

A Submission to the
Senate Inquiry into the Legislative Responses to
Recommendations of the Lockhart Review

from
The Australian Catholic Bishops Conference

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The Australian Catholic Bishops Conference welcomes the opportunity to make a submission to the Senate Inquiry into this very important matter. The issues addressed by the Lockhart Committee, and some of those ignored by the Committee, are of great importance for our society. The decisions by Parliamentarians about some of the key questions will have a profound impact upon the way in which the dignity of humanity is acknowledged in Australia. Such matters are not simply machinery of government. They define the quality of civilisation that we seek in our nation.

When the Lockhart Committee was conducting its Inquiry, the Australian Catholic Bishops Conference provided the Committee with a consideration of the issues being discussed. Those issues are still very relevant. A copy of the Conference's submission is attached. Also attached are copies of submissions from the Catholic Archdiocese of Sydney, including comments provided by Bishop Fisher following discussion with the Lockhart Committee. The following comments are supplementary to those submissions.

Background

The Lockhart Committee arose from requirements in the Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos Act 2002. Both of these Acts were passed in 2002 following considerable public and Parliamentary debate. The Acts required that a committee of review be established "as soon as possible after" 19 December 2004 and report before 19 December 2005. The Lockhart Committee was finally established in June 2005 and reported on 19 December 2005. It is understood that the delay in establishing the Committee was because a number of State Governments had strong views about the membership of the Committee. Whatever the reasons for the delay, the consequent truncated inquiry did not fully address all of the issues that should have been the subject of their Inquiry and, in particular, did not adduce evidence to support a number of important recommendations by the Committee.

In the Issues Paper produced by the Committee early in its deliberations, the Committee advised that it was not its role "to revisit the underpinning community debate and rationale for the legislation". Rather its role was to review the legislation "in the light of any changes in the scientific or community understanding or standards since 2002, and any indications that the provisions are no longer appropriate and or practical in their application".

Aware of the Committee's role, the Government considered the Committee's Report and concluded that there was no evidence adduced that there had been any significant change in the either scientific or community standards since 2002. It appears that the Government also considered that provisions in the current legislation that presented inconveniences for some researchers were not unintended consequences of the 2002 legislation. Accordingly, the Government decided that no change in the current legislation is necessary.

The reason for outlining the way in which the debate has developed to this point is that it is incumbent upon those who wish to make significant changes to the current legislation to justify why the rationale for the existing legislation is incorrect and/or that there has been significant change in scientific or community standards. As the Lockhart Committee specifically did not "revisit the underpinning community debate and rationale for the legislation" and did not adduce evidence of significant change in scientific or community standards, the Lockhart Review cannot be used to justify significant change in the current legislation.

There are numerous recommendations in the Committee's report that are reasonable. But the major ones are unacceptable. The unacceptable recommendations relate mainly to four main issues:

- The definition of human embryo
- The creation and use of human embryos for ART research
- The creation of human embryos for stem cell research (either via IVF, cloning, hybridization or any other technique) and
- The transfer of power from the legislature to an appointed licencing committee without the legislature retaining the power to overrule the committee (except by specific legislation).

Two Bills have very recently been introduced into the Senate by Senator Natasha Stott Despoja and Senator The Hon. Kay Patterson. Both Bills seek to implement the major recommendations of the Lockhart Review, though in slightly different ways. This submission does not specifically discuss all sections of the Bills but rather seeks to address issues and recommendations by the Lockhart Review that appear to have given rise to the Bills.

Issues

Genetics and Stem Cell Research

Catholics embrace genetic research in general and stem cell research in particular. Many areas of such research have the potential to provide great benefit for humanity. Many areas of stem cell research are already showing much promise for major scientific advances. But, as with all human activity, such research must be ethical. In particular, research must respect the dignity of each unique human being. Such respect is important at all stages of life, but especially at the beginning and the end of life when human beings are at their most vulnerable.

Cloning

Cloning of a human in any way is abhorrent. The most commonly known exercise in cloning of an animal has been Dolly the Sheep which was cloned using a technique known as Somatic Cell Nuclear Transfer (SCNT). This technique has been used to clone a number of other animals. There may be animal husbandry or other research reasons for cloning animals. But to clone a human is a failure of respect for those human beings and a denial of the universal dignity of all human beings. To create human beings by this method *in order to destroy them* only multiplies the ethical problems with such a process.

The Lockhart Report and the two recent Bills seek to ameliorate public unease about cloning by cloaking it with various euphemisms such as “SCNT” or “therapeutic” cloning”, and by suggesting a false distinction between “therapeutic” and “reproductive” cloning. The fact is that all cloning is reproductive – it creates a new living organism of that species – and no cloning is therapeutic – it does nothing to help that human being and indeed is usually a prelude to its destruction. So-called “therapeutic” cloning is in fact much more unethical than so-called reproductive cloning because the intention from the beginning is a lethal one: to create a human being so that it can be killed for parts (in this case for stem cells or other useful materials).

It is claimed that so called “therapeutic” cloning has much potential to cure disease. But research using such techniques in animals has not demonstrated the claimed potential. It is therefore reasonable to ask: what evidence is there to justify cloning human beings? If, at some time in the future, evidence is produced to demonstrate benefits sufficient to justify legislative reconsideration, let the case be made for that then. But no evidence has been produced to justify cloning at this time.

Professor Neil Ormerod, writing in the Sydney Morning Herald (14 September 2006), noted that some argue that therapeutic cloning and research on embryos are matters of private morality. He said “Attempts to make these moral issues a question of private morality are as spurious as claiming that

slavery could be a private matter. The Lockhart Report claims that “in the face of moral diversity, it is unjustifiable to ban embryo research and therapeutic cloning”. One might equally conclude that in the face of moral diversity extra caution is required before proceeding.”

In 2002, all members of Parliament voted against cloning. On 8 March 2005, the United Nations adopted the United Nations Declaration on Human Cloning, by which “Member States were called on to adopt all measures necessary to prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life”. Australia voted in favour of this Declaration and has consistently supported all international endeavours to prohibit cloning. There is no evidence of significant change in community attitude to cloning in the past year. If cloning is to be introduced in Australia, the onus is upon those who seek such change to demonstrate that such a significant change is necessary and supported by the community.

Embryo Research

Professor Frank Brennan SJ in an article in *The Australian* (22 August 2006) noted that there are three possible positions regarding experiments on human or hybrid embryos:

1. Experimentation on any embryo not for the benefit of that embryo is wrong,
2. Experimentation on an embryo which was created with the possibility of implantation, and as a member of a group of embryos created to maximise the prospect of successful implantation of a healthy embryo, is permitted once that embryo is no longer required.
3. The creation of embryos specifically for experimentation and destruction is permitted, provided the experimentation is aimed at improving the lot of humanity.

Professor Brennan notes that, in 2002, the majority of Federal Parliament considered that the community standard was reflected by position no.2, though a significant minority of parliamentarians considered that position no.1 was a more accurate reflection of community standards. No one suggested that community standards would be support position no.3. Without offering any evidence of significant change in community attitude, the Lockhart Review and the two recent Bills propose that position no.3 should be the legislative standard.

Professor Brennan suggests that Australia now faces the question of whether it should cross a new moral Rubicon: may a scientist create new human life solely for the purpose of destructive experimentation, with no respect for that particular human life?

The Lockhart Committee proposed redefining the human embryo to move some embryos outside the protective range of Commonwealth and State legislation: "Adopting an independently developed definition of the human

embryo to a slightly later stage in the fertilisation process (the first cell division) would allow much of the research described ...to occur without falling outside the scope of the RIHE Act.” (Lockhart Report, p. xv). Such arbitrary redefinition is a cynical misuse of language. If Parliament is to allow the creation and destruction of early human lives, it should not cloak what it is doing with euphemisms and linguistic gymnastics.

In 2002 the Australian Parliaments voted to allow destructive experimentation upon some IVF embryos which had been created with a view to their being implanted and allowed to go to term, but which had later been designated as ‘excess’ to requirements. The Lockhart Report recommends allowing ‘fresh’ embryos to be created by IVF or other means specifically with a view to their destruction in research. This is a very different proposition ethically to what was approved in 2002. To create human beings with the intention, from the beginning, of killing them in research projects is gravely unethical.

Implanting Human Genetic Material in an Animal Egg

The Lockhart Committee (Rec 24 et al) recommends the legalisation of “transfer of human somatic cell nuclei into animal oocytes...for the creation and use of human embryo clones for research, cloning and clinical application”. The justification for this is that it would minimise the need to obtain human eggs (oocytes) for experimental purposes. Animal tissue is used in many medical procedures but creating a discrete living entity (an embryo) that is a mixture of human and animal tissue is ethically unacceptable and demeans humanity. The idea of ‘crossing’ humans and animals is repugnant to almost all Australians, even if the proposal (at present) is to kill such organisms soon after their creation.

Creating Embryos Using Cells and Genetic Material From More Than Two People.

The Lockhart Committee (Rec 26 et al) recommends the legalisation of the “creation of human embryos using the genetic material from more than two people”. The idea of creating human beings with multiple parents – like the idea of creating human beings with one parent – is morally repugnant, even if the proposal (at present) is to kill such organisms soon after their creation.

Binding Rulings Within “The Tenor” of the Act

The Lockhart Committee (Rec 51) recommends:

“The Licensing Committee should be authorised by the Research Involving Human Embryos Act to give binding rulings and to grant licences on the basis of those rulings for research that is not within the literal wording of the Act, or the regulations made under the Act, but is within their tenor, on condition that the Committee reports immediately

and in detail to the NHMRC and to parliament on any rulings it gives, or any licences it grants, in that way”.

Without specific new legislation each time such a ruling were made, Parliament would not be able to overturn such rulings, even though they were outside the legislation approved by Parliament. This recommendation would transfer legislative power from Parliament to bureaucrats. The Tax Office currently gives binding rulings on some taxation matters. But Tax Rulings do not have the potential to impact upon the dignity of humanity.

Conclusion

In recent times, there have been numerous claims about miracle cures for many afflictions if only a particular technique, such as cloning, could be approved. But such claims are mere assertions or wishful thinking, without substantial evidence to justify such claims.

Of particular concern in the current debate is that some of the changes proposed, such as human cloning and the production of human embryos solely for destructive research, would, if approved by Parliament, substantially shift the balance of human rights and human dignity in Australia. It would establish a precedent of favouring one human being over another.

Cloaking proposals such as human cloning in euphemisms such as “therapeutic” or SCNT do not change the reality of what is being proposed. In the case of human cloning, for example, the proposal is to clone and then destroy a human being. Such a significant and abhorrent practice cannot be justified regardless of any promised or possible subsequent benefit to other human beings.

The Lockhart Review, handicapped by a number of factors, failed to adduce significant evidence to justify its major recommendations. The most likely reason for this failure is that the evidence is not yet available to justify the substantial changes that the Review recommends and the Bills propose. If at some time in the future such evidence becomes available then that will be the time for reconsideration of these important issues.

The Catholic Church operates in a pluralist environment here in Australia and understands that not all of her morality will be adopted by the state as law. The Church will remain, however, a vigorous defender of the life and dignity of every human being. The Church gives expression to this in Australia through its substantial contribution to health care, health education and scientific research. We join all Australians in hoping for new developments in biotechnology and medicine that will improve the health and wellbeing of Australians. We believe there are ways of achieving such results without compromising research ethics or further polarizing the Australian community; ways which protect and promote the health and wellbeing of every member of the human family.

Representatives of the Australian Catholic Bishops Conference are available if Senators wish to discuss these matters further.

Australian Catholic Bishops Conference
3 October 2006