

**HUMAN REPRODUCTIVE TECHNOLOGY AMENDMENT (PROHIBITION OF HUMAN CLONING)
BILL 2003**

Consideration in Detail

Clause 1: Short title -

Mr R.F. JOHNSON: I will not take up too much of the time of the House on this Bill. I have spoken to the Minister for Health and he has agreed to answer a couple of questions while medical experts are at the Table of the House. I foreshadowed asking these questions during the second reading debate on the cloning Bill. I made it clear that although I might think it would be wonderful to have a thousand Rob Johnson's running around the place, I am sure that the rest of society would not.

My serious question is directed to the Minister for Health, who I am sure will get advice from his advisers. I want to know whether it would be deemed to be a form of cloning in the scenario I will outline to members. I refer to a mother who has in storage a human embryo that is no longer needed for the in-vitro fertilisation program who develops leukaemia or another dreadful disease that would require a bone marrow transplant. Family members make the most successful bone marrow donors and the younger the donor, the more successful the procedure is likely to be. I am not a medical expert, but I am told that experimentation could be conducted on the embryo whereby some protein or neurocord - I am not sure if that is what it is called - could provide a benefit by introducing it into the body of the recipient. That benefit could mean that either that treatment or similar treatment will be successful. I am told that eventually that could happen in the wonderful world of medical technology. Is that the view of our experts? Would it be deemed as cloning? If it is deemed as cloning, it would be prohibited under this Bill. If it is not deemed as cloning and the procedure is permissible, it is not only desirable but necessary for human life, which would be the recipient of the benefits of the procedure. It is a simple question in some ways but it is a very difficult question in other ways because it involves matters we do not know yet.

Mr M.F. Board interjected.

Mr R.F. JOHNSON: My colleague says that it is stem cell research. It is other research arising from the use of an embryo that would eventually benefit the recipient, such as the mother of the embryo. I do not see anything wrong with that. I see nothing unethical at all. Will the Minister for Health answer my truly genuine question?

Mr J.B. D'Orazio interjected.

Mr J.A. MCGINTY: To some extent the question has already been answered by the member for Ballajura.

Mr R.F. Johnson: He is a chemist.

Mr J.A. MCGINTY: The first point that needs to be made is that the use of the embryo in the sense to which the member has referred would not be cloning for the purposes of this legislation.. The second point that needs to be made is that an embryo could not be created for the purpose the member has described; in other words, an embryo could not be created legally for the purpose of providing treatment. If it were possible to use an embryo for that treatment, it would be unlawful to create an embryo for that purpose under the legislation.

Mr R.F. Johnson: What if there were an embryo already in place?

Mr J.A. MCGINTY: I am coming to that.

The next step in the process is that if the woman had an excess embryo - in other words, she had gone through an in-vitro fertilisation procedure and there was a spare embryo at the end of the treatment, so it was truly an excess embryo - a researcher could apply to the National Health and Medical Research Council for a licence to use the excess assisted reproductive technology embryo for research purposes to research a particular issue. Given that it is not cloning and given that the embryo could be used for research into that condition, if the research showed that it could achieve the sort of clinical outcome to which the member is referring, whether it could ultimately be used for the mother would be subject to normal safety and therapeutic considerations. A whole series of considerations would come into play about whether it should be used in those particular circumstances. That is as best I can answer the question the member has put, other than the specific question to which the member has referred, which relates to the circumstances of using extract from an embryo for the purpose of bone marrow treatment, for instance. I think what the member may have been referring to is what is known as the notochord - the primitive brain in the embryo that develops after 14 days - and using that notochord for the therapeutic purposes that he has described. We are talking about the use of embryos that are only a few days old, not 14 days old. The notochord does not develop until after 14 days, and it is illegal to keep the notochord for more than 14 days, so the notochord could not be used in the specific case that the member has talked about. Does that answer the member's question?

Mr R.F. Johnson: You have done pretty well!

Clause put and passed.

Clauses 2 to 7 put and passed.

Clause 8: Part 4A inserted -

Mr J.A. McGINTY: The member for Ballajura has identified a typographical error in this clause. It is my intention that that be corrected in the upper House. The word “egg” should have been used in a place where the word “cell” has been used. That is a minor typographical error.

Mr P.G. Pandal: It is more than a typographical error.

Mrs C.L. Edwardes: It is a major problem.

Mr J.A. McGINTY: Perhaps it is, but the intention is that that will be fixed in the other place. I give due recognition to the member for Ballajura for picking up that shortcoming by parliamentary counsel.

Mr J.B. D’ORAZIO: As much as I accept what the minister has said, as I said during the second reading debate, this is the one area in the Bill that no-one had thought of.

The ACTING SPEAKER (Mr A.P. O’Gorman): Will the member please indicate the words that he is talking about?

Mr J.B. D’ORAZIO: I am talking about paragraph (d) of the definition of “hybrid embryo” in proposed new section 53B(1) of the Bill -

an animal cell into which the nucleus of a human cell has been introduced; or

The problem is that if a human cell is put into an animal cell, it has no effect. However, if a human nucleus is put into an animal egg, it has a totally different effect. As I said during the second reading debate, this is the one area about which I have grave concerns. When I read this definition, my hands went up in horror, because this is about implanting a human nucleus into an animal egg, which is exactly the item that I indicated during the second reading debate had been left out. During the luncheon suspension I had a discussion about this paragraph with the minister’s advisers. The paragraph as it stands may actually be reasonable, because to put a human cell into an animal cell is still possible. However, I would like someone to put on the record that taking the nucleus out of an animal stem cell and replacing it with the nucleus of a human stem cell is covered in the Bill and will be illegal. For the benefit of those who may not understand, stem cells are the cells that create the arms and legs and all the other bits and pieces. Parliamentary counsel have told me that it is covered, but I would like that put on the record. If it is on the record that that is covered in legislation and cannot happen, I am happy to accept the minister’s comment that this paragraph will be changed in the upper House. However, if it is not changed, this paragraph should stay as it is and we should add a further paragraph to state that it is illegal to put a human nucleus into an animal egg. This clause states “an animal cell into which the nucleus of a human cell has been introduced”. That covers the problem of taking a nucleus and putting it in, for example, a stem cell of an animal. That means it could create arms and legs but would they be human or animal? I am not sure but I do not want it to happen - full stop. I do not want this legislation to go through if that is the intention. Parliamentary counsel indicated to me today that it is covered elsewhere in the Bill. If that is the case, I can live with the consequence of removing the clause, provided I have an assurance it will not go through the upper House in that form. It will mean relying on someone to move an amendment to change the clause so there is no possibility of an animal egg having its nucleus removed and replaced with a human cell, thus creating a hybrid embryo that could cause all sorts of problems. I do not want to go down the path of even thinking about the consequences. We should not even contemplate that possibility but that possibility is currently there.

Mr J.A. McGINTY: It is intended in the upper House that an amendment will be moved to the definition of “hybrid embryo” at paragraph (d), which currently states -

an animal cell into which the nucleus of a human cell has been introduced . . .

It is intended to delete the word “cell” where it follows the word “animal” and insert the word “egg”. That is the drafting deficiency to which I referred earlier.

Mr J.B. D’ORAZIO: I ask the minister to put on the record that there is a clause that covers the possibility of a human cell being put into an animal cell. Parliamentary counsel advised me there is such a clause.

Mr J.A. McGINTY: Although I do not know it to be the case, I am reliably informed that what the member is concerned about is a physical and scientific impossibility. Therefore, the legislation does not deal with it.

Mr J.B. D'ORAZIO: I do not know who the minister's advisers are but stem cells contain nuclei. It is not beyond scientific capability to take nuclei from stem cells and replace them with nuclei of a different description. It is feasible that it could be animal or human. We must take some steps to ensure that does not happen.

Mr J.A. McGinty: Not to turn it into an embryo.

Mr J.B. D'ORAZIO: No.

Mr J.A. McGinty: We are talking about the definition of an embryo.

Mr J.B. D'ORAZIO: I understand that but I am taking it one step further concerning the use of cells. Is there a clause to prevent that occurring?

Mr P.G. PENDAL: When the member for Ballajura raised this with me, I understood the problem to be that the word "cell" should read "egg".

Mr J.A. McGinty: That is right.

Mr P.G. PENDAL: What is the problem with our passing an amendment now so that the Bill leaves this House in its best form and the member for Ballajura is reassured because the definition is changed to overcome what the minister has loosely described as a typographical error? The Bill will go to the upper House in its pure form. Why can we not do that?

Mr J.A. McGinty: It is purely procedural. We need to get an absolute majority to suspend standing orders to have the third reading.

Mr P.G. PENDAL: What is the problem with achieving an absolute majority?

Mr J.A. McGinty: I would hate not to get it.

Mr P.G. PENDAL: I can understand that. Is there any suggestion that we do not have an absolute majority in the precincts of the House? Is not the real agenda that the minister wanted to get the previous Bill out of this House in order for it to be received in the other place when it next resumes?

Mr J.A. McGinty: Yes.

Mr P.G. PENDAL: Therefore, the minister would not be wasting time; maybe a week or two. I can understand that, and we have done that.

Mr J.A. McGinty: That is not the issue.

Mr P.G. PENDAL: I know it is not the issue, but having done that, is it particularly important? Is there a fear that there may not be an absolute majority present? I am with the minister; I want to see this go through so that cloning can be prohibited, but I am uneasy about sending a Bill to the other place with an error. If the minister does not want to go down the path of seeking a constitutional majority tonight, and if it is left on the Notice Paper until the House resumes, it will be dealt with in a quarter of an hour on day one, and the upper House meanwhile can be putting its mind to the Bill of real contention. Is there a problem with that?

Mr J.A. McGinty: Now that the Houses are out of sync with their sitting days, with only three more sitting weeks for this House, everyone wants to conclude it tonight and get it off to the other place to give consideration to it. I give a guarantee that this amendment will be moved and supported in the upper House.

Mr J.B. D'ORAZIO: In the light of the undertaking given by the Minister for Health, it is appropriate to pass the Bill tonight, and allow its passage. I thank the minister for his forbearance.

Clause put and passed.

Clauses 9 and 10 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by Mr J.A. McGinty (Minister for Health), and transmitted to the Council.