HUMAN REPRODUCTIVE TECHNOLOGY AMENDMENT BILL 2003

Consideration in Detail

Resumed from 29 October.

Clause 36: Part 4B inserted -

Debate was adjourned after the clause was called on.

Mr P.G. PENDAL: I move -

> Page 36, line 19 - To insert after "technology" the following -
>
> > except that in this State the use of excess ART embryos created after 5 April 2002 is prohibited unless it is an exempt use under section 53W(2)

I think I am correct in saying that all the amendments that appear in my name on the Notice Paper from this amendment onwards deal with one issue. Therefore, my remarks, and I hope those of other members, will be addressed to all those amendments, which relate to the cut-off date of 5 April 2002. That was the date the Council of Australian Governments, comprising the Prime Minister, six Premiers from the States and two Chief Ministers from the Territories, met and decided on nationally consistent legislation on human reproductive technology. I suppose COAG used the 5 April date in much the same way that Governments use one date for a devaluation of the dollar or for important taxation legislation. The intention of announcing one date for legislation is to prevent someone taking undue advantage of the decision that is about to be made. So far so good; I have no difficulty with that. I add that my proposed amendments do not impinge on the policy of the Bill; that is, on human reproductive technology. The amendment I have moved is a technical amendment and is designed to ensure that any decision made to release further embryos post 5 April 2002 is made by this Parliament, not by COAG. I hope to have the opportunity in the course of my remarks in a few five-minute bites of the cherry to explain how Governments and politicians in Australia on all sides of the political divide have in the past decade become increasingly concerned about the notion that ministerial meetings or intergovernmental agreements have taken over the role of Parliaments. There is a mountain of material available - if I must refer to it I will - but I want to hear the general attitude of the Government to this amendment because, depending on that, it can either be the slow haul or the fast track. I emphasise that during my first five-minute bite I am talking about matters that are not related to whether people get access to IVF or embryos. I am questioning the argument between Parliament and the Executive. In this case the Executives of the States will be given the authority to make a decision to vary the 5 April 2005 date; that is, to vary any period of the three-year moratorium from 2002 that can be made under this legislation by COAG. As one parliamentarian, I find that offensive. I hope that anyone who believes in a semblance of parliamentary supremacy also finds it offensive. In this Parliament we are elected by a franchise to do a job - as is the case in other Parliaments around Australia - and every member should find repulsive the concept of unwillingly or unwittingly handing over that role to seven people, meeting in this case in the form of COAG. I am referring to a debate about parliamentary principles rather than principles relating to human reproductive technology.

The DEPUTY SPEAKER (Mrs D.J. Guise): Before I recognise the next speaker, and for the purpose of *Hansard*, I clarify that we are dealing with the amendment that appears on the Notice Paper at page 19 - page 36, line 19 - in the name of the member for South Perth.

Mr J.B. D'ORAZIO: I liked what I was hearing from the member for South Perth and I would like him to continue.

Mr P.G. PENDAL: I thank the House and the member for Ballajura. In 1993 this Chamber led Australia on the question that I have now put before the Chair and that is the subject of my amendment. A number of matters were developed over the previous years, on a bipartisan basis, which resulted in the publication of an agreement reached in this Chamber among seven Parliaments. We were told that this was the only time in Australian federal history that that had occurred. This agreement was titled the "Scrutiny of National Schemes of Legislation - Position Paper by the Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia".

The committee that I chaired, and that other members of this Chamber were part of, helped bring about that national protocol. I will explain why it was introduced. I emphasise that it was totally bipartisan. Members of this House, whether Liberal, Labor, National or Independent, brought about this new protocol, which emerged because of a ministerial meeting not unlike COAG. Ministers frequently attend national conferences with their counterparts, and for the most part those conferences are an important part of the cooperative processes between federal and State Governments around Australia. However, those meetings have a downside. A Premier or

minister from this State can go to such things as a Council of Australian Governments conference, a meeting of ministers for education in Launceston, a meeting of ministers for the environment in Darwin or another ministerial meeting somewhere else, and, with the six other ministers, determine, for example, that there will be uniform national legislation on a particular issue. The seven ministers will decide that amongst themselves. Before we know it, the relevant minister will return to Western Australia effectively having committed the Parliament because of what he or she agreed to at the conference that he or she attended a day, week, month or year earlier. When someone like an opposition or government member or an Independent like me wants to move an amendment to that legislation, that person is told that he cannot do that because it has been the subject of an intergovernmental agreement between the six or seven ministers. That person hits a brick wall. Who governs and who legislates? Is it the Executive or is it the Parliaments of Australia? We have come to that position. I repeat that I would appreciate an early understanding of where the Government's view will go on this matter. At least two Parliaments in Australia have done with their human reproductive technology legislation what I am now requesting that we do.

Mr J.A. McGinty: No, that is the problem. They haven't.

Mr P.G. PENDAL: I can tell the Minister for Health that they have. That is the advice I have received. I hope that we will not get into a fight on the quality of the amendments, because the people who drafted the amendments are the same as those who in this House advised the minister on the State Administrative Tribunal Bill one month ago.

Mr J.A. McGinty: I am happy to do what was done in South Australia; that is, to take out the COAG option of between 2002 and 2005. That was the nature of the amendment in South Australia. I am happy to follow that.

Mr P.G. PENDAL: I will repeat that back, because we may be talking about the same thing; if not, I want to clarify it. If the minister is saying that the amendments that I am seeking do not do what the amendments that were made to the South Australian legislation have done, that is certainly contrary to the legal and parliamentary drafting advice I have received. However, I am not here to argue that point.

Ms K. HODSON-THOMAS: The member for South Perth obviously needs some time in which to complete his remarks.

Mr P.G. PENDAL: I thank the member for Carine. If we are talking about the same thing, I would prefer the minister to take a five-minute bite at this matter rather than provide the information and some reassurance by way of interjection. What might be possible - I am not committing myself to this, I am just flagging it - is that, if we are given some indication from the Minister for Health that we can find some way through this, other than in the form I have moved, I presume that we will have the facility to revisit this clause at a later stage. I have momentarily forgotten the name of the device, but I suspect that the Deputy Speaker is taking advice on that matter.

I will summarise the concerns that I would like the minister to address. If we are talking about the same thing, we might make quicker progress. I am pleased that the member for Kingsley has rejoined us, because I would like her guidance on this point. What we are saying is this: the Council of Australian Governments decided that there would be no release of fresh embryos after 5 April 2002, that that prohibition would remain for three years, and that COAG could alter that decision during those three years.

Mr J.A. McGinty: I am happy to support an amendment that takes away COAG's ability to alter it.

Mr P.G. PENDAL: I think I am 50 per cent there. Is the minister saying that if the need arose for the Western Australian community to revisit the issue of so-called frozen embryos after the 2002 deadline by excluding this provision and doing what South Australia did, the matter would come back to Parliament?

Mr J.A. McGinty: No, I am not. I think that leaves the member with a problem.

Mr P.G. PENDAL: It does indeed. I am interested in hearing from the minister why that is not the case. After he has spoken I will pursue the issue further.

Mr J.A. McGINTY: I will paint the picture as comprehensively as I can. The amendments moved by the member for South Perth will ensure that the pool of excess assisted reproductive technology embryos available for research is limited to those already in storage as at the cut-off date of 5 April 2002. If there is a need for further embryos past that date, the request must come back to the Western Australian Parliament. It has been said that this amendment was passed in South Australia. In effect, the amendments will put a permanent embargo - subject to future parliamentary consideration of the matter - on the use of excess ART embryos created after 5 April 2002. In its current form this Bill provides - it is consistent with commonwealth legislation and the COAG agreement - that the embargo on embryos created after 5 April 2002 will cease to have effect

three years after the COAG agreement. In other words, the embargo will cease to have effect on 5 April 2005, unless an earlier date is agreed by COAG. I am happy to delete "unless an earlier date is agreed by COAG" from the Bill. That would take away part of the member's problem.

Mr P.G. Pendal: Let me stop the minister at that point. If we agree on that much, the 5 April 2002 deadline on access to excess embryos created after that period would remain in operation.

Mr J.A. McGINTY: That is right.

Mrs C.L. Edwardes: Until 5 April 2005.

Mr P.G. Pendal: Okay, until 2005. The minister can keep going.

Mr J.B. D'Orazio: Is that the same as the South Australian legislation?

Mr J.A. McGINTY: Yes. It is also the same as the Tasmanian legislation. South Australia and Tasmania have both moved for that variation to take away the ability to do things between 2002 and 2005 through the COAG process. I am happy for this Parliament to say with certainty what will happen rather than allow COAG to intervene and determine what will happen. However, come 2005, and by conforming to the COAG agreement, that will be lifted.

Mrs C.L. Edwardes: What is the current status of the COAG agreement? We understand from the last COAG communiqué on 29 August that the date was changed as soon as the guidelines and protocols were prepared.

Mr J.A. McGINTY: No. As the member may remember, some of the Premiers left the meeting early and there was nothing -

Mrs C.L. Edwardes: The communiqué is on the Queensland web site. You might like to let them know that that is not true. I understand that the matter was not discussed because the Premiers walked out of the COAG meeting.

Mr J.B. D'Orazio interjected.

Mr J.A. McGINTY: That is right. I think I was making the point that it is not correct to say that South Australia passed the same provisions as those proposed in the member for South Perth's amendment. Legislation in Queensland, New South Wales and Victoria has been passed in the same terms as the commonwealth legislation. In South Australia and Tasmania, the automatic sunsetting of the embargo on 5 April 2005 was retained but amendments were made to remove the possibility of the earlier lifting of the embargo on the basis of a COAG decision. The amendments proposed by the member for South Perth would seriously jeopardise the consistency of the Western Australian legislation with the national scheme agreed to by COAG. Western Australia would be the only jurisdiction to not lift the embargo on the use of embryos created after 5 April 2002 by 5 April 2005. This State wants to maintain that element of consistency with the lifting of the embargo but we are happy to accommodate not allowing COAG to change those dates.

Mrs C.L. EDWARDES: I would like to hear the Minister for Health continue his remarks.

Mr J.A. McGINTY: A very simple amendment is appropriate. I am happy to have someone move it, or I could move it.

Mrs C.L. Edwardes: Once the minister has finished his remarks we could postpone this clause to allow the amendment to be discussed.

Mr J.A. McGINTY: We could do that or we could proceed with the amendment I am suggesting, because it is incredibly simple.

Mrs C.L. Edwardes: It applies further on in the clause, so we could move past this amendment to allow members to think about the remarks made by the minister and deal with it later, if that is acceptable to the House.

Mr J.C. Kobelke: That is not necessarily the best way to go.

Mr J.A. McGINTY: I will make available to the members for South Perth and Kingsley the amendment that I think covers the point I am making. Please ignore the other amendment on the page; we may or may not have to move it.

The Government sees no intrinsic difference between an embryo created before 5 April 2002 and one created after that date. I think that is a common view among all members of this House. The decision to include a three-year embargo on the use of embryos created after the date of the COAG decision appears to be in response to concerns that embryos might be created purely for research purposes and to allow time for the full implementation of the regulatory regime. As outlined, the creation of embryos for research is a crime under the

Bill and Western Australia is well placed to monitor any changes in clinical practice that result in the unwarranted creation of embryos beyond those created for ART clinical purposes. Most of the embryos presently in storage in Western Australia will not become excess ART embryos. They are in storage for future use in ART treatment. Many of the embryos that are surplus to reproductive needs for those for whom they were created will not be donated for research. About a third of the embryos that are donated for research will not survive the thawing process. The pool of existing embryos that may be available for research is difficult to quantify, but it is probably quite small.

The embargo will limit research. Some vital research requiring the use of fresh embryos - that is, prior to their cryopreservation or requiring embryos for particular characteristics that might not be in the available pool - is prohibited. Clinical application of stem cells derived from embryos developed according to new standards such as those required for use in the manufacture of therapeutic products for the United States market is also ruled out.

COAG has yet to consider the early lifting of the restriction on the use of excess-assisted reproductive technology embryos for research created after 5 April 2002. As the South Australian and Tasmanian legislation does not provide for the earlier lifting of the embargo, it is unlikely that COAG would agree to it. Even if we did not remove the possibility of an early lifting of that embargo, it is highly unlikely that it would occur. My proposed amendment has been moved in the spirit of the significant argument advanced by the member for South Perth. If it were accepted, the embargo would not be lifted in Western Australia prior to April 2005.

Mrs C.L. EDWARDES: We acknowledge the spirit in which the Minister for Health suggests his amendment. It solves one of the problems raised by the member for South Perth in that the Council of Australian Governments and not the Executive Government would make a decision on behalf of this Parliament. All members of Parliament should reject that at every single opportunity. Although we accept that, we do not necessarily accept that the amendment is all that is required. The member for South Perth has put forward amendments, and the first is consequential upon the one to lines 22 to 30 on page 58. On 5 April 2005, all excess assisted reproductive technology embryos will be available for stem cell research. When COAG made its original decision on 5 April 2002, it needed to set protocols and guidelines and put in place a regulatory system to ensure that there were certain controls. The advice we are receiving today, now that the hype has gone, is that the scientists who wish to carry out the research do not need any more embryos than were created before 5 April 2002. The stem cell lines that the minister talked about can be continually recreated. Literally millions of stem cells are available from the current pool of embryos available in Australia. It is highly unlikely that the scientists will need any more. By lifting the moratorium on 5 April 2005, the Government is opening the possibility that the pool of embryos available for stem cell research will be increased. What will happen to those embryos that will never be used? The parents will never get the opportunity to make a decision about proper disposal. Even today, some parents will decide not to allow their embryos to be used for research. Once parents sign their embryos over to research, they no longer have control over or ownership of those embryos. We will be taking away the ownership role and decision-making ability of those parents whose embryos will not be required for research. They will no longer have ownership of those embryos, even if those embryos are not required. For how long will we keep excess ART embryos for possible use in research? The advice that became available subsequent to the decision of 5 April 2002 is that there will not be the need for any more embryos. When a need arises, it is quite right and appropriate that the issue should come back to this Parliament so that the Parliament can make a decision based on new medical technology and new information and advice about what is going on in the process. That COAG decision was made on the basis that New South Wales was going to go it alone. If it went alone, companies and people would have moved from Victoria to New South Wales to take advantage of the research. There was a lot of hype. The Christopher Reeves of this world were saying that they need the embryonic stem cell research because they want to be able to walk again. There was a concentrated campaign. Since that time the amount of successful research with adult stem cells has been phenomenal, so much so that far more dollars today are directed to adult stem cell research than to embryonic stem cell research. The last National Health Research and Medical Council report indicates that there was not one application for a licence for embryonic stem cell research.

Mr P.W. ANDREWS: I would like to hear more from the member for Kingsley.

Mrs C.L. EDWARDES: The date of 5 April 2002 was taken as convenient in the hype generated by people like Christopher Reeve and the media and because New South Wales said that it would go it alone. That was all the date meant.

We are receiving information and advice from scientists today. Professor Harvey from the University of Western Australia wants to allow embryonic stem cell research, so he is a supporter of this legislation. He said quite clearly to the members of Parliament who attended the workshop he organised that no more embryonic

stem cell research was necessary past 5 April 2002. That is the knowledge we have in October 2003. Allowing 5 April 2005 to remain in the legislation is opening up forever the ability for embryos to be collected and stored for research. If they do not need to be collected and stored for research, what are we doing? We are taking the ownership and decision making from parents on the basis of a false claim that embryonic stem cells are needed. If they are needed at some future point in time, the minister can come back to this Parliament with knowledge, advice, information and technology that can demonstrate to this Parliament that research institutions need a greater pool of embryos, which has not been proved to date. We will therefore continue to put forward our amendments indicating that 5 April 2005 is not an acceptable date, because allowing excess embryos to be collected and stored for future research is not appropriate when our advice today is that they are not needed.

Mr J.A. McGINTY: I do not wish to stem the flow of debate, but I need to correct a point made by the member for Kingsley relating to consent, because it is important to correct it at this point. Two separate decision-making steps are taken for the use of embryos other than for reproduction. The first step is for a decision to be made that the embryo is excess to the requirements of the woman for whom the embryo is stored and her partner, if she has one. The decision is made at the point when the embryo is no longer required for treatment and not at any prior time. The second step is consent for the use of the excess embryo for a particular research project. The licensing committee approves a protocol for the form of consent that must be obtained before an embryo can be used. This must be in accordance with the NHMRC guidelines relating to consent. The consent must be voluntary. The person giving consent must also have been provided with appropriate information about the research project. All gamete donors and their partners must also have consented to the use of an embryo in the research project before it can be used. It is a condition of the licence to use an embryo that the licence holder must report to the NHMRC licensing committee that consent has been obtained and must comply with any restrictions to which consent is subject. Consent can be withdrawn prior to the use of the embryo. The consent must be operative at the time of the use. The consent form and information provided with it should include advice that the consent can be withdrawn. As members will be aware, couples are not compelled to donate embryos. It is entirely a decision to be made by the couple and any gamete providers, based upon their beliefs and values. No embryo can be used for any purpose, unless there is proper consent for that use from the couple for whom it was created and any gamete providers.

I will make a quick comment on consent to use stem cells. There is no requirement that subsequent use of adult stem cells be approved by the person from whom the stem cells were collected. Similarly, there is no legislative requirement that consent be obtained for any subsequent use of stem cells that have been derived from an embryo. This issue is common to much research involving genetic material from humans, and it is being considered as part of the Australian Law Reform Commission's inquiry into intellectual property rights over genetic materials and genetic and related technologies.

Mrs C.L. EDWARDES: I thank the Minister for Health for ensuring that members in this place are fully aware of the process that needs to be undertaken. However, once there is consent, that is the end of it.

Mr J.A. McGinty: No; that was my point.

Mrs C.L. EDWARDES: I have with me the draft guidelines of the Australian Health Ethics Committee. Once the consent is given, even though the embryo might have been stored for 12 months and is no longer required for the treatment, these people have no ownership of it. The minister just said to the House that they can withdraw the consent if research on the embryo has not started. How will they do that in practice?

Mr J.A. McGinty: Withdraw their consent?

Mrs C.L. EDWARDES: Yes.

Mr J.A. McGinty: It happens in a variety of areas of undertaking every day of the week.

Mrs C.L. EDWARDES: It is stored for 10 years. It may not be needed for another 15 years.

Mr J.A. McGinty: I am told that the consent is to a particular research project.

Mrs C.L. EDWARDES: Let us look at it in a practical sense. If from 5 April 2005 there are excess assisted reproductive technology embryos, is the minister saying that no research will be able to be carried out on any excess ART embryo without the consent of the partners or the family? The second consent is for the research. Under the Human Reproductive Technology Act, embryos can be kept for 10 years, unless further consent is granted by the Reproductive Technology Council.

Mr J.A. McGinty: Yes.

Mrs C.L. EDWARDES: There may be excess ART embryos that are no longer needed for treatment and the couple are happy for research to be carried out. They have signed the first consent, but they are waiting for a research proposal. What if that embryo is not needed? At 10 years, what happens?

Mr J.A. McGinty: It would be allowed to succumb.

Mrs C.L. EDWARDES: What if the parents cannot be found - and that happens?

Mr J.A. McGinty: It could not be used for research without consent.

Mrs C.L. EDWARDES: Under this legislation, the Reproductive Technology Council cannot automatically take ownership of it after 10 years and allow it to be used for research.

Mr J.A. McGinty: Yes, that is right.

Mrs C.L. EDWARDES: That is in the guidelines only.

Mr P.G. Pendal: Yes, and what the member for Kingsley said is right: it cannot be used?

Mr J.A. McGinty: It is in the law. Forget about the guidelines; it is in the law.

Mrs C.L. EDWARDES: Can the minister point us to where that is the case? The member for South Perth might like to continue his remarks while the minister is trying to locate that information.

Mr P.G. PENDAL: Two complicated lines of debate are now taking place. However, I intend, on reflection, to proceed with my amendment, for reasons that I will now outline. We need to go back to what happened on 5 April 2002. I frequently refer to that as the Howard-Beazley line. I use those words because it was basically bipartisan, and it was supported by a Liberal Prime Minister and a former Labor leader, both of whom are known as people who have some ethical basis to their lives. All of those people on that day made a decision that they would prefer not to have made, but they were persuaded by the argument that if frozen embryos are to die, or succumb, it is better that they at least do something useful on the way to succumbing. I have put that a bit crudely, but people know what I mean. That was broadly accepted as being the solution. I disagreed with that decision, but I know that those people made that decision with some reluctance and a sense of unease about handing over live human embryos, albeit frozen, for destructive research. The decision that was made on that day was made because it was believed that was the best option for embryos that are already stored. If we accept that decision, we have no right to turn that into a new argument that now that we have done that, we will preside over the infinite production of fresh embryos for the purpose of future research. Members may ask what is my authority for saying that. I will read a few words, and I will then tell members who said those words -

> First, what exactly is a ‘spare’ embryo? . . .

And -

> . . . when and how do parents decide that their embryos are ‘available’?

I will break in here and say that ironically the argument that I am running now starts to cross the path of the argument that the minister is now putting his mind to. It continues -

> Second, there may also be problems concerning the use of stem cells from future IVF-created embryos.

I want the minister to listen to the following words, because I know he has similar problems to me and a few arguments are being run -

> . . . how can we guarantee that parents are not persuaded to create excess numbers of embryos that will become ‘surplus to requirements’ later on? This is potentially a de facto way of creating embryos purely for research purposes, something almost everyone is against.

Those words are from Professor Alan Harvey, Professor of Neuroscience at the University of Western Australia, and a supporter of the Government’s Bill. In that argument he is effectively saying - in a much more scientific way than I could say it - no to farming. That is why the deadline of 5 April 2002 has been used. That was the extent of the sense of unease among the Premiers and the Prime Minister on that day. They said the embryos are in storage, and we can bring ourselves to say that we should at least do something useful with them while they are on their way to succumbing, but after that day enough is enough. I believe the two arguments have now converged, and my amendment should be adopted, because it attempts to have those decisions remain decisions of this Parliament - not decisions that will be made by six Premiers and the Prime Minister. They had their go in 2002. Their emphatic decision at the time was for no farming. However, without this amendment the door will be open to that.

Mr M.P. WHITELY: This is one of the few proposed amendments on which I know with absolute certainty what I will do. I will vote to support this amendment because I believe that 5 April 2002 is the only real protection from the creation of extra embryos for research. I know the Bill states that it is a criminal offence to create extra embryos for research in perpetuity, but the reality is that I cannot imagine a situation in which the police or any Government would want to prosecute for that offence. Frankly, at a philosophical level, I would not want to see that happen in any case because there is no intrinsic difference between an embryo created before 5 April 2002 and one created after that date.

I know that the minister has argued that we have 10 years' worth of baseline data with which we can make comparisons as a useful measure for the creation of excess embryos. As I tried to clumsily explain the other day, I do not think that is an effective protection because there must be a range of variations from the average; it must be influenced by personal circumstances and clinical practice. I cannot see that it is an effective measure. I do not believe the other provisions in the Bill provide protection against the creation of excess embryos. My view is similar to that of Professor Harvey: I support the basic thrust of this legislation but I want a cautious approach taken. I support the legislation because I believe, fundamentally, more good than harm will come from allowing research on embryos that will succumb in any case. I am not a states'-righter but I believe it is essential in issues of great consequence such as this that the legislation be returned to this Parliament for review. We will then have the benefit of hindsight. We will be able to review arguments put up by the members for Kingsley and South Perth and others who oppose this legislation. They have said that adult stem cell research offers greater opportunities than embryonic stem cell research. I say in all honesty that I do not know whether that is an argument of convenience or scientific fact. With the benefit of hindsight we will have the opportunity to review it. We will also have the opportunity of knowing whether we need access to excess embryonic stem cells. We will be able to determine whether the benefits of the research justify the collection of extra embryos.

As I said, I will support this amendment, primarily because I believe it is the only real protection that the Bill offers. Although it will be a criminal offence to create extra embryos for research, I cannot imagine there would be any enthusiasm in any court to prosecute that offence. Even if there were, I cannot believe an offence could be proved beyond reasonable doubt.

Mr J.A. McGINTY: To answer the question posed by the member for Kingsley, proposed section 53ZE at page 126 of the Blue Bill prescribes that a licence is subject to conditions. It states -

> (1) A licence is subject to the condition that before an excess ART embryo is used as authorised by the licence -
>
> (a) each responsible person in relation to the excess ART embryo must have given proper consent to that use;
>
> (b) the licence holder must have reported in writing to the NHMRC Licensing Committee that such consent has been obtained, and any restrictions to which the consent is subject; . . .

There are some other sections, but that is the crucial one that makes any research subject to the consent of the person concerned.

The second question was posed by the member for South Perth, and asked when an embryo becomes a spare embryo. To put it into lay language that even I can understand, once it is clear that the IVF procedure is complete - whether or not it results in a pregnancy and childbirth - at that stage and not before, the remaining embryos become excess or spare, as the member referred to them.

Mr P.G. Pendal: Significantly, the question was not really mine, but one posed by Professor Alan Harvey, who sits on the Western Australian Reproductive Technology Council.

Mr J.A. McGINTY: I do not think he is on the council at the moment.

Mr P.G. Pendal: I understood he was deputy chairman.

Mr J.A. McGINTY: He is not a member; he is a deputy for one of the members, but he is still connected.

Mr P.G. Pendal: He is at the coalface, and they are the questions he posed, though not necessarily to me, in a copy of a letter to *The Australian*. He was saying that he supports the Bill, but he used the argument virtually as used by the member for Roleystone. That is why it was important to be coming from him as a proponent of the Bill, because he would be supporting what we are doing right now. That is the point I was making.

Mr J.A. McGINTY: The member for Roleystone has articulated a number of the protections in the legislation. It is a criminal offence to create embryos for the purpose of research. There is also monitoring against a decade

of data accumulated in Western Australia, and any abnormalities or sudden increase in the number of embryos created, I am advised, would be easily detected and dealt with by the process. The Bill does create adequate safeguards. Philosophically, I can go along with the proposition the member for South Perth is putting on removing the ability of the Council of Australian Governments to change the date. I give an undertaking to move the amendment I have circulated, so that, at least as a fall-back position, between 2002 and 2005 the law will not be changed as a result of an intervention by COAG. However, I cannot agree with the balance of the amendments of the member for South Perth, because they disrupt the agreement we signed up to implement.

Mr J.B. D'ORAZIO: Some of us face a dilemma on this issue. I accept the amendment of the member for South Perth, and I want to support the amendment of the minister, because I oppose both the creation and the deadline. I am asking the minister for a process decision here, because if his amendment is moved prior to the amendment of the member for South Perth, I would want to support it, because it is sensible and logical. I also want to proceed on to support the second part of the amendment of the member for South Perth. Is there some way in this process that we can either not deal with the amendment of the member for South Perth immediately, because it has the two issues mixed into one? Many of us want to support both issues, but I have the feeling that a number of members will happily support the first part and not the second part. I am not sure what the correct process is here. Do we deal with the amendment of the member for South Perth, which has both issues intertwined, making it difficult for a number of members to make a decision, or do we proceed with the amendment of the minister, to remove the ability of COAG to change the date, and then deal with the second issue of not allowing any farming after 2005? That was the intention, as indicated by the member for South Perth, of all the people who sat around the table and came up with this wonderful unified agreement that each State is now trying to enact. In all the available scientific literature I have read and according to all the work of the professors I have sought information from, the position is that there is absolutely no reason for needing any more embryos than those already in storage. If that is the case - no-one has denied it - there is no justification for allowing excess embryos created after 2005 to be used for research. Therefore, I strongly support the second part of the member for South Perth's amendment. I ask the minister to tell me the process that will follow.

Mr J.A. McGinty: I believe the House should proceed to a vote in the certain knowledge that if the member for South Perth's amendment is unsuccessful, I will move my foreshadowed amendment removing the COAG intervention between 2002 and 2005. I think we can vote in the certain knowledge that that amendment will be moved if the amendment of the member for South Perth fails. I think that covers the situation.

Mr J.B. D'ORAZIO: By voting down the amendment of the member for South Perth -

Mr P.G. Pendal: Which we do not want to do.

Mr J.B. D'ORAZIO: Absolutely not, but there is a decent possibility it will happen. If the amendment is defeated, the criticism may be made that the minister's new amendment is not contrary to the amendment just lost; that is, part of that amendment specifically refers to dates. Therefore, a ruling from the Chair may be necessary. I do not want the situation to arise in which the minister's amendment is lost because the House has already voted on an amendment that contained the minister's intent.

Mr P.G. Pendal: It's not like negating a motion. It comes up as a separate amendment, does it not?

Mr J.A. McGinty: Unless the Deputy Speaker says there is substance to the objection raised by the member for Ballajura, I intend to move my foreshadowed amendment.

Mr J.B. D'ORAZIO: Maybe the Chair could indicate the situation. I do not want to lose the motion on a technicality.

THE DEPUTY SPEAKER: As far as the Chair is concerned, consideration of this clause has not finished. The minister has foreshadowed his intention. Therefore, I see no problem with proceeding with the amendment. If it is lost, it has been foreshadowed that another amendment will be moved. No doubt, the minister will then move that amendment, and the House will deal with it. It relates to a later part of the clause, so it would be allowable.

Mr J.B. D'ORAZIO: I am happy with that.

Mr P.G. PENDAL: I seek some guidance from the Leader of the House. I understood that he sought to move to other business at noon.

Mr J.C. Kobelke: I was seeking to facilitate the wishes of members; that is, a vote be taken on this issue before noon, and other business be brought on because a number of members with a key role in this debate have another commitment.

Mr P.G. PENDAL: I would prefer that a vote not be taken right now for a reason I will outline before I sit down. Can the Chamber report progress and seek leave to sit again? That would mean that nothing would be lost, and

the Government could proceed with its business, and consideration of this matter would resume by three o'clock today. That is preferable to going to a vote at the moment.

The DEPUTY SPEAKER: If it is not put to a vote, and debate is adjourned, the matter will be set down for a later stage of today's sitting.

Mr P.G. PENDAL: I seem to have the last word before a break: I ask members to dwell on the last few comments by the Minister for Health before he resumed his seat and the reasons he offered for not supporting my amendment. I was grateful to hear the remarks of the member for Roleystone and others supporting the amendment; they made a lot of sense. The Minister for Health gave members a reason to not support my amendment, and this was the one reason that should not be taken into account; namely, he said that the amendment could disrupt the nationally consistent approach. That should be the reason least considered by this House. Given the importance of the ethical and human reproduction side of this measure, and given the nature of the technical side - that is, Parliament being in charge of its destiny, not COAG - the argument to be least taken into account is that the passage of my amendment could cause some minor disruption or inconvenience to the federal agreement. That should not even come into it.

In the communiqué that was issued by the Council of Australian Governments on 29 August, in which, incidentally, it reported at some considerable length - that is something the Minister for Health is not aware of - it passed over this business of South Australia and Tasmania going their separate ways with a great degree of ho-hum. It simply was not an issue for COAG - the Prime Minister and the Premiers - as late as 29 August. We should not get too excited about the notion of our making COAG feel a bit uncomfortable. We are not here to make COAG comfortable; we are here to legislate for the good governance of Western Australia. Against that background, I still believe that the amendment I have moved is the right amendment and is couched in the correct terms. I hope that the House, perhaps at a later stage of this day's sitting, will support it.

Debate adjourned until a later stage of the sitting, on motion by Mr J.A. McGinty (Minister for Health).

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