

# Legislation Review of Australia's *Prohibition of Human Cloning Act* and *Research Involving Human Embryos Act*: a Christian perspective

**Submission Closing Date: 9 September 2005**

In December 2002, two new pieces of legislation were passed in the Australian Parliament following intense public debate:

- *Prohibition of Human Cloning Act 2002*
- *Research Involving Human Embryos Act 2002*

While there was widespread support for the banning of human cloning at the time, many Christians opposed the legislation allowing research on frozen excess human embryos (left over from fertility treatment). This opposition was based on the biblical view that human life starts at conception and that all human life, regardless of stage of development, should be treated with respect. It was argued that small undeveloped human beings should not be destroyed even for the purpose of developing medical treatments with embryonic stem cells. There were other morally non-problematic ways to get the same medical results, using adult stem cells.

Each Act includes a clause requiring that it be reviewed by an independent committee in 2005 which must take into account community standards, among other things, in deciding whether the legislation should be altered. This process is now underway. While it is not the purpose of the review to revisit the underpinning community debate and rationale for the legislation, there will be ongoing debate about how our society is going to treat early human life.

## Why should I write a submission?

The Review Committee is calling for submissions from members of the public with an interest in these issues. It is important that the Christian community make their views known to the committee so that they can be taken into account when the committee decides whether the acts should be altered in any way. There will be many people involved in scientific and fertility research who will be calling for relaxing of the laws, in particular to allow human cloning. If the committee has reason to believe that many people in the community are opposed to such changes, it is less likely that the final report will recommend legislation allowing human cloning.

The God of the Bible is one who has a special concern for the vulnerable—those who cannot protect themselves. We need to act now to prevent the creation of human embryos either for the purpose of being destroyed in research or for the purpose of creating a human clone. There are also issues being discussed about the way fertility treatment is supervised. **Submission closing date is 9 September 2005.**

## How do I go about writing a submission?

It doesn't have to be complicated or difficult. Even a short letter would suffice. Submissions can be made electronically through the Review website [www.lockhartreview.com.au](http://www.lockhartreview.com.au) or you can telephone the secretariat on (02) 6295 8481 to make other arrangements. There is much information on the website regarding how to prepare a submission and what issues are being discussed. See the *Committee Documents* section to read some helpful information (note in the *Guidelines*, for example, that name, phone number and street address for the submission must be included). There is a helpful *Issues Paper* which is written in plain English to explain what is in the legislation and what questions the review committee is considering. You can comment on as many or as few of the issues as you like. For those who would like more guidance, there are some suggestions below regarding points you may like to make. Try to put them into your own words. They are laid out in the order given in the *Issues Paper* (it makes it easier for the Review Committee) and will make more sense if you read the two documents together.

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You could start the submission by expressing appreciation for the opportunity to comment as a member of the community. You may at this point wish to explain your concern that human dignity is protected by legislation, or you could do it later during your discussion.

### Issues: definitions and terminology: comment on terms used in legislation

- **Definition of 'human embryo'**: it is good to use the term 'embryo' for the first 8 weeks of life and not to use confusing and ambiguous terms like 'pre-embryo'. It is important that all viable embryos are included in this definition, regardless of how they are formed, as they all deserve protection.
- **Definition of 'human embryo clone'**: It is good that the legislation tries to cover all possible mechanisms of creating a human clone in their definition. Definitions need to be broad enough to cover future mechanisms as well. The definition should not depend on the intended use of the clone but remain a biological description.

### Issues: prohibited embryos and practices

It is important that all practices prohibited under the current legislation remain prohibited.

- **The cloning debate**: it is important that all forms of cloning remain prohibited in Australia. Those in the community who oppose human cloning are often portrayed by their opponents as anti-science, but there are strong scientific arguments against cloning and the resolution passed in the United Nations in March this year<sup>1</sup> demonstrates the widespread international support for this position.

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<sup>1</sup> In March 2005 agreement was reached at the United Nations for a nonbinding resolution to "prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life. See page 25 of the *Issues Paper*.

- **The proposed distinction between therapeutic and reproductive cloning will not work.** The technology used for each process is exactly the same, and once it has been developed for therapeutic cloning, it will inevitably be used for reproductive cloning. There have already been reports of rogue scientists attempting reproductive cloning (e.g. Dr Severino Antinori, plus the Raelian sect reported a live clone birth in Australia).

It would be impossible to police a law banning reproductive but not therapeutic cloning. Under the microscope, an embryo created by fertilisation is indistinguishable from one created by cloning. Embryos are placed in women's wombs regularly in fertility clinics and inspectors would not be able to detect a violation of the law.

- **There is widespread agreement that reproductive cloning is morally wrong.** There are many arguments against reproductive human cloning. Based on animal studies, there is a high risk of severe genetic defects in the offspring. Other arguments include the affront to human dignity when an individual loses their unique genetic identity, the confusion of familial relationships which is inevitable in cloning, the unfair expectations which may be placed on an individual who is cloned to replace or replicate one known to the 'parent' etc. There is a risk that the large numbers of human eggs required in the cloning process will lead to the exploitation of vulnerable women.

- Furthermore, **scientific advances have made cloning unnecessary.** It is argued that therapeutic cloning is needed to develop clinical therapies using embryonic stem cells. However, recent research has shown that reprogramming of somatic cells is an effective way to create pluripotent stem cells. Also adult stem cell therapies have continued to be developed and applied successfully in clinical trials. Why should we allow cloning when these more successful and morally unproblematic options are available?

Embryonic stem cell research is still insufficiently successful to allow clinical trials, and researchers suggest that the expense of developing individualized treatments through therapeutic cloning make the long-term use of embryonic stem cell treatment unlikely.

- **How has the ban on cloning affected research in Australia?** Obviously the bans have meant that therapeutic cloning and its application to embryonic stem cell research has not gone ahead. That is why the prohibitions were introduced, and why they are still needed. One of the objects of the act is to address ethical concerns about utilization of human embryos in science. Ethical reality is not altered by scientific advances. Just because something can be done doesn't mean that it should be done. But good science is ethical science. Moral constraints have not, in the past, prevented scientific progress, but have stimulated new and imaginative ways to work with them. In Australia's case, we are producing world class research in the areas of adult stem cell therapies and somatic cell reprogramming.

- **Are the prohibited embryos and practices described in the Act still relevant in light of advances in biotechnology since 2002? Do they appropriately reflect community standards?** Yes to both questions. See above for reasons why cloning prohibitions are relevant. Mistreating of developing human life is contrary to human dignity and warrants the relevant prohibitions in the Act. These prohibitions prevent harm to the embryo in terms of viability as well as preventing harm to a prospective child whose genetic identity is confused (by more than two genetic parents, by a partially non-human genome etc) or ‘enhanced’. Genetic enhancement is objectionable and dangerous in many ways and needs thorough public consultation before it is even considered an option. It is difficult to see how consent issues for the offspring could ever be addressed.
- **Has the prohibition of payment beyond reasonable expenses for gametes and embryos affected access to these items?** Probably, though it is more likely that loss of confidentiality for donors is to blame for the sperm shortage at least in NSW. Nonetheless, they should still be prohibited. The lack of access to these items is beside the point. Trading in human gametes creates a risk of exploitation (of vulnerable women in particular) and trading in human embryos should be avoided as it promotes the commodification of human beings.

#### **Issues: use of excess ART embryos**

- **Do the provisions of the legislation with respect to the use of excess ART embryos reflect community standards?** The legislation as it currently stands is less in line with community standards than it was in 2002. The ‘sunset clause’ of the RIHE Act<sup>21</sup> was originally inserted into the legislation in response to community concerns that increased production of ART embryos, leading to increased numbers of excess ART embryos, may occur after the legislation was introduced. However, when the sunset clause took effect, there was nothing in place to stop the so-called ‘embryo farming’ from occurring. This situation needs to be addressed. Community concerns remain.
- **Consent issues:** It is good that consent is given by ‘responsible persons’ as this terminology reflects the fact that human embryos are not property. It is important that, if human embryo research is to proceed, that the process is completely transparent. The consent process is extremely important and the separation of declaration of excess and consent for research needs to remain separate, to reduce the risk of coercion and allow the responsible person time for reconsideration. In view of the complexity of this research, it is important that explanations are clear and structured to ensure comprehension by those giving consent.
- **Are the arrangements for accreditation and ethical oversight of ART centres appropriate?** News reports of use of Pre-implantation Genetic Diagnosis (PGD) for late-onset problems, surrogacy gone wrong, sex selection

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<sup>21</sup> The *Research Involving Human Embryos Act* included a clause which said that when the legislation took effect, destructive research could only be done on embryos which were created before 5 April 2002 (21 (3)(b) and 24 (1)(c) and 24(3)), to be lifted on 5 April 2005. This was intended to give governing bodies time to make sure that embryo farming would not occur.

causing imbalance of sex ratios in the community have increased community anxiety about the direction of ART practice. These are issues which could affect society as a whole and therefore deserve to be debated by the community before they are introduced. The National Health and Medical Research Council (NHMRC) is in a good position to oversee such discussions. Compliance with the NHMRC ethical guidelines should be compulsory for all accredited ART clinics and enforceable. The public needs the assurance that high ethical standards are maintained in such an important area.

#### **Issues: licensing and statutory arrangements**

- **Are there any issues relating to the operation of the licensing system?** The Licensing Committee should be commended for not rushing into the issuing of licenses for research. The centralization of the approval process is a good thing when dealing with such a controversial area. If embryo research is to go ahead, it is important that the justification for use of human embryos in destructive research remain significant in terms of medical breakthroughs – ‘significant advance in knowledge or improvement in technologies for treatment, which could not reasonable be achieved by other means’. In view of this, the committee is asked to consider how many embryonic stem cell lines need to be created before it is no longer a significant advance.
- The monitoring of licences has been reassuring in its thoroughness and inspectors should be given access to all areas needed to do their work.

#### **Issues: International exchanges of embryos and stem cell lines**

- **How have the import and export prohibitions affected the operation of ART centres etc?** The high standards of ART in Australia will mean that there will be limited occasions where individual patients need to export embryos. To avoid potential trade in human embryos, particularly importation of ‘prohibited embryos’, the law should stand as it is with individual cases considered as needed.
- **How has the legislation affected stem cell research?** Legislation should be maintained to prohibit the importation of prohibited embryos or stem cell lines which have not been ethically produced. Use of unethically produced stem cell lines promotes the practice even if it is not done in Australia.

#### **Issues: research developments**

- **Have advances in stem cell research been greater or less than expectations in 2002?** Advances in adult stem cell research continue and somatic cell reprogramming is developing beyond expectations. However, it is obvious that claims made regarding embryonic stem cell research were grossly exaggerated in 2002 and the promise of embryonic stem cell therapies has not been realized. See above ‘prohibited embryos and practices’. In view of alternative, more promising, less ethically troublesome, ways to develop stem cell therapies, one could question whether human embryos should remain available for such research.