



# **Prohibition of Human Cloning Act 2002**

**No. 144, 2002**

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

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# **Prohibition of Human Cloning Act 2002**

**No. 144, 2002**

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Section 1

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

[Assented to 19 December 2002]

The Parliament of Australia enacts:

**Part 1—Preliminary**

**1 Short title**

This Act may be cited as the *Prohibition of Human Cloning Act 2002*.

**2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	19 December 2002
2. Sections 3 to 26 and Schedule 1	The 28th day after the day on which this Act receives the Royal Assent	16 January 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

### **3 Object of Act**

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.

### **4 Operation of Act**

- (1) This Act applies as follows:
- (a) to things done, or omitted to be done, by constitutional corporations;
  - (b) to things done, or omitted to be done, in the course of constitutional trade or commerce;
  - (c) to matters within the legislative power of the Commonwealth under paragraph 51(xxix) of the Constitution;
  - (d) to the Commonwealth and Commonwealth authorities;
  - (e) for purposes relating to the collection, compilation, analysis and dissemination of statistics;
  - (f) to matters within the legislative power of the Commonwealth under paragraph 51(xxxix) of the Constitution, so far as it relates to the matters mentioned in paragraphs (a) to (e) of this subsection.

- (2) In this section:

***constitutional corporation*** means a trading, foreign or financial corporation within the meaning of paragraph 51(xx) of the Constitution.

***constitutional trade or commerce*** means trade or commerce:

- (a) between Australia and places outside Australia; or
- (b) among the States; or

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- (c) by way of the supply of services to the Commonwealth or to a Commonwealth authority.

## 5 Act to bind the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

## 6 External Territories

This Act extends to every external Territory.

## 7 Schedule

The *Gene Technology Act 2000* is amended as set out in item 1 of Schedule 1.

## 8 Definitions

- (1) In this Act:

*animal* does not include a human.

*chimeric embryo* means:

- (a) a human embryo into which a cell, or any component part of a cell, of an animal has been introduced; or
- (b) a thing declared by the regulations to be a chimeric embryo.

*Commonwealth authority* means the following:

- (a) a body corporate established for a public purpose by or under an Act;
- (b) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together:
  - (i) the Commonwealth;
  - (ii) a body covered by paragraph (a);
  - (iii) a body covered by either of the above subparagraphs.

**excess ART embryo** means a human embryo that:

- (a) was created, by assisted reproductive technology, for use in the assisted reproductive technology of a woman; and
- (b) is excess to the needs of:
  - (i) the woman for whom it was created; and
  - (ii) her spouse (if any) at the time the embryo was created.

**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.

**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.

**human sperm** includes human spermatids.

**hybrid embryo** means:

- (a) an embryo created by the fertilisation of a human egg by animal sperm; or
- (b) an embryo created by the fertilisation of an animal egg by human sperm; or
- (c) a human egg into which the nucleus of an animal cell has been introduced; or
- (d) an animal egg into which the nucleus of a human cell has been introduced; or
- (e) a thing declared by the regulations to be a hybrid embryo.

**precursor cell** means a cell that has the potential to develop into a human egg or human sperm.

**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.

**State** includes the Australian Capital Territory and the Northern Territory.

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**woman** means a female human.

- (2) For the purposes of establishing that a human embryo clone is a genetic copy of a living or dead human:
  - (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
  - (b) it is not necessary to establish that the copy is an identical genetic copy.
- (3) For the purposes of the definition of **human embryo** in subsection (1), 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 of **human embryo clone** in subsection (1), 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 of **excess ART embryo**, 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.

## **Part 2—Prohibited practices**

### **Division 1—Human cloning**

#### **9 Offence—creating a human embryo clone**

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

Maximum penalty: Imprisonment for 15 years.

#### **10 Offence—placing a human embryo clone in the human body or the body of an animal**

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.

Maximum penalty: Imprisonment for 15 years.

#### **11 Offence—importing or exporting a human embryo clone**

- (1) A person commits an offence if the person intentionally imports a human embryo clone into Australia.

Maximum penalty: Imprisonment for 15 years.

- (2) A person commits an offence if the person intentionally exports a human embryo clone from Australia.

Maximum penalty: Imprisonment for 15 years.

#### **12 No defence that human embryo clone could not survive**

It is not a defence to an offence under section 9, 10 or 11 that the human embryo clone did not survive or could not have survived.

## **Division 2—Other prohibited practices**

### **13 Offence—creating a human embryo other than by fertilisation, or developing such an embryo**

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.

Maximum penalty: Imprisonment for 10 years.

### **14 Offence—creating a human embryo for a purpose other than achieving pregnancy in a woman**

- (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.

Maximum penalty: Imprisonment for 10 years.

- (2) Despite subsection 13.3(3) of the *Criminal Code*, a defendant does not bear an evidential burden in relation to any matter in subsection (1) of this section.

### **15 Offence—creating or developing a human embryo containing genetic material provided by more than 2 persons**

A person commits an offence if the person intentionally creates or develops a human embryo containing genetic material provided by more than 2 persons.

Maximum penalty: Imprisonment for 10 years.

**16 Offence—developing a human embryo outside the body of a woman for more than 14 days**

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.

Maximum penalty: Imprisonment for 10 years.

**17 Offence—using precursor cells from a human embryo or a human fetus to create a human embryo, or developing such an embryo**

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.

Maximum penalty: Imprisonment for 10 years.

**18 Offence—heritable alterations to genome**

- (1) A person commits an offence if:
- (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
  - (b) in altering the genome, the person intended the alteration to be heritable by descendants of the human whose cell was altered.

Maximum penalty: Imprisonment for 10 years.

- (2) In this section:

*human cell* includes a human embryonal cell, a human fetal cell, human sperm or a human egg.

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**19 Offence—collecting a viable human embryo from the body of a woman**

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.

Maximum penalty: Imprisonment for 10 years.

**20 Offence—creating a chimeric or hybrid embryo**

- (1) A person commits an offence if the person intentionally creates a chimeric embryo.

Maximum penalty: Imprisonment for 10 years.

- (2) A person commits an offence if the person intentionally creates a hybrid embryo.

Maximum penalty: Imprisonment for 10 years.

**21 Offence—placing of an embryo**

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

Maximum penalty: Imprisonment for 10 years.

- (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: Imprisonment for 10 years.

- (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: Imprisonment for 10 years.

## **22 Offence—importing, exporting or placing a prohibited embryo**

- (1) A person commits an offence if the person intentionally imports an embryo into Australia knowing that, or reckless as to whether, the embryo is a prohibited embryo.

Maximum penalty: Imprisonment for 10 years.

- (2) A person commits an offence if the person intentionally exports an embryo from Australia knowing that, or reckless as to whether, the embryo is a prohibited embryo.

Maximum penalty: Imprisonment for 10 years.

- (3) 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: Imprisonment for 10 years.

- (4) 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 18) whose genome has been altered in such a way that the alteration is heritable by human descendants of the human whose cell was altered; or

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**Division 2** Other prohibited practices

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- (g) a human embryo that was removed from the body of a woman by a person intending to collect a viable human embryo; or
- (h) a chimeric embryo or a hybrid embryo.

**23 Offence—commercial trading in human eggs, human sperm or human embryos**

- (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.

Maximum penalty: Imprisonment for 10 years.

- (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.

Maximum penalty: Imprisonment for 10 years.

- (3) In this section:

***reasonable expenses:***

- (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
- (b) in relation to the supply of a human embryo:
  - (i) does not include any expenses incurred by a person before the time when the embryo became an excess ART embryo; and
  - (ii) includes, but is not limited to, expenses relating to the storage or transport of the embryo.

***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.

## **Part 3—Commonwealth/State arrangements**

### **24 Operation of State laws**

This Act is not intended to exclude the operation of any law of a State, to the extent that the law of the State is capable of operating concurrently with this Act.

## **Part 4—Review provision and regulations**

### **Division 1—Review of Act**

#### **25 Review of operation of Act**

- (1) The Minister must cause an independent review of the operation of this Act to be undertaken as soon as possible after the second anniversary of the day on which this Act received the Royal Assent.
- (2) The review is to be undertaken by persons chosen by the Minister, with the agreement of each State.
- (3) The persons undertaking the review must give the Council of Australian Governments and both Houses of the Parliament a written report of the review before the third anniversary of the day on which this Act received the Royal Assent.
- (4) The persons undertaking the review must consider and report on the scope and operation of this Act taking into account the following:
  - (a) developments in technology in relation to assisted reproductive technology;
  - (b) developments in medical research and scientific research and the potential therapeutic applications of such research;
  - (c) community standards;
  - (d) the applicability of establishing a National Stem Cell Bank.
- (5) The report must contain recommendations about amendments that should be made to this Act, having regard to the matters mentioned in subsection (4).
- (6) The persons undertaking the review must consult:
  - (a) the Commonwealth and the States; and
  - (b) a broad range of persons with expertise in or experience of relevant disciplines;

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and the views of the Commonwealth, the States and the persons mentioned in paragraph (b) must be set out in the report to the extent that it is reasonably practicable to do so.

## **Division 2—Regulations**

### **26 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Before the Governor-General makes regulations under this Act, the Minister must be satisfied that:
  - (a) the States have been consulted in relation to the proposed regulations; and
  - (b) the proposed regulations have been prepared having regard to views expressed by the States in those consultations.

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## **Schedule 1—Consequential amendment**

### ***Gene Technology Act 2000***

#### **1 Sections 192B, 192C and 192D**

Repeal the sections.

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*[Minister's second reading speech made in—  
House of Representatives on 27 June 2002  
Senate on 18 September 2002]*

(182/02)

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