Inquiry into the Legislative responses to Recommendations of the Lockhart Review

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The *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006* is unconstitutional and is incompatible with human rights obligations. My argument here is essentially a philosophical one, grounded in the original intent and moral philosophy of both the framers of the Australian Constitution and the framers of the International Bill of Human Rights. This moral philosophy is rooted in reason and the natural law.

Constitutional authority to create new class of human beings?

This Amendment Act is unconstitutional in that nowhere in the constitution is there to be found any authority to license the creation of a new class of human beings—human and hybrid embryonic human beings—created specifically for development, use, abuse and destruction in research projects. Such a license, as an affront to long-held principles of human morality and dignity, is implicitly prohibited by the solemn opening agreement in the *Commonwealth of Australia Constitution Act 1900*: *the people… humbly relying on the blessing of Almighty God, have agreed…*[1] Constitutional hermeneutics confirm a commitment by the original framers of the Australian Constitution to a moral philosophy that recognizes objective moral truth laid down by a higher authority, to a natural law that upholds human dignity and forbids abuse and arbitrary destruction of human life.

[1] **Whereas** the people… humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth… under the Constitution hereby established… Preamble

This preambular[2] agreement governs the whole text of the Australian Constitution and is to be applied by the Parliament to all law making—*The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth*… [3] Clearly, operative provisions must be read *consistently* with the preambular paragraphs, which set out the themes and rationale of the Constitution. The power of the Parliament to make laws is "subject to the constitution" and that power is to be exercised in a humility that relies on the blessing of Almighty God.

Parliament is not a law unto itself

So what does this mean to humbly rely on the blessing of Almighty God? It means that the Parliament is not the highest authority. It means that Parliament is not a law unto itself. It means that Parliament must humbly defer to and comply with the natural law that underwrites human dignity and human rights. For this is the essence of what our founding fathers committed us to—that we would seek always the blessing of Almighty God by respecting always the natural law—the universal law written in all hearts, across all faiths and able to be acknowledged even by atheists and agnostics—an objective natural law established by some higher authority—however one may wish to name that higher authority.[4]

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[2] It is logically valid that the international consensus (of which Australia was a part) on the principled interpretation of treaties is also applicable to interpretation of other formal agreements such as national constitutions. *Article 31, General rule of interpretation of the Vienna Convention on the Law of Treaties (1969):*

> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, … its preamble…

The operative provisions of the text of the Australian Constitution shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Constitution in their context (i.e., in the context of its preamble in addition to the text). .

[3] Section 51

[4] Australian Constitution **116.** *The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth* should not be misinterpreted to mean that Australia is a secular state. On contrary, the Constitution declares unequivocally that we are a people *relying humbly on the blessing of Almighty God.* The 116 provision prohibits only the establishment of a single religion, obstacles to the free practice of religion, and specific religious tests as a requirement for any office or public trust under the Commonwealth. When read consistently with the Preamble

Professor Edward M. Andries, one of the world's leading authorities on constitutional law and hermeneutics, teaches the necessity always to disclose the original intent of the framers of a constitution.[5] With regards to the Constitutions of the United States and Germany, he discerns clear moral convictions grounded in an authentic philosophy of human dignity and the natural law, rooted in reason and historically present behind the constitutional text. No less than the US and German Constitutions, our Australian Constitution too, I believe, contains this same "authentic philosophy of human dignity and the natural law, rooted in reason and historically present behind the constitutional text".

Natural law obligations embedded in Constitutional text

Our Australian Parliament, constrained by our Constitution, must humbly recognize the moral and ethical limits of human authority. The opening commitment of the Constitution, "*the people… humbly relying on the blessing of Almighty God, have agreed",* signifies that the philosophy of natural law was part of the original intent of the framers of the Constitution and remains always part of the text. This means that Parliament's laws must remain within the moral and ethical parameters of natural law, parameters that may never be crossed.

It means also that Senator Patterson may not write laws that are based on her own pet philosophy whatever that philosophy may be—Utilitarianism perhaps? No amount of advances in technology can legitimize the deliberate human rights violations involved in cloning into existence (even for a few days) new human life that has been intentionally and radically dehumanized. Nor can technological advances justify using and then discarding selected embryonic human beings for research purposes. Both the cloning and destroying of a 14-day-old human embryo and the using and destroying of "*surplus*" embryos for research purposes are prohibited by that most basic of all ethical principles: human beings, from the very beginning to the very end of existence, may not be used as mere expendable means no matter how noble the ends.

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to the Constitution, 116 does not require Parliament to make laws without reference to what will be blessed by Almighty God or without humble submission the moral and ethical requirements of a Higher Authority. On the contrary.

[5]Edward M. Andries: *Religious and Philosophical Norms in the Constitutions of Germany and the United States* Trier, Federal Republic of Germany, May 1999

Parliament may not pass laws such as the *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006* which are in contempt of the natural law, found across all faiths and belief systems, including atheism, and irrevocably embedded in the text of the Australian Constitution.

Denying the right to exist "shocks the conscience of mankind"

Parliamentary law-making must recognize what the United Nations in 1946 called "*the conscience of mankind*" which condemns outright the "*denial of existence*" to entire groups of human beings .[6] Law makers must recognise the dignity and worth of all human beings and their equality before the law, irrespective of subjective views of how and why each human being has been brought into existence, and irrespective of the number of days they have been in existence. Age should never be accepted as an authentic discriminating factor to justify the withholding of human rights entitlement. Human rights belong to all human beings by virtue of their being human—size does not count as a disqualifying factor.

> Where human life exists it merits human dignity; it is not decisive whether the holder of this human dignity knows of it and is able to maintain it by himself. The potential capabilities, lying in human existence from its inception on, are sufficient to justify human dignity.[7]

What did the founding fathers understand by the phrase, "humbly relying on the blessing of Almighty God"? The ordinary meaning of the phrase at that time included the accepted wisdom that good government and the well-being of our citizens depends on respecting the natural law. For a people to be blessed, it was understood that peace and order and good government are based in humility, in obeying the natural law which is instilled in us by a higher authority which in humility we accept and respect. Two of these natural law principles are the principles of conscience: the golden rule that we may not do unto others what we would not have done to ourselves; and the principle that we may not do evil even that good may come of it.

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[6] *…a denial of the right of existence of entire human groups… shocks the conscience of mankind…, and is contrary to moral law and to the spirit and aims of the United Nations.*…UN Resolution on Genocide, 11th December, 1946

[7] German High Court: GBL2.2: 39 B verf GE 1 (1975)

Abandoning objective rational basis for deciding morality

Now there is a grave logical flaw in permitting these fundamental moral principles of conscience to be ditched in order to pass Senator Patterson's Bill. It is to abandon the only objective rational basis we have for deciding morality. It is to resort to the primitive mob methodology of cannibals and pirates—a naïve facing off the numbers, sizing up two opposing forces with the bigger force having its way in deciding what is morally right. History has shown again and again: a moral law that changes with each passing trend, offers no enduring protection of the dignity and human rights of the very young, the very old, the unwanted, the disabled and the most vulnerable.

No politician should presume to legislate, as in this Bill, a course of action that will violate any of the core set of fundamental moral values that underpin the whole democratic system. Genuine democracy is built on a solid foundation of essential and unchangeable moral principles which should never be subjected to the changing winds of ideology or the shifting sands of politics.

This is the very real and necessary limitation to a truly democratic vote—that democracy cannot work when it attacks its own foundational principles. Thus the Palestinian State's recent disastrous exercise in voting for Hamas leaders whose first illegitimate pronouncement was to deny their neighbour Israel the right to continue to exist.

This is the same mistake that Senator Patterson makes when she attempts to legislate against the principle of the right of embryonic human beings to continue to exist. No Parliament, no democracy has a right to vote down that principle: that all human beings, no matter how they are brought into existence, have a right to continue to exist. …*such denial of the rights of existence shocks the conscience of mankind, results in great losses to humanity…and is contrary to the moral law…*[8]

No authority to license lethal experimentation

In the aftermath of the Second World War, the international community, including Australia, gave formal recognition to the existence and importance

[8] UN Resolution on Genocide, 11th December, 1946

of the natural law which formed the basis of modern international human rights. There is no authority in our Constitution for the Parliament to suspend or contravene these principles in order to permit the creation of a new class of human beings explicitly for experimentation and destruction. The use of these new cloned embryonic human beings, even when confined to the first fourteen days of their existence, cannot be "authorised by licence". Neither has Parliament the authority to authorise a "licensing committee" to issue such a licence. A parliament that believes otherwise has lost its moral bearings and, seduced by the raw and ugly power of utilitarian rationalizations, has been won over to the grotesque culture of scientific ambition unfettered by natural law ethics and human rights.

Such a parliament has no claim to be exercising their power constitutionally i.e. legitimately and consistently with the underlying philosophical commitments of the Australian Constitution. The *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006,* contravenes the foundational commitment of the Constitution of Australia that we remain a people " *humbly relying on the blessing of Almighty God"*.

Proposed legislation—incompatible with human rights

The *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006* is incompatible with human rights obligations of the Commonwealth Government to recognize and protect the human rights and dignity of all human beings. To clone embryonic human beings is in contravention of the core principle of the *International Bill of Rights* as it appears in the Preamble of all three instruments, the *Universal Declaration*, the *Convention on Civil and Political Rights* and the *Convention on Economic, Social and Cultural Rights:*

> ***…****recognition of the inherent dignity and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world***.**

This is a foundational premise upon which all human rights law is based In making laws, the Australian Parliament is not exempt.

It is in contravention of these fundamental principles that Senator Patterson's Bill is proposing to dehumanize human embryos in order to

make them available for experimentation and destruction. The essence of this Bill (irrespective of the cleverly deceptive wording) is to deny the humanity (and thus the human rights) of each new embryo destined for the laboratory and certain destruction. Each new human embryo, even as a single cell possessing already a completed human genome and already organised for further development, is a new human entity from the first moment of existence. To deny this is to deny reason, to deny biology, to deny scientific truth itself.

Denying the humanity of embryonic human beings

Yet Senator Patterson's Bill denies the humanity of these embryonic human beings in order that these tiniest of human beings may be denied basic human rights and thus may be "licensed for use" in research projects. This denial of the humanity human embryos is out of keeping with the growing conviction of the international community that they are human beings deserving of respect. The European Court of Human Rights (ECHR) in *Vo v France* (8th July 2004) evinced a unanimous agreement that the human embryo could **not** be excluded definitively from the "*Right to Life*" as set forth in Article 2 of the ***European*** *Convention for the Protection of Human Rights and Fundamental Freedoms* ***(****1951)*. The High Contracting Parties undertook to *"secure to everyone within their jurisdiction" the right to life.* [9] The Court went on to affirm that this right to life *"requires the State not only to refrain from the "intentional" taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction."*

Senator Patterson's Bill should not ignore this very important ECHR consensus: that the human embryo cannot be excluded definitively from the State's obligation to protect the right to life. After all, the right to life is not just a European human rights obligation—it is a universally codified international human rights norm applying in all contemporary societies. It is an integral part of Australia's international human rights treaty commitments.

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[9] Article 2 footnote 1 – "Right to Life":
Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Inalienable human rights—"belonging to the human race"

The ECHR judgment is notable for its recognition of the common ground between States that the human embryo "*belongs to the human race*". From this recognition, it can be argued incontrovertibly that it is precisely this most fundamental of characteristics "*belonging to the human race*" that under international human rights law, as set out in the original *UN Charter of Human Rights* and in the foundational instruments of the *International Bill of Rights*, entitles all human embryos (cloned. ART, or "surplus" ART) (along with all other "*members of the human family*") to enjoy, *without any discrimination whatsoever*, human rights that are equal, inalienable and inherent.

These human rights are inalienable and cannot be suspended for the first 14 days of existence, as is proposed in Senator Patterson's Bill. The concept of discriminating against a group of human beings on such ludicrous Orwellian grounds that "*some human beings are more equal than others*" is manifestly absurd in the context of the object and purpose of all our international human rights instruments. The concept of an "*inferior*" class of human beings contradicts the fundamental human rights principle of equality, and plainly thwarts the original primary intention of the framers of the international human rights law to provide legislative protection for all human beings *without any discrimination whatsoever*.

Legislation--incompatible with the concept of universal rights

The right to life is a universal human right and as such should apply to every human being in every jurisdiction. According to Justice Costa in the European Court of Human Rights *Vo v France* decision,

> *The Norwegian Supreme Court… (t)he German Federal Constitutional Court and the Spanish Constitutional Court have …accepted that the right to life, as protected by Article 2 of the Convention, can apply to the embryo…*

It is in the nature of universal human rights that if they apply in Norway, Germany and Spain, they must apply also in all other States. Human rights are universal, international. Yet rational judgment on

the universal right to life of embryonic human beings has been swamped by a confusion of ulterior motives and political pressures brought to bear on this human rights issue by rogue scientists and rogue States with a vested interest in cloning embryos and using "surplus" embryos for research.

Parliament's constitutional duty to protect the very young

The closest our Constitution comes to authorizing the Parliament to make laws governing the creation by cloning of a new class of human beings is in Section 51:

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

xxii.) *Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants;*

Here the phrase "custody and guardianship of infants" may be stretched to apply to the custody and guardianship of human embryos in that they, like their older *infant* members of the human family, are extremely vulnerable and quite incapable of protecting themselves. But it can never be within the ethical responsibilities of "custody and guardianship" to "license the creation and use" of these tiny human beings for lethal laboratory research. Embryonic human beings, abandoned by parents or deliberately denied parents by their cloning technologist creators, remain nevertheless in the Commonwealth's custody and guardianship. Parliament must keep this in mind when it legislates on the well-being of these embryonic human beings deprived of parental protection and relying totally on Commonwealth custody and guardianship protection.

The current *Research Involving Human Embryos Act 2002* fails to give appropriate legal protection to "*surplus*" embryonic children. The Parliament should exercise its *parens patriae* responsibilities and powers and should change this legislation to prohibit lethal experimentation on "*surplus*" embryonic children who have no one else to protect them.

It is precisely because parents have abandoned these embryonic children whom they have caused to be brought into existence and precisely because

these parents have "*donated*" their "*surplus*" children to "*science*", that responsible governments must provide appropriate legal protection for these vulnerable and tiniest of human beings.

Proper consent definition contravenes voluntarism principle

The proposed Act also gets it very wrong in its definition of proper consent.

> **Section 8**: ***proper consent***, in relation to the use of an excess ART embryo or a human egg, or the creation or use of any other embryo, means consent obtained in accordance with guidelines issued by the CEO of the NHMRC under the *National Health and Medical Research Council Act 1992* and prescribed by the regulations for the purposes of this definition

It is typical of the total failure of the framers of this Amendment Bill to understand and respect the metaphysical and moral chasm of difference that exists between a human embryo and a human egg. A human egg is not a human being and the same grave constraints on "proper consent" do not apply to consigning a human egg to research and destruction as to consigning an embryonic human being to such a fate. In terms of the natural law and human rights, no definition of proper consent is possible or acceptable given that these cloned embryos are to be created and used for lethal research and mandatory destruction.

In subjecting embryos to lethal research, there is no honourable way of evading serious offences by both the parents and the researchers against the principle of voluntarism. Voluntarism is one of the foremost ethical imperatives of all scientific research. In an unseemly eagerness to lead world research at any moral and ethical cost, researchers who use live human embryos are refusing to recognize they violate the principle of voluntarism, one of the oldest and most basic principles of medical research. Voluntarism is absolutely inviolable—no human being has the right to volunteer for lethal experimentation any human being other than himself. (And even volunteering oneself is subject to restrictions in international law).

The human rights tradition of condemning biological experimentation on or mutilation of human subjects in vulnerable conditions is documented in the Geneva Conventions. For example, *Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War* condemns as

"*grave breaches*" such acts as wilful killing or inhuman treatment, including biological experiments, wilfully causing serious injury to body or health.

Another example is found in the *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to Protocol 1, Article 11, and "Protection of Persons":*

> *The physical or mental health and integrity of persons who are in the power of the adverse party… shall not be endangered… it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned… It is, in particular, prohibited to carry out on such persons, even with their consent:*
>
> *(a) Physical mutilations;*
>
> *(b) Medical or scientific experiments;*
>
> *(c) Removal of tissue or organs for transplantation*

Most significant here is the concept that some practices, such as mutilations and experiments, (and we would include here experiments on embryonic human beings (cloned and "surplus") are prohibited "*even with their consent*". There are indeed some practices so inhumane that even the consent of the human subjects concerned, or of their parents or guardians, cannot give them legitimacy.

"Semantic legerdemain… the antithesis of consent"

The inescapable moral truth is that neither the embryos to be selected nor their parents have the moral authority to "*volunteer*" these embryos as "*fully-informed*" subjects for lethal research processes or experimentation. The concept of third-party authorisation, or substituted consent for any ethically and therapeutically dubious procedure was dismissed by Australian High Court Justice William Brennan in his dissenting opinion re *Marion's Case 1992* as a "*semantic legerdemain*" and "*the antithesis of consent*".

This fundamental principle of voluntarism was designed to protect all human beings—especially to protect those in positions of total dependency. This principle was designed precisely to restrain some human beings, such as

cruel parents, ruthless employers, slave-owners and pimps, from the arrogant exercise of power over smaller and more vulnerable human beings trapped temporarily or permanently in their dependency.

There can be no proper consent for lethal research and mandatory destruction of embryonic human beings. In terms of the natural law and human rights, no definition of proper consent for the use of embryonic human beings for lethal research and mandatory destruction is acceptable or even possible.

A "licence" cannot validate lethal research?

There is no licence—there can be no such licence for it would be incompatible with our natural-law-based Constitution and international human rights standards. Should this Amendment Act 2006 be passed, it cannot stand—sooner or later, as with much of the inhumane Nazi legislation of the Weimar Government, it will be declared eventually to have been void at the very time of its enactment on the grounds that it was incompatible with natural law principles. The vital importance of natural law principles was summed up by the German Federal Supreme Court (*Bundesgerichtshof*) in 1954:

> *The true compelling force of the law consists precisely in its correspondence with the dictates of the moral law. . . . The precepts of the moral law derive their validity from themselves. Their absolute compelling nature not only rests upon a given order of moral values which simply must be accepted, but is founded on a set of moral imperatives which regulate human communal life. These precepts remain in force whether or not they are generally accepted. Their content and meaning does not change simply because opinions about what is right or wrong may vary.*[10]

In this respect, the "opinions" upon which the *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act* are based cannot be validated by authorizing a "licensing committee" to issue "licences". As Aquinas says, "…*every human law has just so much of the nature of law, as it is derived from the law of nature. But if at any point it deflects from the law of nature, it is no longer a law but a*

[10] Cited in Edward M. Andries (1999) op.cit.

perversion of law". Or as Abraham Lincoln once said more simply, "*There is no law that can give me the right to do what is wrong*."

This proposed legislation gets it very wrong in clauses 10A, 22 and 23 in that all these offences are offences because they violate natural law principles and so are intrinsically unethical. Such offences cannot be rendered non-offences by being "authorised by a licence". The idea that "a licence" can justify the creation of human beings and part human/part animal hybrids for use and abuse is both heinous and ludicrous:

> **10A** A person commits an offence if…the person intentionally uses an embryo; and… the embryo is…a hybrid embryo and the use by the person is not authorised by a licence.
>
> **22 Offence—creating a human embryo other than by fertilisation, or developing such an embryo…**A person commits an offence if…the creation or development of the human embryo by the person is not authorised by a licence.
>
> **23B …**A person does not commit an offence against subsection (1) or (2) if the creation or development of the hybrid embryo by the person is authorised by a licence.

Under international human rights law, the human embryo is entitled to legal protection against lethal experimentation. There is no licence that can make lethal experimentation anything other than an offence.

Constitution and human rights—deontological not utilitarian

The key point that advocates of destructive research on "*surplus*" or cloned embryos fail to understand is that a deontological system of duties and principles is irrevocably woven into the very foundations of both our Constitution and international human rights law. The utilitarian approach in this proposed legislation seeking to license the use of human beings in lethal research is totally incompatible with the dignity and human rights of embryonic human beings.

The note attached to 23B is also morally, ethically and legally invalid, as no Act of Parliament can issue a licence to create or develop a hybrid embryo for "testing" for whatever purpose, and irrespective of time limits on the embryo's development before mandatory destruction.

Note: A licence to create or develop a hybrid embryo can only be issued under section 21 of the *Research Involving Human Embryos Act 2002*:

a. for the purposes of testing sperm quality in an accredited ART centre—up to, but not including, the first mitotic division; or
b. in the case of hybrid embryo created by introducing the nucleus of a human cell into an animal egg—for not longer than 14 days.

NHMRC to license withdrawal of inalienable rights?

The term "*inalienable rights of all members of the human family*" applied to human embryos which are embryonic human beings "*belonging to the human family*" means that these human rights cannot be taken from them, not by anyone. Certainly not by the NHMRC (as is proposed in 15 Subsection 20(1) of this Amendment Act:

A person may apply to the NHMRC Licensing Committee for a licence authorising one or more of the following:

a. use of excess ART embryos;
b. creation of human embryos other than by fertilisation of a human egg by a human sperm, and use of such embryos;
c. creation of human embryos other than by fertilisation of a human egg by a human sperm that contain genetic material provided by more than 2 persons, and use of such embryos;
d. creation of human embryos using precursor cells from a human embryo or a human fetus, and use of such embryos;
e. research and training involving the fertilisation of a human egg by a human sperm up to, but not including, the first mitotic division, outside the body of a woman for the purposes of research or training in ART;
f. creation of hybrid embryos by the fertilisation of an animal egg by a human sperm, and use of such embryos up to, but not including, the first mitotic division, if:
    i. the creation or use is for the purposes of testing sperm quality; and
    ii. the creation or use will occur in an accredited ART centre;
g. creation of hybrid embryos by introducing the nucleus of a human cell into an animal egg, and use of such embryos.

How can such a "licence" to contravene human dignity and human rights be given? The right to life, because it is inalienable, rules out lethal experimentation and arbitrary deprivation of life. The natural law principles relevant here are that an entity should be allowed to persist in its being and that one must not directly attack any basic good in any human being, not even for the sake of avoiding bad consequences. This last principle that the basic aspects of human well-being are never to be directly suppressed, is

cited by Professor John Finnis as the principle of natural law that provides the rational basis for *absolute* human rights, for those human rights that "*prevail in all circumstances, and even against the most specific human enactment and commands*". [11]

Community standards—human rights standards

In my previous submission 13th September 2002 to the Legislation Committee re *Research involving embryos and prohibition of human cloning Bill 2002*, as in my submission 17th September 2005 to the Lockhart Review Board (the Lockhart Review made no attempt to address the grave issues raised therein), I sought to establish that international human rights standards apply to both cloned human beings and embryonic human beings, and as such, human rights standards must remain the most relevant and appropriate *community standards* to be met when considering the proposed practice of human cloning and lethal research on "*surplus*" embryonic human beings. As adopted as a general rule *in articles 27 and 46* of the *Vienna Convention on the Law of Treaties*, and as agreed by the Australian Government delegation at the *International Conference on Human Rights in Vienna 1993*, international human rights standards must be respected in domestic law. It would not be honourable now, therefore, for this Parliament, at a national level, to pass this *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006* when this Bill so brazenly rejects and contravenes these standards

Australia should not join rogue States

Both human cloning and lethal research on human subjects have been condemned formally and in principle by the Australian Government as a member of the international community. It would be a logically absurd exercise bordering on rogue politics to renege now on human rights standards that have been agreed in good faith. In the cool light of careful reason, there is no justification for revising the prohibition on human cloning. Ethical principles must not be set aside merely to silence noisy demands and orchestrated pressure from researchers who may be finding it difficult in the heady excitement of new experimentation to be honestly objective about these matters. No doubt some at least of these researchers

[11] *Finnis, John: Natural Law and Natural Rights 1980 and Aquinas: Moral, Legal and Political Theory (1998)*

are seeking more than new cures—scientific fame and pharmaceutical fortunes beckon them on to amoral recklessness as they characterize these extremely serious ethical considerations as unfair obstacles holding them back in some grotesque world-wide scientific race for world firsts.[12]

Australia's position prohibiting all forms of human cloning is in accord with the *United Nations Declaration on Human Cloning* which Australia so recently supported along with some 84 other member countries of the United Nations. Australia gave a solemn consent to the international consensus document, the *United Nations Declaration on Human Cloning (2005)* which says in part:

The General Assembly …

Convinced of the urgency of preventing the potential dangers of human cloning to human dignity,

Solemnly declares the following:

(a) Member States are called upon to adopt all measures necessary to protect adequately human life in the application of life sciences;

(b) Member States are called upon to prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life;

(c) Member States are further called upon to adopt the measures necessary to prohibit the application of genetic engineering techniques that may be contrary to human dignity;

(d) Member States are called upon to take measures to prevent the exploitation of women in the application of life sciences;

(e) Member States are also called upon to adopt and implement without delay national legislation to bring into effect paragraphs (a) to (d);

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[12] Ute Deichmann in *An unholy alliance: On the irresponsibility of 'politically responsible' science(Nature 15 June 2000*) writes
"Nazi moral standards were not imposed on scientists. On the contrary, for whatever reason --opportunism, conviction, promotion, or power -- scientists lent their support to ranking human beings as valuable, inferior or worthless, hence providing the ideological basis of the Nazi state." He warns *"The call for politically responsible science, frequently heard today, cannot solve the problem of how scientists can prevent science from serving immoral, inhuman ends."*

Is Senator Patterson's Bill in conformity with the international human rights agreement above? No, it is not. Is this how the Australian Parliament will honour, or rather will dishonour, its obligation to "*adopt and implement without delay national legislation*" to prohibit all forms of human cloning? All the people of Australia, who would have their Parliament honour their constitutional agreement "*relying on the blessing of Almighty God*" , would certainly not endorse such a dishonourable Bill.

Euphemisms hide unethical science

The euphemisms in the Bill—*other embryos authorised to be created or used under license* **26 Paragraph 29(1)(d)**—should not be permitted to disguise the scientific facts that

(i) human beings with distinctly human genetic identities are to be brought into existence "under licence" to be "used"; and
(ii) part human/part animal entities are also to be brought into existence "under licence" to be "used".

Nor should euphemisms be allowed to hide the unethical science of what is being proposed for "licensing". Regarding (i), embryonic human beings are to be brought into existence and then, after their human stem cells have been harvested, as 14-day-old human beings, they are to be destroyed. In addition, there lies behind this Bill the morally degenerate project that nuclear-transfer techniques are to be employed to "*grow*" some "*early human embryos*" that are to be intentionally deformed, diseased, distorted, disadvantaged and destroyed in order to "*customize*" stem cell lines. Regarding (ii), the proposal to license the creation of hybrid embryos is an unconscionable venture into horrendously irresponsible science.

Dangers of a "purely biological conception of society"

Certain embryologists have told Parliament that "*biologically speaking*", these "*proto-embryos*" are "*just collections of cells*". But these embryologists are ethically illiterate in that they do not understand that

international human rights law was developed precisely to protect the dignity and inherent worth of every human being, to defend each and every human being from being reduced to mere biology, to "*just collections of cells*".

One of the most influential of the philosophers that assisted in framing the first post-World War 11 international human rights instruments was Jacques Maritain. He pointed to the disturbing truth that Nazi atrocities had proven once and for all that a "*purely biological conception of society*" leads inevitably to a contempt for human life, resulting in the heinous anomaly that the termination of expendable human beings becomes both tolerated and extolled for producing "*a more healthy society*". [13]

And so, as one of the original framers of modern human rights law, Charles Malik[14] observed, the "*main objective*" of the *UN Charter* and *Declaration of Human Rights* was "*to proclaim man's irreducible humanity*"—the Australian Parliament today must be reminded of this—that man's humanity is never again to be reduced to "*biologically-speaking a collection of cells*".

The *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006* must not be enacted.

[13] Maritain, Jacques: *Man and the State(* 1951)
[14] From a speech on human rights to the *Committee on International, Political, and Social Problems of the U.S. Chamber of Commerce at The Waldorf Astoria in New York.* November 4, 1949.