

**HUMAN REPRODUCTIVE TECHNOLOGY AMENDMENT BILL 2003**

*Returned*

Bill returned from the Council with amendments.

On motion by Mr J.C. Kobelke (Leader of the House), resolved -

That the Council's amendment be considered in detail forthwith.

*Council's Amendments - Consideration in Detail*

The amendments made by the Council were as follows -

No 1

Clause 16, page 19, line 20 - To delete "both" and insert instead -  
the first and third

No 2

Clause 29, page 31, line 15 - To insert after "gametes" -  
in the first place where it occurs

No 3

Clause 33, page 34, after line 7 - To insert -

(2) Section 49(2)(d) is amended by inserting before "with" —

“ subject to subsections (2a) to (2c), ”.

(3) After section 49(2) the following subsections are inserted —

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(2a) Information that would identify a child born as a result of the relevant procedure who has not reached 16 years of age cannot be divulged or communicated under paragraph (d) of subsection (2) unless each person who has given consent for the purposes of that paragraph has completed approved counselling before giving that consent.

(2b) Except as provided in subsection (2c), a child who has not reached 16 years of age cannot consent for the purposes of paragraph (d) of subsection (2).

(2c) A person who has parental responsibility (as defined in section 68 of the *Family Court Act 1997*) for the child may, after completing approved counselling, consent for the purposes of paragraph (d) of subsection (2) on behalf of that child and in that case the child is to be taken to have consented for the purposes of that paragraph.

(2d) Subject to subsection (2e), information to which subsection (1)(a) applies may be divulged or communicated to a child resulting from the donation who has reached 16 years of age and who has completed approved counselling.

(2e) Information cannot be divulged or communicated under subsection (2d) unless —

(a) the donation was made on or after the day on which the *Human Reproductive Technology Amendment Act 2003* came into operation (the “**commencement day**”); or

(b) the donation was made before the commencement day and —

(i) was used with the effective consent of the donor given on or after the commencement day; or

(ii) the Commissioner of Health is satisfied that the donor was, before the donation, adequately informed that future changes in legislation might enable the information to be

divulged or communicated to the child without the donor's consent.

(2f) In subsections (2a), (2c) and (2d) —

**“approved counselling”** means counselling approved by the Commissioner of Health in relation to the divulging or communication of information to which subsection (1) applies.

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No 4

Clause 36, page 36, after line 22 - To insert -

- (3) Nothing in this Part or in a licence under this Part authorises or permits the use of an excess ART embryo if that use is not a therapeutic use.
- (4) In subsection (3) —  
**“therapeutic use”**, in relation to an excess ART embryo, means —
  - (a) its use in, or in connection with —
    - (i) preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury in persons;
    - (ii) influencing, inhibiting or modifying a physiological process in persons;
    - (iii) testing the susceptibility of persons to a disease or ailment;
    - (iv) influencing, controlling or preventing conception in persons;
    - (v) testing for pregnancy in persons; or
    - (vi) the replacement or modification of parts of the anatomy of persons;
  - (b) a use of it that is prescribed in the regulations and is not inconsistent with a use referred to in paragraph (a); or
  - (c) its use in training or research for the purposes of a use referred to in paragraph (a) or (b).

No 5

Clause 36, page 38, after line 21 - To insert -

- (c) where an intended use is to provide a human embryonic stem cell line, the uses to which the human embryonic stem cell line may be put must have been disclosed and explained;

No 6

Clause 36, page 44, lines 24 to 30 - To delete the lines.

No 7

Clause 36, page 45, lines 27 to 33 - To delete the lines.

No 8

Clause 36, page 47, lines 20 to 27 - To delete the lines.

No 9

Clause 36, page 53, line 1 - To delete the line.

No 10

Clause 36, page 53, after line 10 - To insert -

**Division 7 — Review provisions**

No 11

Clause 36, page 59, after line 11 - To insert -

- (2) Subsection (1) may be repealed by resolution passed by both Houses of Parliament.

No 12

Clause 36, page 60, after line 9 - To insert -

- (4) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament not later than 12 months from the date on which the review is first commenced.
- (5) The Minister must cause a copy of the report based on the review conducted under section 47 of the Commonwealth Human Embryo Act to be laid before each House of Parliament not later than six sitting days from the date of receipt of the report.

Leave granted for the amendments to be moved together.

Mr J.A. MCGINTY: I move -

That amendments Nos 1 to 12 made by the Council be agreed to.

Mrs C.L. EDWARDES: I am pleased to support the amendments moved in the Legislative Council. I will say a few words in particular about amendment No 4, which provides a new definition of "therapeutic use". Nothing will be able to be done unless it is approved within the definition of therapeutic use. If members remember earlier debate in this House on this measure, some members attempted to ensure that if this legislation were to proceed, which was not something I personally supported, at least embryonic stem cells must not to be used in a way that we felt the community would not accept. Members may remember the amendment banning the use of embryonic stem cells for cosmetic purposes. As such, proposed subclauses to clause 36 containing the new definition of "therapeutic use" take what members of this House intended and have strengthened it. Therefore, no use of embryonic stem cells will be permitted under this amendment unless they are used in connection with the six points identified under proposed subclause (4) and/or in the regulations. Also, those regulations cannot be inconsistent with those outlined six points. Having moved the amendment to ban the use of embryos for cosmetic purposes, I was very pleased to see the concept taken and expanded and strengthened.

Mr P.G. PENDAL: I suppose it is human nature that when one is part of the losing side of any discussion, one tends to be grateful for small mercies. The principal amendment that was made in this House, and now agreed to by the other place, for a specific ban on the use of live human embryos in the production or testing of cosmetics is no small victory. I for one was very proud to have been part of the 25-15 vote in this House. The Government did not support that vote, albeit that it was a conscience vote. I was concerned, like others, when that matter went to the upper House because we were aware of intentions to remove that ban on cosmetic use and production. Ironically, the Bill is now back in this House along with its fraternal Bill, and it does not contain one ban on the use of embryos for cosmetics - it now has two bans: one in the words that were moved, albeit on the run, in this House by the member for Kingsley and seconded by me, and a second amendment that probably strengthens that ban significantly.

I tell members that this is the first Parliament in the world to place a ban on the use of live human embryos in cosmetic testing or production. The Canadian Parliament could not bring itself to do what the 25 members who were opposed to the 15 had the courage to do. I hope members who voted in favour of that proposition take great pride in it. The Canadian Parliament and the federal Parliament of this country could not bring themselves to do that, and a number of State Parliaments in Australia did not have the courage to implement that ban.

We have at least taken a live human embryo to be on the same basis as a dolphin in the ocean. We have at least given some dignity to a live human embryo in a way that does not even approach the protection given to live animals in the Animal Welfare Bill dealt with in this Parliament last year. The demand was made in that legislation that live animals be at least treated humanely. We have not managed to do that with the Bill before us. However, we have managed to become, within a few minutes I hope, the first Parliament in the world to draw a line and say that the live human embryo should be given at least the status of a dolphin in the ocean. I am gobsmacked to this day to see how anyone could have voted against that proposal of status for a live human embryo when it came before this House in October last year. I am delighted that the upper House worked as a House of Review. That House effectively sent a message to the Government of the day that the members of the upper House had similar reservations to those expressed by 25 members in the lower House from across party lines. I refer also to those members who did not necessarily have a strong commitment in this regard. I am very proud to see that outcome.

Finally, I am proud to see that one of the leading academics in this State supporting the passage of this legislation said of the group of which I have been a part: "Remember that you are the only people who caused a debate to take place; if it were not for you, there would have been no debate." I am very proud of that. I do not want it to be thought that I am thankful for small mercies. That was my starting point. What has been achieved on the cosmetic issue is a very important breakthrough on a worldwide scale.

Mr John Kobelke; Mr Jim McGinty; Mrs Cheryl Edwardes; Mr Phillip Pendal; Mr John D'Orazio; Mr Paul Andrews

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Mr J.B. D'ORAZIO: I would like the speaker to continue. I would like to hear what he has to say because it is very important.

Mr P.G. PENDAL: I am grateful. I am virtually at the point of having finished my remarks in that respect at least, but I did cut short my comments on what Professor Alan Harvey had to say about the debate that had been created.

Professor Alan Harvey is a scientist of great repute both nationally and internationally. I do not think it would be telling tales out of school to say that he was a supporter of this Bill and a deputy chairman of the Western Australian Reproductive Technology Council, yet in a letter that was published in *The Australian* some years ago, he expressed some real and deep concerns about the way in which legislation in this country had been directing itself on human reproductive technology over the previous four or five years. He was a supporter of this Bill. It was encouraging for me to hear a man of his medical and scientific eminence saying how much he had shifted ground in the past four or five years on these deep, profound matters affecting human life. I am not sure whether it arose from his being an eminent scientist. I think it came more from his being an older human being whose views on these issues have grown more conservative as he has grown older. He was the one who was seeking a cautionary hand to be placed on much of this debate.

We heard in the course of the debates in this House - I hope that newer members who are here will take notice of this because older members will be moving out at the next election - that it would be impossible to change this legislation because it was part of a nationally agreed system. I drew on my experience as a former chairman of the Standing Committee on Uniform Legislation and Intergovernmental Agreements of this Parliament - it is sad that we got rid of that committee - and I made the point to members that such a view was arrant nonsense. The federal and State Governments in this country have entered no scheme that does not allow for variance in the legislation put before this House. I implore members never to be falsely put off the track by the argument that they will hear from Liberal and Labor Governments, because it is arrant nonsense. When a minister or Premier attends a conference nationally with other States, he may well agree on the need for some broad, uniform legislation, but it does not mean to say that ours must be a mirror image and that we must ape every detail of what other people do. We are about to prove that point, because I assume that the Government agrees with the Attorney General's motion that we concur with amendments made in the upper House. The argument that we cannot vary legislation is false. That we are now stepping outside the square by being the first Parliament anywhere in the world to ban the use of embryos for the production of cosmetics is evidence of that.

My point in respect of Professor Harvey is that he, even as a proponent, believed that there was insufficient public debate. That is what prompted him to write judicious letters to the editors of journals like *The Australian* and other newspapers around Australia. He was pleading for people to enter into and create a debate. I was very pleased to be part of that group. This Bill is similar in nature to the abortion legislation of 1998, but it is getting through the Parliament with a far smaller majority. That indicates to me that although for 40 years we have had a culture of abortion on demand in this country, people have been pulled up somewhat, so before we introduce a culture of that kind into this sort of law, we are learning to subject it to far more scrutiny. For that reason I am pleased to see at least that major amendment accepted.

Mr J.B. D'ORAZIO: I support the amendments. I put on record my thanks to the minister for accepting these amendments. As the member for South Perth has said, they will add an extra string to the bow and strengthen the fact that in Western Australia embryos will not be created for cosmetic use. That is really important. It is important that we make sure that protection is there. This is the first Parliament in the world to do it, which is a credit to us all. This is probably the most important piece of legislation we have dealt with in the four years that I have been here. I am glad that I was one of those 25 people who stood up, made comments and were responsible for the amendment to ban the use of embryos in the testing of cosmetics. I put on the record my thanks to the members for South Perth and Kingsley and others who have stood up and made the point that we are dealing with human life. As much as some want to see the extension of testing for medical purposes, the use of embryos in the testing of cosmetics is absolutely abhorrent and opposed. It is fantastic that the legislation is being strengthened. By accepting those amendments, the minister and the Parliament have made the position very clear. It sends a clear message to everybody in the community that the Parliament of Western Australia has resolved that the use of stem cells or embryos for the purpose of cosmetic testing or use is totally abhorrent and should be opposed. I thank the members for South Perth, Kingsley, Southern River and Girrawheen and others who share the same strong views. As I have said, this is probably one of the most important pieces of legislation to have come before the House in my four years as a member. I am thankful that the upper House has strengthened the legislation. I look forward to this Parliament passing the amendments unanimously so that we send a clear message to everybody that we are of the same view. I thank members for the amendments.

Mr John Kobelke; Mr Jim McGinty; Mrs Cheryl Edwardes; Mr Phillip Pendal; Mr John D'Orazio; Mr Paul Andrews

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Mr P.W. ANDREWS: I support the amendments. I think the fourth amendment is a far, far better amendment than the one that we were successful in moving in this place. Members of Parliament said that they were prepared to support the use of human embryos for the further development of science, because it would lead to cures for many diseases. I noticed an article in the newspaper the other day that indicated that miraculous cures were five years away. I hope that might be true, but I strongly suspect it is not. The amendments outlined the reasons that many members supported the Bill. Many of my colleagues on this side of the House voted for the Bill in the first place because they wanted embryos to be used to prevent, diagnose, cure and alleviate a disease, defect or injury to persons. They did not agree to extend the legislation to include the use of embryos in the testing of cosmetics and so on. I believe that if this amendment had not been moved to tighten the words, expressions and terminology, the opportunity may have been available for researchers in the future to use embryos for other purposes. The definition now makes it a much more effective piece of legislation.

I am also very satisfied with the twelfth amendment, which deals with the presentation of the report to both Houses rather than simply leaving it up to the federal Government. With changes in technology happening so quickly, we cannot assume that, because it is happening in New South Wales, the same thing will happen in Western Australia. The processes and outcomes could be different. There are so many different possibilities that it needs to be reviewed on a state-by-state basis. I am glad that the report of the review will be presented in this place. I am sure that we will be able to pursue it. Things are developing so quickly that the ethical and moral considerations that need to be made will be done on a year-by-year basis. The fourth amendment was drafted by Hon Adele Farina, who has done an excellent job.

I reiterate the point that some members on both sides of this place are not happy. Even the strongest supporters of the legislation have a feeling of trepidation, and feel that we need to continuously review and look at this issue rather than simply let it ride along. These amendments lend greater strength to the Bill.

**Question put and passed; the Council's amendments agreed to.**

**The Council acquainted accordingly.**