMRC Licensing Committee and other bodies and officers

The NHMRC Licensing Committee, its Chairperson and members and other bodies and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Commonwealth embryo laws, as those laws apply to the Commonwealth.

9 Delegations

Any delegation by the NHMRC Licensing Committee or by the Chairperson or member of that Committee under the Commonwealth Embryo Act is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.

Part 4 Offences

10 Object of this Part

- (1) The object of this Part is to further the object of this Act by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but are not limited to):
 - (a) the investigation and prosecution of offences, and
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences, and
 - (c) proceedings relating to a matter referred to in paragraph (a) or (b), and
 - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c), and
 - (e) the sentencing, punishment and release of persons convicted of offences, and
 - (f) fines, penalties and forfeitures, and
 - (g) liability to make reparation in connection with offences, and
 - (h) proceeds of crime, and
 - (i) spent convictions.

11 Application of Commonwealth criminal laws to offences against applied provisions

- (1) The relevant Commonwealth laws apply as laws of this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, an offence against the applied provisions:
 - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were a law of the Commonwealth, and
 - (b) is taken not to be an offence against the laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations under this Act.

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- 12 Functions and powers conferred on Commonwealth officers and authorities relating to offences** 1
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- (1) A Commonwealth law applying because of section 11 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Commonwealth embryo laws also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions. 3
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- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Commonwealth embryo laws. 9
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- 13 No double jeopardy for offences against applied provisions** 15
- If: 16
- (a) an act or omission is an offence against both the applied provisions and an offence against the Commonwealth embryo laws, and 17
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- (b) the offender has been punished for that offence under those Commonwealth laws, 20
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- the offender is not liable to be punished for the offence under the applied provisions. 22
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Part 5 Administrative laws

14 Application of Commonwealth administrative laws to applied provisions

- (1) The Commonwealth administrative laws apply as laws of this State to any matter arising in relation to the applied provisions as if those provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, a matter arising in relation to the applied provisions:
 - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were a law of the Commonwealth, and
 - (b) is taken not to be a matter arising in relation to laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations under this Act.
- (4) Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (5) For the purposes of this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

15 Functions and powers conferred on Commonwealth officers and authorities

- (1) A Commonwealth administrative law applying because of section 14 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

Part 6 Miscellaneous

16 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

17 Things done for multiple purposes

The validity of a licence, certificate or other thing issued, given or done for the purposes of the applied provisions is not affected only because it was issued, given or done also for the purposes of the Commonwealth embryo laws.

18 Reference in Commonwealth law to a provision of another law

For the purposes of sections 11 and 14, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of those sections.

19 Fees and other money

All fees, penalties, fines and other money that, under the applied provisions, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded to another person) must be paid to the Commonwealth.

20 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

21 Amendment of Federal Courts (State Jurisdiction) Act 1999 No 22

The *Federal Courts (State Jurisdiction) Act 1999* is amended by inserting after paragraph (h1) of the definition of *relevant State Act* in section 3 the following paragraph:

(h2) *Research Involving Human Embryos (New South Wales) Act 2003*

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| 22 Review of Act | 1 |
| (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. | 2 3 4 |
| (2) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to this Act. | 5 6 |
| (3) 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. | 7 8 9 |
| (4) The Minister may undertake the review of this Act at the same time as the review required by section 47 of the <i>Research Involving Human Embryos Act 2002</i> of the Commonwealth, in which case the report on the outcome of the review of this Act is to be tabled in each House of Parliament as soon as practicable after the Minister has completed the review. | 10 11 12 13 14 15 |