

09 October 2006

Committee Secretary  
Senate Community Affairs Committee

Department of the Senate  
Parliament House  
CANBERRA ACT 2600



Dear Mr. Humphery

I have attached CHA's submission to the Inquiry into Legislative Response: Recommendations of the Lockhart Review.

As always we would be available to appear before the Committee at its discretion.

Yours sincerely

**FRANCIS SULLIVAN**  
Chief Executive Officer

PO Box 330  
DEAKIN WEST ACT 2600

Rowland House  
10 Thesiger Court  
DEAKIN ACT 2600

Telephone  
02 6260 5980

Facsimile  
02 6260 5486

Email  
[secretariat@cha.org.au](mailto:secretariat@cha.org.au)

Web  
[www.cha.org.au](http://www.cha.org.au)

*The Catholic health,  
aged and community  
care sector*

Catholic Health  
Australia Incorporated

ABN 30 351 500 103

## INTRODUCTION

The amendment bills before the Senate are predicated on assumptions that require rigorous scrutiny. Both Bills have been drafted in accord with the recommendations of the Legislation Review: Prohibition of Human Cloning Act 2002 and Research Involving Human Embryos Act 2002.

Since the Lockhart Review will now be debated in the parliament, and the consequence of that debate will determine the parliament's attitude to the Bills before it, CHA provides the following comments to assist such discussion.

### 1. The purpose of stem cell research.

The genuine interest in stem cell research is mainly motivated by a desire to find cures and therapies for debilitating diseases and injuries.

Traditional medical research requires that stringent ethical considerations must be met. These are to safeguard the community, individuals in research and the integrity of the medical research profession. The more profound the ethical issue the greater must be the benefit of the research to justify its going forward.

Consequently, when considering stem cell research into the cause, course and cure of diseases, a number of issues apart from the discovery of cures require serious attention.

In particular can stem cells be used which don't compromise any other ethical concerns? Stem cells come in a number of forms, namely embryonic, adult, placental, umbilical cordal and neural. To date the most effective for research have been adult stem cells. Embryonic stem cells require the destruction of a human embryo and thus raise profound ethical issues involving the right way to treat human life.

It is widely recognised that the use of embryonic stem (ES) cells have never been applied to treatments in humans. Furthermore ES cells have never been proven to be successful in animal research for disease therapies without the risk of serious complications over an extended period.<sup>1</sup>

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<sup>1</sup> Martin, T.J. 'The Ethics and Myths of Stem Cells', Eureka Street, July-August 2005, p.19.

The development of tumours and heart complications has occurred regularly in animal experimentation. This has not been the case with adult stem cells. To date there have been over 70 conditions treated through adult stem cell transplants. Last year alone 45,000 patients benefited from adult stem cell transplants.<sup>2</sup>

Interestingly, proponents of embryonic stem cell research often cite Alzheimers Disease and diabetes as potential targets for therapy discoveries.

In the case of Alzheimers, since it is a global brain condition. It is highly unlikely that cell therapy will prove beneficial.<sup>3</sup>

In the case of juvenile diabetes, there has been more promising results from the use of islet cells from the pancreas. In these cases up to 80 percent of patients treated did not need insulin shots one year after treatment.<sup>4</sup>

This fact alone questions the ethical veracity of using ES cells in human research.

It also raises the serious question over the use of scarce resources in an area of scientific research that has such little promise at this time.

## 2. Embryos are Human Life

Proponents of embryo cloning and research in general are at pains to discount the rights of the embryo. They are engaged in a tortured sophistry seeking to establish a difference between embryos existing outside the body of a woman compared with those implanted in a woman's uterus. They maintain that life doesn't begin until the embryo is implanted into a woman's uterus.

Further in seeking to justify cloning of embryos, they maintain that where the embryo is produced through somatic cell nuclear transfer (SCNT) it should not be afforded the same respect or rights as an embryo which is the result of natural or artificial fertilisation.

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<sup>2</sup> Baldwin, M. 'Stem Embryo Research', The Australian, 19 July 2006.

<sup>3</sup> Martin, p.19

<sup>4</sup> Pavlat, E. 'How to Talk to Democrats About Embryonic Stem Cell Research', Crisis Magazine, Sept 2006,

Furthermore they even seek to change the terminology in an attempt to lessen their ethical obligations. Thus terms such as ‘an unfertilised egg’ or ‘an activated cell’ or a ‘clump of cells’ demeans the intrinsic worth of the embryo.

This is a false distinction

The President’s Council on Bioethics addressed this issue front on:

The technical description of the cloning method ( that is, SCNT ) omits reference not only to cloning but also to the immediate product of the activity. This obscurity enables some to argue that the immediate product of SCNT is not an ‘embryo’ but rather ‘an egg’ or ‘an unfertilised egg’ or ‘an activated egg’, and that the subsequent stages of development should not be called embryos but ‘clumps of cells’ or ‘activated cells’. To be sure, there are genuine difficulties and perplexities regarding what names to use, for we are dealing with an entity new in our experience. Partly for this reason, some people recommend avoiding the effort to describe the nature of the product, preferring instead to allow the uses we human beings have for it to define its being, and hence its worth. We are all too familiar with instances in which some human beings have defined downward the status of other beings precisely to exploit them with impunity and with a clear conscience. Thus, despite the acknowledged difficulties in coming to know it accurately, we insist on making the effort to describe the product of SCNT as accurately and as fairly as we can.<sup>5</sup>

The Council concluded that the product of SCNT is most accurately described as a human embryo.

This has very significant ethical implications.

Firstly it situates the ethical obligations for treatment of the embryo on the same level as the ethical obligations for treatment of other forms of human life. That is it doesn’t subscribe to the view that the embryo’s worth and value is determined by its usefulness.

Secondly, it says that contrary to the intentions of some, it is not ethical to ‘define downwards’ the status of the embryo for exploitation purposes.

These are fundamental positions that impact significantly on the Bills under question.

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<sup>5</sup> President’s Council on Bioethics, “Human Cloning and Human Dignity: An Ethical Inquiry, Washington DC, 2002, p.49

### 3. How is it right to treat the embryo.

The passage of the Research Involving Human Embryos Act 2002 provided a concession for the destructive experimentation on excess embryos from the IVF program. This was solely a utilitarian decision. It was assumed that the embryos would otherwise succumb. In effect their right to succumb naturally was taken from them. Even though they were created for reproductive purposes, not research.

Thus the operating principle of this Act is one of utility. The status of the embryo is directly determined by its usefulness. However, that usefulness was firstly related to its primary purpose, that being the initial stages of the human genetic structure.

It follows that the primary value of the embryo is that it is integrally connected to the human genetic structure and as such deserves the same status and protection as any other stage in that structure.

For the purposes of this inquiry, there is a major philosophical issue at stake. Whereas a utilitarian position was adopted by the parliament over the treatment of excess frozen IVF embryos, the same approach cannot be adopted in the case of embryos deliberately created for destructive research purposes.

To adopt a utilitarian position would be to say that the ends justify the means. Yet the ends of destructive research on embryos are far from settled. There is considerable disquiet over the efficacy and usefulness of embryonic research within the scientific community alone. There is considerable disquiet amongst the community generally over the discriminate treatment of human life in this way. There is also the drastic precedent being entrenched in law that devalues some forms of human life in relation to others.

This treatment of the embryo will raise concerns over future calls for experimentation on particular humans or humans in what some perceive to be futile circumstances. It is already the case that prisoners on death row in China are subject to medical abuse.

The issue of how human embryos should be treated goes to the fundamental practice of medicine. As eminent researchers make clear, “ a distinction

between what one should not do and what one is obliged to do is, of course, fundamental to the practice of medicine.”<sup>6</sup>

This raises the basic question over the reconciliation of competing goods. In other words, how to prioritise a conflict of desired ends. As Ian Kennedy puts it:

There are countless examples where knowledge and truth are not pursued because the pursuit would challenge values we hold dear than them.<sup>7</sup>

This is most stark when dealing with research involving human subjects.

To safeguard the value of human life in relation to medical and scientific research, the standard approach is to adopt the Declaration of Helsinki.

The Declaration makes two important points in relation to research on human embryos.

The first clearly acknowledges that research on embryos falls under the same ethical obligations as research on other human subjects:

Research involving human subjects includes research on identifiable human material **and** medical research involving human subjects must conform to generally accepted scientific principles.<sup>8</sup>

The second stresses the importance of prior research on animals as the fore runner to human experimentation.

It is this issue that reveals the tenuous path adopted by embracing embryonic research, including through SCNT.

At present there is no evidence from animal experimentation with either human or animal ES cells to justify even the most limited human trial of ES cells in therapy. Furthermore, some of the proposed cures are highly unlikely, and others are on a very long time-frame. An essential requirement is that ‘proof of concept’ be provided for the efficacy of ES cells in treatment of even one of the suggested targets – and the way to do this is to use animal models of disease. Any attempt so far has illustrated major

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<sup>6</sup> McCullagh, P. Embryonic Stem Cell Debate, RACP News, Dec. 2002. p.8.

<sup>7</sup> Kennedy, I. ‘The Unmasking of Medicine’, Reith Lectures, 1980.

<sup>8</sup> Baldwin, The Australian, 19 Sept. 2006.

difficulties confronting the embryonic stem cell approach. If there were no other possible way of finding stem cells capable of taking on functions other than those of their tissue of origin, then perhaps the pressure to undertake HES cell research would be very much greater.<sup>9</sup>

#### 4. Community Attitudes

We note the position adopted in the Lockhart Report, but find their justification thin at best that there has been a shift in community standards since the legislation of 2002.

The Lockhart Committee found that determining a shift in community standards was a challenging task. Given that it recognised that the Australian community comprised a range of moral and social values and perspectives, the Committee struggled to identify an appropriate measure of any change in these morals, values or perspectives on the issue of embryo research since 2002.

The Committee settled on survey and focus group analysis. The results were guardedly reported:

The terms used were not defined, the survey did not seek to measure knowledge, and the focus groups suggested that many participants had limited understanding of cloning or stem cell research, all of which suggest that some caution is required when interpreting the results of this research.<sup>10</sup>

This obviously does not give good scientific ground to base assumptions of community attitudinal change.

Strangely though the Committee found otherwise. Firstly it maintained that the community accepted the practical use of spare IVF embryos for research. Despite recognising that there was a general lack of knowledge about the issue. This raises significant and concerning issues about the degree of representation of community attitudes in the Committee's findings.

Secondly, the Committee went even further to suggest that the community would be accepting of an even more complex concept, that being SCNT.

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<sup>9</sup> Martin, p. 19.

<sup>10</sup> Legislation Review Committee, 'Reports, Legislation Review: Prohibition of human Cloning Act 2002 and research Involving Human Embryos Act 2002', December 2005, p.87.

## Again the grounds are not justified:

Attitudes towards creation of human embryos for research purposes, however, appeared to be much more complex and reflected, not only beliefs regarding the moral status of the embryo, but also the cultural significance of reproduction and the social relevance of family and community relationships. For these reasons, the Committee found that, while it was difficult to logically define a moral difference between embryos formed by fertilisation and those formed by nuclear transfer or related methods, it appeared that embryos formed by fertilisation of eggs by sperm may have a different social or relational significance from embryos formed by nuclear transfer.<sup>11</sup>

Curiously this finding actually gives a stronger case for the status quo. The Committee openly admits that there is no moral distinction between embryos regardless of their process of creation. This would imply that the community would also be less than definitive on a different value between embryos created through technology or naturally. The only point of difference the Committee raises is on the grounds of utility. The Committee attempts to attribute more social significance to IVF embryos, presumably because they are in a reproductive program.

If the Committee was being consistent with the remainder of its report, the fact that embryos in research programs would likewise have relational and social significance to goals of the program should mean that in this case there was no distinction in the embryos utility from those in the IVF program.

That being the case the Committee would be hard pressed to prefer or give higher value to one embryo over another.

This makes the principle that all embryos should be treated equally the most logical conclusion. Unfortunately the Committee did not adopt this position but rather took a decision on little or no substantial evidence.

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<sup>11</sup> Reports, p. 87-88.



## 5. Conclusion

In 2002 the Parliament provided a concession for the use of excess embryos from the IVF program to be used for research purposes. The purposes put forward at the time were concerned with seeking cures a therapies. None have occurred through the use of embryos. Where advances have been made it is with adult stem cells.

In a society where research funding is limited, it makes more public policy sense to allocate scarce resources to those areas of research that hold the best promise and have evidence to justify funding. Adult stem cell research is by far the most appropriate field to support.

Furthermore, the proposed amendments before the Senate seek to legalise the creation of human life for its deliberate destruction.

This is a profound and inhumane proposal. It should be resisted at every point. It is a precedent unbecoming any society especially one that upholds the Judeo Christian ethic of the sanctity of life.

We recommend to the Senate that the draft Bills be rejected.