Short Digest of Bill

Purpose

To prohibit experimentation with human embryos created as a result of in vitro fertilization and to prohibit the creating of human embryos for experimentation.

Background

At present there is no Commonwealth legislation controlling experimentation with human embryos. At the same time there is already support amongst Australian doctors for such experimentation. The National Health and Medical Research Council has issued a set of guidelines governing this matter entitled Statement on Human Experimentation.

The Human Embryo Experimentation Bill is presented as an opportunity for the Commonwealth Parliament to determine whether such experimentation should be permitted.

The Standing Committee of Attorneys-General has agreed in principle to the desirability of a uniform code of legislation governing in vitro fertilization procedures. However no action has yet been taken on this. The matter has also been considered by various State legislatures. Bills have been prepared in Tasmania and South Australia and there is an Infertility (Medical Procedures) Act 1984 (not yet proclaimed) in Victoria.[1]

The Tasmanian Bill places stringent controls on in vitro fertilization procedures such as a prohibition on the freezing of fertilised ova; a prohibition on any in vitro fertilization other than through an official program and a limitation of eligibility for participation in an in vitro fertilization program to legally married couples. The South Australian Bill is proposed as an interim measure, with a sunset clause providing for its expiration in December 1985 and provides for the preservation, and prohibits the destruction, of embryos derived from an in vitro fertilization program. The Victorian Infertility
(Medical Procedures) Act prohibits certain procedures and then permits them in certain circumstances. Prohibited procedures include cloning and the fertilization of human gametes by animal gametes. The Act then provides for a Standing Review and Advisory Committee with the authority to grant approval for experimental procedures on embryos. Freezing of embryos is prohibited as is the fertilization of ova outside a woman's body, other than for the purposes of implantation in a woman's body.

Main Provisions

Sub-clause 5(1) defines 'prohibited experimenting' as any experimenting that is undertaken on, or involves the use of, a human embryo created by means of in vitro fertilization before the embryo has been implanted in the womb, i.e. a 'relevant human embryo'. Prohibited experimenting includes manipulation, any procedure undertaken on, or dissection of, an embryo and any process whereby an embryo is used for the purposes of testing reactions to a drug. However such experimentation is not prohibited if it is undertaken primarily for a benefit consistent with the development of the embryo's human potential (sub-clause 5(2)).

Clause 6 creates offences where persons in the Territories or corporations or authorities of the Commonwealth engage in prohibited experimenting (sub-clause 6(1) and (2)). 'Engage in' includes making a financial contribution to another person for or towards prohibited experimenting (sub-clause 6(3)). Sub-clause 6(4) imposes conditions on financial grants by corporations for medical research to the effect that such grants are not to be used for 'prohibited experimenting' and that if they are, the funds are to be repaid. Failure to adhere to these conditions attracts a fine of up to $50,000.

An offence is created under sub-clause 6(5) for a corporation or Commonwealth authority to make premises available for the purposes of 'prohibited experimenting' and it is an offence under sub-clause 6(8) to wilfully destroy or allow a relevant human embryo to die.

Penalties for a person engaging in 'prohibited experimenting' of $20,000 or imprisonment for 4 years are provided for in sub-clause 6(1) and of $50,000 in the case of a corporation or authority (sub-clause 6(2)). Fines of $50,000 are also provided for corporations which either fund, or make premises available for prohibited experimenting (sub-clauses 6(4) and 6(5)). A penalty of 4 years imprisonment for a person or $20,000 for a corporation or Commonwealth authority is provided for wilful destruction
of a relevant human embryo or for wilfully allowing one to die.

Clause 7 provides that financial assistance to the States for medical research can only be granted on the condition that the funds are not used in any way for 'prohibited experimenting'. Any funds which do find their way to such research must be repaid to the Commonwealth.

Grants to persons or bodies for medical research are likewise made on the conditions that the funds are not to be used for 'prohibited experimenting' and that any funds so used must be repaid (clause 8).

Neither corporations nor Commonwealth authorities will have the power to apply for patents for inventions arising out of 'prohibited experimenting', whether such inventions derive from experimentation carried out within or outside Australia (clause 9).

Clause 11 provides for injunctions to restrain persons, corporations and Commonwealth authorities engaging in conduct which contravenes clauses 6, 7 or 8.

For further information, if required, contact: