

CHAPTER 1

INTRODUCTION

Terms of reference

On 14 September 2006 the Senate, on the motion of Senator the Hon Kay Patterson, agreed to the following resolution:

- (1) That the following matter be referred to the Community Affairs Committee for inquiry and report by 27 October 2006:

Legislative responses to recommendations of the reports of the Legislation Review Committee on the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002* (the Lockhart review).

- (2) That in undertaking this inquiry the committee may consider any relevant bill or draft bill based on the Lockhart review introduced or tabled in the Senate or presented to the President by a Senator when the Senate is not sitting.

1.1 In accordance with part 2 of the resolution, the Committee considered the Somatic Cell Nuclear Transfer (SCNT) and Related Research Amendment Bill 2006 exposure draft tabled by Senators Stott Despoja and Webber on 14 September and the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006 presented initially to the President by Senator Patterson on 26 September and introduced in the Senate on 19 October.¹

Conduct of the Inquiry

1.2 The inquiry was advertised in *The Australian* on 28 August and 11 September 2002 and through the Internet. Submissions were also invited from a large range of groups and individuals. Due to the tight timeframe for the inquiry, the closing date for submissions was 4 October 2006, although the Committee continued to receive submissions throughout the course of the inquiry.

1.3 The Committee received 494 public submissions, together with a large amount of additional material from witnesses at hearings and in response to questions on notice. The list of submissions and other written material received by the Committee and for which publication was authorised is at Appendix 1. A large volume of correspondence was received providing general comments. While this correspondence has been processed as submissions it was not possible to acknowledge them all individually. Public hearings were held in Canberra on 20 October, Sydney

¹ http://www.aph.gov.au/Senate/committee/clac_ctte/leg_response_lockhart_review/legis_doc/leg_doc.htm

on 23 October and Melbourne on 24 October. A list of witnesses who appeared at the public hearings is included at Appendix 2. Submissions authorised for publication and the *Hansard* record of the public hearings may be accessed through the Committee's website at www.aph.gov.au/senate_ca

1.4 This inquiry has been undertaken in circumstances where the political parties have given their Senators a 'free vote' on the legislation when it is considered in the Senate. Thus, in conducting the inquiry and in the preparation of the report, the Committee has been mindful that the purpose of the inquiry was primarily to gather information to assist Senators make an informed decision on the legislative responses to the Lockhart Review.

1.5 The report has been structured in the following fashion. This introductory chapter refers to recent inquiries, reports and debate that have resulted in the preparation of the two Bills. Chapter 2 provides the recommendations of the Lockhart Review that form the basis of the terms of reference and are addressed in the respective Bills. Chapter 3 outlines the issues and arguments raised in evidence by those groups and individuals supporting the Lockhart recommendations and the proposed Bills; while Chapter 4 outlines the issues and arguments of those opposing the recommendations and proposed Bills. A number of Senators have attached additional comments to the report.

Background history and chronology

1.6 In 1998 scientific advances in cloning prompted legislatures around the world to consider the ramifications of this work.

1.7 In the same year, the Minister for Health and Aged Care, Dr. Michael Wooldridge, asked the Australian Health Ethics Committee (AHEC) to report to him on the scientific, ethical and regulatory considerations relevant to cloning of human beings.

1.8 In its report,² AHEC made a number of recommendations including that the Minister should encourage informed community discussion on the potential therapeutic benefits and possible risks of the development of cloning techniques.

1.9 In 1999, Minister Wooldridge asked the House of Representatives Standing Committee on Legal and Constitutional Affairs to review the AHEC 1998 Report. In its 2001 report *Human cloning: scientific, ethical and regulatory aspects of human cloning and stem cell research*, the majority of the Committee recommended:

- the enactment of legislation to regulate human cloning and stem cell research;

2 *Scientific, Ethical and Regulatory Considerations Relevant to Cloning of Human Beings*, Australian Health Ethics Committee, 1998.

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- that such legislation should include a ban on cloning for reproductive purposes combined with criminal penalties and loss of an individual's research licence; and
 - The establishment of a national licensing body empowered to issue licences for research involving the isolation, creating and use of embryonic stem cells.

1.10 In addition the Committee said 'there should be a moratorium on the creation of embryos by means of somatic cell nuclear transfer techniques for three years, at which point the issue should be re-examined. During the next three years the progress of research should be continually monitored by AHEC and it should provide regular reports to the Council of Australian Governments through the Commonwealth Minister for Health and Aged Care.'

1.11 Australian Health Ministers and the Council of Australian Governments (COAG) had been considering the issue of human cloning and research involving excess ART embryos from the late 1990s. At a COAG meeting on 5 April 2002 the Prime Minister and all Premiers and Chief Ministers agreed that the Commonwealth, States and Territories would introduce nationally consistent legislation to ban human cloning and other unacceptable practices and that research be allowed only on existing excess ART embryos, that would otherwise have been destroyed, under a strict regulatory regime, including requirements for the consent of donors. A draft bill was prepared and after consultations undertaken by the NHMRC in each State and Territory the Research Involving Embryos and Prohibition of Human Cloning Bill 2002 was introduced in Parliament on 27 June 2002.

1.12 After the Bill's introduction, its provisions were referred to the Community Affairs Legislation Committee which received evidence from a wide range of stakeholders in the community to inform the Senate in its deliberations on the Bill. As is the situation with the current legislation, Senators were given a 'free vote' when the Bill was debated in the Senate.

Committee's Report on the Provisions of the Research Involving Embryos and Prohibition of Human Cloning Bill 2002

1.13 The Committee's report into the Bill debated by the Parliament in 2002, that was subsequently divided to be passed as the two Acts subject to the Lockhart Review, was tabled in October 2002³. The report provided background to the previous inquiries, reports and deliberations that ultimately led to the passage of the two Acts and the legislative review undertaken by the Lockhart Committee.

3 Senate Community Affairs Legislation Committee, *Report on the Provisions of the Research Involving Embryos and Prohibition of Human Cloning Bill 2002*, October 2002, pp.2-8.
http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2002-04/emb_cloning/index.htm

1.14 The report gave an overview of the scientific aspects of the debate, including defining stem cells, outlining the properties of cells and cloning technologies and discussing the potential applications of stem cell research. The report also considered the philosophical arguments over the ethics of embryonic stem cell research. These arguments covered issues such as the moral status of the human embryo, utilitarian arguments, conceptual loss and the slippery slope.

1.15 A description of the provisions of the Bill, subsequently split to become the RIHE Act and the PHC Act, and a brief discussion of international comparisons as they stood at the time, was also provided.

1.16 Attached to the report were a number of supplementary reports and qualifying comments by Senators providing their respective views on the Bill and evidence received by the Committee.

1.17 The Committee has not, as part of this inquiry, replicated the lengthy analysis of the issues raised in 2002 that remain relevant to the current debate. The 2002 report provides useful background on many of these issues, both scientific and ethical.

1.18 The Bill was extensively debated in the House and the Senate, divided into two Bills and finally enacted as the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002*. Following the passage of these Commonwealth Acts, each State and Territory enacted complementary legislation.

Legislative Review Committee

1.19 The *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002* each contain a provision that an independent review of the operation of the Act must be undertaken two years after the Act received Royal Assent by persons chosen by the Minister with the agreement of each State. In June 2005 the Legislative Review Committee chaired by former Federal Court judge, the Hon John Lockhart AO, was appointed to consider and report on the scope and operation of each of the Acts. The report of the Lockhart Review was presented to the Minister for Ageing on 19 December 2005. The recommendations are reproduced in Chapter 2.

1.20 On 23 June 2006 the Prime Minister, the Hon John Howard, provided the Government's response to the recommendations of the Lockhart Review:

After careful reflection, the Government is not disposed to make any changes to the existing national legislative framework for research involving human embryos, agreed in 2002.

Recognising, however, the range of issues and views, there will be a detailed discussion on this issue within the Government parties when Parliament resumes for the Spring sitting...

The Lockhart Review also recommended some administrative improvements that will help reduce red tape in the licensing process and provide further support to the regulatory scheme by enhancing the National Health and Medical Research Council guidelines. Taking into account

experience since the enactment of the legislation in 2002, the Government is supportive of these recommendations.

The Government also supports further exploring the establishment of a national register of donated excess embryos created originally for ART purposes and a national stem cell bank.⁴

1.21 COAG considered the Lockhart Review at a meeting on 14 July 2006 and stated in a communiqué:

COAG noted that agreement had not yet been reached across jurisdictions on all the 54 recommendations of the Lockhart Review Committee Report. However, COAG agreed that officials would continue to work on those Lockhart Review recommendations of an administrative nature on which there is agreement and report back to COAG by December 2006.

While COAG restated its preference for nationally consistent arrangements, in the absence of national agreement some states and territories reserved the right to alter the legislation within their own jurisdictions to the extent that is within their power.⁵

1.22 On 31 August the Prime Minister released a report prepared by mpconsulting that had been commissioned by the Department of the Prime Minister and Cabinet titled 'Analysis of advice on developments in assisted reproductive technology and related medical and scientific research'.

1.23 It was also announced in August that the members of the Coalition parties and the Australian Labor Party would be allowed a free vote if legislation came before the parliament. The tabling of the exposure draft bill by Senators Stott Despoja and Webber and the subsequent introduction of the bill by Senator Patterson has now placed legislation to enact the Lockhart Review recommendations before the parliament.

Senators' Bills seeking to give effect to Lockhart recommendations

1.24 Both Senator Patterson's bill and Senators Stott Despoja and Webber's exposure draft bill reflect the Lockhart Review's recommendations in a legislative form.

1.25 Senator Stott Despoja informed the Senate that the exposure draft bill was intended to create a starting point for discussion of the issues raised by the Lockhart Review, of which this inquiry is a part. All the Lockhart Review recommendations were incorporated into the draft bill. In an accompanying speech, Senator Stott Despoja stated:

This bill enshrines the scientific recommendations of the Lockhart Review that require legislative change to the original Acts.

4 Prime Minister of Australia, Media Release, Lockhart Review, 23 June 2006.

5 Council of Australian Government's meeting 14 July 2006, Communiqué p.13

The inclusion of all the Lockhart recommendations gives the Parliament the opportunity to accept, reject, or amend them, but, at least, debate them. I am not cherry-picking recommendations – it should be for the Parliament to decide which ones become law.⁶

1.26 Senator Patterson released the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006 (the Patterson bill) on 26 September and subsequently introduced the bill on 19 October 2006. This bill also seeks to implement each of the Lockhart Review's recommendations where a legislative response is required. When introducing the bill, Senator Patterson advised the Senate:

In 2002, when I was the Minister for Health and Ageing, I had the responsibility of taking the Prohibition of Human Cloning Bill and the Research Involving Human Embryo Bill through the Senate on behalf of the Government.

As I have said, the Acts required that they be reviewed, and one of the terms of reference required that the “reports must contain recommendations about amendments, if any, that should be made to the Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos 2002, whichever is applicable”.

In 2002 I said in the debate on the Bills, "If the review gives rise to possible amendments to the legislation, any such amendments must come before parliament, and at that time, whoever is here will have the opportunity to consider in detail any proposed changes to the legislation".

This bill provides that opportunity.⁷

1.27 A table showing how the Lockhart Review recommendations are addressed in the Patterson bill is at Appendix 3.

6 Senator Stott Despoja, *Draft Second Reading Speech*, p. 1.

7 Senator Patterson, Second Reading Speech, *Senate Hansard*, 19 October 2006, p.14.