

South Australia

Prohibition of Human Cloning Act 2003

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

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

accredited ART centre means a person or body accredited to carry out assisted reproductive technology by—

- (a) the Reproductive Technology Accreditation Committee of the Fertility Society of Australia; or
- (b) if the regulations prescribe another body or other bodies in addition to, or instead of, the body mentioned in paragraph (a)—that other body or any of those other bodies, as the case requires;

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—

- (a) a body corporate established for a public purpose by or under an Act of the Commonwealth; or
- (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 treatment 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 reproductive material means—

- (a) a human embryo; or
- (b) human sperm; or
- (c) a human egg; or
- (d) a thing declared by the regulations to be human reproductive material;

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;

inspector means a person appointed as an inspector under a related Commonwealth Act;

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

record means a record of any kind, including a disk, tape or other article from which information is capable of being reproduced (with or without the aid of another article or device);

related Commonwealth Act means—

- (a) the *Prohibition of Human Cloning Act 2002* of the Commonwealth; or
- (b) the *Research Involving Human Embryos Act 2002* of the Commonwealth;

South Australian clinical practice licence means a licence to carry out artificial fertilisation procedures issued under Part 3 of the *Reproductive Technology (Clinical Practices) Act 1988*;

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;

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** in subsection (1), 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.

4—Nationally consistent scheme

It is intended that the principal objects of this Act be achieved through a regulatory framework and a range of offences that operate in conjunction with, and in a manner that is consistent with, corresponding Commonwealth and State laws.

Part 2—Prohibited practices

Division 1—Human cloning

5—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.

6—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.

7—Offence—importing or exporting a human embryo clone

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

Maximum penalty: Imprisonment for 15 years.

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

Maximum penalty: Imprisonment for 15 years.

8—No defence that human embryo clone could not survive

It is not a defence to an offence under section 5, 6 or 7 that the human embryo clone did not survive or could not have survived.

Division 2—Other prohibited practices

9—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.

10—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 section 30, a defendant does not bear an evidential burden in accordance with that section in relation to any matter in subsection (1).

11—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.

12—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.

13—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.

14—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.

15—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.

16—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.

17—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.

18—Offence—importing, exporting or placing a prohibited embryo

- (1) A person commits an offence if the person intentionally imports an embryo into South 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 South 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 14) 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.

19—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—Inspectors

20—Powers of inspectors

- (1) An inspector may, for any purpose connected with the administration, operation or enforcement of this Act—
- (a) enter any premises; and
- (b) search the premises and anything on the premises; and
- (c) inspect, examine, take measurements of, conduct tests on, or take samples of, any human reproductive or other material, or thing, at the premises; and
- (d) take photographs, films, audio, video or other recordings, and make sketches; and
- (e) inspect any book, record or document and, if necessary, require a person to produce any book, record or document for inspection; and
- (f) take extracts from or make copies of any book, record or document; and
- (g) operate any equipment at the premises, or require a person to operate any equipment at the premises; and
- (h) take onto the premises any equipment or materials; and
- (i) secure any equipment or material or other thing and require that it not be operated, moved, altered or used in any way until further order of an inspector or magistrate; and
- (j) require a person to answer questions; and

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- (k) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act.
- (2) An inspector may, in exercising powers under this section—
- (a) be accompanied by such police officers or other persons as the inspector thinks fit; and
 - (b) take onto premises such equipment or materials as the inspector reasonably requires.
- (3) Without limiting subsection (1), an inspector may operate equipment at premises to see whether—
- (a) the equipment; or
 - (b) a disk, tape or other storage device that—
 - (i) is at the premises; and
 - (ii) can be used with the equipment or is associated with it,
- contains information or material that is relevant to determining whether there has been compliance with this Act or the regulations.
- (4) Without limiting subsection (1) or (3), if an 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 (3), 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,
- operate the equipment or other facilities to copy the information to the storage device, and remove the storage device from the premises.
- (5) Without limiting subsection (1), if an inspector, during a search of premises, believes on reasonable grounds that there is at the premises a human embryo or other material or thing that may afford evidence of the commission of an offence against this Act, the inspector may—
- (a) secure the embryo, material or other thing, pending the obtaining of a warrant to seize it; and
 - (b) seize it under the authority of a warrant to seize it obtained from a magistrate.
- (6) An inspector is not authorised to enter premises under this section unless—
- (a) the occupier of the premises has consented to the entry; or
 - (b) the occupier of the premises is carrying out activities covered by a licence under this Act, and the entry is at a reasonable time; or
 - (c) the entry is made under the authority of a warrant issued by a magistrate; or

- (d) the inspector has reasonable grounds to believe that the circumstances require immediate entry.
- (7) An application for a warrant under this section—
 - (a) may be made either personally or by telephone;
 - (b) must be made in accordance with the procedures prescribed by the regulations.
- (8) An inspector may use such force as is reasonably necessary to enter premises under subsection (6)(b), (c) or (d).
- (9) A magistrate may, on application by a person who has an interest in any equipment, material or other thing secured under subsection (1)(i), grant an order releasing the equipment, material or thing from the requirement under that paragraph.

21—Announcement before entry

- (1) An inspector must, before entering premises without the consent of the occupier of the premises—
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if the inspector has reasonable grounds to believe that immediate entry to the premises is required to ensure the effective exercise of powers under this Part.

22—Inspector must produce identity card on request

- (1) 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 an identity card for inspection by the occupier; and
 - (b) the inspector fails to comply with the requirement.
- (2) In this section—

identity card means an identity card issued under a related Commonwealth Act.

23—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 an inspector operating the equipment or other facilities.
- (2) Compensation is payable in accordance with the regulations.
- (3) 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.

24—Return of seized things

- (1) Subject to this section, if an inspector seizes any material or thing under this Part, the inspector must take reasonable steps to return it if or when the reason for its seizure no longer exists or it is decided that it is not to be used in evidence (unless the material or thing is forfeited or forfeitable to the State of South Australia under another Act or law).
- (2) An inspector is not required to return any material or thing under subsection (1) if—
 - (a) the material or thing has deteriorated to the extent that it no longer has any useful purpose or any real value; or
 - (b) an inspector is otherwise authorised (by a law, or an order of a court, of the State of South Australia or the Commonwealth) to retain, destroy or dispose of the material or thing.
- (3) The material or thing may be returned under subsection (1) either unconditionally or on such terms and conditions as the Minister thinks fit.
- (4) An inspector may make application to the Magistrates Court for an order for the purposes of subsection (2)(b) and a magistrate may, on such an application, if satisfied that it is appropriate to do so, make an order authorising an inspector to retain, destroy or dispose of any material or thing.
- (5) Before making an application under subsection (4), the inspector must—
 - (a) take reasonable steps to discover who has an interest in the retention of the material or thing; and
 - (b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.
- (6) Despite a preceding subsection, if human reproductive material has been seized and an inspector is asked to return the material because it is intended to be used at an accredited ART centre under a South Australian clinical practice licence for the purposes of achieving pregnancy in a woman, the inspector must give due consideration to the request (and seek to resolve the matter) as expeditiously as possible.

25—Related matters

- (1) Subject to subsection (2), a person who—
 - (a) without reasonable excuse, hinders or obstructs an inspector, or a person assisting an inspector, in the exercise of powers under this Part; or
 - (b) uses abusive, threatening or insulting language to an inspector, or a person assisting an inspector; or
 - (c) without reasonable excuse, fails to obey a requirement or direction of an inspector under this Part; or
 - (d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an inspector; or
 - (e) falsely represents, by words or conduct, that he or she is an inspector,

is guilty of an offence.

Maximum penalty: \$5 000.

- (2) A person is not obliged to answer a question if to do so might tend to incriminate the person or make the person liable to a penalty.
- (3) An inspector, or a person assisting an inspector, who, in the course of exercising powers under this Part—
 - (a) addresses offensive language to any other person; or
 - (b) without lawful authority, hinders or obstructs or uses or threatens force in relation to any other person,

is guilty of an offence.

Maximum penalty: \$5 000.

Part 4—Miscellaneous

26—Commonwealth/State arrangements

- (1) The validity of any thing done for the purposes of this Act is not affected only because it was issued or done also for the purposes of a related Commonwealth Act.
- (2) The Chairperson of the NHMRC Licensing Committee may, after consultation with the Minister, appoint as an inspector under a related Commonwealth Act a person who is appointed or employed by the State.
- (3) If—
 - (a) an act or omission is an offence against this Act and is also an offence against a related Commonwealth Act; and
 - (b) the offender has been punished for the offence under the related Commonwealth Act,

the offender is not liable to be punished for the offence under this Act.

- (4) This Act does not purport to confer a function or power, or to impose a duty, on—
 - (a) a Commonwealth authority; or
 - (b) an officer of the Commonwealth or a Commonwealth authority,to the extent to which the conferral of the function or power, or the imposition of the duty, would be beyond the legislative power of the Parliament of the State.
- (5) Subsection (4) does not limit the operation of section 22A of the *Acts Interpretation Act 1915*.
- (6) In this section—

NHMRC Licensing Committee means the Committee established by section 13 of the *Research Involving Human Embryos Act 2002* of the Commonwealth.

27—Delegations

- (1) The Minister may, by instrument in writing, delegate any of the Minister's functions or powers under this Act or the regulations to any of the following:
 - (a) a person who is appointed or employed by the State;

- (b) an officer of the Commonwealth or a Commonwealth authority.
- (2) A delegation under this section may be made to—
 - (a) a specified person; or
 - (b) a person holding or acting in a specified position.
- (3) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Minister.
- (4) A delegation is revocable at will and does not derogate from the power of the Minister.

28—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$5 000.

29—Liability of directors

- (1) If a corporation commits an offence against this Act, each director of the corporation is guilty of an offence and liable to the same penalty as is fixed for the principal offence unless it is proved that the principal offence did not result from failure on his or her part to take reasonable and practicable measures to prevent the commission of the offence.
- (2) A director of a corporation may be prosecuted and convicted of an offence under this section whether or not the corporation has been prosecuted or convicted of the offence committed by the corporation.

30—Evidential burden in relation to exceptions etc

- (1) Subject to this Act, this section applies with respect to proceedings for an offence against this Act.
- (2) A defendant in proceedings who wishes to rely on any exception, exemption, excuse, qualification or justification under this Act bears an evidential burden in relation to that matter.
- (3) The exception, exemption, excuse, qualification or justification need not accompany the description of the offence.
- (4) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.
- (5) The question whether an evidential burden has been discharged is one of law.
- (6) In this section—

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

31—Regulations

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prohibit or restrict the undertaking of a specified activity, or an activity of a specified class, relating to the use of any human reproductive material; and
 - (b) regulate any procedure associated with the use of any human reproductive material, including by providing that a person undertaking a specified activity, or an activity of a specified class, relating to the use of any human reproductive material must comply with any prescribed requirement or condition; and
 - (c) require the keeping of records, statistics and other information by any person or body who undertakes any activity that relates to the use of any human reproductive material and the provision of reports based on that information to the Minister or any other prescribed person or body; and
 - (d) require the provision of any other report, or any statement, document or other form of information, to the Minister or any other prescribed person or body; and
 - (e) prescribe fines not exceeding \$10 000 for contravention of a regulation.
- (3) Regulations under this Act—
- (a) may be of general application or limited application; and
 - (b) may make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations; and
 - (d) may apply or incorporate, wholly or partially and with or without modification, a code, standard or policy (as in force at the date of the particular regulations, or as in force from time to time) prepared or published by the Minister or any other person or body prescribed by the regulations.
- (4) A regulation made pursuant to subsection (2)(a) or (b) cannot take effect unless and until it has been laid before both Houses of Parliament and—
- (a) no motion for disallowance is moved within the time for such a motion; or
 - (b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.

Schedule—Transitional provision

1—Transitional provision

Section 31(4) does not apply with respect to a regulation made on or before the commencement of this Act that is expressed to come into operation on the day on which this Act comes into operation.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2003	17	<i>Prohibition of Human Cloning Act 2003</i>	19.6.2003	18.12.2003 (<i>Gazette 18.12.2003 p4526</i>)
2009	11	<i>Statutes Amendment (Prohibition of Human Cloning for Reproduction and Regulation of Research Involving Human Embryos) Act 2009</i>	2.4.2009	Pt 2 (ss 4—7)—uncommenced

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	