Extract from *Hansard*
[ASSEMBLY - Tuesday, 28 October 2003]
p12724b-12738a
Mr Phillip Pendal; Mr Paul Andrews; Mrs Cheryl Edwardes; Mr Mike Board; Mr John D'Orazio; Ms Katie Hodson-Thomas; Mr Jim McGinty; Ms Sue Walker; Mr John Day; Mr Martin Whitely; Dr Janet Woollard; Deputy Speaker

HUMAN REPRODUCTIVE TECHNOLOGY AMENDMENT BILL 2003

Consideration in Detail

Clause 1: Short title -

Mr P.G. PENDAL: It has been some time since this Bill was last before the Assembly. I use the occasion of consideration of clause 1, which I will oppose, to restate several important principles with which members are dealing tonight. Members are aware of the title. We are obliged, of course, in debating this clause to adhere fairly closely to the terms of that title. I oppose this clause because, ideally, the Bill should have been brought to the House, if at all, in other forms. The parent Act of 1991 deals almost exclusively with human reproductive technology. The emphasis 12 years ago, which is not a long time in parliamentary terms, as members know, was that the Bill was passed in a bipartisan fashion to regulate technology that had then become available to assist infertile couples to have children. The reason I oppose the title of this Bill - this argument may take two or three bites of the five-minute cherry - is that it bears no resemblance to the content of the Bill. We are confronted in some respects with reversing much of what was contained in the preamble of the 1991 legislation. Therefore, if the Government had wanted to deal with changes to legislation of this kind, it could easily have done so by splitting the Bill once again. Members will recall that the Bill came into the Parliament as composite legislation with that part of the Bill prohibiting human cloning, which is something that was universally accepted. The Government, to its credit, accepted the arguments put by the member for Kingsley and, to a lesser extent, me, that there were good grounds for splitting the Bill, and that occurred. Having hived off the part of the Bill relating to human cloning, we are still left with a Bill that I maintain is contrary to its title of human reproductive technology.

During the debate, people have expressed concerns, I think with some vehemence and passion, albeit with respect for those people who do not necessarily share those views in an overall sense. One of the unifying sets of arguments that have come from people who have opposed the Bill is the contention that although, being realistic, we can see that the Bill will pass, it could be made better by a series of amendments, which I want to touch on briefly during my contribution to opposing the title because it is inappropriate.

A little less than a year ago, a similar Bill, as part of the nationally consistent approach, was before the Senate. Complaints were made in that House that the Bill was brought through in a rush. I will not say that the Bill introduced into this House in June of this year has been rushed.

Mr P.W. ANDREWS: I am interested in what the member for South Perth is saying and would like to hear more.

Mr P.G. PENDAL: I thank the member for the facility. If ever a Bill could appropriately be sent off to a legislation committee, this is it. Whenever that facility is drawn on, it is customary for the Government of the day to say that it is a method of slowing down the process. It is always a question of slowing down the process. That is what good legislative processes mean, but it does not have to mean that referring a Bill to a legislation committee shuts it down over and above the time frame that the Government is entitled to lay down. Since the introduction of the Bill in June, the time might have been well spent by a legislation committee had the Government been prepared to see the Bill properly placed under the scrutiny that it deserves. The timetable that the Government wanted could still have been observed.

As few as five or six major areas of concern have produced amendments which are now circulating and which will be the subject of some considerable debate during the next few days. There are provisions that, of their nature, attack the notion that the title of the Bill deserves to be passed in its present form. For example, in other circumstances I might have moved that we amend the title of the Bill to reflect the title of the Bill that was eventually passed, minus the cloning provisions, in the House of Representatives last year. However, I do not intend to do that because I would prefer to spend the time available to us as members on more productive arguments that surround those four or five critical points. I will not dwell on them in detail, but they come down to the following: first, the title of the Bill will be inaccurate unless the Bill reflects adequate conflict of interest provisions, which are the subject of an amendment and which will be dealt with more fully at the appropriate time; secondly, a clawback provision dealing with the question of serious genetic abnormality has been the subject of considerable lobbying in recent months; and, thirdly, an issue in the Bill that I regard as being technical and important to this Parliament is that under which the Council of Australian Governments will make decisions that this Parliament ought to make. I find it repulsive for parliamentary purposes - in the way that I find other aspects of the Bill repulsive for humane purposes - that we would even contemplate being in a position whereby seven leaders of Australian Governments will take over the decision-making processes properly left in this Parliament. It is another reason to oppose the title of the Bill. The fourth critical point is the testing of

human embryos in pharmaceutical products or, worse still, cosmetic products. People will hear arguments put that if it is good enough to have cosmetics labelled as not tested on animals, we are at least entitled to see the same for human embryos. The final critical point is what is generally known as a conscientious objection clause, which should hopefully not need all that much by way of explanation when we get to it.

I am aware that this is my second bite. I have promised to be expeditious but I hope someone might be interested enough to ask for a third go.

Mrs C.L. EDWARDES: I invite the member for South Perth to finalise his remarks.

Mr P.G. PENDAL: I thank the member for Kingsley. In speaking to the title of the Bill, my submission is that, on the issues I have just outlined, there is a real danger that a Bill of this kind to amend the 1991 law will pass into law with insufficient debate. Even to this day, members are probably still surprised at the level of representations made to them that indicates there is not a high level of public understanding of this Bill. Apart from several notable exceptions, it is something that the media itself has found it difficult to come to grips with. That is partly because the title of the Bill is somewhat misleading for the reasons I mentioned earlier. The exceptions I would make to the general concern about media and, therefore, public understanding - because they are notable - are in the terms of two editorials that have appeared in *The West Australian* as recently as the past six weeks. On both occasions the editorials have acknowledged the need for genetic testing of the kind for which we have seen people lobby. I do not agree with that position. However, the editorials of *The West Australian* stated that members opposing this Bill on that ground alone are entitled to and should, in the public interest, continue to oppose the Bill. This will ensure that the definition of severe genetic abnormality does not bring about the position that people fear in which - in the words of *The West Australian* - designer babies can be bought on stream. Many people say that in Western Australia we have a statutory authority in place to ensure that those things do not happen. We have in place the National Health and Medical Research Council that will also have a function under this Bill, the title of which I am now seeking to dispute. Therefore, the argument runs that sufficient safeguards have been built in. *The West Australian* editorials did not see it that way on two occasions. I do not see it that way, and nor do a number of people in this House and a significant number of people in the community. Dawn Gibson, a young reporter from *The West Australian*, has brought a great deal to this debate by attempting to do what Professor Alan Harvey exhorted us to do at the briefings in this Parliament some months ago. His words are worth listening to because he actually supports this Bill. However, he also supports a number of amendments that we are seeking. He has made the comment to me on more than one occasion that were it not for this group that opposes this Bill, the level of public discourse would have been very minimal. The tragic irony is that the people who are most opposed to the Bill on ethical grounds are the people who have done the most to bring it to the public's attention.

I promised not to make an unnecessary meal of this. I believe the title is wrong for the reasons I have outlined - other members may have other views on it. I certainly want to continue the detail of my remarks once we discuss the amendments, which I think begin at clause 5.

Mr M.F. BOARD: I rise to clearly indicate that although the Minister for Health is expediting the consideration in detail stage of this Bill, he is not doing so on behalf of the total Government. Although it is the Government's Bill, there will be a conscience vote by government members and members on this side of the Parliament. Hence, the comments I will make during consideration in detail will not be as the shadow Minister for Health or on behalf of the Liberal Party but as the member for Murdoch. It should be made clear that we will all be giving our personal opinions and that there will be a conscience vote during consideration in detail on the amendments proposed by the Government.

The member for South Perth outlined with a broad-brush approach his objection to the title of the Bill. He also championed the cause for a number of members who want to propose amendments to this legislation - they have every right to do so - that align with his. My opinion is that we are amending the Human Reproductive Technology Act that was brought into this Parliament a few years ago, and, therefore, the title of the Bill indicates that it will amend the previous Human Reproductive Technology Act.

The Government agreed to separate a number of principles from the original legislation, and hence we are dealing with two Bills. We are now dealing with amendments to the Human Reproductive Technology Act, which concerns reproductive technology and embryos. We are dealing with the two major issues of embryonic testing and research. That process is the subject of this legislation and that is why the title of the Bill is legitimate.

As members of the Western Australian Parliament, we have every right to express our personal opinions and points of view on a difficult piece of legislation that is emotive and goes to many people's core values. We are also debating this in the shadow of the fact that, through the Council of Australian Governments, agreement has

been reached on federal legislation. That legislation was extensively debated nationally, including by Western Australia's federal representatives and representatives of all the other States of Australia. The federal Government desires mirror legislation to be passed in Western Australia. However, that does not obligate the Western Australian Parliament to pass legislation, despite the fact that the Premier signed and agreed to the federal legislation. As members of Parliament we have a right to determine where we take this legislation. We are trying to bring about a national regime. To that extent, there is an obligation on us to consider also the previous debates on this issue. We must consider the opinions and expertise that were presented in those debates. That is not to say that each member does not have a personal vote or that the Western Australian Parliament does not have the right to choose its own course. We must take into consideration that the objective of the agreement is to have a national framework. That is a good objective. Notwithstanding that members might have different viewpoints about the outcomes, it is good to have a national framework in this regard. I support the title of the Bill, which will amend cutting-edge legislation that Western Australia introduced a number of years ago; indeed, Western Australia led the country at that stage.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Section 3 amended -

Mr P.G. PENDAL: I move -

Page 8, after line 20 - To insert the following -

(16) Section 3 is amended by inserting after subsection (9) -

"

(9a) For the purposes of sections 27(3a), 53ZA(1) and 53ZB(3)(d) a reference to a person who holds a practice licence granted under section 27(1)(b) or an exemption granted under section 28, includes a reference to -

(a) an employee of that person;

(b) a person (including a related body corporate) who has a commercial or material interest in or with that person;

(c) a person (including a related body corporate) in or with whom that person has a commercial or material interest;

(d) where that person is a body corporate, a person who occupies a position of authority in that body;

(e) a related body corporate of that person;

(f) an employee of a related body corporate referred to in paragraphs (b), (c) or (e); and

(g) a person who occupies a position of authority in a related body corporate referred to in paragraphs (b), (c) or (e).

".

This is one of the five proposed amendments to which I referred earlier and which have also been referred to in the second reading debate. Before we go too far down the track in the debate, I want to emphasise that, in my opinion, there is nothing in any of the amendments that would make this legislation inconsistent with the national legislation. However, even if that were the case - this is one of the arguments that applies here - my argument as a member of the Western Australian Parliament would be so what?

This Bill has grown out of an intergovernmental agreement, about which we will hear plenty, particularly when we get to the so-called Council of Australian Governments provision. By their very nature, intergovernmental agreements are just that - no more, no less. There is no magic attached to them. They require Governments to use their best endeavours to achieve the contents of the agreement. It is an injury to the parliamentary system if we fall for the argument that seven ministers or seven Premiers and the Prime Minister can meet and bring about an agreement for uniform or nationally consistent legislation, and then expect the seven Parliaments of Australia to fall into line either in the broad or in the detail. If we accept that, we dismantle the very parliamentary system we have; it becomes unnecessary.

In advance, one of the arguments used for my amendment is that we begin to look as though we are stepping out of line with the principles that were agreed to in April 2002. Against that background, why have I moved this amendment? What is it intended to do? The amendment is intended to say that people who are involved in in-vitro fertilisation procedures are involved because they are infertile and wish to conceive a child by that methodology. However, to then say that the people who are in charge of the IVF procedures will also be part of the rules and part of the research processes that go on is, I think, putting two sides of an equation together that should never be put together. Without being a scaremonger, I can well see the pressure that could go on - an IVF clinic buys a set of researchers - unless we were to bring about a prohibition of that conflict of interest. That is why members have the amendment in front of them. We are even seeing that conflict of interest now - we will come to this later - in the way in which the demand is going on for the production of a greater number of embryos in the fear that we may run out of those excess embryos in storage.

The argument I put to the House is simply that there is a potential conflict of interest between those who operate an IVF clinic and those who want to be involved in the research end of the equation, and never the twain shall meet. I ask members to take that into account and vote in favour of the amendment before them.

Mrs C.L. EDWARDES: I support the amendment put forward. I will explain exactly what the amendment will do. It covers the conflict of interest situation between a reproductive technology practice and an applicant for a licence to use excess assisted reproductive technology embryos for research, which is to be included as another deterrent to committing an offence such as creating embryos specifically for research. That is what is being attempted in the amendment. We are doing this to ensure that a line is being drawn. We are not talking about Chinese laws. The provisions that have been drafted are very similar to those provisions that would be found in the Corporations Act. The provision is extensive; we acknowledge that. It applies to body corporate reproductive technology practices and a practice dealing with a body corporate. "Related body corporate" is defined in section 3(1) of the Act and a person who occupies a position of authority is defined in section 3(9).

The response from the minister indicated that the amendment is likely to exclude research that is directed at improving treatment for infertile patients of assisted reproductive technology clinics. That was not the intent of the legislation that began at a national level. Another issue that the minister raised was that the amendment would effectively rule out all IVF-related research, staff training and quality assurance in ART clinics to the detriment of ART patients and progress in that area of clinical treatment. What happens now? Is the minister telling me that that does not occur now? It does with infertile patients; they are receiving the value of the research. An IVF clinic need not carry out that research. If women can send their embryos across to the eastern States for testing, it will not be too difficult to send them to another corporate body around the corner, and that will not impact or affect whatsoever any IVF-related research that is required to provide information back to infertile couples. There is no way that the minister can sell the notion that the amendment will prevent that from occurring, because it can happen right next door.

The Opposition is saying that an IVF clinic should not be able to create excess embryos specifically for research. Women who attend an IVF clinic are already under emotional pressure. What would happen if an unscrupulous operator said, "You want IVF and I have a long queue waiting to come in here. I require you to sign this consent for three embryos to be created for research"? What position would that woman be in? She would not have gone to the clinic easily, as in-vitro fertilisation is not a process that women put themselves through in normal circumstances. This legislation will put parents almost in a position of bribery; that is, they will be able to go through the IVF process as long as they consent to giving the clinic an extra three embryos for research. That happens elsewhere. Why then should the legislation provide for a potential conflict to occur between the operators of an IVF clinic and those who conduct research? The legislation will not prevent IVF-related research; it could be carried out next door to an IVF clinic. I support the amendment.

Mr J.B. D'ORAZIO: I want to hear what the member for Kingsley has to say.

Mrs C.L. EDWARDES: I thank the member for Ballajura. Research could be carried out next door to an IVF clinic and would not prohibit or in any way impact on IVF-related research. I understand the concerns that parents have about the advice issued by the Minister for Health that the amendment will prevent improvements to treatment for infertile patients of ART clinics and effectively rule out all IVF-related research, staff training and quality assurance. Are we talking about embryos for staff training? I do not think so. I do not believe that was the intention of the legislation. A couple of words have been thrown into this debate that were not intended to be thrown in. I am sure that was not what the Minister for Health was talking about. The amendment will certainly not impact on IVF-related research.

Mr M.F. BOARD: I had put my name to the original amendment for this proposal but withdrew it following the advice I received from not only the minister, but also a number of people who had been involved in IVF

programs. I say to the member for Kingsley in this case that the member for South Perth has moved his amendment with the best of intentions and the utmost desire to make sure that there is no commercialisation of embryos and that no undue pressure is placed on couples to produce additional embryos which might then be utilised for the purposes of the clinic they are attending, outside of the IVF program. The information that has come to me is that, first of all, those embryos are precious to each couple. It is not as though they see them as a tradeable item. The embryos are a precious commodity. Each embryo that belongs to a couple is loved, if I can use that term. Secondly, parents must give permission for any project that may ultimately arise, whether it be from that body or any other body. Safeguards have been put in place. The way I see it at this point, in terms of the utilisation of those embryos, is that the system is numbered and defined in such a way that every embryo will have a result or project oriented to it. That gives some strength to the current proposal.

Although the amendment is trying to strengthen the legislation, it will actually take something away from some couples. Good, intimate relationships develop between those involved in the IVF program and these couples. Those people are in it not just for commercial reasons or solely to try to prostitute someone's embryos to make some money or achieve some fame from them. It is about working with infertile couples or couples who have not been able to produce a child through normal means to try to produce a healthy child. A base of information and knowledge is built up in that process. A trusting relationship develops. Okay, there may be the odd person or situation that may not fall into that category. However, I think enough safeguards are in place to deal with that. To throw all that out and deny some of those people the opportunity is - I hate to use the term in this case - throwing the baby out with the bathwater. Couples may desire that some testing be carried out or even that some long-term research be conducted into the cause of their infertility or the difficulties they face in terms of hereditary diseases. They are the things and the knowledge base that can go forward. To deny those people the opportunity to be involved is to deny some strength to the program. I do not have intimate knowledge of these matters. This information has been brought to me through consultation with a large number of people who have been involved in this process. That is the way I view this situation after having given it some consideration. If we pass this amendment, we will diminish the opportunity for those people, which is the very heart and strength of this Bill.

Mrs C.L. EDWARDES: I follow on regarding some of the safeguards that are supposedly in place. I do not know how many of the National Health and Medical Research Council documents the Minister for Health has had the opportunity or time to read. However, those documents contain a very strong sense of protection of commercial information. That protection of commercial information - this also relates to our next amendment - means that there is no ability to track much of what is occurring. The concern, and the prime reason for this, is the creation of excess assisted reproductive technology embryos for research purposes. There is a 10-year baseline for current excess ART embryos. In today's commercial world, I am not sure that that will be sufficient to provide very strong guidance about what is occurring in the business world. The business world knows of our proposal. It will simply mean that two separate entities will carry out two very different functions. They will have two very different roles. I acknowledge what the member for Murdoch said about the relationship a couple have with their IVF provider. That will not be interfered with. The results of the research will still be delivered to the IVF provider. The amendment will not interfere with that relationship. A lot of fears have been created, but there are always ways around these things to make sure that the relationship and the research that is able to assist couples are not inhibited by the mere fact of ensuring that one particular corporate body is not related to another. The NHMRC does not follow up on a commercial basis. As such, we will not get the information through the Western Australian Reproductive Technology Council. We will not know who is involved in carrying out those two very different roles and functions.

Ms K. HODSON-THOMAS: I will keep my comments brief, largely because I have been left in a state of confusion by the amendment before us. I listened intently to the members for South Perth, Kingsley and Murdoch. I was particularly interested in the member for Kingsley's remarks that this clause would be a deterrent to the creation of embryos specifically for research. In that sense, I want to support the amendment. I listened to what the member for Murdoch said. I know the issue is about couples seeking IVF and that they are in essence trying to start a family. I support that. I said in my contribution to the second reading debate that I know the subject intimately. I know that couples seeking IVF do not do it lightly. They go down that path because they are infertile or carry a genetic disorder. It is for those very reasons that they embark on IVF. It is a highly invasive therapy and causes them a certain amount of grief. We have all heard many different stories about that. I want to get some clarification from the Minister for Health and perhaps the member for South Perth. Will this amendment be a deterrent to the creation of embryos specifically for research?

Mr J.B. D'ORAZIO: I also support this amendment, not so much to restrict research, but based on the possibility that 5 April 2002 might be removed at some point in time by a learned person. If that were to happen

and people with commercial interests were involved in in-vitro fertilisation programs, creation of embryos might become a commercial process. This amendment should be included in the Bill so that people who make decisions understand who the licensing authorities are and that people with a direct relationship with someone involved in in-vitro testing cannot serve any commercial interest by testing and creating embryos. It is important that this amendment is included. The present Minister for Health might not be in government, the leaders of the various States might not be here or the date might change without Parliament having any influence on it. Unless this amendment is supported, the floodgates could be opened to the possibility of people involved in improper practices being induced to do something which none of us would agree to or accept.

Mr J.A. McGINTY: The mover of this amendment stated that it seeks to cover a conflict situation between reproductive technology practice and the applicant for a licence to use excess ART embryos for research, which is to be included as another deterrent to committing an offence such as creating embryos specifically for research. This is done by making any person who has any professional or business association with an ART clinic, or a medical practitioner who provides artificial insemination services, ineligible to apply to the National Health and Medical Research Council for a licence to use excess ART embryos. I say to the member for Carine that this amendment could be an additional deterrent to creating embryos for the purposes of research. However, the legislation already contains a sufficiently powerful deterrent by making it an offence. The problem with the amendment is that it also has negative ramifications; namely, in Western Australia it will prevent all IVF research associated with embryos in a very practical sense, so I am advised. The point has been made that the creation of embryos for research is already prohibited under section 35H, which attracts a penalty of up to 10 years imprisonment. The creation of a human embryo outside the body of a woman is prohibited unless the person's intention in creating an embryo is to attempt to achieve a pregnancy. I do not think we need any incentives in the legislation when it is a crime that attracts a significant penalty to do the very thing that is being complained about here.

The Bill also contains a provision for monitoring the creation of embryos to ensure they are not created for the purposes of research. The legislation makes it a crime, contains a monitoring provision, and provides for the auditing of IVF clinics to ensure that embryos are not being created for that purpose. In addition, there is a ban on any commercial trading in embryos. To put it mildly, this legislation contains sufficient disincentive to ensure that people do not make embryos for that purpose. We do not need this additional provision. It is highly desirable that research continue through IVF clinics into IVF-related matters. The advice I have received is that this legislation will effectively stop that.

Ms K. Hodson-Thomas: Will the minister outline the research that he is referring to? I know he has only one and a half minutes left, but could he expand on the research he is referring to? I will seek the call and allow the minister to receive advice.

Mr J.A. McGINTY: Yes.

Ms K. HODSON-THOMAS: I am particularly interested in the research that the IVF clinics would embark upon. That is where people have concerns. Having been on the select committee, I understand there is a need for research. The committee examined a number of aspects to do with research. I alluded to ICSI - intracytoplasmic sperm injection - in my contribution to the second reading debate. The minister may be able to provide some information about the research that might be limited by introducing this amendment.

Mr P.G. PENDAL: The minister almost gave comfort to the amendment. He went so far as to say that there were three reasons for not needing the amendment. I do not mind if we pursue that argument. I could add a fourth - someone who is involved in IVF procedures and applies for a national licence to do research. If people have to separate out those things in their professional lives, so be it. That is a proper thing to do. Corporate law in Australia is full of examples in which people can do one thing in the corporate field, but if they choose to do that, that automatically excludes them from doing other things. That is the case because someone has either a conflict of interest or a potential conflict of interest. That is what the amendment seeks to do. The member for Murdoch sought to make a point that parents do not see excess embryos as being a tradeable commodity, but that is the point: they will be. They are being made a tradeable commodity under the legislation before us. With the greatest of respect to the member for Murdoch, it is no good his saying that people do not see this as being a tradeable commodity when the legislation tells us otherwise. That is not an argument, either. I return to the argument used by the minister - I will paraphrase him - that there are already enough safeguards in the legislation. That is where I and a lot of people in the community beg to differ. They are not people who oppose IVF technology; they are people who support it. If that is the case, what do we fear? I remind members that we rarely pass laws for the good guys in society, because we are never concerned about what the good guys will do. Almost to the nth degree, the legislation we pass in Parliament is directed at the bad guys, the unscrupulous

people, those who will have no compunction about using their capacity as an IVF provider to do as I suggest. That is why there are three parts to the minister's argument, and I am adding a fourth. I will give an example of how these things can be corrupted. A debate is going on right at the moment in the United States. One particular researcher in the United States has said that we are "not even close" to cloning. That made other people raise their eyebrows and say that it was really not true. I quote from the article by Citra Abbott -

> These announcements remained at odds with the American Association of Medical Colleges, of which Stanford is a member.

Stanford is the university at which this academic works. The article continues -

> The association clearly equates somatic cell nuclear transfer (SCNT) with therapeutic cloning.

In other words, the one is the other. In one case, an academic argued that we are nowhere near that question over there, but he simply changed the terminology. Just as the medical profession in the United States took exception to that academic doing that because it was unscrupulous, so too are people concerned here about the lack of control without the amendment.

Ms K. HODSON-THOMAS: I am not sure whether the member for South Perth has completed his remarks. I would like to provide him with the opportunity to continue them.

Mr P.G. PENDAL: I will only finish my point. I thank the member. My point in introducing the contemporary example from the United States was to show how someone at the cutting edge of these debates was attempting to obfuscate - to put it most kindly - or to mislead at worst. This is someone who is prepared to be unscrupulous. I bring that back to what I said earlier. We very rarely pass legislation in this Parliament - or anywhere in the world - to regulate the good people because by and large the good people do not need to be regulated. We regulate people who cannot control their drugs habits, or who cannot drive motor cars under the speed limit, and we apply penalties to them. Here is a case in which I would expect that most people involved in the provision of IVF would not abuse that privilege at the other end in research. We always introduce penalties and strictures on people we know are capable of breaking the law.

I return now to where I began earlier on the clause. People can think of countless examples in their own lives, or with other legislation, in which we say that if a person wishes to take up the privileged position of doing A in society, he or she is automatically barred from doing B because a situation of conflict of interest can arise. Here is a clear case, as the member for Kingsley has pointed out, in which that conflict can arise. I do not believe that the minister is correct in saying that it would shut down all the research in Western Australia. It would regularise it, so that the two functions are made separate and are carried out by different people, and do not get the chance to be mixed up. Someone provides the IVF procedure to a woman, and someone else is involved in the research capacity and, to use my earlier comment, never the twain shall meet. That is why I believe the amendment should pass, and I urge members to consider it.

Mr J.B. D'ORAZIO: Can the minister explain to me how he sees the offence? In my mind, even though the offence under the legislation says that embryos may not be created for the purpose of research, if someone is carrying out IVF, that is not for the purpose of research; it is for the purpose of fertility. The problem is that a pile of extra embryos are created as the by-product of that process. The minister went on to say that there is a law to stop people from trading in embryos. However, if a company wanted to bypass the system, it could allow drug company X to use the embryos - it would not be selling or trading them - if it was willing to donate $200 000 to the company for the purpose of research. That is happening now. One example is the liver transplant people who are doing work in our public hospitals. They are given donations by major multinational companies for the purpose of research, but we all know that it is all tied to the need for those companies to get information about the drugs they are planning to use. If we change the provision with regard to excess embryos, we will really have a problem, because it will become open slather. I do not understand why the amendment will create a problem. It will not affect experimentation. All it will do is clarify the situation so that everyone will understand the process, and so that if we as politicians want to influence the process or if the council wants to influence the process, people will know what is going on. The amendment will not change the intent of what the minister is trying to achieve. What it will do is give comfort to people like me who, being involved in the medical field, understand that all sorts of deals are done to get around the provisions in legislation, particularly with regard to research. We need to think very carefully about opposing the amendment. The amendment will not stop research. It will just mean that people will need to understand what they are doing and how it is being done.

Ms S.E. WALKER: If couples go to an IVF clinic to donate their excess embryos to research, are they required to sign a consent form? Has the minister done any research on that?

Mr J.A. McGINTY: To date no couples have sought to donate their material for research, for the simple reason that it is not currently allowed. To go back to the question raised by the member for Carine, the problem with the amendment is essentially that in a practical sense the only people who are interested in conducting research are the IVF clinics.

Mrs C.L. Edwardes: That is not true.

Mr J.A. McGINTY: The advice that I have received is that the IVF clinics are the only people who have an interest in research. That research is generally directed at improving IVF outcomes. It may be as basic as research into the storage of embryos, such as a variation of one or two degrees in the temperature at which they are frozen, or the effect of changing the temperature; the best way of culturing embryos; better interventions, including genetic testing; improving the success rate of IVF implantation; questions with regard to human development, particularly abnormal development; and why implantation is failing. Those are the sorts of issues on which an IVF clinic will be interested in conducting research. My problem with the amendment is that it will mean that IVF clinics cannot do that research on excess embryos, when they are the people who primarily have an interest in improving IVF outcomes.

The member for South Perth clearly articulated his desire and intention that one body conduct the research and another body conduct the IVF; therefore, no overlap and conflict of interest would arise. The practical problem with that proposition is that it would effectively rule out any research by anyone connected with an IVF clinic. One could then conduct the research only under a licence approved by the National Health and Medical Research Council's licensing committee, as established under division 3 of the Commonwealth's Research Involving Human Embryos Act 2002. This includes research directed at improving treatment for infertile patients at assisted reproductive technology clinics. As I indicated, the amendment, if successful, would effectively rule out all IVF-related research, staff training and quality assurance within ART clinics to the detriment of ART patients and progress in that area of clinical treatment.

I have also mentioned that the creation of embryos for research processes is a crime. I also add that if a licence holder were convicted of any offence under commonwealth or corresponding state or territory legislation, each licence for the use of excess embryos would be revoked. That is why traditional deterrents are not necessary, particularly when they have the downside of stopping research. I referred last time I was on my feet to the monitoring aspect. Western Australia is well placed to monitor any deliberate creation of excessive numbers of embryos in the course of clinical practice. The reporting requirements under the Human Reproductive Technology Act mean that 10 years of data is available as a baseline measure of the number of embryos created in the course of routine clinical practice prior to embryo research being conducted in this State. A comparative baseline is available.

The amendment would mean that the Western Australian legislation would be inconsistent with the agreed regulatory regime for the use of excessive ART embryos that has been passed in four other jurisdictions. Legislation was not necessary in the two Territories, which are covered by the commonwealth legislation. Western Australia is the last State to implement this measure. For the reasons that I have given, this provision now applies in all other States. The member for South Perth will say "So what?", but the guiding principle for me is that it is consistent with the national regime.

Mr P.G. PENDAL: Personally, I am happy to go to a vote on this matter. The Minister for Health has stated my views back to me quite correctly, except that I found one part difficult to follow: he talked about an amendment of this kind being a detriment to the research side of in-vitro fertilisation procedures in Western Australia. I put it back to the Minister for Health that, as a matter of law, it cannot be a detriment ever in our law to eliminate conflict of interest. The Minister for Health's view implies that it is okay to leave embedded in law a conflict of interest if it will be a little uncomfortable for the person with the conflict of interest to get out of it; that is, it may well mean that people who had that business arrangement - that is what it is - may well have to withdraw from that arrangement, and someone else in their profession will have to take up the slack. I repeat that we do that on many occasions with law, both federal and state. We tell people that if they will be in one position in a company, there are occasions on which they cannot deal in or own shares. Why? It is because we say there is a conflict of interest. We do not start from the starting point that the Minister for Health has just used and say that if we are to prevent that first person from participating, it will be a detriment to him. Of course it will be, by its very nature. We are saying that the detriment should be removed; it should be eliminated. That is not a reason for us not to proceed; it is a reason for us to go ahead. If those companies must make their own arrangements, so be it. I knew we would come to this question, but of all people I wish it was not the Attorney General as Minister for Health putting us through the argument about it making us nationally inconsistent.

Let me put that argument to the test. The Minister for Health's counterpart in South Australia used precisely that argument in respect of the 2005 date of the Council of Australian Governments. The Parliament said otherwise. It said that COAG does not decide what will be nationally inconsistent. What did the South Australian Government do? Perhaps the Minister for Health could do it. The South Australian Government wrote to the federal Attorney-General, I thought a bit meekly, and asked if he would mind letting it know if what it had done in the South Australian Parliament was a bit inconsistent with what was wanted in the national scheme of things. Do members know what the South Australian Government heard? It heard a resounding silence. The South Australians are very comfortable about it. They have said that it was not all that exciting or flash, but they took on the commonwealth authorities and asked that if the legislation was nationally inconsistent, would the authorities tell them. Even if they were to be told that it was inconsistent, the South Australian Government was of a mind to say that it would not back down because the South Australian Parliament is the Parliament of South Australia and COAG is not. In any event, the people in the federal Attorney-General's department solved the problem by falling silent.

The Minister for Health was right when he said that I would not like his argument about that. I am a bit more impressed with some of his medically based arguments tonight, but as for constitutional law, we would have to say he has failed on the question of whether COAG should dominate in this House. It is not a question of the federal Attorney-General's department determining whether what gets passed in this House is nationally consistent or inconsistent. All these agreements are merely that; they are not a holy writ. The good Lord does not send them down. Certainly I know of no-one in Canberra better qualified to know that. I urge members to support the amendment.

Mr M.F. BOARD: The member for South Perth, as always, argues his points strongly and articulately, but the reality is that his logic is flawed on the basis that if we were to pursue this in the way in which he has put his case, we would not allow orthopaedic surgeons to receive any grants for studying or researching their specialty, nor would we allow psychiatrists to receive any grants or money for research in psychiatry because they may get an inducement from a private company involved in that specialty.

Mr P.G. Pendal: There is a conflict of interest. You are right.

Mr M.F. BOARD: The point is that because people are good at what they do and because they want to improve their skills, it does not mean that they have sold out to commerciality and that they will prostitute their values. If the member for South Perth were to propose an amendment that stopped corrupt individuals but allowed others to be involved, that would be fine, but what he is proposing by his amendments is to stop all research by anybody involved in in-vitro fertilisation.

Mr P.G. Pendal: That is not true.

Mr M.F. BOARD: It is the case.

Mr P.G. Pendal: It is not true. It has to be separated out, and we have done it many times with the federal Corporations Act.

Mr M.F. BOARD: I think they are different principles. The professionals are taking a body of expertise to assist, refine and develop what they do. The member's amendment would prohibit that to some degree. That is the way I view it and that is why I cannot support it. If the amendment somehow enhanced what the Minister for Health was endeavouring to do, and somehow acted as a greater penalty or deterrent for those people, I would support it. To stop anyone involved because he happens to work with in-vitro fertilisation, regardless of intent, is acting against the spirit of the legislation and what we are endeavouring to do. I think the member knows that. The reality is that we will have a lesser piece of legislation as a result. As I said, if the member were to move an amendment that would act as a greater deterrent and provide stronger penalties, I would endorse it. To stop anyone because of his mere association with IVF would act as a barrier to the very people who have the knowledge, passion and desire to assist people in our community.

Mr J.H.D. DAY: The member for South Perth has argued that a lot of legislation we pass in this place is to prevent the activities of people who would otherwise be unscrupulous or unethical in their behaviour, business practices or other activities. I think there is a large element of truth in that. However, this amendment would have the effect of preventing probably the overwhelming majority of people who do and will act scrupulously and ethically in this sort of research being involved in research concerning human reproductive technology. That would very much be a backward step. The reality is that a relatively small number of individuals are involved in this sort of research and clinical practices in this State and Australia. It is a mistake to assume or imply that it is likely they will have a conflict of interest or will act unethically simply because they may be involved in the clinical practice of IVF and research. I entirely agree that there need to be appropriate checks and balances in

the system and some degree of independent scrutiny and peer review and that sort of thing. In reality, that operates for all forms of research in universities. It will be necessary to have approval for stem cell research from the licensing committee of the National Health and Medical Research Council, as the Minister for Health has outlined. I assume that any research conducted in other forms of medicine not involving stem cell research, such as infertility, will meet the approval of relevant university ethics committees. I would be grateful if the Minister for Health could confirm that is the case.

Mr J.A. McGinty: That is right.

Mr J.H.D. DAY: It is the case. I see appropriate and adequate checks and balances in the system. As we see on a daily basis, just because a law says something it does not mean that people will not act unscrupulously or unethically. Obviously, people need very much to be called to account if that is the case. In the overwhelming majority of cases, if not all, people involved in clinical practice and research with this sort of technology will be able to operate appropriately with suitable checks and balances. I foresee major problems in advancing scientific and medical knowledge in Western Australia and Australia if we approve this amendment. It would be counterproductive to the desires of people who want to help treat infertility and help people have children or alleviate a range of - in some cases, serious - medical conditions.

Ms S.E. WALKER: I think I understand where the member for South Perth is coming from on this issue. When I spoke on this matter during the second reading debate, one of the issues I raised - perhaps I can make it clearer now - is that many people who apply to the clinic are emotionally vulnerable. I would have preferred a complete ban on all in-vitro fertilisation clinics giving consent forms to applicants at the time they apply to the clinic; that is, consent forms that allow experimentation to occur on that person's live human embryos. I have not got a satisfactory response from the Minister for Health that there is nothing to stop an IVF clinic giving consent forms to an applicant. I have been given one of the consent forms that allow for the use of embryos - I will not name the clinic that gave it to me. I am concerned that when applicants go to a clinic they are not seen to be manipulated by the clinic - I am not suggesting they are. Members can see that when these people go to a clinic and are given a consent form, along with a lot of other consent forms, to allow for the use of their embryos for their treatment, they want that treatment and will therefore sign that form. I do not know why it was not thought of, but I would have preferred a ban on clinics giving this sort of form to applicants when they apply - a form that gives consent for experimentation on their live human embryos. Further, I would like a ban on the clinic giving them that form until two years after their treatment has finished. That still means that the clinics could deal with their clients' live human excess embryos.

I will vote against this Bill but not for those reasons. I support some parts of this Bill but other parts I do not. It seems to me that there is a logical way of dealing with the issue about which people are concerned. I may yet move an amendment because there is nothing preventing clinics doing that at this time and it is something that should be put in place in the legislation.

Mr M.P. WHITELY: I have still not made up my mind on how I will vote on this amendment so I will seek further information from the Minister for Health. I want a little more detail on some of the protections that the minister says currently exist. One of the arguments put by the minister is that there is 10 years of baseline data that enables us to make a comparison of, presumably, the number of embryos produced. I presume that that data gives us an average with which we can compare. I do not know a great deal about the technology but I believe there is a range. The number of embryos that are produced is something of a judgment call whereby, I imagine, the age and the health of the participants may lead to the production of extra embryos so that the numbers exceed the average. I wonder how useful that baseline data is as a base or comparison, particularly if the final consequence of being well above that average is a criminal offence. I am concerned that the number of embryos that may be created to treat infertility would be based on a judgment call. There must be an acceptable range limiting the usefulness of an average figure when trying to make a comparison upon which presumably a prosecution could eventually be based. I wonder how real the prospect of a criminal sanction being applied is in the long term. I am interested to hear the minister's comments on that.

Mr J.A. McGINTY: Each clinic will keep statistics of every aspect of the in-vitro fertilisation treatment, including the number of eggs that are collected and the success rate etc. Currently, embryos cannot be used for research. Through the existing monitoring process, anything abnormal or unusual that shows up in the statistics will be investigated. I will give the member a practical example. Concern was raised in one instance of the high number of eggs being collected. The concern was not related to the misuse of those eggs but to the health of the women from whom they were collected. The Reproductive Technology Council will monitor the situation and when an irregular or abnormal statistic is found, it will question the clinic about those statistics.

The point I made is that we have a database with 10 years of experience against which to compare the future behaviour of the clinics if there is a suspicion that an increased number of embryos are being created or an increased number of eggs are being collected. Anything of that nature can be checked as part of the monitoring to ensure that embryos are not being created for research purposes.

Mr M.P. Whitely: There is some scientific evidence of what an acceptable range is. Imagine the situation whereby many eggs were collected over time and extra embryos were created for research.

Mr J.A. McGINTY: The monitoring will be done not only at a state level through the Reproductive Technology Council but also nationally through the National Health and Medical Research Council with a view to developing protocols and guidelines for what is and is not acceptable and establishing those very baselines or limits that the member talked about. The operation of the clinics would be regarded as being acceptable based on those experiences that have been recorded prior to the enactment of this legislation. That is all in place and is being handled sensitively at a national and state level. There is also data to compare between the jurisdictions.

Amendment put and a division taken with the following result -

Ayes (13)

Mr P.W. Andrews	Mrs C.L. Edwardes	Mr J.R. Quigley	Mr A.J. Dean *(Teller)*
Mr D.F. Barron-Sullivan	Ms A.J. MacTiernan	Ms M.M. Quirk	
Mr J.J.M. Bowler	Mr P.D. Omodei	Ms S.E. Walker	
Mr J.B. D'Orazio	Mr P.G. Pendal	Mr M.P. Whitely	

Noes (23)

Mr C.J. Barnett	Mr S.R. Hill	Mr M. McGowan	Mr D.A. Templeman
Mr M.J. Birney	Ms K. Hodson-Thomas	Mr N.R. Marlborough	Mr M.W. Trenorden
Mr M.F. Board	Mr J.C. Kobelke	Mr B.K. Masters	Mr P.B. Watson
Mr J.H.D. Day	Mr R.C. Kucera	Mr M.P. Murray	Dr J.M. Woollard
Mr J.P.D. Edwards	Mr F.M. Logan	Ms J.A. Radisich	Mr R.N. Sweetman *(Teller)*
Dr J.M. Edwards	Mr J.A. McGinty	Mr E.S. Ripper	

Amendment thus negatived.

Clause put and passed.

Clauses 6 to 10 put and passed.

Clause 11: Section 14 amended -

Mr P.W. ANDREWS: I move -

Page 12, after line 26 - To insert the following -

(f) after paragraph (g) by inserting -

"

(ga) to monitor any issue of public interest concerning the creation, use or storage of human embryos, or issues of public interest relating to research involving human embryos, including but not limited to their use for stem cell research and related purposes, and to report to the Minister on those issues of public interest and to provide a copy of any report to the Commissioner;

".

Section 14(1) of the Act deals with the functions of the Western Australian Reproductive Technology Council. The first of those functions listed in paragraph (a) provides that the council is to advise the minister on reproductive technology and any matter that is connected with or incidental to reproductive technology and, generally, as to the administration and enforcement of the Act. The other subsections that deal with the functions of the council provide that it should advise the Commissioner of Health on any matters relating to licensing, including the suitability of any applicant for a licence to carry out procedures or approved research, and as to the conditions that are imposed on any licence. Section 14(1)(b) of the Human Reproductive Technology Act relates to the administration and enforcement of the Act by the Western Australian Reproductive Technology Council, having regard to disciplinary matters and findings made by a committee of inquiry. Paragraph (c) of that section requires the council to publish, review and amend a code of practice. A

function of the council under paragraph (d) is to encourage and facilitate research into infertility and the social and public health implications of reproductive technology. Paragraph (e) requires the council to ensure that no research is carried out that is not in accordance with the Act or given approval by the council. Paragraph (f) relates to the consideration of applications to carry out research. Paragraph (g), as the Act stands now, states -

> to promote informed public debate, and to consult with bodies representing the public or sections of the public, on the ethical, social, economic and public health issues that arise from reproductive technology;

That function, in itself, is quite a suitable one. However, my amendment will give greater strength to section 14(1) because it uses specific terms. A function of the council under paragraph (a) is to advise the minister. The paragraph uses general expressions about the administration of the Act and reproductive technology. I believe that people in Western Australia want the council to specifically monitor the use of human embryos, and that it should be spelt out in section 14 of the Act.

Another issue is that paragraph (g) does not contain a provision for reporting. The council is to advise the minister; however, I would like to see a provision in the Act whereby the council advises the minister on matters of public interest and - as I will move later - a report tabled in this Parliament. The reason for this is simple. The science on stem cell and embryonic stem cell research is at a time of development at which we must go to the greatest possible length to make sure that there is no way that the council could report on reproductive technology without reporting on human embryo research. I believe the public expects a report to be tabled in not only the federal Parliament but also the State Parliament. If members compare paragraph (g) as it stands now in the Act with my amendment, they will see that my amendment is much more precise. It gets to the point of saying that the council should report to the minister on the use of human embryos, rather than just reproductive technology. The reporting process needs to be much more defined because, if we actually go through this, there is no obligation on the council to report to the minister. Therefore, there is no obligation for that report to be tabled in Parliament.

I have in front of me a press release from Hon Kevin Andrews MP, former Minister for Ageing, which states that a nine-member committee of the National Health and Medical Research Council was established by the Research Involving Human Embryos Act 2002. The press release relates to the committee reporting on the number of licences and so on. In it Mr Andrews states -

> "It will consider applications for a licence to use excess human embryos for research and refuse or grant licences, subject to conditions.
>
> "The Committee will monitor compliance with the legislation by appointing . . .

That committee will report on the applications and licences involved in reproductive technology. I have read the first report, which was tabled. What I would be looking for in such a report would be not just the number of licences and their conditions and so on but also issues that will be of great importance to the community in the next five years; in other words, emerging issues. My amendment states "to monitor any issue of public interest". What I am suggesting is that the report that will be tabled in the federal Parliament will probably be quite limited in its scope. The people of Western Australia would be far more interested in a report tabled in this place which dealt with issues of public interest. I would be interested to hear the minister's comments on that.

Mr J.A. McGINTY: The Western Australian Reproductive Technology Council already has the function of advising the minister on reproductive technology issues and any matter that is connected with or incidental to reproductive technology. That is contained in section 14(1) of the Human Reproductive Technology Act 1991. On the use of excess assisted reproductive technology embryos, this Bill, consistent with legislation in all other States and the Commonwealth, provides that the function of licensing and reporting is undertaken by the NHMRC licensing committee and not the Reproductive Technology Council. That is done because that committee has the expertise to provide for a nationally consistent approach. It can essentially oversee the whole of Australia on those very important matters of the licensing and reporting on the use of excess ART embryos. In my view, to seek now to vest that function in the Western Australian Reproductive Technology Council flies in the face of what I think is a far better scheme of having one body do it nationally, which can then have all the interstate comparisons and expertise available to it. Under section 19 of the commonwealth Research Involving Human Embryos Act 2002, the National Health and Medical Research Council licensing committee is able to report at any time and is required to report on 30 June and 31 December each year or at the request of either House of the Commonwealth Parliament. A copy of any report is to be tabled in either House of the Commonwealth Parliament and must be provided to each State. The NHMRC licensing committee is also required to provide written details relating to its operation for inclusion in the NHMRC annual report. That is contained in section 18 of the Act. Under section 29, it must also maintain a publicly available web site with information about each licence that it grants. The Reproductive Technology Council provides an annual report

to the Commissioner of Health, who must forward this to the Minister for Health for tabling in both Houses of Parliament. That is contained in section 5(6) and clause 11(1) of schedule 1 of the Human Reproductive Technology Act. Current reporting requirements set out in the commonwealth Research Involving Human Embryos Act 2002 and the Western Australian Human Reproductive Technology Act 1991 already ensure that the detailed information will be readily available in the public arena.

I am happy to accommodate the member by following an approach similar to that adopted by the South Australian Parliament, in which the appropriate body, the NHMRC licensing committee, reports to it on those matters relating to the licensing of and reporting on the use of excess ART embryos. If members want that report tabled in this Parliament to ensure a measure of state accountability in this process, I am happy to provide the wording for an amendment of that nature. That would be moved later in the Bill. It would ensure that this Parliament is reported to about matters involving excess ART embryos. I think that it is preferable for the Parliament to do it that way rather than by seeking to vest in the state body responsibility that it has been nationally agreed should be vested in the national body; namely, the NHMRC licensing committee. I am happy to entertain an amendment that would give the Parliament an oversight role through having those reports presented to it. I believe there is merit in the proposal that the licensing of and reporting on these matters be done at a national level with that national report being presented to this Parliament.

Mrs C.L. EDWARDES: I thank the Minister for Health for his comment and I am sure that the member for Southern River will take him up on his very generous offer to table the NHMRC report. I think that is important and should be done in any event. However, that is not what the member for Southern River put forward. The member for Southern River has not put forward a duplication of the function of the NHMRC. We are not asking for the Western Australian Reproductive Technology Council to duplicate that function of reporting on licences. We are specifically asking for the Reproductive Technology Council "to monitor any issue of public interest concerning the creation, use or storage of human embryos, or issues of public interest relating to research involving human embryos, including but not limited to their use for stem cell research and related purposes, and to report to the Minister on those issues of public interest and to provide a copy of any report to the Commissioner". A further amendment of the member for Southern River is for that report to be tabled in this Parliament. It is not a duplication. I think it is quite right and appropriate that the NHMRC report on licensing and other matters be tabled in this Parliament, as the minister suggested. However, this is a specific issue that deals with our own State, particularly as it applies to the IVF providers and those companies that will have the licences. The amendment specifically relates to the public interest. It is not a duplication. We believe that function ought to be in the Bill, and we strongly support its inclusion. I was surprised that proposed section 14 of the Act did not provide a reporting function. It provides an advisory function but not a reporting function to the minister. There is no formal sense of a relationship between the council and the minister. This amendment will correct that because it specifically relates to public interest.

Dr J.M. WOOLLARD: I support this amendment. Just as our state budget each year does not show the difference in spending between the various teaching hospitals, no doubt the federal report will not show differences between what is happening with ART in Western Australia and the other States. People would like to know what happens with this research. It is a good amendment.

Mr P.G. PENDAL: Surely, of all the amendments on the Notice Paper, the one moved by the member for Southern River and a later one to be moved by me about the Council of Australian Governments arrangements would have been the easiest and the least contentious for the Government to agree to. At one level, the minister said that he was willing to entertain an amendment along those lines. Sometime during discussions, a suggestion was made that a federal report would be made available. Both the member for Southern River and the member for Kingsley have made it plain that that is not what we are talking about. If, for example, the Western Australian Reproductive Technology Council is not in a position to do this or have the minister via the commission table a report in this Parliament, we must wonder why, under the new arrangement, we would continue to have a Western Australian Reproductive Technology Council. We are forgetting reproduction of a different nature. We are creating a hybrid today over and above the state system that has operated by itself for the past 12 years. I cannot imagine a more straightforward request for accountability. An Act of Parliament in Western Australia is in general terms nationally consistent with legislation passed throughout the country and a minister of the Crown is in charge of a statutory authority in Western Australia. We want to hear of and see those bodies being accountable. It is not onerous. I hope that on reflection, the minister will upgrade his "inclination to accept this amendment". I would also like him to spell out precisely what he meant by it. If we do not do that now, what does the minister have in mind? Can we recommit this clause at a later stage with an amendment that is agreed to behind the Chair. I agree with the member for Southern River's opening comments that this is an accountability issue, albeit not an onerous one. The job the council does is not on behalf of the

Government but on behalf of the Parliament, which set it up. For the life of me, as we have said in public discussions in recent weeks, I cannot see that it will be anything other than enhancement of the reporting processes that are already in place. I am half encouraged by what I heard. However, I agree with the member for Kingsley that we are talking about a state body and its obligation to report to the commissioner, the commissioner's obligation to pass that to the minister and the minister's obligation to report to the House. Members should not forget that none of us can ask a question in this House about what is contained in a federal report. It is no good suggesting that I arrange to have a question asked of the Minister for Health about what is happening in the federal scene. Under standing orders, I would be immediately ruled out of order. I am a member of this Parliament, not the federal Parliament. This Parliament is being asked to ensure that the monitoring and other activities of the Western Australian council are ultimately brought to the Table of this House. As a member of this Parliament, that is when I am empowered to ask about its contents. That is when I am able to run a motion, such as a matter of public interest. I urge the minister to accede to the wishes of the member for Southern River, backed as he was by the member for Kingsley.

Mr P.W. ANDREWS: I thank the minister for considering the amendment relating to excess embryos. My first point is this concept of monitoring issues of public interest in Western Australia. The entire issue of human reproductive technology is obviously an Australian-wide matter, but in the very near future issues could arise which pertain particularly to Western Australia and might not be of such generality in the eastern States. We in Western Australia have a different mindset to those in other States, and what might be regarded as not being a public issue in another State might be a public issue in Western Australia. I would argue that we do need a different monitoring and reporting process from what the federal Government provides. Secondly, if the Minister for Health tables a report given to him by the Commissioner of Health, including the monitoring of issues, I suggest that those public issues have been filtered through the process of the Department of Health rather than through the process of this Parliament. The Reproductive Technology Council might make recommendations or give advice to the commissioner which particularly pertains to health and technology issues but not necessarily ethical issues. To say that the Commissioner of Health will provide a report on the human embryo and use of stem cells and so on in research through the Commissioner of Health will put a slant on that monitoring of public interest.

Mr J.A. McGINTY: This Bill does not propose to amend the schedule to the Human Reproductive Technology Act. Section 11(2) of the schedule relating to the annual report on reproductive technology states -

> The report to be furnished by the Council to the Commissioner, and the annual report to be submitted to the Minister, under subclause (1) -
>
> (a) shall set out -
>
> (i) any significant developments in the use of, or in the procedures or techniques used in, reproductive technology during the year, whether in the State or elsewhere;
>
> (ii) details of research specifically approved by, or being conducted with the prior approval of, the Council during that year;
>
> (iii) in statistical terms, the activities of persons licensed under this Act and carried on during that year; and
>
> (iv) any discernible social trends that became apparent during that year and are, or may be, attributable to the use of reproductive technology;

That enables the Reproductive Technology Council to report to the minister and to the Parliament on exactly the issues that the member is raising. I have in front of me the most recent annual report from the Western Australian Reproductive Technology Council, which comments on a whole raft of issues, rather than providing a narrow report in the more traditional form. For instance, it contains a section on stem cell research which is currently not allowed under the Act, and it refers to developments that are occurring. It comments on those matters which are of particular relevance - emerging social trends and the like. This body has the capacity to report on those matters. For instance, in Western Australia it could report on the number of embryos that are used for stem cell research, assuming this legislation were passed. There is nothing to prevent it from doing that. I know the member for South Perth finds this offensive in principle.

My problem with the amendment is that the intention of the national scheme when it comes to the issue of excess ART embryos is that the licensing and reporting is to be done by one national body, which then has the benefit of knowing what is happening in each State - it compares statistics and is able to report comprehensively on the whole of Australia in respect of this very important issue. That is not a function that is seen fit to be vested in a

state body, because to do so would be to duplicate the work that is appropriately done by one national body. That is not an abrogation of sovereignty. It may well be in the minds of others, but it is a sensible cooperative national arrangement on an issue of national concern. That is the way I see it, and that supports the notion that that body will do that work on behalf of the State. One body is doing the licensing and reporting associated with excess ART embryos. That is the context in which I believe it would be appropriate to have that body - it does not matter whether it is a federal or state body -

Mr P.G. Pendal: It does if we cannot question it.

Mr J.A. McGINTY: That is the member's view.

Mr P.G. Pendal: It is not; it is a constitutional view. I cannot ask questions in this House of your federal counterparts. That is not just my view.

Mr J.A. McGINTY: Nobody is suggesting that the member can, but he can ask questions of me about something that a statute under my control directs to be done by a body that is a result of a cooperative federal-state arrangement, and does that work on behalf of the State of Western Australia pursuant to this legislation. That is a different proposition from the one the member is putting. I believe the member can ask questions about that and demand answers. It is not uncommon in these days of cooperative arrangements. For instance, if I can just wear another hat, the corporate regulator, the Australian Securities and Investments Commission, reports to me, even though it is a federal body, because it is a joint state-federal body. That sort of arrangement is not unusual. It is sensible to do it in that way, and that is why, in respect of the reporting and licensing functions, it is appropriate that that body, through the Minister for Health, report to this Parliament.

Mrs C.L. EDWARDES: Can the minister tell me, then, what the connection is between the council and the National Health and Medical Research Council. The NHMRC, later on in this Bill, is shown as the licensing authority, yet this clause mentions the council granting or refusing approval. How will the two bodies interact, and where will the reporting requirement occur?

Mr J.A. McGINTY: There is no overlap between the two bodies - the NHMRC nationally and the Reproductive Technology Council in Western Australia. The two bodies between them cover the field and do everything when it comes to licensing in particular.

Mrs C.L. Edwardes: Later on in this clause, the council can be required not to grant approval unless a variety of conditions are met, yet the NHMRC is actually issuing the licences. How do the two interact?

Mr J.A. McGINTY: Clinical research on embryos that are to be implanted - in other words, not excess embryos - is dealt with by the Reproductive Technology Council. The Reproductive Technology Council licences certain what are referred to as exempt uses; namely, the storage and transport of embryos, allowing embryos to succumb, observation and diagnostic investigations of unfit embryos, and donation for ART treatment. It is proposed that embryos that are excess to requirements will otherwise be licensed by the NHMRC.

Dr J.M. WOOLLARD: I thank the minister for pointing out section 11(2) of the schedule. Subparagraph (i) of paragraph (a) refers to "any significant developments in the use of". Would that cover that part of the amendment that contains the words "the creation, use or storage"?

Mr J.A. McGinty: Yes.

Dr J.M. WOOLLARD: Subparagraph (iv) refers to "any discernible social trends that become apparent during that year and are, or may be, attributable to the use of reproductive technology". Would that include issues of public interest?

Mr J.A. McGinty: Yes.

Dr J.M. WOOLLARD: So the only thing that is missing - this is what I believe the member for Southern River is hoping to do next - is whether the annual report will be tabled in this House.

Mr J.A. McGinty: Yes, it will.

Dr J.M. WOOLLARD: Where in the schedule is that found?

Mr J.A. McGINTY: It is in section 5(6) of the Human Reproductive Technology Act, which reads -

> A report on the use of human reproductive technology in the State during the preceding financial year shall be furnished annually by the Council to the Commissioner who shall thereafter submit the annual report required by clause 11 of the Schedule to the Minister who shall, within 14 sitting days after the submission of that report, cause copies of it to be laid before each House of Parliament.

Mr P.G. PENDAL: Perhaps one of the drawbacks in writing legislation is that in the main we cannot use colloquialisms. I recall that one person who did break that rule was the minister, when earlier this year he introduced a Bill called the Whistleblowers Protection Bill. On that occasion some of us took exception to the use of a colloquialism, and the minister learnt his lesson and changed the title of the Bill to the Public Interest Disclosure Bill. The relevance of that to the amendment moved by the member for Southern River is that this provision was circulated to the media and members as a provision that, speaking colloquially, would enhance reporting procedures - not that there were no reporting procedures, and not that people would not be able to find out things second-hand if they wrote to their local federal member or the Minister for Health, but that the reporting provision would be enhanced. For the life of me, I cannot see where the resistance would come from.

I cannot see that the WA Reproduction Technology Council would find it onerous to report in terms of amendment, the commissioner would find it onerous to report to the minister, and the Minister for Health would find it onerous to table a report in Parliament. It is an accountability issue. The amendment is not designed to trip. It is not to be held up to the light to find some conspiracy. It is a request for enhanced reporting to the Parliament that is making the law. Frankly, I find it a little absurd to be told by the Minister for Health that I would have access along the lines that he suggests to a report that is destined to be tabled in the federal Parliament. I am not a member, nor do I want to be a member, of the federal Parliament. As far as I can, I want access to that data from the minister in charge of this area of public policy. It is not a big ask. Even people who have not followed the debate at the technical or medical level could not possibly find an argument because even the Minister for Health is struggling to argue that, no, we cannot have enhanced reporting procedures. It should not even be an issue.

According to the Leader of the House, once we disposed of the first matter tonight, the House was to adjourn about 10.30 pm. The word went around that the Minister for Health would accept this amendment, and that that would be a good time to adjourn. I cannot see a philosophical, medical or political reason for not supporting this amendment. Perhaps there is a political problem that we do not know about. I cannot imagine what it is. In the final analysis, let us consider the request contained in the member's amendment. When the Western Australian council - not the national body - the members of which are paid from the public purse, reports from time to time on its monitoring of those matters of public interest to the Commissioner of Health, who hands it on to the Minister for Health, the minister will then table those things in Parliament. I repeat: it is an enhanced reporting procedure. It is not a big ask. I ask all members of the House to support the amendment of the member for Southern River at the vote.

Amendment put and a division taken with the following result -

Ayes (18)

Mr P.W. Andrews	Mr J.J.M. Bowler	Ms A.J. MacTiernan	Ms M.M. Quirk
Mr C.J. Barnett	Mr J.B. D'Orazio	Mr B.K. Masters	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mrs C.L. Edwardes	Mr P.D. Omodei	Mr A.J. Dean *(Teller)*
Mr M.J. Birney	Mr J.P.D. Edwards	Mr P.G. Pendal	
Mr M.F. Board	Ms K. Hodson-Thomas	Mr J.R. Quigley	

Noes (18)

Mr C.M. Brown	Mr R.C. Kucera	Mr N.R. Marlborough	Mr P.B. Watson
Mr J.H.D. Day	Mr F.M. Logan	Mr M.P. Murray	Mr M.P. Whitely
Dr J.M. Edwards	Mr J.A. McGinty	Ms J.A. Radisich	Mr R.N. Sweetman *(Teller)*
Mr S.R. Hill	Mr M. McGowan	Mr D.A. Templeman	
Mr J.C. Kobelke	Mr A.D. McRae	Mr M.W. Trenorden	

The DEPUTY SPEAKER: As there is an equality of votes, I cast my vote with the noes.

Amendment thus negatived.

Debate adjourned, on motion by Mr J.A. McGinty (Minister for Health).

House adjourned at 10.43 pm