

Western Australia

**Acts Amendment (Prohibition of Human  
Cloning and Other Practices) Act 2004**

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As at 16 Jul 2004

No. 18 of 2004

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## Acts Amendment (Prohibition of Human Cloning and Other Practices) Act 2004

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Western Australia

## **Acts Amendment (Prohibition of Human Cloning and Other Practices) Act 2004**

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**No. 18 of 2004**

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**An Act to further amend the *Human Reproductive Technology Act 1991* and to amend the *Human Tissue and Transplant Act 1982*.**

[Assented to 16 July 2004]

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Acts Amendment (Prohibition of Human Cloning and Other Practices) Act 2004*.

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**2. Commencement**

This Act comes into operation immediately after the *Human Reproductive Technology Amendment Act 2004* comes into operation.

**3. The Act amended**

The amendments in this Act, except in section 11, are to the *Human Reproductive Technology Act 1991*\*.

[\*Act No. 22 of 1991.  
For subsequent amendments see *Western Australian Legislation Information Tables for 2002, Table 1, p. 177 and the Human Reproductive Technology Amendment Act 2004.*]

**4. Section 3 amended**

(1) Section 3(2) is amended by inserting before “4B” —

“ 4A or ”.

(2) After section 3(9) the following subsection is inserted —

“

(9a) Nothing in this Act, or in a licence, authorisation or approval under this Act, authorises or permits the use of a human embryo for technical or commercial purposes in the testing, creation or manufacture of cosmetic products such as lipstick, mascara, face moisturising creams and other like beauty products.

”.

**5. Section 4 amended**

After section 4(1) the following section is inserted —

“

(1a) The particular objects of Part 4A are set out in section 53A.

”.

**6. Section 25 amended**

Section 25(a) is amended by deleting “section 7(1)(j);” and inserting instead —

“ section 53Q; ”.

**7. Section 26 amended**

Section 26(1)(a) is amended by deleting “section 7(1)(j),” and inserting instead —

“ section 53Q, ”.

**8. Part 4A inserted**

After section 53 the following Part is inserted —

“

**Part 4A — Prohibited practices**

**Division 1 — General**

**53A. Object of this Part**

- (1) The object of this Part is —
  - (a) to address concerns, including ethical concerns, about scientific developments in relation to human reproduction and the utilisation of human embryos by prohibiting certain practices; and
  - (b) to adopt in this State a uniform Australian approach to the prohibitions.
- (2) For that purpose, this Part creates a number of offences that are similar to offences under the *Prohibition of Human Cloning Act 2002* of the Commonwealth.

**53B. Definitions**

(1) In this Part —

**“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 regulations under the *Prohibition of Human Cloning Act 2002* of the Commonwealth to be a chimeric embryo;

**“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;

**“hybrid embryo”** means —

- (a) an embryo created by the fertilisation of a human egg by animal sperm;
- (b) an embryo created by the fertilisation of an animal egg by human sperm;
- (c) a human egg into which the nucleus of an animal cell has been introduced;
- (d) an animal egg into which the nucleus of a human cell has been introduced; or
- (e) a thing declared by regulations under the *Prohibition of Human Cloning Act 2002* of the Commonwealth to be a hybrid embryo;

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

- (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 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.
- (4) A reference in this Part to a number of penalty units is a reference to the amount calculated in accordance with the following formula —

**A x B**

where —

- A** is that number of penalty units; and
- B** is the amount (in dollars) that is for the time being a penalty unit under section 4AA of the *Crimes Act 1914* of the Commonwealth.

### **Division 2— Human cloning**

#### **53C. Offence — creating a human embryo clone**

A person commits a crime if the person creates a human embryo clone.

Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

**53D. Offence — placing a human embryo clone in the human body or the body of an animal**

A person commits a crime if the person places a human embryo clone in the body of a human or the body of an animal.

Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

**53E. Offence — importing or exporting a human embryo clone**

- (1) A person commits a crime if the person imports a human embryo clone into the State from a place outside Australia.

Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

- (2) A person commits a crime if the person exports a human embryo clone from the State to a place outside Australia.

Penalty: A fine of 900 penalty units or imprisonment for 15 years or both.

**53F. No defence that human embryo clone could not survive**

It is not a defence to an offence under section 53C, 53D or 53E that the human embryo clone did not survive or could not have survived.

**Division 3 — Other prohibited practices**

**53G. Offence — creating a human embryo other than by fertilisation, or developing such an embryo**

A person commits a crime if the person creates a human embryo by a process other than the fertilisation

of a human egg by human sperm, or develops a human embryo so created.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

**53H. Offence — creating a human embryo for a purpose other than achieving pregnancy in a woman**

- (1) A person commits a crime if the person 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.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

- (2) A defendant does not bear an evidential burden in relation to the exception provided by subsection (1).

**53I. Offence — creating or developing a human embryo containing genetic material provided by more than 2 persons**

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

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

**53J. Offence — developing a human embryo outside the body of a woman for more than 14 days**

A person commits a crime if the person 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.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years.

**53K. 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 a crime if the person uses precursor cells taken from a human embryo or a human fetus, intending to create a human embryo, or develops an embryo so created.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

**53L. Offence — heritable alterations to genome**

- (1) A person commits a crime 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.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

(2) In this section —

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

**53M. Offence — collecting a viable human embryo from the body of a woman**

A person commits a crime if the person removes a human embryo from the body of a woman, intending to collect a viable human embryo.

Penalty: A fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

**53N. Offence — creating a chimeric or hybrid embryo**

- (1) A person commits a crime if the person creates a chimeric embryo.
- (2) A person commits a crime if the person creates a hybrid embryo.
- (3) A person who commits an offence against this section is liable to a fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

**53O. Offence — placing of an embryo**

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

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- (2) A person commits a crime if the person places a human embryo in the body of a human, other than in a woman's reproductive tract.
- (3) A person commits a crime if the person places an animal embryo in the body of a human for any period of gestation.
- (4) A person who commits an offence against this section is liable to a fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

**53P. Offence — importing, exporting or placing a prohibited embryo**

- (1) A person commits a crime if the person imports a prohibited embryo into the State from a place outside Australia.
- (2) A person commits a crime if the person exports a prohibited embryo from the State to a place outside Australia.
- (3) A person commits a crime if the person places a prohibited embryo in the body of a woman.
- (4) A person who commits an offence against this section is liable to a fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

- (5) 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;
- (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;
- (c) a human embryo that contains genetic material provided by more than 2 persons;
- (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;
- (e) a human embryo created using precursor cells taken from a human embryo or a human fetus;
- (f) a human embryo that contains a human cell (as defined in section 53L(2)) whose genome has been altered in such a way that the alteration is heritable by human descendants of the human whose cell was altered;
- (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.

**53Q. Offence — commercial trading in human eggs, human sperm or human embryos**

- (1) A person commits a crime if the person 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 a crime if the person receives, or offers to receive, valuable consideration from another person for the supply of a human egg, human sperm or a human embryo.

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- (3) A person who commits an offence against this section is liable to a fine of 600 penalty units or imprisonment for 10 years or both.

Summary conviction penalty: A fine of 120 penalty units or imprisonment for 2 years or both.

- (4) 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.

**Division 4 — Review of Part**

**53R. Review of Part**

- (1) The Minister must cause a review of the operation of this Part to be undertaken as soon as possible after 19 December 2004.

- (2) The review must take into account —
  - (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; and
  - (d) the applicability of establishing a national stem cell bank.
- (3) The review of this Part may be undertaken as part of the review of the *Prohibition of Human Cloning Act 2002* of the Commonwealth mentioned in section 25 of that Act.
- (4) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament not later than 12 months from the date on which the review is first commenced.
- (5) The Minister must cause a copy of the report based on the review conducted under section 25 of the *Prohibition of Human Cloning Act 2003* of the Commonwealth to be laid before each House of Parliament not later than six sitting days from the date of receipt of the report.

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**9. Section 53ZG amended**

Section 53ZG(2) is amended by inserting after “law” —  
“ , Part 4A ”.

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**10. Sections 53ZP, 53ZQ and 53ZR amended**

Sections 53ZP(1), 53ZQ(1)(b) and (2) and 53ZR are each amended by inserting after “Part” —

“ or Part 4A ”.

**11. *Human Tissue and Transplant Act 1982* amended**

- (1) The amendments in this section are to the *Human Tissue and Transplant Act 1982*\*.

[\*Reprinted as at 29 October 1999.

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2003, Table 1, p. 182.]*

- (2) The long title is amended by inserting after “transplantation,” —

“

**other therapeutic purposes, or medical or scientific  
purposes,**

”.

- (3) After Part V the following Part is inserted —

“

**Part VA — Prohibition on the use of embryonic  
stem cell lines**

**30A. Interpretation**

In this Part —

**“human embryonic stem cell line”** means cultured stem cells derived by isolation of cells from an excess ART embryo as defined in section 53T of the *Human Reproductive Technology Act 1991*;

**“therapeutic use”**, in relation to a human embryonic stem cell line, means —

- (a) its use in, or in connection with —

- (i) preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury in persons;
  - (ii) influencing, inhibiting or modifying a physiological process in persons;
  - (iii) testing the susceptibility of persons to a disease or ailment;
  - (iv) influencing, controlling or preventing conception in persons;
  - (v) testing for pregnancy in persons; or
  - (vi) the replacement or modification of parts of the anatomy of persons;
- (b) a use of it that is prescribed in the regulations and is not inconsistent with a use referred to in paragraph (a); or
- (c) its use in training or research for the purposes of a use referred to in paragraph (a) or (b).

**30B. Restriction on use of human embryonic stem cells lines**

A person who uses a human embryonic stem cell line except for a therapeutic use commits a crime.

Penalty: Imprisonment for 5 years.

Summary conviction penalty: Imprisonment for 12 months.

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