

SUBMISSION

on the

**INQUIRY INTO THE LEGISLATIVE RESPONSES TO
RECOMMENDATIONS OF THE LOCKHART REVIEW**

To the

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1. INTRODUCTION

1.1 Background

In 2002, Parliament introduced two bills: the *Research Involving Human Embryos Bill 2002*, which sought to allow research on ‘surplus’ human embryos created as part of the IVF process; and the *Prohibition of Human Cloning Bill 2002*, which sought to

prevent any type of human cloning, whether for therapeutic or reproductive purposes. These were presented as one bill, despite a motion supported by many parliamentarians to have them as two separate bills so all had the opportunity to choose.

Both bills were passed, with many MPs indicating their support for the first bill because, in their view, the unused embryos would eventually die anyway. The vote on the cloning bill was passed unanimously, with many parliamentarians expressing their firm belief that the creation of a human clone for the purposes of destruction was an unacceptable measure.

The 2002 Acts included a provision for review in three years' time. The Lockhart Review began in 2005. The Review Committee consisted mainly of scientists, some of whom were active in promoting embryonic stem cell research. There were no ethicists from churches or the wider community. Hearings were held; over 1,000 submissions were received, and the Committee brought its findings to parliament later in the year.

Pressure was brought to bear on the Prime Minister to allow conscience votes on any legislative response to the Lockhart Review. This resulted in two bills: one from Senator Natasha Stott Despoja, and the other by Senator Kay Patterson.

1.2 The Two Bills

The *Somatic Cell Nuclear Transfer (SCNT) and Related Research Amendment Bill 2006* was tabled in the Senate on 14 September 2006 by Senator Natasha Stott-Despoja. The *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006* was tabled out of session on 26 September 2006 by Senator Kay Patterson. (Hereafter these will be called the *Stott-Despoja Bill* & the *Patterson Bill*.)

The Submission rationale

My submission is based on these convictions:

- That a human life is created when a male sperm and a female egg are united.
- That no re-definition of the phrase “human embryo” can prevent the scientific fact that once the sperm and egg unite, a unique human life has been created.
- That no one has a right to create a cloned human embryo for any purpose.
- That ethical, democratic, scientific, and utilitarian reasons demonstrate conclusively that human cloning is harmful, unnecessary, undesirable, morally repugnant, and may be even impossible.

2. THE LOCKHART REVIEW RECOMMENDATIONS

2.1 The Rationale

The Lockhart Review rationale is expressed on pages xiii and xiv of its report. There it claims that because Australia is made up of “*diverse ‘communities’ with different perspectives, interests and values*”, then there will be differences of opinion about the status of the human embryo. It goes on to say that there are moral values common to all Australian communities such as “*social justice and equity and [to] the care of vulnerable people*”, and because of that, there has to be a balance between “*the social and moral value that some communities attach to the human embryo*” and “*the social and moral value that other communities attach to the treatment of disease and to helping people to have a family.*” It then says that “*the wider the range of ethical views on a particular activity, the weaker becomes the case for declaring that activity to be illegal, with all the attendant consequences of criminal conduct.*”

Critique of Lockhart Rationale

Firstly, it is significant that the statement “the care of vulnerable people” is set in opposition to the value of the human embryo. It incorporates the belief that the human embryo is not a vulnerable person. The Lockhart authors therefore show that they are on the side of those who do not regard the human embryo as a human person. Such lack of objectivity undermines their credibility. Science assures us that the human embryo is a human person at the commencement of his/her journey.

Secondly, the statement that all Australian communities value “*social justice and equity*” is demonstrably false. The Committee mistakes what all communities perhaps “should” value for what they in fact do value. Just as there are Australian communities which want to lower the legal age of sexual consent to 12 years for boys and girls does not mean that we should balance this value with other communities which believe it is wrong. There has to be a judgement based on the rightness or wrongness of the value.

Thirdly, it says that the more ethical views there are on an issue, “*the weaker becomes the case for declaring that activity to be illegal*”. This rationale prevents people from making decisions on any moral principle. It implies that we must allow something because some people want it. But in making our laws we choose between competing moralities, mostly on the basis of majority beliefs. In the case of the human embryo, public opinion is against cloning. The unanimity of the 2002 parliament in banning

cloning was underlined by the belief that cloning was morally repugnant. Why does the Committee want to bypass the moral assessment of the parliament and its people?

2.2 The Patterson Bill

The Patterson Bill amends the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002*, incorporating some of the Lockhart recommendations. Its unacceptable features include:

2.2.1 Banning reproductive human cloning, but allowing human cloning for therapeutic and research purposes.

2.2.2 Allowing the production of hybrid animal-human embryos for research.

2.2.3 Prohibition of the production of human embryo clones except under NHMRC licence.

2.2.1 The Value of a Human Embryo

The human embryo is an individual human being. As such, it has an inherent right to life. No other human beings have an inherent right to extinguish that life: no-one has a right to create another human for its destruction. No arbitrary value or definition by other people can define away its humanity. The right to life cannot be bestowed on some human lives and not on others without threat to all human life. No external criteria used to define the value of a human – viability, personhood, consciousness, moral ability, health, race etc. - can detract from his/her inherent humanity and hence his/her right to life.

Creating a human clone for research and ultimate destruction violates these principles. The *Research Involving Human Embryos Act 2002* wrongly allowed for the destruction of ‘excess’ human embryos created by assisted reproductive techniques (ART). It is significant that many who voted for this Bill voted against the creation of cloned embryos for research in the *Prohibition of Human Cloning Act 2002*. The principle clearly expressed was that the creation of humans for their destruction was wrong. Mrs Patterson said it well: “I believe strongly that it is wrong to create human embryos solely for research. It is not morally permissible to develop an embryo with the intent of truncating it at an early stage for the benefit of another human being.”¹

2.2.2 Hybrid Human-Animal Embryos

The Bill allows the creation of human-animal hybrid clones by somatic cell nuclear transfer. It also defines this resultant embryo as non-human. However, in the process, a human embryo is created and destroyed. This again goes against the principles espoused above, and by all parliamentarians in 2002.

Also, not only does this mix complicate the research unnecessarily, but the listed prohibitions do not include the possibility of placing a hybrid embryo in the womb of an animal. This could lead to the development of a hybrid foetus and eventual live-birth of ‘God-knows-what’.

2.2.3 Creation of Clones by Licence

This step achieves nothing in the way of ethical control. If the violation of human life by cloning is allowed, restrictions and controls on future use are meaningless. It is an

example of ‘closing the gate after the horse has bolted’ and ‘making the deck chairs on the Titanic neater’.

2.3 The Stott-Despoja Bill

The exposure draft bill initiated by Senator Stott-Despoja deals with aspects similar to the more comprehensive bill by Senator Patterson. The same violation of human life occurs; the same desire to ignore the right to life of all humanity. This submission will not deal directly further with this bill.

3 REASONS FOR OBJECTIONS

The writer believes that the bills are flawed and should not be passed in part or entirety. The following are the reasons for my objections.

3.1 Ethical Objections

3.1.1 - The creation of human embryos for destruction is wrong.

3.1.2 - The creation of human-animal hybrids is wrong.

3.1.3 - It is possible that, through the use of precursor stem cells (Recommendation 27), an aborted child may become the parent of a human embryo which would in turn be destroyed for research. This is wrong.

3.2 Scientific Objections

3.2.1 - There is no necessity to clone human embryos for stem cell harvesting. Adult stem cell research is leading the way with cures.²

3.2.2 - The ability to clone a human being is yet unknown. The Hwang fraud, which the Lockhart report accepted as a breakthrough in cloning, means that we can't put tax-payers money into uncertain research. If we do, we divert funds that could be put to ethical, safe, and productive use in adult stem cell research.³

3.2.3 - The scientific documents which Senator Patterson tabled in parliament on 14th September 2006 do not support the lifting of the prohibition on human cloning. One of them supports the possibility of adult stem cell pluripotency.⁴

3.2.4 - There is no proof that there are any scientific benefits to be gained from human cloning.⁵

3.3 Political Objections

3.3.1 - Over 80% of submissions to the Lockhart Inquiry opposed human cloning.⁶

3.3.2 - The most in-depth Australian study into attitudes on human cloning – the 2004 Swinburne University of Technology study – concluded that the majority (63%) of Australians were not happy about scientists using stem cells created by human cloning.⁷

3.3.3 - All members of the 2002 Australian Parliament voted to prohibit all forms of human cloning, many of them on moral grounds.⁸

3.3.4 - The majority of Australians have little idea of the ramifications of the Lockhart recommendations, and they have not been consulted about them. The writer believes that there would be much protest over many of these recommendations were they known.

4 CONCLUSION AND RECOMMENDATIONS

The increased scope for interference in human life which these bills and the Lockhart recommendations allow, is cause for great concern. The destruction of some human lives for the benefit of others is a principle that has no visible end to the number of scenarios it can produce. It gives God-like power to the State that, regardless of the benefits it might produce for some, will always result in the diminution of individual human worth. That is too great a price to pay.

In the words of Dr David van Gend of *Do No Harm*: “It is surely an abuse of the most significant human relationship to manufacture offspring with no real mother or father – perhaps cloned from an anonymous lump of meat in the hospital fridge. It is surely inhuman when living embryos are cloned, not to help parents have a baby, but to provide raw material for men in white coats – to be cut up for drug testing, or, as some have proposed, farmed for their organs, hybridized with animals, and other abuses as yet unimagined. In short, a desecration of humanity.”⁹

In sections 8 & 35 of the Patterson Bill, the setting for future expansion of the principle is already created. Given that two Senators changed their minds about creating cloned human beings for destruction, the possibilities of allowing clones to be developed further than 14 days are high, especially if there are possible “benefits” for others, e.g., for the harvesting of organs and allowing women to sell their ova. Once the principle of destroying some human life for the benefit of others has been established, the new principle – the benefit of others – rules.

The bills and the Lockhart recommendations should be buried and left to rest in peace. I ask the Senate Community Affairs Committee members to advise its fellow senators to reject the two bills, shelve the Lockhart Review, and start again with a more representative committee.

Geoffrey Bullock.

5 ENDNOTES

¹ *Senate Official Hansard No. 13*, 2002 Tuesday, 12 November 2002 p.6136

² “It is often stated that therapeutic cloning will be required to investigate the biology of certain diseases and to find cures for them by studying embryonic stem cells and their progeny derived from the patients... Therapeutic cloning is a long and laborious procedure that will require donor oocytes and will produce an inexact ‘copy’ of the donor because of the handful of mitochondrial genes passed on through the donor egg. An alternative source of stem cells for these important investigations is provided by adult stem cells. In our lab we already have over 40 adult cell lines derived from persons with schizophrenia, Parkinson’s disease, motor neuron disease, and mitochondrial disease. These are relatively easily obtained, easy to grow in the lab in large numbers and amenable to cell culture studies, gene expression profiling and proteomics analyses. It is probable that such cell lines as these will render therapeutic cloning irrelevant and impractical.” [*Professor Alan Mackay-Sim*, <http://griffith.edu.au/centre/eskitis/>]

³ “The final report from the investigation committee of Seoul National University (SNU) has concluded that the authors of two papers published in *Science* have

engaged in research misconduct and that the papers contain fabricated data. With regard to Hwang et al., 2004, the Investigation Committee reported that the data showing that DNA from human embryonic stem cell line NT-1 is identical to that of the donor are invalid because they are the result of fabrication, as is the evidence that NT-1 is a bona fide stem cell line. Further, the committee found that the claim in Hwang et al., 2005 that 11 patient-specific embryonic stem cells line were derived from cloned blastocysts based on fabricated data. According to the report of the Investigation Committee, the laboratory ‘does not possess patient-specific stem cell lines or any scientific basis for claiming to have created one.’ Because the final report of the SNU investigation indicated that a significant amount of the data presented in both papers is fabricated, the editors of *Science* feel that an immediate and unconditional retraction of both papers is needed. We therefore retract these two papers and advise the scientific community that the results reported in them are deemed to be invalid.” [*Science*’ 20 January 2006: Vol. 311 no 5759, p.335]

⁴ www.cloning.org.au/Documents/Analysis%20of%20papers%20tabled%20by%20Senator%20Patterson.pdf

⁵ Emeritus Professor John Martin, *Hold fire on therapeutic cloning until there's proof it works*, Sydney Morning Herald, 26 July 2006

⁶ *Legislation Review: Prohibition of Human Cloning Act 2002 and Research Involving Human Embryos Act 2002*, Reports, December 2005, p18

⁷ Christine Critchley and Lyn Turney, *Understanding Australians’ Perceptions Of Controversial Scientific Research*, *Australian Journal of Emerging Technologies and Society*, Vol. 2, No. 2, 2004, pp: 82-107

⁸ Various House of Reps Hansard recordings from 22-08-02 to 28-08-02

⁹ Dr David van Gend *Truth the first casualty in the cloning wars*, unpublished article for Herald Sun October 2005
