

New South Wales

# 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.

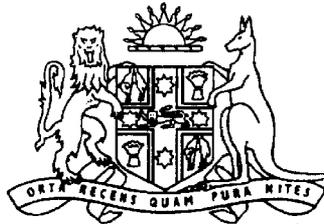
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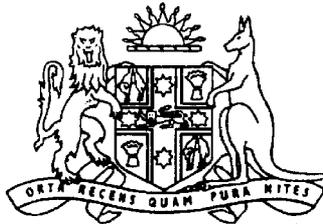
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New South Wales

# Human Cloning and Other Prohibited Practices Bill 2003

No , 2003

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## A Bill for

An Act to adopt in this State a uniform Australian approach to the prohibition of human cloning and certain other practices associated with reproductive technology; and for other purposes.

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See also *Research Involving Human Embryos (New South Wales) Bill 2003*.

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**The Legislature of New South Wales enacts:** 1

**Part 1 Preliminary** 2

**1 Name of Act** 3

This Act is the *Human Cloning and Other Prohibited Practices Act 2003*. 4  
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**2 Commencement** 6

This Act commences on a day or days to be appointed by proclamation. 7  
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**3 Object of Act** 9

(1) The object of this Act is to adopt in this State a uniform Australian approach to the prohibition of human cloning and certain other practices associated with reproductive technology. 10  
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(2) For that purpose, this Act creates a number of offences that mirror offences found in the *Prohibition of Human Cloning Act 2002* of the Commonwealth. 13  
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**4 Definitions** 16

(1) In this Act: 17

*animal* does not include a human. 18

*chimeric embryo* means: 19

(a) a human embryo into which a cell, or any component part of a cell, of an animal has been introduced, or 20  
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(b) a thing declared by the regulations to be a chimeric embryo. 22

*human embryo* means a live embryo that has a human genome or an altered human genome and that has been developing for less than 8 weeks since the appearance of 2 pro-nuclei or the initiation of its development by other means. 23  
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*human embryo clone* means a human embryo that is a genetic copy of another living or dead human, but does not include a human embryo created by the fertilisation of a human egg by human sperm. 27  
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*human sperm* includes human spermatids. 30

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- hybrid embryo*** means: 1
- (a) an embryo created by the fertilisation of a human egg by animal sperm, or 2  
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  - (b) an embryo created by the fertilisation of an animal egg by human sperm, or 4  
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  - (c) a human egg into which the nucleus of an animal cell has been introduced, or 6  
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  - (d) an animal egg into which the nucleus of a human cell has been introduced, or 8  
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  - (e) a thing declared by the regulations to be a hybrid embryo. 10
- precursor cell*** means a cell that has the potential to develop into a human egg or human sperm. 11  
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- woman*** means a female human. 13
- (2) For the purposes of establishing that a human embryo clone is a genetic copy of a living or dead human: 14  
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    - (a) it is sufficient to establish that the set of genes in the nuclei of the cells of the living or dead human has been copied, and 16  
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    - (b) it is not necessary to establish that the copy is an identical genetic copy. 18  
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  - (3) For the purposes of the definition of ***human embryo*** in subsection (1), in working out the length of the period of development of a human embryo, any period when the development of the embryo is suspended is to be disregarded. 20  
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  - (4) For the purposes of the definition of ***human embryo clone*** in subsection (1), a human embryo that results from the technological process known as embryo splitting is taken not to be created by a process of fertilisation of a human egg by human sperm. 24  
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<b>Part 2</b>	<b>Prohibited practices</b>	1
<b>Division 1</b>	<b>Human cloning</b>	2
<b>5</b>	<b>Offence—creating a human embryo clone</b>	3
	A person commits an offence if the person intentionally creates a human embryo clone.	4 5
	Maximum penalty: Imprisonment for 15 years.	6
<b>6</b>	<b>Offence—placing a human embryo clone in the human body or the body of an animal</b>	7 8
	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.	9 10 11
	Maximum penalty: Imprisonment for 15 years.	12
<b>7</b>	<b>No defence that human embryo clone could not survive</b>	13
	It is not a defence to an offence under section 5 or 6 that the human embryo clone did not survive or could not have survived.	14 15
<b>Division 2</b>	<b>Other prohibited practices</b>	16
<b>8</b>	<b>Offence—creating a human embryo other than by fertilisation, or developing such an embryo</b>	17 18
	A person commits an offence if the person intentionally creates a human embryo by a process other than the fertilisation of a human egg by human sperm, or intentionally develops a human embryo so created.	19 20 21 22
	Maximum penalty: Imprisonment for 10 years.	23
<b>9</b>	<b>Offence—creating a human embryo for a purpose other than achieving pregnancy in a woman</b>	24 25
(1)	A person commits an offence if the person intentionally creates a human embryo 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.	26 27 28 29
	Maximum penalty: Imprisonment for 10 years.	30

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(2)	A defendant does not bear an evidential burden in relation to any matter in subsection (1).	1 2
<b>10</b>	<b>Offence—creating or developing a human embryo containing genetic material provided by more than 2 persons</b>	3 4
	A person commits an offence if the person intentionally creates or develops a human embryo containing genetic material provided by more than 2 persons.	5 6 7
	Maximum penalty: Imprisonment for 10 years.	8
<b>11</b>	<b>Offence—developing a human embryo outside the body of a woman for more than 14 days</b>	9 10
	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.	11 12 13
	Maximum penalty: Imprisonment for 10 years.	14
<b>12</b>	<b>Offence—using precursor cells from a human embryo or a human foetus to create a human embryo, or developing such an embryo</b>	15 16
	A person commits an offence if 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.	17 18 19
	Maximum penalty: Imprisonment for 10 years.	20
<b>13</b>	<b>Offence—heritable alterations to genome</b>	21
(1)	A person commits an offence if:	22
	(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	23 24 25
	(b) in altering the genome, the person intended the alteration to be heritable by descendants of the human whose cell was altered.	26 27
	Maximum penalty: Imprisonment for 10 years.	28
(2)	In this section:	29
	<i>human cell</i> includes a human embryonal cell, a human foetal cell, human sperm or a human egg.	30 31

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<b>14</b>	<b>Offence—collecting a viable human embryo from the body of a woman</b>	1 2
	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.	3 4 5
	Maximum penalty: Imprisonment for 10 years.	6
<b>15</b>	<b>Offence—creating a chimeric or hybrid embryo</b>	7
(1)	A person commits an offence if the person intentionally creates a chimeric embryo.	8 9
(2)	A person commits an offence if the person intentionally creates a hybrid embryo.	10 11
	Maximum penalty: Imprisonment for 10 years.	12
<b>16</b>	<b>Offence—placing of an embryo</b>	13
(1)	A person commits an offence if the person intentionally places a human embryo in an animal.	14 15
(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.	16 17 18
(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.	19 20
	Maximum penalty: Imprisonment for 10 years.	21
<b>17</b>	<b>Offence—placing a prohibited embryo</b>	22
(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.	23 24 25
	Maximum penalty: Imprisonment for 10 years.	26
(2)	In this section, <i>prohibited embryo</i> means:	27
(a)	a human embryo created by a process other than the fertilisation of a human egg by human sperm, or	28 29
(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	30 31 32
(c)	a human embryo that contains genetic material provided by more than 2 persons, or	33 34

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| (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   | 1<br>2<br>3          |
| (e)       | a human embryo created using precursor cells taken from a human embryo or a human foetus, or  | 4<br>5               |
| (f)       | a human embryo that contains a human cell (within the meaning of section 13) 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                          | 6<br>7<br>8<br>9     |
| (g)       | a human embryo that was removed from the body of a woman by a person intending to collect a viable human embryo, or   | 10<br>11             |
| (h)       | a chimeric embryo or a hybrid embryo.   | 12                   |
| <b>18</b> | <b>Offence—commercial trading in human eggs, human sperm or human embryos</b>   | 13<br>14             |
| (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.<br>Maximum penalty: Imprisonment for 10 years.                   | 15<br>16<br>17<br>18 |
| (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.<br>Maximum penalty: Imprisonment for 10 years. | 19<br>20<br>21<br>22 |
| (3)       | In this section:<br><i>reasonable expenses:</i>   | 23<br>24             |
| (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   | 25<br>26<br>27       |
| (b)       | in relation to the supply of a human embryo:  | 28                   |
| (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 <i>Prohibition of Human Cloning Act 2002</i> of the Commonwealth, and                                  | 29<br>30<br>31<br>32 |
| (ii)      | includes, but is not limited to, expenses relating to the storage or transport of the embryo.   | 33<br>34             |
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Clause 18 Human Cloning and Other Prohibited Practices Bill 2003

Part 2 Prohibited practices

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*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.

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## Part 3      Miscellaneous

### 19    Review of Act

- (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) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to this Act.
- (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.
- (4) The Minister may undertake the review of this 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 this Act is to be tabled in each House of Parliament as soon as practicable after the Minister has completed the review.

### 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.