

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 23 April 1985)

(SENATOR HARRADINE)

A BILL

FOR

An Act to prohibit experiments involving the use of human embryos created by in vitro fertilization

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short Title

5 **1.** This Act may be cited as the *Human Embryo Experimentation Act 1985*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

10 **3. (1)** In this Act, unless the contrary intention appears—

“authority of the Commonwealth” means—

- (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment;

(b) a body, whether incorporated or unincorporated, established for a public purpose (otherwise than by or in accordance with the provisions of an enactment) by the Governor-General or a Minister; or

(c) an incorporated company over which the Commonwealth, or a body referred to in paragraph (a) or (b), is in a position to exercise control, 5

and includes the Australian National University;

“corporation” means a body corporate that—

(a) is a foreign corporation; 10

(b) is a trading corporation formed within the limits of Australia or is a financial corporation so formed;

(c) is incorporated in a Territory; or

(d) is the holding company of a body corporate of a kind referred to in paragraph (a), (b) or (c); 15

“enactment” means—

(a) an Act;

(b) an Ordinance of a Territory; or

(c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance; 20

“in vitro fertilization” means the fertilization of a human ovum otherwise than within the body of a woman;

“medical research” includes research or experimenting involving, or related to, relevant human embryos;

“relevant human embryo” means a human embryo created by means of in vitro fertilization and includes tissue obtained from such an embryo; 25

“State” includes the Northern Territory;

“Territory” means the Australian Capital Territory, the Jervis Bay Territory or an external Territory.

(2) For the purpose of this Act, the question whether a body corporate is the holding company of another company shall be determined in the same manner as that question is required to be determined by section 7 of the *Companies Act 1981*. 30

(3) In this Act, unless the contrary intention appears, a reference to a contribution, to financial assistance or to a grant shall be read as including a reference to a payment by way of an instalment of a contribution, financial assistance or a grant, as the case may be. 35

(4) In this Act, a reference to a contribution made by a corporation, or an authority of the Commonwealth, to another person or body shall be read as including a reference to financial assistance provided by, and to a grant made by, the corporation or authority to another person or body. 40

Extension to external Territories

4. This Act extends to the external Territories.

Prohibited experimentation

5 (1) For the purposes of this Act, but subject to sub-section (2), any experimenting that is undertaken on, or that involves the use of, a relevant human embryo before the embryo has been implanted in the womb of a woman, including, but without limiting the generality of the foregoing—

- (a) any manipulation of a relevant human embryo;
- 10 (b) any procedure undertaken on, or involving the use of, a relevant human embryo;
- (c) any dissection of a relevant human embryo; and
- (d) any process by way of testing reactions to a drug involving the use of a relevant human embryo,

before the embryo has been so implanted, is prohibited experimenting.

15 (2) Any experimenting referred to in sub-section (1) is not prohibited experimenting for the purposes of this Act if it is undertaken primarily for a benefit consistent with the development of the relevant human embryo's full human potential.

20 (3) The creating of a relevant human embryo in anticipation that the development of the full human potential of the relevant human embryo will be interrupted, or of using the embryo, or of having the embryo available for use, in any experimenting, manipulation or procedure that is prohibited experimenting by virtue of sub-section (1) shall be deemed to be prohibited experimenting for the purposes of this Act.

25 **Offences in respect of prohibited experimenting**

6. (1) A person shall not, in a Territory, engage in prohibited experimenting, or do any act or thing by way of, or for the purposes of, prohibited experimenting.

Penalty: \$20,000 or imprisonment for 4 years.

30 (2) A corporation, or an authority of the Commonwealth, shall not engage in prohibited experimenting.

Penalty: \$50,000.

(3) For the purposes of sub-section (2), a corporation, or an authority of the Commonwealth, shall be taken to engage in prohibited experimenting—

- 35 (a) if it engages any person or body to carry out any prohibited experimenting on its behalf; or
- (b) if it makes a contribution to another person or body for or towards prohibited experimenting that is being, or is to be, carried out by or on behalf of that other person or body.

40 (4) A corporation, or an authority of the Commonwealth, shall not make a contribution to another person or body for or towards any medical research, or

any experimenting involving a human embryo, that is being, or is to be, carried out by or on behalf of that other person or body unless, before, or at the time of, making payment of the contribution, that corporation or authority obtains from the person or body to which the payment is to be, or is being made, an agreement in writing that:

- (a) the person or body will ensure that the contribution is not used, either in whole or in part, for any prohibited experimenting; and
- (b) if the person or body does not fulfil the condition specified in paragraph (a), the person or body will repay to the corporation, or to the authority of the Commonwealth, as the case may be, an amount equal to the sum of the amounts paid to the person or body by the corporation, or authority of the Commonwealth, as contributions towards the medical research or the experimenting.

Penalty: \$50,000.

(5) A corporation, or an authority of the Commonwealth, shall not, directly or indirectly, make any premises or other facilities available for use by another person or body in the carrying out of prohibited experimenting.

Penalty: \$50,000.

(6) Where—

- (a) a corporation or authority of the Commonwealth makes a contribution to another person or body of a kind described in sub-section (4);
- (b) the corporation, or authority of the Commonwealth, complies with sub-section (4) in respect of the contribution; and
- (c) the person or body fails to comply with the condition specified in paragraph (4) (a) in respect of the contribution,

it is a defence to a prosecution of the corporation, or of the authority of the Commonwealth, as the case may be, for an offence against sub-section (2) in respect of the making of that contribution if the corporation, or the authority of the Commonwealth, satisfies the court that it has recovered, or has taken reasonable steps to recover, the amount payable to it under the condition referred to in paragraph (4) (b).

(7) A corporation, or an authority of the Commonwealth, shall not make a contribution to another person or body for any purpose if that person or body is engaged in, or, to the knowledge of the corporation or authority, is planning to engage in, prohibited experimenting.

Penalty: \$50,000.

(8) A person shall not, in a Territory, and a corporation or an authority of the Commonwealth shall not,

- (a) wilfully destroy a relevant human embryo; or
- (b) wilfully allow a relevant human embryo to die.

Penalty: \$20,000 or, in the case of a natural person, imprisonment for 4 years.

Additional conditions to which financial assistance to the States are subject

7. Financial assistance granted to a State under any Act for medical research, or for purposes that include medical research, is granted on the following conditions in addition to the conditions on which it is granted under that Act:

- (a) the State will ensure that that financial assistance will not be used, in whole or in part, for prohibited experimenting; and
- (b) if the State does not fulfil the condition specified in paragraph (a) with respect to the grant, the State will, if the Minister so determines, repay to the Commonwealth such amount (not being an amount greater than the sum of the amounts of financial assistance paid to the State for medical research or for purposes that include medical research) as the Minister specifies in the determination as the amount that should be repaid by the State.

Conditions to which certain grants by the Commonwealth are subject

8. (1) In this section, "grant by the Commonwealth for medical research" means a grant or payment of moneys—

- (a) by the Commonwealth, the Governor-General, a Minister or an authority of the Commonwealth for medical research, or for purposes that include medical research, in pursuance of, or in accordance with, the provisions of an Act; or
- (b) a grant or payment of moneys made or authorized by the Governor-General, a Minister or an authority of the Commonwealth for medical research, or for purposes that include medical research, otherwise than in pursuance of or in accordance with the provisions of an Act,

and, without limiting the generality of the foregoing, includes—

- (c) a payment of moneys for medical research, or for purposes that include medical research, out of moneys appropriated by the Parliament for medical research or for purposes that include medical research; and
- (d) a payment out of the Medical Research Endowment Fund established by the *Medical Research Endowment Act 1937*.

(2) A grant by the Commonwealth for medical research to a person or body is made on the following conditions in addition to any other conditions on which it is made:

- (a) the person or body will ensure that the grant will not be used, in whole or in part, for prohibited experimenting; and
- (b) if the person or body does not fulfil the condition specified in paragraph (a) with respect to the grant, the person or body will, if the Minister so determines, repay to the Commonwealth such amount (not being an amount greater than the sum of the amounts of the grant paid to the person or body for medical research or for purposes that include

medical research) as the Minister specifies in the determination as the amount that should be repaid by the person or body.

(3) Sub-section (2) does not apply to a payment out of the Medical Research Endowment Fund referred to in paragraph (1) (d) if the payment is made out of moneys representing a gift or bequest or income arising from the investment thereof and the conditions specified in sub-section (2) are inconsistent with the conditions upon which the gift or bequest was given or made.

5

Patents

9. (1) Neither a corporation, nor an authority of the Commonwealth, has the power to make application, either in its own name or by an attorney or agent, for, or to join with another person in making application for, a patent, in any capacity, being a patent—

10

- (a) for an invention arising directly or indirectly out of prohibited experimenting, whether carried out within or outside Australia;
- (b) for an invention resulting from or based on information obtained from prohibited experimenting, whether carried out within or outside Australia; or
- (c) for an invention in respect of an article developed from relevant human embryos or a process related to relevant human embryos.

15

20

(2) A member, officer or employee of a corporation, or of an authority of the Commonwealth, is not authorised to make application for or to assign to another person the right to make application for, a patent for an invention of a kind referred to in sub-section (1) if the invention was discovered by him or her in the course of performing duties as such a member, officer or employee.

25

(3) The *Patents Act 1952* has effect, after the commencement of this Act, as if it did not confer power to grant a patent to any person under that Act, or under an international convention to which that Act gives effect, for an invention of a kind referred to in sub-section (1).

(4) This section applies notwithstanding—

30

- (a) any provisions of the *Patents Act 1952*; and
- (b) any powers conferred on a corporation, or on an authority of the Commonwealth, by or under any other law, including a law of the State, Territory or country in which the corporation was incorporated.

(5) Sub-section (1) applies to the making of an application for a patent either within or outside Australia and so applies notwithstanding the law of a country other than Australia.

35

(6) In this section, “patent” includes a petty patent.

Information

10. A corporation, or an authority of the Commonwealth, shall state, in each annual financial statement prepared by it, whether it has, in the period to which the statement relates, made any contribution for or towards medical

40

research that is being, or is to be, carried out by another person or body and, if it has made any such contributions, shall cause particulars of the persons or bodies to whom the contributions were made and of the amounts of the contributions to be set out in that financial statement.

5 Penalty: \$5,000.

Injunction

11. (1) The Court may, on the application of—

- (a) the Minister; or
- (b) any other person,

10 grant an injunction restraining—

(c) a corporation or an authority of the Commonwealth from engaging in conduct that constitutes or would constitute—

- (i) a contravention of sub-section 6 (2), (4), (5) or (7);
- (ii) attempting to contravene such a provision;

15 (iii) being in any way, directly or indirectly, knowingly concerned in or party to, the contravention by a corporation or authority of the Commonwealth of such a provision; or

(iv) conspiring with others to contravene such a provision; or

20 (d) any person from engaging in conduct that constitutes or would constitute—

(i) a contravention of sub-section 6 (1), of a condition specified in sub-section 6 (4) to which that person has agreed to be bound, or of a condition specified in section 7 or 8 that is applicable to a grant made to the person;

25 (ii) attempting to contravene that sub-section or such a condition;

(iii) being in any way knowingly directly or indirectly concerned in or party to a contravention of that sub-section or such a condition; or

30 (iv) conspiring with others to contravene that sub-section or such a condition.

(2) Where, in the opinion of the Court, it is desirable to do so, the Court may grant an interim injunction pending determination of an application under sub-section (1).

35 (3) The Court may rescind or vary an injunction granted under sub-section (1) or (2).

(4) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in sub-section (1), the Court may—

40 (a) if it is satisfied that the person has engaged in conduct of that kind—grant an injunction under sub-section (1) restraining the person from engaging in conduct of that kind; or

- (b) if, in the opinion of the Court, it is desirable to do so—grant an interim injunction under sub-section (2) restraining the person from engaging in conduct of that kind,

whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.

5

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in sub-section (1), the Court may—

- (a) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—grant an injunction under sub-section (1) restraining the person from engaging in conduct of that kind; or

10

- (b) if, in the opinion of the Court, it is desirable to do so—grant an interim injunction under sub-section (2) restraining the person from engaging in conduct of that kind,

15

whether or not the person has previously engaged in conduct of that kind and whether or not there is imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) Where the Minister makes an application to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertaking as to damages.

20

(7) Where—

- (a) in a case to which sub-section (6) does not apply, the Court would, but for this sub-section, require a person to give an undertaking as to damages or costs; and

25

- (b) the Minister gives the undertaking,

the Court shall accept the undertaking by the Minister and shall not require a further undertaking from any other person.

(8) In this section—

30

“Court” means the Federal Court of Australia; and

“person”, without limiting its meaning, includes a corporation, an authority of the Commonwealth and a State.

Officers in default

12. Any officer or employee of a corporation, or of an authority of the Commonwealth, (including a person who subsequently ceased to be such an officer or employee) who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention by the corporation or authority of sub-section 6 (2), (4), (5) or (7) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

35

40

Application

13. (1) This Act applies to, and in relation to—

- (a) any prohibited experimenting carried out in a Territory after the commencement of this Act, including prohibited experimenting that commenced to be carried out before the commencement of this Act;
- (b) any prohibited experimenting engaged in (within the meaning of sub-section 6 (2)) by a corporation, or by an authority of the Commonwealth, after the commencement of this Act, including prohibited experimenting that commenced to be carried out before the commencement of this Act;
- (c) a contribution made by a corporation, or by an authority of the Commonwealth, towards prohibited experimenting after the commencement of this Act, including a contribution so made in pursuance of a promise or agreement made before the commencement of this Act and including such a contribution towards prohibited experimenting that commenced to be carried out before the commencement of this Act;
- (d) a payment, made after the commencement of this Act under an Act that came into operation before the commencement of this Act, by way of financial assistance to a State for medical research or purposes that include medical research including such a payment for medical research that commenced to be carried out before the commencement of this Act; and
- (e) subject to sub-section (2), a grant by the Commonwealth for medical research (within the meaning of section 8) made after the commencement of this Act, including—
 - (i) a payment, made after the commencement of this Act by way of an instalment of such a grant made, or promised to be made, before the commencement of this Act; and
 - (ii) such a grant for medical research that commenced before the commencement of this Act.

(2) Where—

- (a) financial assistance is granted to a State for medical research, or for purposes that include medical research, under an Act that comes into operation after the commencement of this Act; or
- (b) a grant is made by the Commonwealth to a person or body for medical research, or for purposes that include medical research, in pursuance of, or in accordance with, the provisions of an Act that comes into operation after the commencement of this Act,

this Act applies, unless otherwise expressly provided by that Act, to and in relation to that financial assistance or grant.