



Australian Capital Territory

# Human Cloning (Prohibition) Act 2004

A2004-21

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Australian Capital Territory

# Human Cloning (Prohibition) Act 2004

**A2004-21**

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An Act to prohibit human cloning and other unacceptable practices associated with reproductive technology

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Human Cloning (Prohibition) Act 2004*.

### 2 Commencement

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*human embryo*—see section 7.' means that the term 'human embryo' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## **5 Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## **6 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.

## **7 Meaning of *human embryo***

(1) In this Act:

*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.

(2) 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.

## 8 Meaning of *human embryo clone*

- (1) In this Act:

*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.

- (2) To establish 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) 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.

## **Part 2                      Prohibited practices**

### **Division 2.1              Human cloning**

#### **9              Offence—creating 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 human embryo clone in body of human or 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 human embryo clone**

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

Maximum penalty: imprisonment for 15 years.

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

Maximum penalty: imprisonment for 15 years.

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

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

## **Division 2.2 Other prohibited practices**

### **13 Offence—creating human embryo otherwise than by fertilisation etc**

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 human embryo for purpose other than achieving pregnancy**

- (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 the Criminal Code, section 58 (3), a defendant does not bear an evidential burden in relation to anything mentioned in subsection (1).



**15 Offence—creating etc human embryo containing genetic material from more than 2 people**

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

Maximum penalty: imprisonment for 10 years.

**16 Offence—developing human embryo outside body of woman for longer 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 longer than 14 days, excluding any period when development is suspended.

Maximum penalty: imprisonment for 10 years.

**17 Offence—using precursor cells to create human embryo etc**

A person commits an offence if 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.

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 foetal cell, human sperm and a human egg.

**19 Offence—collecting viable human embryo from woman’s body**

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 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 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 prohibited embryo**

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

Maximum penalty: imprisonment for 10 years.

- (4) In this section:

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

*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 containing genetic material provided by more than 2 people; or
- (d) a human embryo that has been developing outside the body of a woman for a period of longer than 14 days, disregarding any period when development is suspended; or

- (e) a human embryo created using precursor cells taken from a human embryo or foetus; or
- (f) a human embryo containing a human cell 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
- (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 etc**

- (1) A person commits an offence if the person intentionally gives or offers valuable consideration to someone else 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 someone else 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, for example, 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) includes, for example, expenses relating to the storage or transport of the embryo; but

- (ii) does not include any expenses incurred by a person before the embryo became an excess ART embryo.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***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                      Miscellaneous

### 24      Review of operation of Act

- (1) The Minister must review the operation of this Act as soon as practicable after the 2nd anniversary of the day the Act commences.
- (2) 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.
- (3) The review may be undertaken as part of the review mentioned in the *Prohibition of Human Cloning Act 2002* (Cwlth), section 25.

### 25      Regulation-making power

The Executive may make regulations for this Act.

*Note*      Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- Executive
- under.

***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) anything declared under the regulations to be a chimeric embryo.

***excess ART embryo***—see the *Human Embryo (Research) Act 2004*, section 9.

***human embryo***—see section 7.

***human embryo clone***—see section 8.

***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 under 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.

*woman* means a female human.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 30 March 2004.

**2 Notification**

Notified under the Legislation Act on 7 April 2004.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Human Cloning (Prohibition) Bill 2004 which was passed by the Legislative Assembly on 1 April 2004.

Clerk of the Legislative Assembly