HUMAN REPRODUCTIVE TECHNOLOGY AMENDMENT BILL 2003

Introduction and First Reading

Bill introduced, on motion by Mr R.C. Kucera (Minister for Health), and read a first time.

[Quorum formed.]

Second Reading

MR R.C. KUCERA (Yokine - Minister for Health) [11.29 am]: I move -

That the Bill be now read a second time.

The Bill contains legislative amendments necessary for Western Australia to be part of a national legislative scheme to prohibit human cloning and regulate research involving human embryos. The Council of Australian Governments agreed in April 2002 that all States and Territories would legislate to prohibit human cloning and other unacceptable practices related to assisted reproductive technology, and regulate the use of human embryos for research under strict criteria to be administered by the National Health and Medical Research Council. COAG also agreed to nationally consistent standards for ART clinical practice. The Western Australian Government, through the Premier, was a party to that agreement. The States and Territories have worked closely with the Commonwealth to develop legislation required to give effect to the agreement. The process of developing the legislation involved consultation with experts and interested parties in all States and Territories, including Western Australia.

The Commonwealth introduced the Research Involving Embryos and Prohibition of Human Cloning Bill 2002 in June 2002. The Bill was subsequently split, and the Commonwealth Parliament passed the Research Involving Human Embryos Act 2002 and the Prohibition of Human Cloning Act 2002 in December 2002. The commonwealth Bills were referred to the Senate Standing Committee on Community Affairs, which undertook a detailed consideration of the Bills with the assistance of written and oral submissions from a wide range of experts and other interested parties.

The commonwealth legislation applies in Western Australia to the extent of the Commonwealth's constitutional powers. The powers on which the commonwealth legislation relies are broad, and include the power to legislate on trade and commerce, corporations and external affairs. However, the Commonwealth does not have the power to comprehensively legislate in the areas of human reproductive technology and embryo research. Therefore, any national scheme is dependent on complementary legislation in each State and Territory to ensure that there is complete national coverage. The Parliaments of Queensland, Victoria and South Australia have already passed legislation to give effect to the COAG agreement. The New South Wales Parliament has introduced legislation to the same effect as the commonwealth legislation, which has been passed by the lower House but not yet considered by the upper House.

The Human Reproductive Technology Amendment Bill 2003 amends the Human Reproductive Technology Act 1991 to provide consistency with the approach agreed by COAG and the commonwealth legislation. The amendments contained in the Bill are also consistent with recommendations made by the select committee that reviewed the Human Reproductive Technology Act 1991 and reported in 1999. The Bill incorporates provisions relating to both the prohibition of human cloning and other unacceptable practices, and the regulation of human embryo research. Some members may feel that dealing with both these issues in one Bill compromises their ability to oppose some aspects of the Bill while supporting others. However, it must be stressed that the situation in Western Australia with respect to reproductive technology legislation is different from the situation faced by the Commonwealth and most other States and Territories. The Human Reproductive Technology Act 1991 is comprehensive legislation that contains broad prohibitions on cloning and other unacceptable practices. Consequently, it would be a complex exercise to separate amendments on human cloning and other unacceptable practices from those on the regulation of embryo research and put them into two separate Bills that would both amend the same Act. The exercise itself might pose a threat to the comprehensive coverage of the existing legislation.

Prohibition of human cloning: The relevant provisions of the commonwealth Prohibition of Human Cloning Act 2002 are mirrored in proposed part 4A, which is to be inserted in the Human Reproductive Technology Act 1991. Proposed part 4A details the prohibited practices in relation to the creation of a human embryo clone and other ethically unacceptable practices. The prohibitions are generally expressed to ban the creation, implantation in a woman, importation and exportation of certain types of embryos, including hybrid embryos or embryos that are created other than by fertilisation of a human egg by a human sperm. Commercial trading in human reproductive material is also prohibited under proposed part 4A, as is the creation of a human embryo for a purpose other than achieving pregnancy in a woman.

All the practices prohibited in proposed part 4A are already prohibited or regulated under the Human Reproductive Technology Act 1991. The proposed amendments replace existing prohibitions and are framed in terminology that more accurately reflects current scientific knowledge and ensures consistency with the way the offences are described in the national scheme. The penalty levels for offences under part 4A are the same as those under the commonwealth legislation.

I, like the vast majority of the Australian community, am opposed to human cloning. Proposed part 4A provides a clear statement of the abhorrence with which such practices are viewed.

Research involving human embryos: The relevant provisions of the commonwealth Research Involving Human Embryos Act 2002 are mirrored in proposed part 4B, which is to be inserted in the Human Reproductive Technology Act 1991. Proposed part 4B regulates the use of human embryos created through ART for the purpose of achieving pregnancy but no longer required by the persons for whom they were created. These are referred to in the Bill as excess ART embryos. Uses of excess ART embryos, other than certain exempt uses that will remain subject to the oversight and approval of the Western Australian Reproductive Technology Council, will be subject to the licensing requirements set out in the Bill. A committee of the National Health and Medical Research Council has been established by the commonwealth legislation to consider applications for research or other activities involving excess ART embryos. The effect of the amendments in the Bill will be that any Western Australian who proposes using excess ART embryos for research will require a licence from the NHMRC Licensing Committee. The Licensing Committee is required to ensure that appropriate consent is given for the use of each excess ART embryo. The proposed use must have the approval of a human research ethics committee and comply with all ethical guidelines issued by the NHMRC. The Licensing Committee must also consider the likelihood of significant advances in knowledge or improvement in technologies for treatment as a result of the proposed use, which could not reasonably be achieved otherwise.

I acknowledge that there are different views in the community about whether research involving human embryos is ethically acceptable. The Bill provides a reasonable balance. Importantly, it does not allow the creation of human embryos purely for the purpose of research. People who have developed embryos with the intention of using them to achieve a pregnancy and who no longer need them for that purpose will have the option of consenting to the donation of the embryos for research. The type of research that may be undertaken has the potential to improve reproductive technology treatment as well as develop possible new therapies using embryonic stem cells for treatment of degenerative diseases.

Clinical practice: Other clauses in the Bill contain changes to the Human Reproductive Technology Act 1991 necessary to accommodate the provisions included in proposed parts 4A and 4B, and provide national consistency with ART clinical practice. The agreed national standard for ART clinical practice is accreditation by the Reproductive Technology Accreditation Committee of the Fertility Society of Australia. Existing licensing requirements in the Human Reproductive Technology Act 1991 will be retained, but with accreditation by the RTAC being made a condition of licensing.

There are changes to storage and diagnostic testing of embryos to provide for consistency with clinical practice in other jurisdictions. In particular, the period of permitted storage is extended from three years to 10 years with the possibility of further extension with the approval of the Reproductive Technology Council, and genetic testing of embryos will be permitted with the approval of the council when there is a significant risk of a serious genetic abnormality or genetic disease in the embryo.

The amendments will also allow access to IVF procedures when this would avoid the transmission of an infectious disease such as HIV to a child. The subject matter of this Bill is a matter of fundamental interest to many in the community, with both strong supporters and strong opponents. The importance of the moral and ethical concerns that are involved is recognised by the fact that government members will have a conscience vote on the Bill.

I believe that the Bill offers a sensible approach by prohibiting certain unacceptable practices and imposing a strict regulatory regime on the use of human embryos. It gives me great pleasure to commend this Bill to the House.

Debate adjourned, on motion by Mr R.N. Sweetman.