

Queensland



PROHIBITION OF HUMAN CLONING BILL 2003

Queensland



PROHIBITION OF HUMAN CLONING BILL 2003

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	4
2	Commencement	4
3	Object of Act	4
4	Act binds all persons	4
5	Definitions	4
6	Meaning of “reckless”	5
PART 2—PROHIBITED PRACTICES		
<i>Division 1—Human cloning</i>		
7	Offence—creating a human embryo clone	6
8	Offence—placing a human embryo clone in the human body or the body of an animal	6
9	No defence that human embryo clone could not survive	6
<i>Division 2—Other prohibited practices</i>		
10	Offence—creating a human embryo other than by fertilisation, or developing such an embryo	7
11	Offence—creating a human embryo for a purpose other than achieving pregnancy in a woman	7
12	Offence—creating or developing a human embryo containing genetic material provided by more than 2 persons	7
13	Offence—developing a human embryo outside the body of a woman for more than 14 days	7
14	Offence—using precursor cells from a human embryo or a human fetus to create a human embryo, or developing such an embryo	8
15	Offence—heritable alterations to genome	8

Prohibition of Human Cloning Bill 2003

16	Offence—collecting a viable human embryo from the body of a woman . .	8
17	Offence—creating a chimeric or hybrid embryo.	8
18	Offence—placing of an embryo	9
19	Offence—placing a prohibited embryo.	9
20	Offence—commercial trading in human eggs, human sperm or human embryos	10

PART 4—MONITORING POWERS

41	Appointment of inspectors	11
42	Identity card.	11
43	Powers available to inspectors for monitoring compliance.	11
44	Monitoring powers	12
45	Power to secure	13
46	Inspector must produce identity card on request.	13
47	Consent	14
48	Compensation for damage.	14

PART 5—MISCELLANEOUS

Division 1—Review of Act

49	Review of operation of Act	14
----	--------------------------------------	----

Division 2—Matters about offences

50	Attempts to commit offences against this Act.	15
51	Crimes	15

Division 3—Regulations

53	Regulation-making power	16
----	-----------------------------------	----

PART 6—AMENDMENT OF GENE TECHNOLOGY ACT 2001

56	Act amended in pt 6.	16
57	Amendment of provision 192B (Cloning of human beings is prohibited) . .	16
58	Amendment of provision 192C (Certain experiments involving animal eggs prohibited)	16
59	Amendment of provision 192D (Certain experiments involving putting human and animal cells into a human uterus prohibited)	17

SCHEDULE	18
---------------------------	----

DICTIONARY

2003

A BILL

FOR

**An Act to prohibit human cloning and other unacceptable practices
associated with reproductive technology, and for related purposes**

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

1 Short title

3

This Act may be cited as the *Prohibition of Human Cloning Act 2003*.

4

2 Commencement

5

This Act commences on a day to be fixed by proclamation.

6

3 Object of Act

7

The object of this Act is to address concerns, including ethical concerns, about scientific developments in relation to human reproduction and the utilisation of human embryos by prohibiting certain practices.

8

9

10

4 Act binds all persons

11

(1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

12

13

14

(2) Nothing in this Act makes the Commonwealth or a State liable to be prosecuted for an offence.

15

16

5 Definitions

17

(1) The dictionary in the schedule defines particular words used in this Act.

18

19

(2) For the purposes of establishing that a human embryo clone is a genetic copy of a living or dead human—

20

21

(a) it is sufficient to establish that the set of genes in the nuclei of the cells of the living or dead human has been copied; and

22

23

(b) it is not necessary to establish that the copy is an identical genetic copy.

24

25

Prohibition of Human Cloning Bill 2003

(3) For the purposes of the definition “human embryo” in the schedule, in working out the length of the period of development of a human embryo, any period when the development of the embryo is suspended is to be disregarded.

(4) For the purposes of the definition “human embryo clone” in the schedule, a human embryo that results from the technological process known as embryo splitting is taken not to be created by a process of fertilisation of a human egg by human sperm.

(5) For the purposes of paragraph (b) of the definition “excess ART embryo” in the schedule, a human embryo is excess to the needs of the persons mentioned in that paragraph at a particular time if—

(a) each such person has given written authority for use of the embryo for a purpose other than a purpose relating to the assisted reproductive technology treatment of the woman concerned, and the authority is in force at that time; or

(b) each such person has determined in writing that the embryo is excess to their needs, and the determination is in force at that time.

(6) The following provisions of the *Acts Interpretation Act 1954* do not apply to a reference to a spouse in this Act—

- section 32DA(6)¹
- section 36, definition “spouse”.

6 Meaning of “reckless”

(1) A person is “reckless” in relation to a circumstance if—

(a) the person is aware of a substantial risk that the circumstance exists or will exist; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(2) A person is “reckless” in relation to a result if—

(a) the person is aware of a substantial risk that the result will happen; and

¹ *Acts Interpretation Act 1954*, section 32DA (Meaning of “de facto partner”)

- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk. 1
2
- (3) It is a question of fact as to whether taking a risk is unjustifiable. 3

PART 2—PROHIBITED PRACTICES 4

Division 1—Human cloning 5

7 Offence—creating a human embryo clone 6

A person commits an offence if the person intentionally creates a human embryo clone. 7
8

Maximum penalty—15 years imprisonment. 9

8 Offence—placing a human embryo clone in the human body or the body of an animal 10 11

A person commits an offence if the person intentionally places a human embryo clone in the body of a human or the body of an animal. 12
13

Maximum penalty—15 years imprisonment. 14

9 No defence that human embryo clone could not survive 15

It is not a defence to an offence under section 7 or 8 that the human embryo clone did not survive or could not have survived. 16
17

Division 2—Other prohibited practices	1
10 Offence—creating a human embryo other than by fertilisation, or developing such an embryo	2 3
A person commits an offence if the person intentionally creates a human embryo by a process other than the fertilisation of a human egg by human sperm, or intentionally develops a human embryo so created.	4 5 6
Maximum penalty—10 years imprisonment.	7
11 Offence—creating a human embryo for a purpose other than achieving pregnancy in a woman	8 9
(1) A person commits an offence if the person intentionally creates a human embryo outside the body of a woman, unless the person's intention in creating the embryo is to attempt to achieve pregnancy in a particular woman.	10 11 12 13
Maximum penalty—10 years imprisonment.	14
(2) A defendant does not bear an evidential burden in relation to any matter in subsection (1).	15 16
12 Offence—creating or developing a human embryo containing genetic material provided by more than 2 persons	17 18
A person commits an offence if the person intentionally creates or develops a human embryo containing genetic material provided by more than 2 persons.	19 20 21
Maximum penalty—10 years imprisonment.	22
13 Offence—developing a human embryo outside the body of a woman for more than 14 days	23 24
A person commits an offence if the person intentionally develops a human embryo outside the body of a woman for a period of more than 14 days, excluding any period when development is suspended.	25 26 27
Maximum penalty—10 years imprisonment.	28

14 Offence—using precursor cells from a human embryo or a human fetus to create a human embryo, or developing such an embryo	1 2
A person commits an offence if the person uses precursor cells taken from a human embryo or a human fetus, intending to create a human embryo, or intentionally develops an embryo so created.	3 4 5
Maximum penalty—10 years imprisonment.	6
15 Offence—heritable alterations to genome	7
(1) A person commits an offence if—	8
(a) the person alters the genome of a human cell in such a way that the alteration is heritable by descendants of the human whose cell was altered; and	9 10 11
(b) in altering the genome, the person intended the alteration to be heritable by descendants of the human whose cell was altered.	12 13
Maximum penalty—10 years imprisonment.	14
(2) In this section—	15
“human cell” includes a human embryonal cell, a human fetal cell, human sperm or a human egg.	16 17
16 Offence—collecting a viable human embryo from the body of a woman	18 19
A person commits an offence if the person removes a human embryo from the body of a woman, intending to collect a viable human embryo.	20 21
Maximum penalty—10 years imprisonment.	22
17 Offence—creating a chimeric or hybrid embryo	23
(1) A person commits an offence if the person intentionally creates a chimeric embryo.	24 25
Maximum penalty—10 years imprisonment.	26
(2) A person commits an offence if the person intentionally creates a hybrid embryo.	27 28
Maximum penalty—10 years imprisonment.	29

18 Offence—placing of an embryo

(1) A person commits an offence if the person intentionally places a human embryo in an animal.

Maximum penalty—10 years imprisonment.

(2) A person commits an offence if the person intentionally places a human embryo in the body of a human, other than in a woman's reproductive tract.

Maximum penalty—10 years imprisonment.

(3) A person commits an offence if the person intentionally places an animal embryo in the body of a human for any period of gestation.

Maximum penalty—10 years imprisonment.

19 Offence—placing a prohibited embryo

(1) A person commits an offence if the person intentionally places an embryo in the body of a woman knowing that, or reckless as to whether, the embryo is a prohibited embryo.

Maximum penalty—10 years imprisonment.

(2) In this section—

“prohibited embryo” means—

- (a) a human embryo created by a process other than the fertilisation of a human egg by human sperm; or
- (b) a human embryo created outside the body of a woman, unless the intention of the person who created the embryo was to attempt to achieve pregnancy in a particular woman; or
- (c) a human embryo that contains genetic material provided by more than 2 persons; or
- (d) a human embryo that has been developing outside the body of a woman for a period of more than 14 days, excluding any period when development is suspended; or
- (e) a human embryo created using precursor cells taken from a human embryo or a human fetus; or
- (f) a human embryo that contains a human cell (within the meaning of section 15) whose genome has been altered in such a way that

Prohibition of Human Cloning Bill 2003

the alteration is heritable by human descendants of the human whose cell was altered; or	1 2
(g) a human embryo that was removed from the body of a woman by a person intending to collect a viable human embryo; or	3 4
(h) a chimeric embryo or a hybrid embryo.	5
20 Offence—commercial trading in human eggs, human sperm or human embryos	6 7
(1) A person commits an offence if the person intentionally gives or offers valuable consideration to another person for the supply of a human egg, human sperm or a human embryo.	8 9 10
Maximum penalty—10 years imprisonment.	11
(2) A person commits an offence if the person intentionally receives, or offers to receive, valuable consideration from another person for the supply of a human egg, human sperm or a human embryo.	12 13 14
Maximum penalty—10 years imprisonment.	15
(3) In this section—	16
“reasonable expenses”—	17
(a) in relation to the supply of a human egg or human sperm—includes, but is not limited to, expenses relating to the collection, storage or transport of the egg or sperm; and	18 19 20
(b) in relation to the supply of a human embryo—	21
(i) does not include any expenses incurred by a person before the time when the embryo became an excess ART embryo; and	22 23 24
(ii) includes, but is not limited to, expenses relating to the storage or transport of the embryo.	25 26
“valuable consideration”, in relation to the supply of a human egg, human sperm or a human embryo by a person, includes any inducement, discount or priority in the provision of a service to the person, but does not include the payment of reasonable expenses incurred by the person in connection with the supply.	27 28 29 30 31

PART 4—MONITORING POWERS**41 Appointment of inspectors**

(1) The chairperson of the NHMRC Licensing Committee may, by instrument in writing, appoint any of the following persons as inspectors—

- (a) a person who is appointed or employed by the State;
- (b) a person who is appointed or employed by the Commonwealth.

(2) In exercising powers or performing functions as an inspector, an inspector must comply with any directions of the chairperson of the NHMRC Licensing Committee.

(3) The chairperson of the NHMRC Licensing Committee must not appoint a person as an inspector under subsection (1) unless he or she is satisfied that the person has appropriate skills and experience.

42 Identity card

(1) The chairperson of the NHMRC Licensing Committee must issue an identity card to an inspector.

(2) The identity card—

- (a) must be in the form prescribed by the regulations under the Commonwealth Act; and
- (b) must contain a recent photograph of the inspector.

(3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the chairperson of the NHMRC Licensing Committee as soon as practicable.

Maximum penalty—1 penalty unit.

(4) An inspector must carry his or her identity card at all times when exercising powers or performing functions as an inspector.

43 Powers available to inspectors for monitoring compliance

(1) For the purpose of finding out whether this Act has been complied with, an inspector may—

- (a) enter any premises; and

Prohibition of Human Cloning Bill 2003

- (b) exercise the monitoring powers set out in section 44. 1
- (2) An inspector is not authorised to enter premises under subsection (1) 2
unless— 3
- (a) the occupier of the premises has consented to the entry; or 4
- (b) the premises are premises at which the occupier of the premises 5
is carrying out activities authorised by a licence issued under the 6
Regulation of Research Involving Human Embryos and Assisted 7
Reproductive Technology Act 2003, section 29,² and the entry is 8
at a reasonable time. 9
- 44 Monitoring powers** 10
- (1) The monitoring powers that an inspector may exercise under 11
section 43(1)(b) are as follows— 12
- (a) to search the premises and any thing on the premises; 13
- (b) to inspect, examine, take measurements of, conduct tests on, or 14
take samples of, any human embryo or thing on the premises that 15
relates to this Act; 16
- (c) to take photographs, make video or audio recordings or make 17
sketches of the premises or any thing on the premises; 18
- (d) to inspect any book, record or document on the premises; 19
- (e) to take extracts from or make copies of any such book, record or 20
document; 21
- (f) to take onto the premises such equipment and materials as the 22
inspector requires for the purpose of exercising powers in 23
relation to the premises. 24
- (2) For the purposes of this part, monitoring powers include the power to 25
operate equipment at premises to see whether— 26
- (a) the equipment; or 27
- (b) a disk, tape or other storage device that— 28
- (i) is at the premises; and 29
- (ii) can be used with the equipment or is associated with it; 30

² *Regulation of Research Involving Human Embryos and Assisted Reproductive Technology Act 2003*, section 29 (Determination of application by committee)

Prohibition of Human Cloning Bill 2003

contains information that is relevant to determining whether there has been compliance with this Act.

(3) If the inspector, after operating equipment at the premises, finds that the equipment, or that a tape, disk or other storage device at the premises, contains information mentioned in subsection (2), the inspector may—

(a) operate equipment or facilities at the premises to put the information in documentary form and copy the document so produced; or

(b) if the information can be transferred to a tape, disk or other storage device that—

(i) is brought to the premises; or

(ii) is at the premises and the use of which has been agreed to in writing by the occupier of the premises;

operate the equipment or other facilities to copy the information to the storage device, and remove the storage device from the premises.

45 Power to secure

If an inspector, during a search of premises, believes on reasonable grounds that there is at the premises a human embryo or a thing that may afford evidence of the commission of an offence against this Act, the monitoring powers include securing the embryo or thing pending the obtaining of a warrant by anyone to seize it.

46 Inspector must produce identity card on request

An inspector is not entitled to exercise any powers under this part in relation to premises if—

(a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and

(b) the inspector fails to comply with the requirement.

Prohibition of Human Cloning Bill 2003

47 Consent

(1) Before obtaining the consent of a person for the purposes of section 43(2)(a),³ the inspector must inform the person that he or she may refuse consent.

(2) An entry of an inspector by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

48 Compensation for damage

(1) The owner of equipment or other facilities is entitled to compensation for damage to the equipment or other facilities if—

- (a) the damage was caused to the equipment or other facilities as a result of it being operated by an inspector as mentioned in this part; and
- (b) the damage was caused as a result of insufficient care being exercised by the inspector operating the equipment or other facilities.

(2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment or other facilities that was appropriate in the circumstances.

PART 5—MISCELLANEOUS

Division 1—Review of Act

49 Review of operation of Act

(1) The Minister must cause a review of the operation of this Act to be undertaken as soon as possible after the second anniversary of the date this section commences.

3 Section 43 (Powers available to inspectors for monitoring compliance)

Prohibition of Human Cloning Bill 2003

- (2) The review must cover the scope and operation of part 2 of this Act taking into account the following— 1
2
- (a) developments in technology in relation to assisted reproductive technology; 3
4
 - (b) developments in medical research and scientific research and the potential therapeutic applications of such research; 5
6
 - (c) community standards; 7
 - (d) the applicability of establishing a National Stem Cell Bank. 8
- (3) The review of this Act may be undertaken as part of the reviews of the Commonwealth Act and the *Prohibition of Human Cloning Act 2002* (Cwlth) mentioned in the Commonwealth Act, section 47. 9
10
11

Division 2—Matters about offences 12

50 Attempts to commit offences against this Act 13

- (1) A person who attempts to commit an offence against this Act commits an offence. 14
15

Maximum penalty—the maximum penalty for committing the offence attempted to be committed. 16
17

- (2) The Criminal Code, section 4,⁴ applies to subsection (1). 18

51 Crimes 19

- (1) The following offences are crimes— 20
- (a) an offence mentioned in part 2;⁵ 21
 - (b) an offence against section 50(1). 22
- (2) The offender can not be arrested without warrant. 23

4 Criminal Code, section 4 (Attempts to commit offences)

5 Part 2 (Prohibited practices)

Division 3—Regulations	1
53 Regulation-making power	2
The Governor in Council may make regulations under this Act.	3
PART 6—AMENDMENT OF GENE TECHNOLOGY ACT 2001	4 5
56 Act amended in pt 6	6
This part amends the <i>Gene Technology Act 2001</i> .	7
57 Amendment of provision 192B (Cloning of human beings is prohibited)	8 9
Provision numbered 192B, note—	10
<i>omit, insert—</i>	11
‘Note—	12
The Commonwealth Act, section 192B was repealed by the <i>Prohibition of Human Cloning Act 2002</i> (Cwlth), schedule 1.’	13 14
58 Amendment of provision 192C (Certain experiments involving animal eggs prohibited)	15 16
Provision numbered 192C, note—	17
<i>omit, insert—</i>	18
‘Note—	19
The Commonwealth Act, section 192C was repealed by the <i>Prohibition of Human Cloning Act 2002</i> (Cwlth), schedule 1.’	20 21

Prohibition of Human Cloning Bill 2003

59	Amendment of provision 192D (Certain experiments involving putting human and animal cells into a human uterus prohibited)	1
		2
	Provision numbered 192D, note—	3
	<i>omit, insert—</i>	4
	<i>Note—</i>	5
	The Commonwealth Act, section 192D was repealed by the <i>Prohibition of Human Cloning Act 2002</i> (Cwlth), schedule 1.’.	6
		7

SCHEDULE	1
DICTIONARY	2
section 5(1)	3
“animal” does not include a human.	4
“chimeric embryo” means—	5
(a) a human embryo into which a cell, or any component part of a cell, of an animal has been introduced; or	6 7
(b) a thing declared under a regulation to be a chimeric embryo.	8
“Commonwealth Act” means the <i>Research Involving Human Embryos Act 2002</i> (Cwlth).	9 10
“excess ART embryo” means a human embryo that—	11
(a) was created, by assisted reproductive technology, for use in the assisted reproductive technology treatment of a woman; and	12 13
(b) is excess to the needs of—	14
(i) the woman for whom it was created; and	15
(ii) her spouse (if any) at the time the embryo was created.	16
“human embryo” means a live embryo that has a human genome or an altered human genome and that has been developing for less than 8 weeks since the appearance of 2 pro-nuclei or the initiation of its development by other means.	17 18 19 20
“human embryo clone” means a human embryo that is a genetic copy of another living or dead human, but does not include a human embryo created by the fertilisation of a human egg by human sperm.	21 22 23
“human sperm” includes human spermatids.	24
“hybrid embryo” means—	25
(a) an embryo created by the fertilisation of a human egg by animal sperm; or	26 27
(b) an embryo created by the fertilisation of an animal egg by human sperm; or	28 29

SCHEDULE (continued)

(c) a human egg into which the nucleus of an animal cell has been introduced; or	1 2
(d) an animal egg into which the nucleus of a human cell has been introduced; or	3 4
(e) a thing declared under a regulation to be a hybrid embryo.	5
“inspector” means a person appointed as an inspector under section 41(1).	6
“NHMRC Licensing Committee” means the committee established by the Commonwealth Act, section 13.	7 8
“precursor cell” means a cell that has the potential to develop into a human egg or human sperm.	9 10
“reckless” see section 6.	11
“spouse” , in relation to a person, includes a person who, although not legally married to the person, is living with the person as the person’s spouse on a bona fide domestic basis.	12 13 14
“State” includes the Australian Capital Territory and the Northern Territory.	15 16
“woman” means a female human.	17