

Human Reproductive Technology Amendment (Prohibition of Human Cloning) Bill 2003

CONTENTS

1.	Short title	1
2.	Commencement	2
3.	The Act amended	2
4.	Section 3 amended	2
5.	Section 4 amended	2
6.	Section 25 amended	2
7.	Section 26 amended	3
8.	Part 4A inserted	3
9.	Section 53ZG amended	12
10.	Sections 53ZP, 53ZQ and 53ZR amended	13

Western Australia

LEGISLATIVE ASSEMBLY

(As divided by the Assembly and pro forma amendments)

**Human Reproductive Technology Amendment
(Prohibition of Human Cloning) Bill 2003**

A Bill for

An Act to further amend the *Human Reproductive Technology Act 1991*.

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Human Reproductive Technology Amendment (Prohibition of Human Cloning) Act 2003*.

s. 2

2. Commencement

This Act comes into operation immediately after the *Human Reproductive Technology Amendment Act 2003* comes into operation.

5 **3. The Act amended**

The amendments in this Act are to the *Human Reproductive Technology Act 1991**.

[*Act No. 22 of 1991.

10 For subsequent amendments see *Western Australian Legislation Information Tables for 2002, Table 1, p. 177 and the Human Reproductive Technology Amendment Bill 2003 currently before Parliament.*]

4. Section 3 amended

Section 3(2) is by inserting before “4B” —

15 “ 4A or ”.

5. Section 4 amended

After section 4(1) the following section is inserted —

“

20 (1a) The particular objects of Part 4A are set out in section 53A.

”.

6. Section 25 amended

Section 25(a) is amended by deleting “section 7(1)(j);” and inserting instead —

25 “ section 53Q; ”.

7. Section 26 amended

Section 26(1)(a) is amended by deleting “section 7(1)(j),” and inserting instead —

“ section 53Q, ”.

5 **8. Part 4A inserted**

After section 53 the following Part is inserted —

“

Part 4A — Prohibited practices

Division 1 — General

10 **53A. Object of this Part**

(1) The object of this Part is —

- 15 (a) to address concerns, including ethical concerns, about scientific developments in relation to human reproduction and the utilisation of human embryos by prohibiting certain practices; and
- (b) to adopt in this State a uniform Australian approach to the prohibitions.

20 (2) For that purpose, this Part creates a number of offences that are similar to offences under the *Prohibition of Human Cloning Act 2002* of the Commonwealth.

53B. Definitions

(1) In this Part —

“**animal**” does not include a human;

25 “**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

s. 8

- (b) a thing declared by regulations under the *Prohibition of Human Cloning Act 2002* of the Commonwealth to be a chimeric embryo;

5 **“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;

“hybrid embryo” means —

- 10 (a) an embryo created by the fertilisation of a human egg by animal sperm;
- (b) an embryo created by the fertilisation of an animal egg by human sperm;
- (c) a human egg into which the nucleus of an animal cell has been introduced;
- 15 (d) an animal cell into which the nucleus of a human cell has been introduced; or
- (e) a thing declared by regulations under the *Prohibition of Human Cloning Act 2002* of the Commonwealth to be a hybrid embryo;

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

- (2) For the purposes of establishing that a human embryo clone is a genetic copy of a living or dead human —

- 25 (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.

- 30 (3) 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.

- (4) A reference in this Part to a number of penalty units is a reference to the amount calculated in accordance with the following formula —

A x B

where —

A is that number of penalty units; and

B is the amount (in dollars) that is for the time being a penalty unit under section 4AA of the *Crimes Act 1914* of the Commonwealth.

Division 2— Human cloning

53C. Offence — creating a human embryo clone

A person commits a crime if the person creates a human embryo clone.

Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

53D. Offence — placing a human embryo clone in the human body or the body of an animal

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

Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

53E. Offence — importing or exporting a human embryo clone

- (1) A person commits a crime if the person imports a human embryo clone into the State from a place outside Australia.

Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

s. 8

- (2) A person commits a crime if the person exports a human embryo clone from the State to a place outside Australia.

Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

53F. No defence that human embryo clone could not survive

It is not a defence to an offence under section 53C, 53D or 53E that the human embryo clone did not survive or could not have survived.

Division 3 — Other prohibited practices

53G. Offence — creating a human embryo other than by fertilisation, or developing such an embryo

A person commits a crime if the person creates a human embryo by a process other than the fertilisation of a human egg by human sperm, or develops a human embryo so created.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

53H. Offence — creating a human embryo for a purpose other than achieving pregnancy in a woman

- (1) A person commits a crime if the person 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.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

- (2) A defendant does not bear an evidential burden in relation to the exception provided by subsection (1).

53I. Offence — creating or developing a human embryo containing genetic material provided by more than 2 persons

A person commits a crime if the person creates or develops a human embryo containing genetic material provided by more than 2 persons.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

53J. Offence — developing a human embryo outside the body of a woman for more than 14 days

A person commits a crime if the person 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.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years.

53K. Offence — using precursor cells from a human embryo or a human fetus to create a human embryo, or developing such an embryo

A person commits a crime if the person uses precursor cells taken from a human embryo or a human fetus, intending to create a human embryo, or develops an embryo so created.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

s. 8

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

53L. Offence — heritable alterations to genome

(1) A person commits a crime if —

- 5 (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
- 10 (b) in altering the genome, the person intended the alteration to be heritable by descendants of the human whose cell was altered.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

15 Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

(2) In this section —

“**human cell**” includes a human embryonal cell, a human fetal cell, human sperm or a human egg.

53M. Offence — collecting a viable human embryo from the body of a woman

20

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

25 Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

53N. Offence — creating a chimeric or hybrid embryo

30

(1) A person commits a crime if the person creates a chimeric embryo.

- (2) A person commits a crime if the person creates a hybrid embryo.
- (3) A person who commits an offence against this section is liable to a fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

53O. Offence — placing of an embryo

- (1) A person commits a crime if the person places a human embryo in an animal.
- (2) A person commits a crime if the person places a human embryo in the body of a human, other than in a woman's reproductive tract.
- (3) A person commits a crime if the person places an animal embryo in the body of a human for any period of gestation.
- (4) A person who commits an offence against this section is liable to a fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

53P. Offence — importing, exporting or placing a prohibited embryo

- (1) A person commits a crime if the person imports a prohibited embryo into the State from a place outside Australia.
- (2) A person commits a crime if the person exports a prohibited embryo from the State to a place outside Australia.

s. 8

- (3) A person commits a crime if the person places a prohibited embryo in the body of a woman.
- (4) A person who commits an offence against this section is liable to a fine of 600 penalty units or imprisonment for 10 years or both.

5

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

- (5) In this section —

“prohibited embryo” means —

10

(a) a human embryo created by a process other than the fertilisation of a human egg by human sperm;

15

(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;

20

(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 fetus;

25

(f) a human embryo that contains a human cell (as defined in section 53L(2)) whose genome has been altered in such a way that the alteration is heritable by human descendants of the human whose cell was altered;

30

(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.

53Q. Offence — commercial trading in human eggs, human sperm or human embryos

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

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

(3) A person who commits an offence against this section is liable to a fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

(4) 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; 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,

s. 9

but does not include the payment of reasonable expenses incurred by the person in connection with the supply.

Division 4 — Review of Part

5 **53R. Review of Part**

- (1) The Minister must cause a review of the operation of this Part to be undertaken as soon as possible after 19 December 2004.
- (2) The review must take into account —
- 10 (a) developments in technology in relation to assisted reproductive technology;
- (b) developments in medical research and scientific research and the potential therapeutic applications of such research;
- 15 (c) community standards; and
- (d) the applicability of establishing a national stem cell bank.
- (3) The review of this Part may be undertaken as part of the review of the *Prohibition of Human Cloning Act 2002* of the Commonwealth mentioned in section 25 of that Act.
- 20
- ”.

9. Section 53ZG amended

Section 53ZG(2) is amended by inserting after “law” —

25 “ , Part 4A ”.

10. Sections 53ZP, 53ZQ and 53ZR amended

Sections 53ZP(1), 53ZQ(1)(b) and (2) and 53ZR are each amended by inserting after “Part” —

“ or Part 4A ”.
