

# Human Cloning for Reproduction and Other Prohibited Practices Act 2003 No 20

[2003-20]



New South Wales

## Status Information

### Currency of version

Current version for 29 June 2018 to date (accessed 21 May 2024 at 21:29)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Human Cloning and Other Prohibited Practices Act 2003

### Responsible Minister

- Minister for Health
- Minister for Regional Health
- Minister for Mental Health

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Human Cloning for Reproduction and Other Prohibited Practices Act 2003 No 20



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Human Cloning for Reproduction and Other Prohibited Practices 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 prohibition of human cloning for reproduction and certain other practices associated with reproductive technology.
- (2) For that purpose, this Act creates a number of offences that mirror offences found in the *Prohibition of Human Cloning for Reproduction Act 2002* of the Commonwealth.

### 4 Definitions

- (1) In this Act:

**animal** does not include a human.

**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.

**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.

**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.

**human sperm** includes human spermatids.

**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.

**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](#).

**precursor cell** means a cell that has the potential to develop into a human egg or human sperm.

**woman** means a female human.

- (2) For the purposes of establishing that a human embryo clone is a genetic copy of a living or dead human:
  - (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
  - (b) it is not necessary to establish that the copy is an identical genetic copy.
- (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.

- (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.
- (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.

## **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 being 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.
- (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.

## **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 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.

#### **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.

#### **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.