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No. 72 of 2008

Authorised Version incorporating amendments as at 1 December 2013

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The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose 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.

2 Commencement

(1) This Act comes into operation on a day to be proclaimed.

(2) If this Act does not come into operation before 1 January 2010, it comes into operation on that day.

3 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;
excess ART embryo has the meaning set out in section 4 of the Research Involving Human Embryos Act 2008;

human embryo means a discrete entity that has arisen from either—

(a) the first mitotic division when fertilisation of a human oocyte by a human sperm is complete; or
(b) any other process that initiates organised development of a biological entity with a human nuclear genome or altered human nuclear genome that has potential to develop up to, or beyond, the stage at which the primitive streak appears—

and has not yet reached 8 weeks of development since the first mitotic division;

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;
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Part 1—Preliminary

licent means a licence issued under section 15 of the Research Involving Human Embryos Act 2008;

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

sperm means sperm from a man;

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) A reference in this Act to an embryo (including a human embryo) is a reference to a living embryo.

(6) A reference in this Act to a human egg is a reference to a human oocyte.
(7) A reference in this Act to a human embryo does not include a reference to—
   (a) a hybrid embryo; or
   (b) a human embryonic stem cell line.

4 Act to bind the Crown

(1) This Act binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.
PART 2—PRACTICES THAT ARE COMPLETELY PROHIBITED

5 Offence—placing a human embryo clone in the human body or the body of an animal

(1) 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.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.

6 Offence—importing or exporting a human embryo clone

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

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

(3) An offence against subsection (1) or (2) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.

7 No defence that human embryo clone could not survive

It is not a defence to an offence under section 5 or 6 that the human embryo clone did not survive or could not have survived.

8 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 by a process of the fertilisation of a human egg by a human sperm 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.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.

(3) Despite section 72(1) of the **Criminal Procedure Act 2009**, an accused does not bear a burden of presenting or pointing to evidence in accordance with that section in relation to any matter in subsection (1) of this section.

9 **Offence—creating or developing a human embryo by fertilisation that contains genetic material provided by more than 2 persons**

(1) A person commits an offence if—

   (a) the person intentionally creates or develops a human embryo by a process of the fertilisation of a human egg by a human sperm outside the body of a woman; and

   (b) the human embryo contains genetic material provided by more than 2 persons.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.

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

(1) 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.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.
11 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.

(2) In this section—

*human cell* includes a human embryonal cell, a human foetal cell, human sperm and a human egg.

(3) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.

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

(1) 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.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.

13 Offence—creating a chimeric embryo

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

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.
Part 2—Practices that are Completely Prohibited

14 Offence—developing a hybrid embryo

(1) A person commits an offence if the person intentionally develops a hybrid embryo for a period of more than 14 days, excluding any period when development is suspended.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.

15 Offence—placing of an embryo

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

(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.

(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.

(4) An offence against subsection (1), (2) or (3) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.

16 Offence—importing, exporting or placing a prohibited embryo

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

(2) A person commits an offence if the person intentionally exports an embryo from Victoria knowing that, or reckless as to whether, the embryo is a prohibited embryo.
Part 2—Practices that are Completely Prohibited

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(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.

(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 using precursor cells taken from a human embryo or a human foetus; or

(f) a human embryo that contains a human cell (within the meaning of section 11) 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
Part 2—Practices that are Completely Prohibited

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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.

(5) An offence against subsection (1), (2) or (3) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.

17 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.

(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.

(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
Part 2—Practices that are Completely Prohibited

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(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.

(4) An offence against subsection (1) or (2) is an indictable offence punishable by imprisonment for a term not exceeding 15 years.
PART 3—PRACTICES PROHIBITED UNLESS AUTHORISED BY A LICENCE

18 Offence—creating a human embryo other than by fertilisation or developing such an embryo

(1) A person commits an offence if—

(a) the person intentionally creates a human embryo by a process other than the fertilisation of a human egg by a human sperm, or develops a human embryo so created; and

(b) the creation or development of the human embryo by the person is not authorised by a licence.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 10 years.

Notes

1 The development of a human embryo outside the body of a woman for more than 14 days is prohibited by section 10.

2 The placement in the body of a woman of a human embryo clone, or any other human embryo created other than by the fertilisation of a human egg by a human sperm, is prohibited by sections 5 and 16.

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

(1) A person commits an offence if—

(a) the person intentionally creates or develops a human embryo by a process other than the fertilisation of a human egg by a human sperm; and

(b) the human embryo contains genetic material provided by more than 2 persons; and
(c) the creation or development of the human embryo by the person is not authorised by a licence.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 10 years.

Notes
1 The development of a human embryo outside the body of a woman for more than 14 days is prohibited by section 10.
2 The placement in the body of a woman of a human embryo created other than by the fertilisation of a human egg by a human sperm is prohibited by section 16.

20 Offence—using precursor cells from a human embryo or a human foetus to create a human embryo, or developing such an embryo

(1) A person commits an offence if—

(a) the person uses precursor cells taken from a human embryo or a human foetus, intending to create a human embryo, or intentionally develops an embryo so created; and

(b) the person engages in activities mentioned in paragraph (a) without being authorised by a licence, and the person knows or is reckless as to that fact.

(2) An offence against subsection (1) is an indictable offence punishable by imprisonment for a term not exceeding 10 years.

21 Offence—creating a hybrid embryo

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

(2) A person commits an offence if the person intentionally develops a hybrid embryo.
(3) 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.

(4) An offence against subsection (1) or (2) is an indictable offence punishable by imprisonment for a term not exceeding 10 years.

Note
A licence to create or develop a hybrid embryo can be issued under section 15 of the Research Involving Human Embryos Act 2008 for the purposes of testing sperm quality in an accredited ART centre—up to, but not including, the first mitotic division.
PART 4—GENERAL

22 Regulations

The Governor in Council 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.
PART 5—TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

Division 1—Transitional provisions

23 Definitions

In this Division—

*commencement* means the commencement of this Act;

*repealed Act* means the *Infertility Treatment Act 1995*.

24 Superseded references

On and from the commencement, a reference in an Act (other than this Act) or a document to Part 4A of the repealed Act is taken, if the context permits, to be a reference to this Act.

25 Continuing proceedings

If, immediately before the commencement, proceedings for an offence against Part 4A of the repealed Act had started but had not yet been determined, the proceedings may continue under the repealed Act as if that Act had not been repealed.
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s. 26

Pt 5 Div. 2
(Heading and
ss 26, 27)
repealed by
No. 702013
s. 3(Sch. 1
item 41).
ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 10 September 2008

Legislative Council: 10 October 2008

The long title for the Bill for this Act was "A Bill for an Act to prohibit human cloning for reproduction and other unacceptable practices associated with reproductive technology, and for related purposes."

The Prohibition of Human Cloning for Reproduction Act 2008 was assented to on 25 November 2008 and came into operation on 1 January 2010: section 2(2).
2. Table of Amendments

This Version incorporates amendments made to the **Prohibition of Human Cloning for Reproduction Act 2008** by Acts and subordinate instruments.

**Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**
- **Assent Date:** 24.11.09
- **Commencement Date:** S. 97(Sch. item 97) on 1.1.10: Government Gazette 10.12.09 p. 3215
- **Current State:** This information relates only to the provision/s amending the **Prohibition of Human Cloning for Reproduction Act 2008**

**Statute Law Revision Act 2013, No. 70/2013**
- **Assent Date:** 19.11.13
- **Commencement Date:** S. 3(Sch. 1 item 41) on 1.12.13: s. 2(1)
- **Current State:** This information relates only to the provision/s amending the **Prohibition of Human Cloning for Reproduction Act 2008**
3. **Explanatory Details**

   No entries at date of publication.