

HUMAN REPRODUCTIVE TECHNOLOGY AMENDMENT BILL 2003

Second Reading

Resumed from 23 September.

DR E. CONSTABLE (Churchlands) [12.38 pm]: This legislation gives effect to the Council of Australian Governments agreement, which dates back to April 2002. It is therefore designed as uniform legislation so that we have nationally consistent legislation in a number of matters relating to human reproductive technology. The Commonwealth, New South Wales, Victoria, South Australia and Queensland have already enacted legislation along these lines. I understand that the Tasmanian Government introduced legislation to the Tasmanian Parliament in August. We now have before us the Western Australian version of this uniform legislation.

The Bill deals with a number of matters which are quite contentious and which deserve a lot of attention from the Parliament, especially during the consideration in detail stage. Firstly, the agreement set down that all jurisdictions must legislate to regulate human embryo research through a very strict licensing scheme, which will be administered by the National Health and Medical Research Council. Secondly, it sought the adoption of a nationally consistent approach to the regulation of assisted reproductive technology, or ART, as it is known. Thirdly, it is agreed that research should be allowed on existing excess ART embryos that would otherwise be destroyed but only with the permission of the couples who have been involved in the production of those embryos. It has to be expressed very firmly and loudly that the research will be subject to a very strict regulatory regime, which must not be forgotten.

In general, the legislation has three main thrusts. Firstly, it prohibits human cloning, and I categorically support those provisions of the legislation. Proposed part 4A of the legislation is very clear in this regard and clear in its aversion to human cloning. Secondly, it regulates research on human embryonic cells. Thirdly, it contains amendments with regard to the clinical practice concerning assisted reproductive technology.

The issues subject to this legislation raise a number of moral and bioethical issues, religious issues for some and philosophical interpretations, as well as scientific matters. That presents for us all a very complex set of issues. A range of different views on these matters are based, for many, on their religious views, their philosophical interpretations or their general understanding of the issues. It is very difficult for those of us who are non-scientists to come to grips with the detail of these issues. However, we are not here to be scientists but to be legislators and to represent the general community. This legislation raises a number of very fundamental issues and questions. I will pose some of those as examples because it is a very complex and detailed matter and the time is not available to go into every issue raised by the legislation. The first question that stands out for me is this: should we permit research involving human embryos? That has been the subject of many members' speeches so far. Some people believe that life begins at the time of fertilisation and attribute moral status as human beings from that time. That view is based on religious underpinnings and on philosophical views. However, there are other views. Others distinguish between fertilisation and conception, which can be also underpinned by religious interpretation. Those people believe that embryos do not have the same moral status as human beings until the fourteenth day of development when the primitive streak appears, when the possibility of twinning has disappeared and implantation has taken place. The primitive streak goes on to form the central nervous system. For many people the fourteenth day is the time at which they attribute moral status as human beings. In the 1980s in the United Kingdom, this issue was the subject of a major report entitled "Report of the Committee of Inquiry into Human Fertilisation and Embryology", commonly known as the Warnock report. The Warnock report supported the fourteen day view. I have researched this matter as much as I can and I find that view compelling when I consider the information from as many angles as possible.

It is important to recognise what this legislation does not permit. For example, it does not permit the creation of embryos purely for the purpose of research. However, I will outline what it does permit by quoting from the minister's second reading speech in *Hansard* because it sums up this issue. This legislation does permit -

People who have developed embryos with the intention of using them to achieve a pregnancy and who no longer need them for that purpose will have the option -

They will have a choice -

of consenting to the donation of the embryos for research.

They are not compelled to donate; they have a choice. They do not have to allow their embryos to be used for research. However, they may decide that they want to make that contribution; that there are reasons that they want medical research to continue along this path, and that choice is given to them. I support that sentiment.

A controversial argument exists about the perceived advantages of adult stem cells over excess assisted reproductive technology embryos. What are stem cells? I am not a scientist, but I have tried to understand as

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much as I can about this, and I would like to put some of it on the record. Stem cells are unspecialised cells, and they renew themselves over long periods through cell division. They are unique because, under certain physiological or experimental conditions, they can be induced to become cells with special functions. For example, many stem cells specialise themselves into red blood cells, insulin-creating cells for the pancreas or muscle cells in the heart. They are essential to all of us. In fact, they could be called the body's repair system. In theory, they can divide without limit to replenish other cells as long as a human being is alive. They are amazing things.

A careful analysis of available research indicates that scientists simply do not have enough information to state that adult stem cells are more promising than embryonic stem cells. We just do not know which one of them is the most promising or whether they are equally promising in the treatment of diseases in a clinical setting. Research is still in its infancy, so people cannot yet form an opinion about which cells will be the most useful to us. That is why we need medical research.

Blood stem cells in bone marrow using adult stem cells are currently the only type of stem cells commonly used for therapy, and that has been the case for about the past 40 years. Those cells are used to treat leukemia, lymphoma and other blood disorders. Therefore, that is one area in which treatment is quite advanced. On the other hand, embryonic stem cells were first isolated in 1998 - only five years ago - by Professor James Thomson at the University of Wisconsin. The only conclusion I can come to is that it is unreasonable for the opponents of embryonic stem cell research to expect scientists to now abandon them as useless, or expect them to know enough about their use in humans at this stage. It is only the beginning of this investigation. I simply cannot conclude that the lack of clinical applications for embryonic stem cells so far means that those clinical applications will never be discovered. I do not know; scientists do not know; and the community does not know. We simply do not know enough to reject embryonic stem cells as an option at this stage.

A very important article was published in the magazine *Nature* in June 2002 by Professor Catherine Verfaillie of the University of Minnesota. She demonstrated that stem cells isolated from adult bone marrow could be coaxed to differentiate into a range of cell types. It was a major breakthrough that she was able to isolate these cells in this way. However, she herself says that her hypothesis now needs to be tested. It is important to note that this professor, who has been involved in research on adult stem cells, also works with embryonic stem cells, and side by side she is looking at both. To me, this again adds weight to the argument that we cannot abandon one sort of stem cell research for another at a stage when we simply do not know enough. She also says that all this sort of work needs to be replicated over and over again and dealt with with much caution at this stage.

I can understand why many members have expressed concerns in this debate so far, and I am sure others will as well. However, I am not prepared to pre-empt the results of scientific investigation and rule out of hand research on embryonic stem cells. A number of members made the statement that every dollar spent on embryonic stem cell research could be better spent on adult stem cell research. That statement is based on a number of assumptions that I do not think we can make at this stage. Indeed, it may turn out that every dollar spent on adult stem cell research would have been better spent on embryonic stem cell research. We do not know and we simply cannot draw those conclusions at this stage.

I will make a couple of comments about certain aspects of clinical practice that are dealt with in the legislation. One issue that is receiving enormous attention is PGD, or pre-genetic implantation diagnosis. This procedure allows embryos that have been produced using the gametes of a prospective couple to be screened for disease. What is PGD? I understand that at the time embryos undergo PGD testing, the embryos are about three days old. At that stage they contain about eight cells. One or two cells are isolated for screening. The isolation of those cells does not affect the embryo itself but allows genetic screening. Only embryos that are not affected by the genetic disorder will be implanted in the uterus on the same day or up to five days later. Results show that the success rate for the implantation of screened embryos is about 25 per cent. For many people, PGD can eliminate the prospect of repeated miscarriages, chromosomal abnormalities and other problems that many couples face. PGD is available in all other Australian States. I know of people who have had to go interstate to undergo PGD procedures. I do not think that is something we can condone in this State. We should have a national law so that all Australians can have access to PGD.

Since time began, men and women have applied their intelligence and creativity to understanding the universe and to scientific investigation. Through the centuries, those of us who are not scientists have expressed anxiety and even fear about scientific activity, as well as wonder about the discoveries of scientists. Galileo, the mathematician and astronomer, was jailed for his scientific investigations about the universe. Today we do not think twice about flights into outer space. Inquisitive scientists and early medical people were punished and reviled for wanting to dissect dead bodies to understand human anatomy. We do not think twice about that today. Every one of us has benefited from scientific investigation and medical research. We have taken

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antibiotics and all sorts of things. My family has certainly benefited from surgery. One of my sons had very intricate surgery some years ago. I am in awe of the sorts of things that medical researchers have done for us over the years.

It is well within the realm of possibility that the type of research that this legislation will allow - I underline that it will be under strict regulation - will advance our understanding about conditions such as muscular dystrophy and myriad other genetically based conditions. I hope that is the case. Australia has a very proud and successful scientific research community, which is governed by strict ethical and legal rules and regulations. It is very important that we have a national, uniform approach to the issues dealt with in this legislation. The legislation will allow scientists to move forward and use their intelligence and creativity with caution and regulation.

DR J.M. WOOLLARD (Alfred Cove) [12.53 pm.]: This is a very complex issue, and I am very pleased that both major parties are allowing a conscience vote on it. I believe that means that all members will vote independently - not on party lines, but as representatives of their electorates. Some members of the community and some members of this House are ethically and morally opposed to the Bill. I have some sympathy for that view; however, on balance, a greater number of people in my electorate support stem cell research as long as appropriate safeguards are met. I therefore support the Bill.

MR A.P. O'GORMAN (Joondalup) [12.55 pm]: I support the Bill, albeit, as a person from an Irish Catholic background, it is difficult for me to do so. I have a major problem with the fact that the Catholic Church has made me aware that it is opposed to the Bill. I had to decide whether to adopt the Catholic Church's stance and oppose the Bill. I concluded that I represent an electorate; therefore, I should canvas my constituents. I came to that conclusion because of a story my wife told me a couple of weeks ago when we discussed the legislation, as I have done with a number of my constituents. She reminded me of a referendum held in Ireland in 1986 on whether married people should be allowed to divorce. Divorce is also contrary to the Catholic ethos. My wife went to a convent school where one of the senior nuns - she was well into her seventies - shocked the staff with her opinion about whether divorce should be allowed. Everyone expected the nun to support the view that divorce should not be allowed. However, based on the fact that 95 per cent of the Irish population was Catholic and, therefore, five per cent was non-Catholic, she did not see why the Catholic view should deny non-Catholics the right to divorce if they wanted to do so. She believed that Catholics who had a strong faith would not seek to divorce regardless of whether that option was available.

I am using the same basis for my view. People who have strong religious views, whether they be Catholics or members of any other religion, and are opposed to in-vitro fertilisation, embryonic stem cell research or any other provisions in this Bill will make their decision according to their conscience. If the Bill is passed, they will not avail themselves of its provisions. As legislators, we are not in Parliament to legislate for our beliefs but for those of our constituents and of the wider Western Australian community. Therefore, it would not be right if I were to impose my culture on other people by seeking to block this legislation. With that in mind, I examined the Bill from a different point of view to that which I initially had.

Division 2 covers human cloning. Proposed section 53C specifically prohibits a person from creating a human embryo clone, and I strongly support that; it is a very good provision. As humans, we do not have the right to clone other human beings. That is dealt with fairly solidly in the Bill. A number of members have spoken about splitting the Bill so that that issue and the issue of embryo stem cell research can be dealt with separately. Given that I am not a very experienced member of Parliament - I have not yet been here for a full term - I will leave that particular debate up to those more experienced members. In due course we will make up our minds on that issue. I strongly support the argument that we should not allow human cloning.

A number of other issues relate to research. The majority of those who oppose this Bill have an issue with research because they believe it interferes with and destroys human embryos. Again, this Bill will allow research on embryos that have already been created. It will not allow for the mass production of embryos into the future for stem cell research. Research will be carried out on embryos that already exist. At the moment, an embryo can be frozen for only three years. This Bill will increase that period to 10 years for a number of reasons. One of those reasons is to allow those people who avail themselves of in-vitro fertilisation to plan their family over a longer period and to have their embryos available so that there is not a repeated harvesting and fertilisation of eggs. That is also a good part of the Bill. It will allow those people to plan their families into the future, which is what most of us who have normal reproductive systems do.

The other issue that bothered me was the pre-implantation genetic diagnosis. Again, I suppose that falls back to my upbringing and what I have been brought up to believe. I was all for opposing that part of the Bill until I received a phone call and then a letter with further information that informed me that a number of people have specific problems conceiving naturally so they use IVF. However, some people who use IVF still have major problems with genetic disorders. It was pointed out to me that amniocentesis tests can be done at 12 weeks in

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this State to check for genetic disorders. If a genetic disorder is detected, people have to decide whether to continue or terminate the pregnancy. PGD allows for that decision to be made much earlier. Again, far less harm will be done if that decision can be made earlier. I was convinced about that as a result of the letter that was sent to me. I will read out that letter. However, I will not read all of it because it might identify the person and she specifically asked not to be identified. The letter reads -

In the coming weeks you will be asked to cast a conscience vote on the Human Reproductive Technology Amendment Bill 2003. I felt it important to detail to you how the passing of this Bill will greatly affect my family and others within WA.

This is easily summed up in one word 'hope'.

That got me thinking and I asked myself whether I am here to destroy somebody's hope or whether I am here to try to help people and the community along. I think all members from both sides of the House are primarily here to help the community develop and move along. The letter continues -

Over the past eight years my husband and I have tried to conceive a healthy baby. However, I am a carrier of Becker Muscular Dystrophy and the chances of passing this fatal genetic disorder onto our offspring has proven very high.

Under current legislation we are unable to have any tests for this disorder until I am twelve weeks pregnant. It is then that we are given the choice as to the outcome of that pregnancy. Tragically in the past my husband and I have been in this situation four times and each time I have been found to be carrying a boy, with Muscular Dystrophy. The choice to terminate, considering the inevitable outcome, was incredibly difficult and heart breaking, and something I would not wish upon my worst enemy.

I find that I am in the same position: I could not wish such a thing on my worst enemy either. I do not have the right as a legislator to deny choice to people in that situation. People's beliefs, religion and culture will determine their choice. I support the parts of the Bill that allow for that.

On the question of research, which I have already mentioned, under the National Health and Medical Research Council, ethics committees have been set up around the country to look at research and arrive at decisions. I am a member of a committee set up under the NHMRC to deal with animal ethics. I do not denigrate this issue in any way when I talk about animal ethics, but being involved in that committee, knowing how it operates and how it inquires into every research project that comes before it for consideration, I appreciate how conscientiously each member of the committee looks into the question and how particular they are about what they let through. They do not merely let research projects through. I am sure that when it comes to human ethics committees, the screening would be even more thorough. I am therefore happy to support the research because it is so strongly regulated.

A number of speakers in the House this week have spoken about the risks of trafficking in human embryos. The legislation caters for that concern under proposed section 53Q which makes it an offence to commercially trade in human eggs, human sperm or human embryos. From my reading of that and following clauses, I believe the situation is covered. The offence of profiteering from human eggs or human embryos is also covered in these clauses. I am therefore quite happy that we have dealt with many of the issues that members have raised on trafficking in human embryos and stem cells.

I support the Bill. I do not have much more to say except that it is very difficult for me to do so. Having consulted many people in my close family and my broader electorate, I believe that in the end the question comes down to whether I am comfortable with the outcomes of the legislation. In some circumstances I can see that I would be uncomfortable, but overall I believe that it is a good Bill that allows us to move forward scientifically to look at cures for many diseases.

My family seems to be affected by genetic cancer, with both my parents dying at a very young age. They were 64 and 67 years of age - a time of life when they could enjoy their lives. They were both retired, reasonably well off financially and could start to do some of the things that most of us would aspire to do in our retirement; that is, travel and visit members of the family in different parts of the world. Within a short period, both my parents had died. My dad died from lung cancer. I flew back to Ireland and was told that was the diagnosis, and he was dead within six weeks. Stem cell research, whether adult stem cell research, embryonic stem cell research or research on umbilical cord blood may find an answer to that type of disease. My mother also died of cancer within four months of my father's death. My father died on 26 August and my mother on 2 January. My mother had a form of cancer that meant she could have lived for another 10 years, but for some reason once my dad died the cancer became aggressive and she died within a very short time. Again, the type of research that will be permitted under this Bill might have saved her. I do not know, and I do not think anybody else here knows. However, we need to look. Throughout history, scientists and medical people have found cures for many things.

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We have to give people that opportunity. The particular form of cancer that my mother had was in the liver. It caused a blockage between the bowel duct and the liver so that fluids could not get through, and she died over a period of about four months. My aunt, my mother's sister, also died of the same form of cancer. I am told that form of cancer is very rare. However, I have a concern that it may be genetic and we may pass it on to future generations of our family. Therefore, I believe it would be wrong of me to deny people the opportunity for research to see whether they can come up with a cure for that type of cancer. I will be supporting the legislation, and I will be watching closely as we go through the debate to see whether anything comes up that makes me change my mind.

MR J.P.D. EDWARDS (Greenough) [1.11 pm]: I wish to make some comments on the Human Reproductive Technology Amendment Bill. I appreciate the difficulty that the member for Joondalup has found in making his decision on this Bill. This is an emotive and, of course, controversial issue. That is reflected in the fact that we on this side of the House have been given a conscience vote on this Bill. In the main, I support most of the legislation. I have listened to various opinions and views. I am aware of the member for South Perth's amendments, some of which I can probably agree with but others I cannot. It needs to be remembered that we are debating issues that will impact on people and unborn children, and of course all members would be aware of that. I am also aware that the Queensland, New South Wales, Victorian and South Australian Parliaments have already addressed the human reproductive technology legislation in one way or another, so I guess Western Australia is in a state of catch-up at the moment.

The Bill can be divided into three parts: cloning, stem cells and research. I am totally opposed to human cloning, as I think is everyone else in this House. I refer to a booklet from the Western Australian Reproductive Technology Council titled "Proceedings from Seminar - Cloning, stem cell research and transgenics". Page 26 of the report contains an article by Dr Sandra M. Webb titled "Towards the national regulation of human cloning and embryo research". The following sentence on that page sums up the matter very well -

It seems that the whole world is united in agreement that reproductive cloning should be prohibited, although the reasons why may differ.

I suspect I need say no more on that matter, and I will not, because I have made my feelings on that matter clear, as have other members.

However, I want to comment on clause 11(2) of the Bill, which seeks to amend section 14 of the Human Reproductive Technology Act 1991, which deals with pre-implantation genetic diagnosis. This process gives parents who know that there is the possibility of some genetic defect in their family, however small that may be or whatever it may be, the opportunity to have their embryos screened before they are implanted in the uterus. I understand that currently a woman needs to be 12 weeks pregnant before she can have an amniocentesis test. I am aware of the signed letter that the member for Joondalup has received. I suspect all members of Parliament have received a copy of the same letter. In fact, the lady concerned was probably sitting in the public gallery yesterday. I have an enormous amount of sympathy for the situation in which she and her husband and other people find themselves. It is excellent that the provision is part of this Bill. I understand that people currently have to travel to the eastern States if they wish to be screened. It is right that the screening will be available in Western Australia. I fully support that. I hope it brings joy and hope to those affected.

I have grappled to some degree with the problem of adult stem cells and embryonic stem cells. I have received representations about both sides of the argument from members of my electorate who have very strong views; however, probably most representations have concerned the issue of embryonic stem cells. At this stage I am withholding my decision - if that is the right way of putting it - until I have heard all the debate in the Chamber.

Research is extremely important. If it is a matter of being able to help someone in a situation in which he does not choose to be in, and research will help, we should support it, no matter whether it involves an embryo in a womb, an accident, or a degenerative disease. I suspect that will be my thinking. I am aware that some people have very moral and ethical questions about the use of embryonic stem cells. I understand that if they are used for research, they must be used in the right way. The use of the cells should not be abused; they should be used for no other purpose than for the good of research.

I understood for some time that most degenerative conditions could be repaired by using adult stem cells. I have done some research in the past day or so and now understand that that is not necessarily so. That brings me to the reason I was putting forward my argument about embryonic stem cells. As far as I know, it has not yet been done, but researchers using embryonic stem cells will eventually be capable of using them to grow new livers, spleens, pancreas and kidneys. I do not believe adult stem cells are capable of that. I may stand corrected on that. Adult stem cells will help address illnesses such as leukaemia, haemophilia and auto-immune diseases of the blood. I can sit reasonably comfortably with research, although I know I will probably upset some members of my electorate by saying that because some people do not believe that should be so. However, if one looks at

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this from a practical point of view, stem cells are taken from an embryo that is only 0.1 millimetre in diameter; it is infinitesimally small. The stem cells are taken from an embryo two or three days after fertilisation. People talk about life and all the issues that come into this, but it is not an argument or direction I will take. I profess not to know enough about it; I am certainly not a scientist or a doctor.

I have concerns whether this legislation is tight enough to stop commercialisation and profit making from stem cells. I believe that issue is addressed by the legislation and I hope it is tight enough to prevent the commercialisation of stem cells. Perhaps I am naive in the extreme to say that surely people, for moral and ethical reasons, would not use them for commercial or devious profitable means. However, that is not always the case in this world; therefore, I hope the legislation will cover that issue adequately enough so that it does not occur.

I believe the legislation is a step in the right direction. This is obviously a subject that needed to be addressed by legislation. I am sure that with the goodwill of this Parliament, the legislation, in whichever form it is passed, will be in the best interests of the people who will rely on it as a law of this State to help them in whichever way it may.

MR J.B. D'ORAZIO (Ballajura) [1.20 pm]: This for me has probably been one of the most difficult issues to address and on which to take a position. Given my background as a chemist and from my reading of all the research that has been done on various conditions and especially on the use of drugs, I understand the need for research and the pressure on researchers to develop different ways of dealing with issues. I also understand the difficulties in testing drugs on babies and that, therefore, the testing of drugs on human embryos will be of some benefit. In my opinion, Parliaments always legislate for the lowest common denominator. Usually the laws we pass prevent people from doing something, rather than proactively support people who are ethical and above board, whether those laws relate to speeding, crimes against people, financial crimes and so on. This legislation is no different.

I found it difficult to research this issue. So many experts in the world have so many different views that it is very difficult to take a position. However, one thing is clear: we all strongly oppose human cloning. A close examination of the process involved in human cloning begs more questions than it answers. For example, this legislation goes to great lengths to include the definition of terms, but cloning that has occurred through various research projects has made it difficult to put parameters on the practice.

What is cloning? Cloning is the removal of the nucleus from an egg and replacement with adult nuclei of a person or other being, which then generates a person or other being of the same clone. People would have thought that was impossible 10 to 20 years ago. I will take that concept one stage further. What would happen if the nucleus of a mammal egg - a pig egg or whatever - were replaced with an adult cell? Would that create a human embryo? What would it create? Is it possible? I am not sure. However, it scares the hell out of me that I am about to vote on a law that will create definitions to allow people who are far more experienced, far more clinical and far cleverer than I am to interpret definitions that may get around that rule of law. There are always experts who can get around the written definitions in laws that we pass on any subject. That worries the hell out of me, especially in relation to cloning, because its frontiers are moving so quickly that I am unsure whether we as politicians are in a position to legislate to prevent what we all in this place agree should be prevented.

As a professional person who has been involved in scientific matters, it is with great trepidation that I try to work out whether I want to take the next step of supporting research being conducted on embryos. What would it be called if it were possible to create an embryo of whatever description from the fertilisation of adult human cells and they were placed into another mammal's egg? Is it part of the process? Should it be done? Some researchers might say it is not a bad way of creating cells for research. I am totally opposed to cloning in any form. However, I am not sure whether this legislation addresses that issue. Someone who is far cleverer than I says that it does. I hope he is right. What about taking that to the next level and allowing experimentation on those cells if it were possible? Some will say I am talking fiction, and I might be, but I also understand how science works and how quickly things change. I want to be sure that the legislation we pass does not give permission for something to happen because it does not specifically say in the legislation that something should not happen. That is important.

Why does research have to be done on embryonic stem cells? Do I want to support that? I am not going to support that on the basis that it is unnecessary. We have heard and seen some of the scientific research that stem cells are taken from adult cells and umbilical cord blood. Stem cells from cord blood seems to be far more useful and important in the research being done for some programs. Therefore, I ask myself, why are we debating whether to allow research to be conducted on embryos that are held in storage? The issue is quite clear in my mind. If there is another way of achieving the same result, why should approval be given to conduct research on the embryos that are held in storage? The only argument I have heard in favour of allowing research

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to be conducted on stored embryos is that once they are used, they will no longer be available for research. I do not believe embryos should be stored either. There is no process for keeping what is proposed in this legislation under control. I will not support experimentation on embryonic stem cells. However, I support the use of techniques to diagnose people with problems. I sympathise with the lady who had to terminate four pregnancies.

A number of lobbyists have tried to approach some members of Parliament. Some of us have deliberately tried to avoid being lobbied by them because sometimes they provide only one version of events. I have had enough trouble juggling this issue in my own mind without having pressure placed on me from other people who want to make me understand what they think about the issue. I sympathise with that. I will support the clause that allows people to be diagnosed for genetic diseases. However, I have a problem with the wider application of research into human embryos. On the one hand I understand the dilemma. I sympathise with and will support that part of the process. However, as a principle, I do not want research to be conducted on embryonic stem cells because that creates so many other uncertainties and I do not want to be put in that position. It is difficult for members of Parliament, who are the custodians of the community's view, to take that one step further, which is being suggested here.

Interestingly, as I said, over the past couple of months a number of people have wanted to lobby me on this issue. I have read their letters to me and I thank them for their input. I also decided on a couple of occasions to informally test the community's attitude to this issue. In my former life as a pharmacist, a number of young women worked for me. About nine of those girls, who are aged between 17 and 25 years, and I attended a social function one night at which I asked whether research on human embryos should be prohibited. They all had the same view that research on human embryos should be prohibited. They did not hold that view because of their scientific knowledge but because they were unsure of the consequences of allowing that to happen. That also worries me. Some members of Parliament have a scientific background and others do not. Members come from all walks of life and they are being asked to make judgments on a subject that they are not very knowledgeable about. More importantly, they are not in a position to make a decision on such matters. Members are the custodians of the community and have been asked to make a decision on its behalf; therefore, we need to take a position. I stress that we should be cautious and therefore oppose experimentation on human embryos.

I conducted the exercise I did with the young girls with about 20 senior citizens. I had the same discussion, and although some had conditions that might be improved by the outcome of the research, the senior citizens were also almost unanimous in saying that they were not happy to take the extra step of allowing experimentation on human embryos because they were uncertain about the outcomes or where it would lead us. They were also concerned that things were happening too quickly. The human race needs to be very careful. We are on the verge of a major change in the way humans, as we understand them, function. No-one in the community wants to take the step of allowing the formation of human life to be forever changed without having any ability to control that change. I find it difficult to support legislation that hands the control of that process to an external organisation comprising so-called experts, all with their own view of life, and which does not allow any input from the people who are elected by their community to make decisions. I am happy that an advisory body has been set up, but I am not happy that this legislation will give it the ability to license certain projects and processes, thereby taking the role of making decisions for the community away from politicians, who are answerable to and charged with making law on behalf their communities.

This has been a very difficult exercise for me. As I said, I understand the need for research, but I also have my own religious beliefs. It is important to realise that we are making a decision about the basis of humanity and the human structure. It is inappropriate for us to support research on human embryos. Other areas of research, such as on adult stem cells and umbilical cord blood, are providing the same degree of success. In some cases, the results are better. Why the hell are we introducing legislation that will allow embryonic research when other methods are available that will achieve the same end without provoking the same concern from the community?

I strongly oppose cloning. I wish more experts could tell me that the words in this Bill to prevent cloning go far enough. I think the definitions are too narrow and specific - for example, by referring to humans - and that people could find loopholes to allow them to work outside the definitions. I am concerned that those definitions weaken this legislation rather than achieve the aim of stopping any sort of human cloning. That worries me, and I would like some advice on that, if possible. As I said earlier, I do not think the definition of a human embryo includes an egg that is implanted with human cells. If that is the case, there will be problems in achieving the aim that has been expressed in this Chamber of categorically preventing cloning. I want to stop cloning.

I am also opposed to research on human embryos, although I am happy for there to be a diagnostic method of testing for diseases in embryos, as has been referred to in this Chamber. I have no problem with that. That is a much more sensible process than requiring someone to carry a baby for four months, who then has to have an abortion. That creates further ethical problems. I am happy with that process of testing. I want some guarantees that we are not passing legislation that will bite us and the community in the bum; that is, I would like a

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guarantee that, in trying to make the definitions specific enough to prevent things, we are not opening the floodgates to other interpretations of what is intended.

MS M.M. QUIRK (Girrawheen - Parliamentary Secretary) [1.35 pm]: I am very grateful that on both sides of the House it is acknowledged that matters relating to fundamental issues of the creation of life itself, encompassing deeply held beliefs and personal convictions, should be the subject of a conscience vote. I am also very appreciative of the respectful and civil manner in which those of differing opinions have approached the debate thus far.

This legislation arises out of an undertaking given by the Council of Australian Governments that States would pass laws to mirror federal laws that permit the use for research purposes of embryos created prior to 5 April 2002, in excess of those required for in-vitro fertilisation. Before canvassing some of the specific issues in the Bill, I will make some observations about the COAG process. There seems to be an increasing trend towards introducing legislation into this House as part of a mirror scheme for all States in the Commonwealth. Obviously in some cases, there are particularly compelling reasons for having identical legislation in all States and federally on a range of issues. It is nevertheless my view that States are often fettered in setting their own agendas and time lines, and are increasingly being asked to fall into line behind COAG imperatives. This is a diminution of State sovereignty. Once an agreement has been reached - I use the term advisedly, because my experience has shown that many strong-arm tactics are used to get the States to fall into line on issues discussed by COAG - considerable pressure is placed on us as legislators to pass legislation in exactly the same form as every other State.

I accept that there will be occasions when it is important, to ensure the effectiveness of an overall scheme, that we fall into line with other States. However, there seems to be a cogent argument to suggest that these agreements undermine the sovereignty of the State Parliaments. In future we may need a method more structured and orderly than that which currently exists to deal with such laws, given their increasing prevalence. The extent to which these national schemes are controversial will vary. There are cases, such as the amendments to the Corporations Law that needed to be made following the High Court decision in *The Queen v Hughes* in 2000. In that case, a number of routine and procedural amendments needed to be made to state legislation to clarify the constitutional relationship between the States and the Commonwealth. The amendments received timely passage through both Houses. It was readily understood that the failure to expedite such laws might create difficulties for companies, and if the amendments did not apply nationally, there was the potential that the whole basis of the Corporations Law would be undermined, along with the issue of conferral of power on the States more generally.

In the case of the Bill before the House, however, there is a very real tension between the imperative to bring this State into line with all others, and the need to preserve the sovereignty of this Parliament. Unlike other issues such as that involving the Corporations Law that I have already cited, I have received very few representations that legislation like this Bill is urgent, or that the failure of this State to embrace the scheme would have significantly adverse consequences for the people of Western Australia. From this side of the country, my observations of the issue of embryonic cell research, as it was discussed at the federal level, is that it seems to have been driven more by what I would call the scientific white shoe brigade, who hastily focused on financial outcomes rather than on reflective and sound public policy. No sooner were extravagant claims made about the potential of such research than they were challenged. These claims then needed to be qualified or modified.

Although state Premiers seem to be very supportive of this legislation, I believe that to some extent they were cajoled into participating on the grounds that failure to do so would leave States at a commercial disadvantage and that they would experience a loss of prestige if scientific advances were made elsewhere. I have had some real difficulties with the Council of Australian Governments process in the present context. This is not just some arcane argument; it has practical application. The commonwealth provisions have set the date after which embryos that were created cannot be used as 5 April 2002. However, that date can be unilaterally changed by the Commonwealth without reference to the States. For that reason, I will support the amendments that will ensure that this cannot occur.

There is real tension between those who believe that experimentation on embryonic stem cells shows great promise in the fight against human disease and should be pursued at all costs for the greater good, and those who consider that research involving the harvesting of cells will require the destruction of embryos. Those in the latter category regard such destruction to be the destruction of human life itself.

It is certainly uncontroversial that both adult and embryonic stem cells have great potential to lead to treatments for major degenerative diseases such as Alzheimer's disease, Parkinson's disease, heart disease and insulin-dependent diabetes by replacing cells in diseased tissues and organs with healthy cells. It is also believed that stem cell therapy may have application in the delivery of healthy genes to organs which are missing a protein or

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which have a defective protein. It is equally uncontroversial, however, that the use of embryonic stem cells raises some real ethical and moral dilemmas for many in the community. Even those with the most liberal views consider that, because of those legitimate concerns, strict limits and restrictions on certain research practices are appropriate.

One such concern is that legislation such as this could lead to the commodification of human life. Instead of regarding embryos as potential human beings, it encourages people to regard them as no more than a product within the marketplace. I regard it as somewhat paradoxical that the by-products of in-vitro fertilisation, which is directed towards creating life in instances when conception is problematical, are treated merely as commodities rather than as potential human beings.

From the foregoing, it is perhaps apparent that I oppose some aspects of the Bill. I believe everyone in this place will support any ban on cloning. Current state legislation bans cloning. What is proposed in the Bill merely updates the provisions in terms of technology. I reiterate that I have concerns about permitting the practice of cloning. I will support a range of amendments, especially those directed at separating the practice of reproductive technology from the use of excess embryos in research. I will also support amendments directed towards the use of embryos purely for commercial purposes.

In the context of this debate, in recent years we have seen images of the film star Christopher Reeve, who is most famous for his role as Superman. He has advocated very effectively the view that embryonic stem cell research will deliver a cure for his paralysis, and that such a cure is imminent. The Premier of New South Wales, Hon Bob Carr, even brought Mr Reeve to Australia to provide a focus for the debate in that State. However, the arguments are somewhat more complex than that. There are approximately 70 000 unused embryos in storage in Australia that are subject to this legislation. The agreement of the Council of Australian Governments is based on the utilitarian notion that since these embryos are surplus to requirements and they will no longer be viable in any event, we should make a virtue out of necessity.

In the context of the remaining amendments, I am also anxious that we increase reporting mechanisms so that we can better monitor how this research is conducted. I am also concerned that genetic testing be limited to serious genetic abnormalities. A number of people have expressed some reservations about genetic testing saying that they believe there should be restrictions on testing to permit screening for only so-called serious defects. The serious defects are those that would prevent a child - ultimately an adult - from enjoying an acceptable quality of life. For example, I consider that screening for deafness would be outside the scope of the testing available. Likewise, amendments designed to limit the kind of research for which embryos can be used will be fully supported by me. Under this amendment, embryonic stem cells should not be used for testing products, training staff or testing new laboratory techniques. I will also support amendments that seek to separate the conduct of reproductive technology, such as in-vitro fertilisation, from the research on embryos. Such a separation will remove both potential and actual conflicts of interest.

In my inaugural speech in this place, I asserted the proposition that the ends should never justify the means. I also expressed the belief that there was room for a moral dimension within politics. In my view, no more relevant are these kinds of considerations than in the present debate.

MR J.H.D. DAY (Darling Range) [1.47 pm]: This legislation seeks to make a number of changes to the Human Reproductive Technology Act. I will comment on the three main aspects of this Bill. Firstly, I will deal with the proposed changes to the legislation regarding the clinical practice of assisted reproductive technology. The purpose of these changes has been outlined in the second reading speech of the minister. The intention is to put provisions in place in Western Australia similar to those in other States and Territories of Australia with regard to ART. In particular, it is proposed to change the legislation with regard to the storage and diagnostic testing of embryos to provide for consistency with the practice in other jurisdictions.

The period of permitted storage is proposed to be extended from three years to 10 years, with the possibility of further extension with the approval of the Western Australian Reproductive Technology Council. There has been something of a problem with the three-year limitation because most people find that it is insufficient time and they need to keep coming back to the Reproductive Technology Council for approval to continue to store embryos. Extending the period to 10 years is much more realistic. Secondly, the Bill allows for genetic testing of embryos to be permitted with the approval of the council and when there is a significant risk of a serious genetic abnormality or genetic disease in the embryo. The genetic testing would be approved only if the council was satisfied that there was a significant risk of a serious genetic abnormality or disease being present in the embryo. Thirdly, this aspect of the legislation includes amendments to allow for access to IVF procedures when such procedures may help to prevent the transmission of an infectious disease, such as HIV or AIDS, to a child. I believe that that is an entirely understandable change and one that is worthy of support.

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On the issue of pre-implantation genetic diagnostic testing, I am mindful of the representations that I think have been made to all members of Parliament, including me, of course, from a lady, Sonja Jenkins. I mention her name because she has been happy to be identified publicly in recent times, although she requested in her letter that that not be the case. I place on record my commendation of her thoroughness and the determination that she has shown to do whatever she can to ensure that members of Parliament have an adequate understanding of the implications of this aspect of the legislation and the need for it. She has written to me and other members of Parliament pointing out that she is a carrier of Becker muscular dystrophy - a very serious form of the disease of muscular dystrophy, I understand - and advising that it is a fatal genetic disorder and that there is a high chance of its being passed on to offspring. She has outlined her history. She has become pregnant on four occasions and, unfortunately, has had to make the very difficult decision to terminate her pregnancies because it was found through prenatal testing that the embryos were the carriers or would be sufferers of that form of muscular dystrophy. The case that she has made to allow for this sort of testing to be undertaken in Western Australia is very compelling. My understanding is that it was originally intended to be permitted under the legislation that was passed in this House in 1990, I think. However, because of one or two inconsistencies in the existing Act and the legal interpretation that has therefore been placed on the existing provisions, it has not been possible to undertake pre-implantation genetic diagnosis in Western Australia.

I am also very mindful of the representations that were made to me by a constituent of mine in 1999 and 2000 - somebody who explained to me that she was a carrier of a very serious genetic disease. One of her parents suffered to a large extent from this disease, and she was seeking access to PGD at that time. It was, in part, because of those representations that I received when I was Minister for Health that I was very keen for this aspect of the legislation to be introduced into Parliament and to pass through both Houses of Parliament in 2000. That did not occur at the time, because there was some reluctance for it to occur in 2000. However, I am pleased that now, in 2003, this issue is being addressed. This constituent explained to me that, despite the fact that she was a member of the Catholic faith, she would have no alternative but to terminate a pregnancy if it were found that the foetus she was carrying was either a carrier or a potential sufferer of this disease. Her concerns and arguments also add a great deal of weight to the need for this change to be made.

I am also mindful of some of the comments that were made in the report of the Select Committee on the Human Reproductive Technology Act 1991. This report was presented to the Legislative Assembly in 1999. The committee recommended that the legislation be changed to allow PGD. I also note that there was quite a large degree of support for this change to be made. The Baptist Union of Western Australia, for example, made a submission to the select committee at that time. According to the report, its submission states -

... spare embryos will exist where earlier attempts at IVF have been successful or where one or both partners have opted out of a contract to continue. Bearing in mind, especially, that the rate of attrition of natural pregnancies in their early stages remains high for causes unknown, we recognise that some research may be permitted in the context of testing and improving the efficiency of IVF procedures,

That relates more to the aspect of research involving embryos, which I will come to in a short while. In relation to pre-implantation genetic diagnosis, it is important to realise that we are talking about either preventing or reducing in many cases the levels of suffering from serious diseases in our community. In seeking to allow this form of testing to be undertaken, we are in no way making a comment about those in the community who have a disability. This legislation and this form of testing in no way looks back to what might have been had this sort of testing existed 20, 30 or more years ago. It is a matter of looking forward to see whether we can reduce suffering and pain in the community in the future. Absolutely no comment is made about those in our community who suffer any form of disability at the moment and who quite rightly are and should be regarded as absolutely full and contributing members of our community in every respect.

It is also important to realise that at present there are no limits on prenatal testing of embryos or foetuses. In other words, after conception and implantation have occurred, it is entirely possible for prenatal testing to be undertaken for a range of diseases and for a woman to make a decision to terminate the pregnancy at that time. The reality is that that does occur. In my mind and in most people's minds, it is far better to make a decision whether to implant an embryo with the knowledge that the embryo will carry or potentially suffer from a particular disease at the pre-implantation stage rather than later in the pregnancy, when a much more difficult situation would be faced by the mother and father of the embryo.

The second major aspect of the Bill relates to the prohibition on the cloning of human embryos. I think all members of Parliament strongly support such a prohibition. It is impossible to envisage any situation in which the cloning of human embryos would be an acceptable or desirable practice. It is entirely appropriate that this legislation provide for such a prohibition. The provisions that will be put in place in Western Australia are consistent with those in existence in other jurisdictions. It is important to note that most of the other jurisdictions

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in Australia have now enacted in all respects the legislation we are debating today. Western Australia is one of the last States to put in place this legislation. In particular, our provisions to prohibit human cloning will be consistent with those contained in the commonwealth Prohibition of Human Cloning Act 2002.

The third major aspect of the Bill will put in place regulation and strict controls on research involving embryos. The provisions that will be put in place if this Bill is successful will be consistent with those in the commonwealth Research Involving Human Embryos Act 2002; and, as I mentioned a moment ago, they have been enacted in this form in most other States of Australia. To a large extent, this is a difficult and contentious issue and one on which many members of the community hold very strong views. We should give very serious consideration to all the concerns raised. We must ensure that strong controls are implemented so that what most of the community would regard as unacceptable activity cannot be undertaken on human embryos.

[Leave granted for the member's speech to be continued at a later stage.]

Debate thus adjourned.

[Continued on page 11708.]