

Passed by both Houses



New South Wales

Human Cloning and Other Prohibited Practices Amendment Bill 2007

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2007*



New South Wales

Human Cloning and Other Prohibited Practices Amendment Bill 2007

Act No , 2007

An Act to amend the *Human Cloning and Other Prohibited Practices Act 2003* to mirror changes made by the Commonwealth to nationally consistent legislation; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Human Cloning and Other Prohibited Practices Amendment Act 2007*.

2 Commencement

This Act is taken to commence on 12 June 2007.

3 Amendments to Human Cloning and Other Prohibited Practices Act 2003 No 20

The *Human Cloning and Other Prohibited Practices Act 2003* is amended as set out in Schedule 1.

4 Amendments to Research Involving Human Embryos (New South Wales) Act 2003 No 21

The *Research Involving Human Embryos (New South Wales) Act 2003* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Human Cloning and Other Prohibited Practices Act 2003

(Section 3)

[1] Long title

Insert “for reproduction” after “cloning”.

[2] Section 1 Name of Act

Insert “*for Reproduction*” after “*Cloning*”.

[3] Section 3 Object of Act

Insert “for reproduction” after “cloning” in section 3 (1).

[4] Sections 3 (2) and 19 (4)

Insert “*for Reproduction*” after “*Cloning*” wherever occurring.

[5] Section 4 Definitions

Omit the definition of *human embryo* from section 4 (1). Insert instead:

human embryo means a discrete entity that has arisen from either:

- (a) the first mitotic division when fertilisation of a human oocyte by a human sperm is complete, or
- (b) any other process that initiates organised development of a biological entity with a human nuclear genome or altered human nuclear genome that has the potential to develop up to, or beyond, the stage at which the primitive streak appears,

and has not yet reached 8 weeks of development since the first mitotic division.

[6] Section 4 (1)

Insert in alphabetical order:

licence means a licence issued under section 21 of the *Research Involving Human Embryos Act 2002* of the Commonwealth, including a licence issued under section 21 of that Act as applied in this State by the *Research Involving Human Embryos (New South Wales) Act 2003*.

[7] Section 4 (5)–(7)

Insert after section 4 (4):

- (5) A reference in this Act to an embryo (including a human embryo) is a reference to a living embryo.
- (6) A reference in this Act to a human egg is a reference to a human oocyte.
- (7) A reference in this Act to a human embryo does not include a reference to:
 - (a) a hybrid embryo, or
 - (b) a human embryonic stem cell line.

[8] Part 2

Omit the Part. Insert instead:

Part 2 Prohibited practices

Division 1 Practices that are completely prohibited

5 Offence—placing a human embryo clone in the human body or the body of an animal

A person commits an offence if the person intentionally places a human embryo clone in the body of a human or the body of an animal.

Maximum penalty: Imprisonment for 15 years.

6 No defence that human embryo clone could not survive

It is not a defence to an offence under section 5 that the human embryo clone did not survive or could not have survived.

7 Offence—creating a human embryo for a purpose other than achieving pregnancy in a woman

- (1) A person commits an offence if the person intentionally creates a human embryo by a process of the fertilisation of a human egg by a human sperm outside the body of a woman, unless the person's intention in creating the embryo is to attempt to achieve pregnancy in a particular woman.

Maximum penalty: Imprisonment for 15 years.

- (2) A defendant does not bear an evidential burden in relation to any matter in subsection (1).

8 Offence—creating or developing a human embryo by fertilisation that contains genetic material provided by more than 2 persons

A person commits an offence if:

- (a) the person intentionally creates or develops a human embryo by a process of the fertilisation of a human egg by a human sperm outside the body of a woman, and
- (b) the human embryo contains genetic material provided by more than 2 persons.

Maximum penalty: Imprisonment for 15 years.

9 Offence—developing a human embryo outside the body of a woman for more than 14 days

A person commits an offence if the person intentionally develops a human embryo outside the body of a woman for a period of more than 14 days, excluding any period when development is suspended.

Maximum penalty: Imprisonment for 15 years.

10 Offence—heritable alterations to genome

(1) A person commits an offence if:

- (a) the person alters the genome of a human cell in such a way that the alteration is heritable by descendants of the human whose cell was altered, and
- (b) in altering the genome, the person intended the alteration to be heritable by descendants of the human whose cell was altered.

Maximum penalty: Imprisonment for 15 years.

(2) In this section:

human cell includes a human embryonal cell, a human foetal cell, human sperm or a human egg.

11 Offence—collecting a viable human embryo from the body of a woman

A person commits an offence if the person removes a human embryo from the body of a woman, intending to collect a viable human embryo.

Maximum penalty: Imprisonment for 15 years.

12 Offence—creating a chimeric embryo

A person commits an offence if the person intentionally creates a chimeric embryo.

Maximum penalty: Imprisonment for 15 years.

13 Offence—developing a hybrid embryo

A person commits an offence if the person intentionally develops a hybrid embryo for a period of more than 14 days, excluding any period when development is suspended.

Maximum penalty: Imprisonment for 15 years.

14 Offence—placing of an embryo

- (1) A person commits an offence if the person intentionally places a human embryo in an animal.
- (2) A person commits an offence if the person intentionally places a human embryo in the body of a human, other than in a woman's reproductive tract.
- (3) A person commits an offence if the person intentionally places an animal embryo in the body of a human for any period of gestation.

Maximum penalty: Imprisonment for 15 years.

15 Offence—placing a prohibited embryo

- (1) A person commits an offence if the person intentionally places an embryo in the body of a woman knowing that, or reckless as to whether, the embryo is a prohibited embryo.

Maximum penalty: Imprisonment for 15 years.

- (2) In this section, *prohibited embryo* means:

- (a) a human embryo created by a process other than the fertilisation of a human egg by human sperm, or
- (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, or
- (c) a human embryo that contains genetic material provided by more than 2 persons, or
- (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, or

- (e) a human embryo created using precursor cells taken from a human embryo or a human foetus, or
- (f) a human embryo that contains a human cell (within the meaning of section 10) whose genome has been altered in such a way that the alteration is heritable by human descendants of the human whose cell was altered, or
- (g) a human embryo that was removed from the body of a woman by a person intending to collect a viable human embryo, or
- (h) a chimeric embryo or a hybrid embryo.

16 Offence—commercial trading in human eggs, human sperm or human embryos

- (1) A person commits an offence if the person intentionally gives or offers valuable consideration to another person for the supply of a human egg, human sperm or a human embryo.

Maximum penalty: Imprisonment for 15 years.

- (2) A person commits an offence if the person intentionally receives, or offers to receive, valuable consideration from another person for the supply of a human egg, human sperm or a human embryo.

Maximum penalty: Imprisonment for 15 years.

- (3) In this section:

reasonable expenses:

- (a) in relation to the supply of a human egg or human sperm includes, but is not limited to, expenses relating to the collection, storage or transport of the egg or sperm, and
- (b) in relation to the supply of a human embryo:
 - (i) does not include any expenses incurred by a person before the time when the embryo became an excess ART embryo within the meaning of the *Prohibition of Human Cloning for Reproduction Act 2002* of the Commonwealth, and
 - (ii) includes, but is not limited to, expenses relating to the storage or transport of the embryo.

valuable consideration, in relation to the supply of a human egg, human sperm or a human embryo by a person, includes any inducement, discount or priority in the provision of a service to the person, but does not include the payment of reasonable expenses incurred by the person in connection with the supply.

Division 2 Practices that are prohibited unless authorised by a licence

17 Offence—creating a human embryo other than by fertilisation, or developing such an embryo

A person commits an offence if:

- (a) the person intentionally creates a human embryo by a process other than the fertilisation of a human egg by a human sperm, or develops a human embryo so created, and
- (b) the creation or development of the human embryo by the person is not authorised by a licence.

Maximum penalty: Imprisonment for 10 years.

18 Offence—creating or developing a human embryo containing genetic material provided by more than 2 persons

A person commits an offence if:

- (a) the person intentionally creates or develops a human embryo by a process other than the fertilisation of a human egg by a human sperm, and
- (b) the human embryo contains genetic material provided by more than 2 persons, and
- (c) the creation or development of the human embryo by the person is not authorised by a licence.

Maximum penalty: Imprisonment for 10 years.

18A Offence—using precursor cells from a human embryo or a human foetus to create a human embryo, or developing such an embryo

A person commits an offence if:

- (a) the person uses precursor cells taken from a human embryo or a human foetus, intending to create a human embryo, or intentionally develops an embryo so created, and
- (b) the person engages in activities mentioned in paragraph (a) without being authorised by a licence, and the person knows or is reckless as to that fact.

Maximum penalty: Imprisonment for 10 years.

18B Offence—developing a hybrid embryo

- (1) A person commits an offence if the person intentionally creates a hybrid embryo.

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- (2) A person commits an offence if the person intentionally develops a hybrid embryo.
 - (3) A person does not commit an offence against subsection (1) or (2) if the creation or development of the hybrid embryo by the person is authorised by a licence.
Maximum penalty: Imprisonment for 10 years.

[9] Section 19A

Insert after section 19:

19A Further review of Act

- (1) The Minister is to further review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act, as amended by the *Human Cloning and Other Prohibited Practices Amendment Act 2007*, remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the *Human Cloning and Other Prohibited Practices Amendment Act 2007*.
- (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 3 years.
- (4) The Minister may undertake the review of this Act at the same time as the review required by section 25A of the *Prohibition of Human Cloning for Reproduction Act 2002* 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.

Schedule 2 Amendment of Research Involving Human Embryos (New South Wales) Act 2003

(Section 4)

[1] Section 3 Object of Act

Insert “or by other means” after “technology” in section 3 (1).

[2] Section 6 Modification of Commonwealth embryo laws

Omit “*Prohibition of Human Cloning Act 2002*” from section 6 (1).

Insert instead “*Prohibition of Human Cloning for Reproduction Act 2002*”.

[3] Section 6 (1)

Omit “*Human Cloning and Other Prohibited Practices Act 2003*”.

Insert instead “*Human Cloning for Reproduction and Other Prohibited Practices Act 2003*”.

[4] Section 23

Insert after section 22:

23 Further review of Act

- (1) The Minister is to further review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the *Research Involving Human Embryos Act 2002* of the Commonwealth, as applied in this State by this Act and amended by the *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006* of the Commonwealth, remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the *Human Cloning and Other Prohibited Practices Amendment Act 2007*.
- (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 3 years.

- (4) The Minister may undertake the review of this Act at the same time as the review required by section 47A of the *Research Involving Human Embryos Act 2002* 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.