

TASMANIA

**HUMAN EMBRYONIC RESEARCH
REGULATION BILL 2003**

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HUMAN EMBRYONIC RESEARCH REGULATION BILL 2003

*(Brought in by the Minister for Health and Human
Services, the Honourable David Edward Llewellyn)*

A BILL FOR

**An Act to apply the *Research Involving Human
Embryos Act 2002* of the Commonwealth as a law of
Tasmania and for other purposes**

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Human Embryonic
Research Regulation Act 2003*.

Commencement

2. The provisions of this Act commence on a day or days to
be proclaimed.

Object of Act

3. (1) The object of this Act is to adopt in Tasmania a
uniform Australian approach to the regulation of activities

that involve the use of certain human embryos created by assisted reproductive technology.

(2) For that purpose, this Act –

- (a) applies the *Research Involving Human Embryos Act 2002* of the Commonwealth as a law of Tasmania; and
- (b) makes provision to ensure that that Commonwealth Act and the applied law of Tasmania are administered on a uniform basis by the Commonwealth as if they constituted a single law of the Commonwealth.

Interpretation

4. (1) In this Act, unless the contrary intention appears –

“applied provisions” means the Commonwealth embryo laws that apply as a law of Tasmania because of section 6, including any modification under section 7;

“Commonwealth administrative laws” means the following Acts and regulations of the Commonwealth:

- (a) the *Administrative Appeals Tribunal Act 1975* (excluding Part IVA);
- (b) the *Freedom of Information Act 1982*;
- (c) the *Ombudsman Act 1976*;
- (d) the *Privacy Act 1988*;
- (e) the regulations in force under any of those Acts;

“Commonwealth Embryo Act” means the *Research Involving Human Embryos Act 2002* of the Commonwealth;

“Commonwealth embryo laws” means –

- (a) the Commonwealth Embryo Act; and
- (b) all regulations in force under that Act;

“function” includes duty;

“modification” includes additions, omissions and substitutions;

“NHMRC Licensing Committee” means the Embryo Research Licensing Committee of the NHMRC established under the Commonwealth Embryo Act.

(2) If an expression is defined in the Commonwealth Embryo Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act.

Act binds Crown

5. This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 – THE APPLIED PROVISIONS**Application of Commonwealth embryo laws to Tasmania**

6. (1) The Commonwealth embryo laws, as in force for the time being and as modified by or under this Act, apply as a law of Tasmania.

(2) Those Commonwealth embryo laws so apply as if they extended to matters in relation to which Tasmania may make laws –

- (a) whether or not the Commonwealth may make laws in relation to those matters; and
- (b) even though the Commonwealth embryo laws provide that they apply only to specified matters with respect to which the Commonwealth may make laws.

Modification of Commonwealth embryo laws

7. (1) The Commonwealth embryo laws are modified for the purposes of this Act by requiring a reference in section 26(2) or 41 of the Commonwealth Embryo Act to the *Prohibition of Human Cloning Act 2002* of the Commonwealth to be read as including a reference to the *Human Cloning and Other Prohibited Practices Act 2003* of Tasmania.

(2) The regulations under this Act may also modify the Commonwealth embryo laws for the purposes of this Act.

(3) Without limiting subsection (2), the regulations may provide that the Commonwealth embryo laws apply

under section 6(1) as if an amendment to the Commonwealth embryo laws –

- (a) made by a law of the Commonwealth; and
- (b) specified in the regulations –

had not taken effect.

Interpretation of Commonwealth embryo laws

8. (1) The *Acts Interpretation Act 1901* of the Commonwealth –

- (a) applies as a law of Tasmania in relation to the interpretation of the applied provisions; and
- (b) so applies as if the applied provisions were a Commonwealth Act or were regulations or other instruments under a Commonwealth Act, as the case requires.

(2) The *Acts Interpretation Act 1931* of Tasmania does not apply to the applied provisions.

**PART 3 – FUNCTIONS AND POWERS UNDER
APPLIED PROVISIONS****Functions and powers of NHMRC Licensing
Committee and other bodies and officers**

9. The NHMRC Licensing Committee, its Chairperson and members and other bodies and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Commonwealth embryo laws, as those laws apply to the Commonwealth.

Delegations

10. Any delegation by the NHMRC Licensing Committee or by the Chairperson or any member of that Committee under a provision of the Commonwealth Embryo Act is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.

PART 4 – OFFENCES

Object of this Part

11. (1) The object of this Part is to further the object of this Act by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.

(2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but are not limited to) –

- (a) the investigation and prosecution of offences; and
- (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
- (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
- (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
- (e) the sentencing, punishment and release of persons convicted of offences; and
- (f) fines, penalties and forfeitures; and
- (g) liability to make reparation in connection with offences; and
- (h) proceeds of crime; and
- (i) spent convictions.

Application of Commonwealth criminal laws to offences against applied provisions

12. (1) The relevant Commonwealth laws apply as laws of Tasmania in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth and not a law of Tasmania.

(2) For the purposes of a law of Tasmania, an offence against the applied provisions –

- (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were a law of the Commonwealth; and
- (b) is taken not to be an offence against the laws of Tasmania.

(3) Subsection (2) has effect for the purposes of a law of Tasmania except as provided by the regulations under this Act.

Functions and powers conferred on Commonwealth officers and authorities relating to offences

13. (1) A Commonwealth law applying because of section 12 that confers on a Commonwealth officer or authority a function or power in relation to an offence against a provision of the Commonwealth embryo laws also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.

(2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the

corresponding provision of the Commonwealth embryo laws.

No double jeopardy for offences against applied provisions

14. If –

- (a) an act or omission is both an offence against the applied provisions and an offence against the Commonwealth embryo laws; and
- (b) the offender has been punished for that offence under those Commonwealth laws –

the offender is not liable to be punished for the offence under the applied provisions.

PART 5 – ADMINISTRATIVE LAWS**Application of Commonwealth administrative laws to applied provisions**

15. (1) The Commonwealth administrative laws apply as laws of Tasmania to any matter arising in relation to the applied provisions as if those provisions were a law of the Commonwealth and not a law of Tasmania.

(2) For the purposes of a law of Tasmania, a matter arising in relation to the applied provisions –

- (a) is taken to be a matter arising in relation to the laws of the Commonwealth in the same way as if those provisions were a law of the Commonwealth; and
- (b) is taken not to be a matter arising in relation to the laws of Tasmania.

(3) Subsection (2) has effect for the purposes of a law of Tasmania except as provided by the regulations under this Act.

(4) Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.

(5) For the purposes of this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (as that provision applies as a law of Tasmania) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

Functions and powers conferred on Commonwealth officers and authorities

16. (1) A Commonwealth administrative law applying because of section 15 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the applied provisions.

(2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

PART 6 – MISCELLANEOUS**Things done for multiple purposes**

17. The validity of a licence, certificate or other thing issued, given or done for the purposes of the applied provisions is not affected only because it was issued, given or done also for the purposes of the Commonwealth embryo laws.

Reference in Commonwealth law to a provision of another law

18. For the purposes of sections 12 and 15, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of those sections.

Fees and other money

19. All fees, penalties, fines and other money that, under the applied provisions, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded to another person) must be paid to the Commonwealth.

Regulations

20. (1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.

(3) The regulations may authorise any matter to be from time to time determined, applied or regulated by a person specified in the regulations.

Review of Act

21. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 2 years from the date of Royal Assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

(4) The Minister may undertake the review of this Act at the same time as the review required by section 47 of the *Research Involving Human Embryos Act 2002* of the Commonwealth, in which case the report on the outcome of the review of this Act is to be tabled in each House of Parliament as soon as practicable after the Minister has completed the review.

Administration of Act

22. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Health and Human Services;
- and

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- (b) the department responsible to the Minister for Health and Human Services in relation to the administration of this Act is the Department of Health and Human Services.

Federal Courts (State Jurisdiction) Act 1999
amended

23. Section 3 of the *Federal Courts (State Jurisdiction) Act 1999* is amended by inserting after paragraph (c) in the definition of “relevant State Act” the following paragraph:

- (ca) *Human Embryonic Research Regulation Act 2003*;