

Overview of AHEC's discussion of ethical issues

INTRODUCTION

- 5.1 The following three chapters discuss the ethical issues raised by human cloning and its related research. This chapter will provide an overview of the issues and outline the approach taken in the AHEC report to the ethical issues associated with cloning. Chapter 6 will consider the ethical issues raised by cloning for reproductive purposes and outline the Committee's reasons for rejecting the use of cloning technologies for such purposes. Chapter 7 will discuss the ethical issues associated with cloning technologies and stem cell research that involve the use of embryos and will outline the Committee's views on these matters.
- 5.2 The Committee considers it would be difficult to treat the ethical considerations that may emerge from, for example, the replication of a skin cell in the same way as the ethical considerations that may emerge from the replication of a human being. Therefore the Committee has decided to differentiate between:
- use of cloning technology to create whole human beings; and
 - use of cloning technology for other purposes such as the extraction of embryonic stem cells or the creation of embryos by means such as asexual reproduction.
- 5.3 The ethical issues touch on the most sensitive of matters and inevitably give rise to strong views that have been reflected in the submissions and oral evidence received.
- 5.4 While the majority of members of the public appear to have connected the term 'human cloning' with the replication of whole human beings, the use

of somatic cell nuclear transfer technology to create an embryo followed by its implantation, gestation and the birth of a human being has not occurred. Nevertheless this has been seriously proposed. The possibility has aroused passionate interest and comment. Underlying many of the concerns expressed has been a sense that the cloning of whole human beings is something that is 'bound' to happen.

- 5.5 However, this is not the only area of research related to the use of cloning technology where strong views have been expressed. Equally passionate interest and comment has resulted from practices not related to the cloning of whole human beings. These include the creation of embryos by means of somatic cell nuclear transfer and the use of embryos derived from assisted reproductive technologies for research purposes such as the derivation of embryonic stem cells.
- 5.6 The key ethical issues raised in the inquiry were i) the potential replication of a whole human being; and ii) the creation and/or use of embryos in research or therapy. The fundamental question is: is it ethical to proceed with the research and development of this technology and, if so, to what extent?

THE AHEC REPORT'S DISCUSSION OF ETHICAL ISSUES

Terminology

- 5.7 The AHEC report distinguished between '... two categories of cloning: cloning of a human being and copying (cloning) of human component *parts* (such as DNA and cells).'¹
- 5.8 This distinction was expanded on in Chapter 3 of the AHEC report in which the ethical issues raised by cloning were discussed. The report states:
- ... a distinction was drawn between (a) applications of cloning techniques to generate new human subjects and (b) applications of cloning techniques to generate human genes or cell lines. Another, more general, way of expressing the same difference is to distinguish between (a) the (re)production of human *wholes* or (b) the (re)production of the component *parts* of a human.²
- 5.9 The AHEC report then goes on:

1 AHEC report, Chapter 1, paragraph 1.1

2 AHEC report, Chapter 3, paragraph 3.4

This discussion of the ethics of cloning focuses in the main on the ethical issues associated with the use of cloning techniques involving whole human entities, in particular embryos.³

5.10 A number of different terms and descriptions are used by AHEC. Its report refers variously to 'cloning of a human being', 'generat[ing] new human subjects', '(re)production of human wholes' and 'whole human entities'.⁴ This raises the issue of what AHEC is referring to when it uses these terms.

5.11 'New human subjects' are elsewhere referred to in the AHEC report as the production of a 'child, a fetus or an embryo'. For example, AHEC states the report deals principally with:

[p]roposals for the application of cloning techniques to generate new human subjects (embryonic, fetal or post-natal) not with cloning of human genes or cell lines.... Nevertheless, there may be situations in which development of a cell line necessitates the production of a new human subject as a preliminary step.⁵

Elsewhere in its report AHEC refers to the production of 'new human individuals with a post-natal existence.'⁶

5.12 In expanding on the distinction it has drawn, the AHEC report states:

Recognising a fundamental distinction between the cloning of a "whole" human entity and the cloning of a component "part" of a human being does not commit one to the idea that all the members of the first category are "human beings" in an ethical or moral sense. It merely follows from the fundamental biological difference between copying a new individual of the human species identical to some other individual and copying component parts of an individual.⁷

5.13 In its submission to this inquiry AHEC stated (in relation to its report):

After pointing out the fundamental ethical difference between proposals to clone whole human entities (embryos, fetuses, etc) and existing practices of cloning parts of human entities (cells, etc) AHEC concentrated on the acceptability of proposals to clone whole human entities.⁸

3 AHEC report, Chapter 3, paragraph 3.4

4 AHEC report, Chapters 1, 2 and 3. See paragraphs 1.1, 2.7 and 3.4 respectively

5 AHEC report, Chapter 2, paragraph 2.7

6 AHEC report, Chapter 2, paragraph 2.1

7 AHEC report, Chapter 3, paragraph 3.5

8 AHEC, *Submissions*, p. S350. This distinction was reiterated in correspondence from Dr Kerry Breen, the Chairperson of AHEC, on 15 December 2000. AHEC, *Position on Cloning and Related*

- 5.14 The use of such a variety of terms to describe similar things creates ambiguity and is liable to lead to some confusion. However, the Committee understands the discussion of ethical issues in the AHEC report to be focused primarily on the use of cloning technologies that may lead to the creation of embryos, foetuses and whole human beings.

AHEC's Approach To Ethical Issues

- 5.15 The AHEC report discussed the ethical issues relevant to human cloning by reference to the four factors it considered should be taken into account when considering ethical issues raised by proposals to engage in human cloning:
- the ethical significance of a variety of objectives or goals for which cloning might be pursued as a means. Such goals or objectives might include—the use of cloning technologies as a way of increasing the number of embryos available for implantation in reproductive technologies, as a way of investigating human biology and pathology or as a way of producing transplantable human organs and tissues;
 - the ethical significance of the circumstances in which cloning might take place, such as whether cloning techniques have been tested on animals prior to being tested on humans, whether it would require destructive research on human embryos or how safe the techniques for cloning are judged to be;
 - the ethical significance of cloning in itself; and
 - the ethical significance of a social policy which permits cloning in some circumstances but not in others or of a policy which prohibits it altogether.⁹
- 5.16 The rest of Chapter 3 of the AHEC report discusses each of these factors in more detail and states, in summary, that '[o]verall, it has been suggested that the more convincing, weighty and cogent arguments support constraints on the use of cloning techniques which involve human embryos.'¹⁰

Technologies, Exhibit 45. This correspondence was intended as clarification of the NHMRC position on the use of cloning and stem cell technologies which Dr Breen's correspondence states was inadvertently mis-stated in background material issued to State and Territory health officials

9 AHEC report, Chapter 3. These factors are discussed in paragraphs 3.8-3.32 of the AHEC report

10 AHEC report, Chapter 3, paragraph 3.33

5.17 In evidence to this inquiry, Professor Chalmers, Chairman of AHEC when the AHEC report was completed, emphasised that the primary focus of that report was on the use or creation of human embryos. He stated:

... most importantly, the [AHEC] committee looked at the source of the material to be involved in cloning. ... It was the assumption throughout the terms of the report that the legislation in the various states and the principles embodied in a number of national reports suggested and led to no other conclusion than the fact that this country has a view about the integrity and dignity of the human embryo and that research should not be conducted on the human embryo, except according to prescribed regulation.¹¹

Comments On The AHEC approach

5.18 While some submissions to the inquiry praised the AHEC report for providing a good overview of the ethical issues, a number suggested that AHEC's approach was only a preliminary step towards forming conclusions about the ethical issues surrounding cloning and that more rigorous analysis and detailed deliberation was required. In Chapters 6 and 7 of this report the Committee seeks to provide further analysis and reach conclusions about the ethical issues arising from engaging in human cloning and stem cell research.

5.19 The AMA praised Chapter 3 of the AHEC report saying it 'comprehensively addresses the major ethical issues associated with cloning techniques applied to humans'.¹² Likewise St Vincent's Hospital Sydney submitted that the framework used by AHEC is:

... a good one in which to think about the ethics of cloning. However, each of the main ethical theories in current use has some contribution to make in considering the ethics of cloning.¹³

5.20 The Hospital went on to argue:

Much of the discussion in this chapter is so brief as to be of very little use ... If this chapter is to be genuinely instructive and thought provoking, it needs further development.¹⁴

5.21 St Vincent's Hospital Sydney suggested, for example, that it would have been useful if the main ethical theories in current use:

11 Professor Donald Chalmers, *Transcript*, p.3

12 AMA, *Submissions*, p.S25

13 St Vincent's Hospital Sydney, *Submissions*, p.S153

14 St Vincent's Hospital Sydney, *Submissions*, p.S154

... or “frameworks for reasoning about ethical issues” had been identified, rather than alluded to, and distinguished from each other ... By clearly setting these theories out, at the beginning of the chapter, providing some illustrations of the ways in which these approaches might be applied to the ethics of cloning and illuminating the strengths and weaknesses of each of these approaches, in particular as each is applied to the ethics of cloning, it would have been possible to present the ethical considerations with a greater richness and depth through accessing the contribution that each theory has to offer.¹⁵

5.22 The Queensland Bioethics Centre argued that AHEC did not really detail in its report why it considers the cloning of humans to be wrong and why it should be prohibited by legislation.¹⁶

5.23 St Vincent’s Hospital Sydney submitted that a serious failure in Chapter 3 of the AHEC report is the:

...failure ... to distinguish the considerations relevant to an assessment of the intrinsic ethics of cloning from considerations relevant to the social regulation of cloning.¹⁷

5.24 The Plunkett Centre for Ethics in Health Care, argued that it is:

... one thing to consider the ethics of an individual case of cloning. It is another to consider the ethics of a social policy which permits or prohibits cloning. ... From the fact that something is reasonably judged to be unethical, it does not follow that it ought to be subject to legal prohibition.¹⁸

5.25 The Plunkett Centre for Ethics in Health Care agreed with AHEC that the ethics:

... of a particular proposal is never solely a matter of the intentions of those who engage in it (and never solely a matter of its likely consequences): there is always also a question of the rightness or wrongness of the proposal in itself. That is why the question of whether cloning research and technologies would involve destructive research on embryos matters.¹⁹

15 St Vincent’s Hospital Sydney, *Submissions*, p.S154

16 Queensland Bioethics Centre, *Submissions*, p.S708

17 St Vincent’s Hospital Sydney, *Submissions*, p.S154

18 Plunkett Centre for Ethics in Health Care, *Submissions*, p.S178. Dr Tobin, the Director of the Plunkett Centre, was a member of AHEC during the time the AHEC report was developed and is currently a member of AHEC

19 Plunkett Centre for Ethics in Health Care, *Submissions*, p.S178

- 5.26 The Social Responsibilities Committee of the Anglican Diocese of Melbourne also criticised the AHEC report for its lack of 'ethical reflection and analysis'.²⁰
- 5.27 These concerns were also reflected in comments from some members of the public such as Dr Russell Blackford, for example, who criticised the discussion of ethical issues in Chapter 3 of the AHEC report as lacking in rigour²¹ and Dr David Swanton, who argued that AHEC's methodology indicates 'that it assumes that human cloning is ethically unacceptable before its study has begun'.²²
- 5.28 Mr Peter Eddington, while not expressing any views on the ethics of cloning, submitted a detailed critique of the AHEC report. He argued that although it provided a great deal of information about cloning techniques, it 'failed to provide any guidance about how our society might deal with the complex issues that must inevitably follow genetic research'.²³ It:

... fails to take the process forward. It fails to provide a social context, and it fails to provide any meaningful framework for dealing with these issues.²⁴

Mr Eddington stated Chapter 3 of the AHEC report 'does not set out the choices that we face, or the decisions that we must make'.²⁵

THE COMMITTEE'S OBSERVATIONS ON AHEC'S APPROACH

- 5.29 In the Committee's view, the discussion of ethical issues in Chapter 3 of the AHEC report provides a useful summary of the ethical considerations relevant to human cloning as they were perceived at the time of the report. It is worth reiterating that there have been many developments in this area of research since the AHEC report was completed.
- 5.30 However one of the principal functions of AHEC is to advise the National Health and Medical Research Council on ethical matters relating to health.²⁶ AHEC represents a broad spectrum of views.²⁷ In this context it is

20 Social Responsibilities Committee, Anglican Diocese of Melbourne, *Submissions*, p.S293

21 Dr Russell Blackford, *Submissions*, p.S1

22 Dr David Swanton, *Submissions*, p.S114

23 Mr Peter Eddington, *Submissions*, p.S81

24 Mr Peter Eddington, *Submissions*, p.S98

25 Mr Peter Eddington, *Submissions*, p.S84

26 *National Health and Medical Research Council Act 1992* (Cth), section 35 (3) (a)

27 *National Health and Medical Research Council Act 1992* (Cth), section 36 (1). Section 36 (1) of the Act establishes the composition of AHEC

unfortunate that the summary of the ethical issues in Chapter 3 of the AHEC report did not canvass in more detail the reasoning underpinning AHEC's discussion of the key ethical factors or its conclusions on these matters. The Committee would have found Chapter 3 of the AHEC report more useful in informing its own consideration of the ethical issues had that been the case.