

Human Reproductive Technology Amendment Bill 2007

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Western Australia

LEGISLATIVE ASSEMBLY

**Human Reproductive Technology Amendment
Bill 2007**

A Bill for

An Act to amend the *Human Reproductive Technology Act 1991*.

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Human Reproductive Technology Amendment Act 2007*.

2. Commencement

- 5 (1) If this Act receives the Royal Assent on or before 12 June 2007 it comes into operation on 12 June 2007.
- (2) If this Act receives the Royal Assent after 12 June 2007 it comes into operation on the day after the day on which it receives the Royal Assent.

10 **3. The Act amended**

The amendments in this Act are to the *Human Reproductive Technology Act 1991**.

[* *Reprinted as at 11 November 2005.*

15 *For subsequent amendments see Acts Nos. 34 of 2004, 28 and 77 of 2006.]*

4. Long title amended

The long title is amended by deleting “certain” and inserting instead —

“ **embryo and other** ”.

20 **5. Preamble repealed**

The Preamble is repealed.

6. Section 1 amended

Section 1 is amended by deleting “*Human Reproductive Technology Act 1991*.” and inserting instead —

25 “
Human Reproductive Technology and Embryo Research Act 1991.

”.

7. Section 3 amended

(1) Section 3(1) is amended as follows:

(a) by inserting in the appropriate alphabetical positions —

“

5 “**animal**” does not include a human;

“**chimeric embryo**” means —

(a) a human embryo into which a cell, or any component part of a cell, of an animal has been introduced; or

10 (b) a thing declared by regulations under the *Prohibition of Human Cloning for Reproduction Act 2002* of the Commonwealth to be a chimeric embryo;

“**hybrid embryo**” means —

15 (a) an embryo created by the fertilisation of a human egg by animal sperm; or

(b) an embryo created by the fertilisation of an animal egg by human sperm; or

20 (c) a human egg into which the nucleus of an animal cell has been introduced; or

(d) an animal egg into which the nucleus of a human cell has been introduced; or

25 (e) a thing declared by regulations under the *Prohibition of Human Cloning for Reproduction Act 2002* of the Commonwealth to be a hybrid embryo;

“**NHMRC Licensing Committee**” means the Committee of that name established under the Commonwealth Human Embryo Act section 13;

30 “**precursor cell**” means a cell that has the potential to develop into a human egg or human sperm;

”;

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- (b) in the definition of “authorised officer” by inserting after each of paragraphs (b) and (c) —
“ or ”;
- 5 (c) in the definition of “counselling services” by inserting after paragraph (a) —
“ and ”;
- (d) in the definition of “director” by inserting after paragraph (a) —
“ and ”;
- 10 (e) in the definition of “human egg” by deleting “egg;” and inserting instead —
“ oocyte; ”;
- (f) in the definition of “in vitro fertilisation procedure” by deleting “or” after paragraph (a)(ii);
- 15 (g) in the definition of “in vitro fertilisation procedure” by inserting after paragraph (a)(iii) —
“ or ”;
- (h) in the definition of “licensee” by inserting after each of paragraphs (aa) to (c) —
“ and ”;
- 20 (i) in the definition of “record” by inserting after paragraph (a) —
“ and ”;
- (j) in the definition of “reproductive technology” by inserting after paragraph (a) —
“ or ”;
- 25 (k) in the definition of “this Act” by inserting after paragraph (a) —
“ and ”.

(2) Section 3(3) is amended as follows:

(a) by inserting before paragraph (b) —

“

(a) to an embryo (including a human embryo) is a reference to a living embryo; and

”;

(b) after paragraph (b) by inserting —

“ and ”.

(3) Section 3(5) is amended by inserting after each of paragraphs (a) and (b) —

“ and ”.

(4) Section 3(9) is amended after paragraph (a) by inserting —

“ or ”.

8. Section 3A amended

(1) Section 3A(1) is amended by deleting the definition of “human embryo” and inserting instead —

“

“human embryo” means a discrete entity that has arisen from either —

(a) the first mitotic division when fertilisation of a human oocyte by a human sperm is complete; or

(b) any other process that initiates organised development of a biological entity with a human nuclear genome or altered human nuclear genome that has the potential to develop up to, or beyond, the stage at which the primitive streak appears,

and has not yet reached 8 weeks of development since the first mitotic division, but does not

s. 9

include a hybrid embryo or a human embryonic stem cell line.

”.

(2) Section 3A(2) is amended as follows:

5

(a) by deleting “of a human embryo”;

(b) by deleting “of the embryo”.

9. Section 5 amended

Section 5(6) is amended by deleting “clause 11 of the Schedule” and inserting instead —

10

“ Schedule 1 clause 11 ”.

10. Section 5A amended

(1) Section 5A is amended by inserting before “This” the subsection designation “(1)”.

(2) At the end of section 5A the following subsection is inserted —

15

“

(2) This Division does not apply in relation to a human embryo that was created other than by the fertilisation of a human egg by human sperm.

”.

20

11. Section 7 amended

Section 7(1)(a) and (b) are amended by deleting “any embryo,” and inserting instead —

“ a human embryo, ”.

12. Section 8 amended

25

Section 8(6) is amended by deleting “The Schedule” and inserting instead —

“ Schedule 1 ”.

13. Section 28A amended

- (1) Section 28A(1) is amended by deleting “excess ART” and inserting instead —
“ any ”.

- 5 (2) Section 28A(2) is amended by deleting “excess ART”.

14. Section 45 amended

Section 45(1)(da) is amended by deleting “established under section 13 of the Commonwealth Human Embryo Act”.

15. Section 53A amended

- 10 Section 53A(2) is amended by inserting after “*Prohibition of Human Cloning*” —

“ *for Reproduction* ”.

16. Section 53B amended

Section 53B(1) is amended as follows:

- 15 (a) by deleting the definitions of “animal”, “chimeric embryo”, “hybrid embryo” and “precursor cell”;
- (b) by deleting the semicolon at the end of the definition of “human embryo clone” and inserting instead a full stop.

17. Heading to Part 4A Division 2 and section 53C replaced

- 20 The heading to Part 4A Division 2 is deleted and section 53C is repealed, and the following section and heading are inserted instead —

“

53C. Meaning of reckless

- 25 (1) For the purposes of this Part a person is reckless with respect to circumstances if —
- (a) the person is aware of a substantial risk that the circumstance exists or will exist; and

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(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(2) The question whether taking a risk is unjustifiable is one of fact.

5 **Division 2 — Practices that are completely prohibited**

”.

18. Section 53F amended

Section 53F is amended by deleting “53C,”.

19. Heading to Part 4A Division 3 deleted

10 The heading to Part 4A Division 3 is deleted.

20. Section 53G repealed

Section 53G is repealed.

21. Section 53H amended

Section 53H(1) is amended as follows:

15 (a) by inserting after “human embryo” —

“

by a process of the fertilisation of a human egg by human sperm

”;

20 (b) by deleting the penalty clause and the summary conviction penalty clause and inserting instead —

“

Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

25

”.

22. **Section 53I replaced**

Section 53I is repealed and the following section is inserted instead —

“

5 **53I. Offence — creating or developing, by fertilisation, a human embryo containing genetic material provided by more than 2 persons**

A person commits a crime if —

- 10 (a) the person creates or develops a human embryo by a process of the fertilisation of a human egg by a human sperm outside the body of a woman; and
- (b) the human embryo contains genetic material provided by more than 2 persons.

15 Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

”.

23. **Section 53J amended**

20 Section 53J is amended by deleting the penalty clause and the summary conviction penalty clause and inserting instead —

“

Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

”.

25 **24. Section 53K repealed**

Section 53K is repealed.

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25. Section 53L amended

Section 53L(1) is amended by deleting the penalty clause and the summary conviction penalty clause and inserting instead —

“

5 Penalty: A fine of 900 penalty units or imprisonment
 for 15 years or both.

”.

26. Section 53M amended

Section 53M is amended by deleting the penalty clause and the summary conviction penalty clause and inserting instead —

“

10 Penalty: A fine of 900 penalty units or imprisonment
 for 15 years or both.

”.

15 27. Section 53N replaced by sections 53N and 53NA

Section 53N is repealed and the following sections are inserted instead —

“

53N. Offence — creating a chimeric embryo

20 A person commits a crime if the person creates a
 chimeric embryo.

 Penalty: A fine of 900 penalty units or imprisonment
 for 15 years or both.

**25 53NA. Offence — developing a hybrid embryo for more
 than 14 days**

 A person commits a crime if the person develops a
 hybrid embryo for a period of more than 14 days,
 excluding any period when development is suspended.

30 Penalty: A fine of 900 penalty units or imprisonment
 for 15 years or both.

”.

28. Section 53O amended

Section 53O(4) is repealed and the following subsection is inserted instead —

“

- 5 (4) A person who commits an offence against subsection (1), (2) or (3) is liable to a fine of 900 penalty units or imprisonment for 15 years or both.

”.

29. Section 53P amended

- 10 (1) Section 53P(1) is amended by inserting after “Australia” —

“

knowing that, or reckless as to whether, the embryo is a prohibited embryo

”.

- 15 (2) Section 53P(2) is amended by inserting after “Australia” —

“

knowing that, or reckless as to whether, the embryo is a prohibited embryo

”.

- 20 (3) Section 53P(3) is amended by inserting after “woman” —

“

knowing that, or reckless as to whether, the embryo is a prohibited embryo

”.

- 25 (4) Section 53P(4) is repealed and the following subsection is inserted instead —

“

- 30 (4) A person who commits an offence against subsection (1), (2) or (3) is liable to a fine of 900 penalty units or imprisonment for 15 years or both.

”.

30. Section 53Q amended

Section 53Q(3) is repealed and the following subsection is inserted instead —

“

- 5 (3) A person who commits an offence against subsection (1) or (2) is liable to a fine of 900 penalty units or imprisonment for 15 years or both.

”.

31. Part 4A Division 3 inserted

10 After section 53Q the following Division is inserted —

“

Division 3 — Practices that are prohibited unless authorised by an NHMRC licence

15 **53QA. Offence — creating a human embryo other than by fertilisation, or developing such an embryo**

A person commits a crime if —

- 20 (a) the person creates a human embryo by a process other than the fertilisation of a human egg by a human sperm, or develops a human embryo so created; and
- (b) the creation or development of the human embryo by the person is not authorised by an NHMRC licence.

25 **Penalty:** A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

53QB. Offence — creating or developing, other than by fertilisation, a human embryo containing genetic material provided by more than 2 persons

A person commits a crime if —

- 5 (a) the person creates or develops a human embryo by a process other than the fertilisation of a human egg by a human sperm; and
- (b) the human embryo contains genetic material provided by more than 2 persons; and
- 10 (c) the creation or development of the human embryo by the person is not authorised by an NHMRC licence.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

15 Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

53QC. Offence — using precursor cells from a human embryo or a human fetus to create a human embryo, or developing such an embryo

20 A person commits a crime if —

- (a) the person uses precursor cells taken from a human embryo or a human fetus, intending to create a human embryo, or develops an embryo so created; and
- 25 (b) the person engages in activities mentioned in paragraph (a) without being authorised by an NHMRC licence, and the person knows or is reckless as to that fact.

30 Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

53QD. Offence — creating a hybrid embryo

- (1) A person commits a crime if the person creates a hybrid embryo.
- (2) A person commits a crime if the person develops a hybrid embryo.
- (3) A person who commits an offence against subsection (1) or (2) is liable to a fine of 600 penalty units or imprisonment for 10 years or both.
- Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.
- (4) A person does not commit an offence against subsection (1) or (2) if the creation or development of the hybrid embryo by the person is authorised by an NHMRC licence.

”.

32. Section 53R amended

- (1) Section 53R(1) is amended by deleting “19 December 2004.” and inserting instead —

“ 12 December 2009. ”.

- (2) Section 53R(2) is repealed and the following subsection is inserted instead —

“

- (2) The persons undertaking the review must consider and report on the scope and operation of this Part as amended by the *Human Reproductive Technology Amendment Act 2007*, taking into account the following —

- (a) developments in assisted reproductive technology, including technological, medical and scientific developments, and the actual or

-
- potential clinical and therapeutic applications of such research;
- 5 (b) developments in embryonic stem cell research, including technological, medical and scientific developments, and the actual or potential clinical and therapeutic applications of such research;
- (c) community standards;
- 10 (d) a brief analysis of international developments and legislation relating to the use of human embryos and related research;
- (e) an analysis of research resulting from the NHMRC licences granted;
- 15 (f) any National Stem Cell Centre and any national register of donated excess ART embryos;
- (g) an evaluation of the effectiveness of legislative provisions and NHMRC guidelines relating to proper consent;
- 20 (h) an evaluation of the range of matters for which the NHMRC Licensing Committee may issue an NHMRC licence and any recommendations to increase, decrease or alter these arising from the evaluation;
- 25 (i) an analysis of any research or clinical practice which has been prevented as a result of legislative restrictions;
- 30 (j) the extent to which the NHMRC Licensing Committee has effectively used information and education tools to assist researchers working in the field, and any ongoing need for legally binding rulings;

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(k) the extent of Commonwealth/State cooperation in the area of human embryo research and the requirement for further Commonwealth or State legislation on the matter.

5

”.

(3) Section 53R(3) is amended by deleting “*Prohibition of Human Cloning Act 2002* of the Commonwealth mentioned in section 25 of that Act.” and inserting instead —

“

10

Prohibition of Human Cloning for Reproduction Act 2002 of the Commonwealth mentioned in section 25A of that Act.

”.

(4) Section 53R(5) is amended by deleting “section 25 of the *Prohibition of Human Cloning Act 2003*” and inserting instead —

15

“

the *Prohibition of Human Cloning for Reproduction Act 2002* section 25A

20

”.

33. Heading to Part 4B replaced

The heading to Part 4B is deleted and the following heading is inserted instead —

“

25

Division 4B — Regulation of the use of excess ART embryos, other human embryos, hybrid embryos and human eggs

”.

34. **Section 53S amended**

Section 53S(1) is amended as follows:

- 5 (a) in paragraph (a) by deleting “certain human embryos created by assisted reproductive technology;” and inserting instead —
- “
- excess ART embryos, other human embryos,
hybrid embryos and human eggs;
- 10 (b) in paragraph (b) by deleting “certain human embryos created by assisted reproductive technology.” and inserting instead —
- “
- excess ART embryos, other human embryos,
hybrid embryos and human eggs.
- 15 ”.

35. **Section 53T amended**

Section 53T(1) is amended as follows:

- 20 (a) by deleting the definitions of “NHMRC Licensing Committee”, “proper consent” and “responsible person”;
- (b) by deleting the full stop at the end of the definition of “State” and inserting instead a semicolon;
- (c) by inserting in the appropriate alphabetical positions —
- 25 “
- “proper consent”**, in relation to the use of an excess ART embryo or a human egg, or the creation or use of any other human embryo or any hybrid embryo, means consent obtained —
- (a) in accordance with guidelines —
- 30 (i) issued by the chief executive officer of the NHMRC under the *National Health and Medical Research*

Council Act 1992 of the
Commonwealth; and

- (ii) prescribed by the Commonwealth
Human Embryo regulations for the
purposes of the Commonwealth
Human Embryo Act;

5

and

- (b) where the intended use is to provide a human
embryonic stem cell line — after the uses to
which the human embryonic stem cell line
may be put have been disclosed and
explained;

10

“responsible person” means —

- (a) in relation to an excess ART embryo,
means —

15

- (i) each person who provided the egg or
sperm from which the embryo was
created; and

- (ii) the woman for whom the embryo was
created, for the purpose of achieving
her pregnancy; and

20

- (iii) any person who was the spouse or
de facto partner of a person
mentioned in paragraph (a) at the time
the egg or sperm mentioned in that
paragraph was provided; and

25

- (iv) any person who was the spouse or
de facto partner of the person
mentioned in paragraph (b) at the
time the embryo was created;

30

or

5

- (b) in relation to an embryo other than an excess ART embryo — each person whose reproductive material, genetic material or cell was used, or is proposed to be used, in the creation or use of the embryo; or
- (c) in relation to a human egg — the woman who was the biological donor of the egg;

“unsuitable for implantation”, in relation to a human embryo, means a human embryo that —

10

- (a) is diagnosed by preimplantation genetic diagnosis as unsuitable for implantation, in accordance with the Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research (2004), issued by the chief executive officer of the NHMRC; or

15

- (b) is determined to be unsuitable for implantation in the body of a woman, in accordance with objective criteria specified in guidelines issued by the chief executive officer of the NHMRC under the National Health and *Medical Research Council Act 1992* of the Commonwealth and prescribed by the Commonwealth Human Embryo regulations for the purposes of the Commonwealth Human Embryo Act;

20

25

“use” includes develop, or development, as the case requires.

”.

36. Sections 53WA and 53WB inserted

After section 53W the following sections are inserted —

“

53WA. Offence — use of other embryos

- 5 A person commits a crime if —
- (a) the person uses —
 - 10 (i) a human embryo created by a process other than the fertilisation of a human egg by a human sperm; or
 - (ii) a human embryo created by a process other than the fertilisation of a human egg by a human sperm that contains genetic material provided by more than 2 persons; or
 - 15 (iii) a human embryo created using precursor cells taken from a human embryo or a human fetus; or
 - (iv) a hybrid embryo;
- and
- 20 (b) the use by the person is not authorised by a NHMRC licence.

Penalty: A fine of 300 penalty units or imprisonment for 5 years or both.

25 Summary conviction penalty: A fine of 60 penalty units or imprisonment for 12 months or both.

53WB. Offence — certain activities involving use of human eggs

- A person commits a crime if —
- 30 (a) the person undertakes research or training involving the fertilisation of a human egg by a human sperm up to, but not including, the first

mitotic division, outside the body of a woman for the purposes of research or training in assisted reproductive technology; and

- (b) the person is not authorised by a licence to undertake the research or training.

Penalty: A fine of 300 penalty units or imprisonment for 5 years or both.

Summary conviction penalty: A fine of 60 penalty units or imprisonment for 12 months or both.

”.

37. Section 53ZA amended

Section 53ZA(1) is repealed and the following subsections are inserted instead —

“

- (1) A person may apply to the NHMRC Licensing Committee for a licence authorising one or more of the following —

- (a) use of excess ART embryos;
- (b) creation of human embryos other than by fertilisation of a human egg by a human sperm, and use of such embryos;
- (c) creation of human embryos other than by fertilisation of a human egg by a human sperm that contain genetic material provided by more than 2 persons, and use of such embryos;
- (d) creation of human embryos using precursor cells from a human embryo or a human fetus, and use of such embryos;
- (e) research and training involving the fertilisation of a human egg by a human sperm up to, but not including, the first mitotic division, outside the body of a woman for the purposes of research or training in assisted reproductive technology;

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- (f) creation of hybrid embryos by the fertilisation of an animal egg by a human sperm, and use of such embryos up to, but not including, the first mitotic division, if —
- 5 (i) the creation or use is for the purposes of testing sperm quality; and
- (ii) the creation or use will occur in a licensed ART centre.
- (1a) Nothing in subsection (1)(a), (b), (c) or (d) permits the NHMRC Licensing Committee to authorise any use of an excess ART embryo or other human embryo that would result in the development of the embryo for a period of more than 14 days, excluding any period when development is suspended.
- 10
- 15

”.

38. Section 53ZB amended

- (1) Section 53ZB(3)(a)(i) is amended by deleting “is used” and inserting instead —
- 20 “
- or human egg is used, or any other human embryo or a hybrid embryo is created or used
- 25 ”.
- (2) Section 53ZB(4)(b) is amended by inserting after “embryos” —
- “ , other human embryos, human eggs or hybrid embryos, ”.

39. Section 53ZE amended

- (1) Section 53ZE(1) is repealed and the following subsection is inserted instead —
- 30 “
- (1) A licence is subject to the conditions that —
- (a) before an excess ART embryo or human egg is used as authorised by the licence, each

responsible person in relation to the embryo or egg must have given proper consent to the embryo or egg being so used; and

- 5 (b) before a human embryo (other than an excess ART embryo) or a hybrid embryo is created or used as authorised by the licence, each responsible person in relation to the embryo must have given proper consent to the embryo being so created or used; and
- 10 (c) the licence holder must have reported in writing to the NHMRC Licensing Committee that the consent required under paragraph (a) or (b) has been obtained, and any restrictions to which the consent is subject.

15

(2) Section 53ZE(2) is amended by inserting after “embryo” —

“

or human egg, or the creation or use of any other human embryo or a hybrid embryo,

20

(3) Section 53ZE(5) is amended as follows:

(a) in paragraph (a) by inserting after “embryos” —

“

or human eggs, or create or use other human embryos or hybrid embryos

25

(b) by deleting paragraph (b) and inserting instead —

“

(b) the number of excess ART embryos or human eggs authorised to be used under the licence, or the number of other human embryos or hybrid embryos authorised to be created or used under the licence;

30

”;

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- (c) in paragraph (e) by inserting after “embryos” —
“
or human eggs, or to create or use other human
embryos or hybrid embryos
5 ”.
- (4) Section 53ZE(6) is amended by inserting after “embryos” —
“
or human eggs, or to create or use other human
embryos or hybrid embryos
10 ”.
- (5) Section 53ZE(7)(b) is amended by inserting after “embryos” —
“
or human eggs, or to create or use other human
embryos or hybrid embryos
15 ”.
- (6) After section 53ZE(7) the following subsection is inserted —
“
(8) For the purposes of applying the condition referred to
in subsection (1)(a) —
20 (a) a licence may provide that the guidelines
referred to in the definition of “proper consent”
in section 53T(1) apply in a modified form in
relation to the use, under the licence, of excess
ART embryos that are unsuitable for
25 implantation; and
(b) if a licence so provides, the guidelines as
modified by the licence have effect in relation
to the giving of consent for such creation or
30 use.
”.

40. **Section 53ZG amended**

Section 53ZG(2) is amended by inserting after “*Prohibition of Human Cloning*” —

“ *for Reproduction* ”.

5 41. **Section 53ZJ amended**

Section 53ZJ(1) is amended as follows:

(a) in paragraph (b) by inserting after “embryos” —

“

10 or human eggs, and creations or uses of other human embryos or hybrid embryos,

”;

(b) by deleting paragraph (d) and inserting instead —

“

15 (d) the number of excess ART embryos or human eggs authorised to be used under the licence, and the number of other human embryos or hybrid embryos authorised to be created or used under the licence;

”.

20 42. **Section 53ZL amended**

Section 53ZL is amended as follows:

(a) after each of paragraphs (a), (b) and (c) by inserting —

“ or ”;

25 (b) in the definition of “eligible person” by inserting after paragraph (c) —

“

30 (ca) in relation to a decision to modify guidelines under section 53ZE(8) in respect of a licence — the licence holder; or

”.

43. Section 53ZM amended

After section 53ZM(1)(c) the following paragraph is inserted —

“

- 5 (ca) a decision to modify guidelines under
section 53ZE(8) in respect of a licence;

”.

44. Section 53ZP amended

Section 53ZP(2) is amended by deleting the full stop at the end
of paragraph (b) and inserting instead —

10

“

; or

- (c) the entry is made under a warrant under
section 53ZRA.

”.

15 **45. Section 53ZQ amended**

Section 53ZQ(1) is amended as follows:

- (a) in paragraph (b) by inserting after “embryo” —
“ , chimeric embryo, hybrid embryo, human egg ”;
- 20 (b) by deleting the full stop at the end of paragraph (f) and
inserting instead —

“

;

25

- (g) in addition to the powers mentioned in
paragraphs (a) to (f), if the inspector was
authorised to enter the premises by a warrant
under section 53ZRA — to require any person
in or on the premises to —

- (i) answer any questions put by the
inspector; and

- (ii) produce any book, record or document requested by the inspector.

”.

46. Section 53ZR amended

5 Section 53ZR is amended as follows:

- (a) by inserting after “human embryo” —

“

, a chimeric embryo, a hybrid embryo, a human egg

”;

- 10 (b) by deleting “the embryo or thing” and inserting instead —

“ the embryo, the egg or the thing ”.

47. Sections 53ZRA to 53ZRD inserted

After section 53ZR the following sections are inserted —

15 “

53ZRA. Monitoring warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.
- 20 (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied by information on oath or affirmation that it is reasonably necessary that one or more inspectors should have access to the premises for the purposes of finding out whether this Part or Part 4A has been complied with.
- 25 (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the
- 30 warrant is being sought.

- (4) The warrant must —
- (a) authorise one or more inspectors (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable —
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 53ZQ in relation to the premises;
- and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 15 days after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

53ZRB. Details of warrant to be given to occupier or other person present

- (1) If a warrant under section 53ZRA is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector must make available to that person a copy of the warrant.
- (2) The inspector must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

53ZRC. Announcement before entry

An inspector must, before entering premises under a warrant —

- 5 (a) announce that he or she is authorised to enter the premises; and
(b) give any person at the premises an opportunity to allow entry to the premises.

53ZRD. Occupier entitled to be present during search

- 10 (1) If a warrant under section 53ZRA is being executed and the occupier of the premises, or another person who apparently represents the occupier is present at the premises, the person is entitled to observe the search being conducted.
15 (2) The right to observe the search being conducted ceases if the person impedes the search.
(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

”.

48. Part 4B Division 9 repealed

20 Part 4B Division 9 is repealed.

49. Part 4B Division 10 heading amended

The heading to Part 4B Division 10 is amended by inserting after “embryos” —

“

25 **other human embryos, hybrid embryos and human eggs**

”.

50. Section 53ZVA amended

Section 53ZVA is amended by inserting after “embryo” —

“ , other human embryo, hybrid embryo or human egg ”.

51. Section 53ZW amended

(1) Section 53ZW(1) is amended by deleting “19 December 2004.” and inserting instead —

“ 12 December 2009. ”.

5 (2) Section 53ZW(2) is repealed and the following subsection is inserted instead —

“

10 (2) The persons undertaking the review must consider and report on the scope and operation of this Part as amended by the *Human Reproductive Technology Amendment Act 2007*, taking into account the following —

- 15 (a) developments in assisted reproductive technology, including technological, medical and scientific developments, and the actual or potential clinical and therapeutic applications of such research;
- 20 (b) developments in embryonic stem cell research, including technological, medical and scientific developments, and the actual or potential clinical and therapeutic applications of such research;
- 25 (c) community standards;
- (d) a brief analysis of international developments and legislation relating to the use of human embryos and related research;
- 30 (e) an analysis of research resulting from the NHMRC licences granted;
- (f) any National Stem Cell Centre and any national register of donated excess ART embryos;
- (g) an evaluation of the effectiveness of legislative provisions and NHMRC guidelines relating to proper consent;

- 5
- (h) an evaluation of the range of matters for which the NHMRC Licensing Committee may issue an NHMRC licence and any recommendations to increase, decrease or alter these arising from the evaluation;
- (i) an analysis of any research or clinical practice which has been prevented as a result of legislative restrictions;
- 10 (j) the extent to which the NHMRC Licensing Committee has effectively used information and education tools to assist researchers working in the field, and any ongoing need for legally binding rulings;
- 15 (k) the extent of Commonwealth/State cooperation in the area of human embryo research and the requirement for further Commonwealth or State legislation on the matter.

”.

- 20 (3) Section 53ZW(3) and (5) are amended by deleting “section 47” and inserting instead —
- “ section 47A ”.

52. Section 53ZX inserted

After section 53ZW the following section is inserted —

25 “ **53ZX. Minister to report to Parliament in relation to the Commonwealth Human Embryo Act sections 47B and 47C**

30 The Minister must cause a copy of a report prepared under section 47B or 47C of the Commonwealth Human Embryo Act to be laid before each House of Parliament not later than 6 sitting days from the date of receipt of the report.

”.

s. 53

53. Section 61 replaced

Section 61 is repealed and the following section is inserted instead —

“

5 **61. Savings and transitional provisions**

Schedule 2 sets out savings and transitional provisions.

”.

54. Schedule amended

10 The Schedule is amended by deleting all of the Schedule before clause 1 (including the Schedule headings) and inserting instead —

“

15 **Schedule 1 — Provisions relating to the membership and proceedings of the Council and the annual report on reproductive technology**

[s. 5 and 8]

”.

55. Schedule 2 inserted

After Schedule 1 the following Schedule is inserted —

20 “

Schedule 2 — Savings and transitional provisions

Division 1 — Provisions for *Human Reproductive Technology Amendment Act 2007*

1. Terms used in this Division

25 In this Division —

“**amended Act**” means the Act as amended by the *Human Reproductive Technology Amendment Act 2007*;

“commencement day” means the day on which the *Human Reproductive Technology Amendment Act 2007* section 50 comes into operation.

2. Saving and transitional provision for licence applicants

- 5 (1) If —
- (a) at any time before the commencement day, a person made an application under section 53ZA(1) for a licence; and
- 10 (b) immediately before the commencement day, the NHMRC Licensing Committee had not decided the application,
- then the person is to be taken, on and from the commencement day, to have applied under section 53ZA(1) of the amended Act for the licence.
- 15 (2) Nothing in this clause prevents a licence that was in force immediately before the commencement day from continuing in force after the commencement day.

”.

56. Amendments relating to the amended title of the *Human Reproductive Technology Act 1991*

20 The Acts listed in the first column of the Table to this section are amended in the corresponding provisions listed in the second column by deleting “*Human Reproductive Technology Act 1991*” and inserting instead —

25 “
Human Reproductive Technology and Embryo Research Act 1991

”.

Table

<i>Artificial Conception Act 1985</i>	s. 3(3) in the definition of “artificial fertilisation procedure”
<i>Constitution Acts Amendment Act 1899</i>	Schedule V Part 3 in the item relating to The Western Australian Reproductive Technology Council
<i>Freedom of Information Act 1992</i>	Schedule 1 clause 13(b)
<i>Human Tissue and Transplant Act 1982</i>	s. 30A in the definition of “human embryonic stem cell line”

