

House of Representatives  
Supplementary Order Paper

Tuesday, 5 October 2004

Human Assisted Reproductive Technology Bill

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*Proposed amendments*

Hon David Benson-Pope, in Committee, to move the following amendments:

*Clause 5*

To insert, after the definition of **cloned embryo** (after line 13 on page 19), the following definition:

**Customs officer** has the same meaning as in section 2(1) of the Customs and Excise Act 1996

*Clause 8*

To omit *subclause (2)* (lines 29 to 32 on page 22), and substitute the following clause:

- (2) Every person commits an offence who, knowing that an in vitro gamete, an in vitro embryo or an in vitro foetus, or an in vitro being has been formed by an action described in **Schedule 1**, imports into, or exports from, New Zealand that in vitro gamete, in vitro embryo, in vitro foetus, or in vitro being.

*Clause 9*

To add to *subclause (2)* (line 21 on page 23) the expression “; or”, and to also add the following paragraphs:

- (c) possesses the embryo with a view to using it in human reproductive research or for reproductive purposes; or  
(d) uses the embryo in human reproductive research or for reproductive purposes.

To omit from *subclause (3)* the words “compliance with **subsection (2)**” (lines 24 and 25 on page 23), and substitute the words “that **subsection (2)** is not contravened”.

*Clause 22*

To omit *clause 22* (lines 34 to 36 on page 30 and lines 1 to 31 on page 31), and substitute the following clause:

- 22 Ethics committee may cancel approval**
- (1) The ethics committee may cancel an approval, in whole or in part, if it is satisfied—
    - (a) that 1 or more conditions stated in the approval have been breached; or
    - (b) that the activity undertaken, or purportedly undertaken, under the approval—
      - (i) is inconsistent with any relevant guidelines and advice issued by the advisory committee on or before or after the date on which the approval was given; or
      - (ii) is inconsistent with the description set out in the application in which the approval was sought; or
      - (iii) breaches or has breached this Act or regulations made under **section 72**; or
    - (c) that, since giving the approval, the ethics committee has become aware that the activity to which the approval relates poses a serious risk to human health and safety.
  - (2) The ethics committee must cancel an approval so far as it relates to a kind of assisted reproductive procedure or human reproductive research that has become subject to a moratorium imposed under **section 24**.
  - (3) The ethics committee may not cancel an approval under **subsection (1)** unless it has first—
    - (a) informed the person responsible for the activity under the approval why it is considering cancelling the approval; and
    - (b) given that person a reasonable opportunity to make written submissions and be heard on the question, either personally or by his or her representative.
  - (4) Before the ethics committee cancels an approval under **subsection (2)**, it must endeavour to inform the person responsible for the activity of the forthcoming cancellation and of the date on which the cancellation is to take effect.
  - (5) If the ethics committee cancels an approval, it may give directions on how the activity affected by the cancellation is to be stopped.
  - (6) Directions under **subsection (5)** may, without limitation, relate to the preservation, custody, or disposal of in vitro human gametes, in vitro human embryos, or in vitro hybrid embryos.
  - (7) The ethics committee cancels an approval under this section by written notice given or sent to the person responsible for the activity to which the approval relates or to any other person who appears to be in charge of the activity.

- (8) A notice issued under **subsection (7)** takes effect according to its tenor and must—
- (a) state the date on which it takes effect (not being a date earlier than the date of the notice); and
  - (b) if the cancellation relates to only part of the approval, identify the part to which it relates.

*Clause 23(b)*

To omit the expression “**22(4)**” (line 1 on page 32), and substitute the expression “**22(5)**”.

*Clause 25*

To omit from the heading to this clause (line 25 on page 32) the word “**Committees**”, and substitute the word “**Committee**”.

*New clause 25A*

To insert, after *clause 25* (after line 31 on page 32), the following clause:

**25A Offence to perform procedures or conduct research subject to moratorium**

- (1) Every person commits an offence who performs an assisted reproductive procedure or conducts human reproductive research in the following circumstances:
- (a) the procedure or research is at the time of its performance of a kind that is subject to a moratorium imposed under **section 24(1)**; and
  - (b) the ethics committee—
    - (i) has never given its approval for the procedure or research; or
    - (ii) has cancelled any approval previously given for the procedure or research.
- (2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$100,000, or both.

*Clause 26*

To insert, after *subclause (7)* (after line 5 on page 34), the following subclause:

- (7A) In order to meet the requirements of **subsection (3)**, the Minister may appoint 1 or more additional members to a committee, being a committee established for another purpose, on any terms and conditions (including terms and conditions as to remuneration and travelling allowances and expenses) that the Minister determines by written notice to the member.

*Clause 64*

To omit this clause (lines 22 to 35 on page 53 and lines 1 to 9 on page 54), and substitute the following clause:

**64 Matters to be ascertained by authorised persons**

- (1) **Subclause (2)** applies if an authorised person believes on reasonable grounds that there is a place (**the place**) in which—

- (a) a gamete, an embryo or a foetus, or being that has been formed by an action described in **Schedule 1** is located; or
  - (b) any assisted reproductive procedure is performed or any human reproductive research is conducted.
- (2) The authorised person may at any reasonable time exercise any of the powers in **section 65** reasonably necessary to ascertain all or any of the following matters:
- (a) whether a gamete, an embryo or a foetus, or being that has been formed by an action described in **Schedule 1** is, in fact, located in the place:
  - (b) whether any assisted reproductive procedure or any human reproductive research is, in fact, performed or conducted in the place:
  - (c) whether the performance of any assisted reproductive procedure or the conduct of any human reproductive research—
    - (i) involves a contravention of any of **sections 8 to 13 and 25A**:
    - (ii) complies with any regulations made under **section 72(1)** that regulate any kind of assisted reproductive procedure or human reproductive research:
    - (iii) complies with the requirement to obtain the approval of the ethics committee for the performance of an assisted reproductive procedure or the conduct of human reproductive research:
    - (iv) complies with any conditions included in an approval given by an ethics committee.

*New clause 69A*

To insert, after *clause 69* (after line 7 on page 58), the following clause:

**69A Detection of import and export offences**

- (1) A Customs officer may detain any matter or item that he or she finds in the course of exercising any power of search or examination under the Customs and Excise Act 1996, if he or she believes on reasonable grounds that the matter or item is—
  - (a) a gamete, an embryo, or a foetus, or being that is being imported or exported in contravention of **section 8(2)** or **section 9(2)**; or
  - (b) any equipment or device used in relation to that import or export.
- (2) If a Customs officer detains any matter or item under **subsection (1)**, he or she must, as soon as practicable, deliver that matter or item into the custody of an authorised person.
- (3) Once a matter or item has been delivered under **subsection (2)**,—
  - (a) responsibility for that matter or item passes from the Customs officer to the authorised person; and

- (b) **section 69** applies to that matter or item as if it had been seized under **section 65(1)(d)**.
- (4) The following sections of the Customs and Excise Act 1996 apply, with any necessary modifications, to any gamete, embryo, foetus, or being that is imported or exported in contravention of **section 8(2) or section 9(2)** as if the gamete, embryo, foetus, or being and any equipment or device used in relation to that import or export were a prohibited import or, as the case requires, a prohibited export within the meaning of that Act:
  - (a) section 145 (questioning persons about goods and debt):
  - (b) section 147 (evidence of identity and entitlement to travel):
  - (c) section 148 (detention of persons questioned about goods or debt):
  - (d) section 160 (requisition to produce documents):
  - (e) section 161(further powers in relation to documents).
- (5) If a Customs officer requests an authorised person to assist the Customs officer in the exercise of a power under this section or any of the sections applied by **subsection (4)**, the authorised person may exercise the relevant power under the direction of the Customs officer.

*Clause 70*

To omit this clause (lines 8 to 15 on page 58), and substitute the following clause:

**70 Exclusion of liability of authorised persons, Customs officers, and assistants**

No authorised person, or a person requested to assist an authorised person, or a Customs officer who does, or omits to do, an act in pursuance of a function or power conferred on that person by this Act or by the Customs and Excise Act 1996 as applied by **section 69A** is under civil or criminal liability for that act or omission unless the person acts, or omits to act, in bad faith or without reasonable cause.

*Clause 72(1)(a)*

To add to *subparagraph (iv)* (line 33 on page 59) the words “or the Director-General of Health”.

To add, after *subparagraph (iv)* (after line 33 on page 59), the following subparagraph:

- (v) requiring persons who perform, or who arrange for the performance of, established procedures or any class of health practitioner (within the meaning of the Health Practitioners Competence Assurance Act 2003) to keep records of information of a kind provided for by the regulations (not

being identifying information) in relation to established procedures, and requiring those persons and health practitioners to disclose, in the manner provided for by the regulations, that information to the advisory committee or to any duly authorised representative of that committee or to the Director-General of Health.

*New clause 80A*

To insert, after the heading above *clause 81* (after line 18 on page 64), the following clause:

**80A Amendment to Customs and Excise Act 1996**

Section 148(2)(b) of the Customs and Excise Act 1996 is amended by adding the following subparagraph:

“(v) the Human Assisted Reproductive Technology Act 2004.”

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### Explanatory note

This Supplementary Order Paper amends the Human Assisted Reproductive Technology Bill to—

- clarify that the offence against importing or exporting unlawfully formed gametes, embryos, or foetuses applies only if they are imported or exported in an in vitro state;
- create a new offence of possessing an in vitro human embryo or an in vitro hybrid embryo with a view to using it in human reproductive research or for reproductive purposes, or of actually using it in this way, in any case where the in vitro embryo has developed beyond the period set by *clause 9*;
- require the ethics committee to cancel approvals for activities that have become subject to a moratorium;
- create a new offence of performing an assisted reproductive procedure or conducting human reproductive research at a time when that procedure or research is subject to a moratorium;
- enable the Minister of Health to appoint additional members to an existing committee that is designated as the ethics committee, so as to ensure compliance with the membership requirements of *clause 26(3)*;
- extend the situations in which premises (other than dwellinghouses) may be searched to those where it is believed on reasonable grounds that unlawfully formed gametes, embryos, or foetuses are located on the premises;
- authorise Customs officers to detain any thing that the officers believe on reasonable grounds to be unlawfully imported or exported under the Human Assisted Reproductive Technology Act 2004 and to exercise certain powers under the Customs and Excise Act 1996 in respect of

those imports and exports and to hand over any detained material to an authorised person under the Human Assisted Reproductive Technology Act 2004:

- extend the protection from certain civil or criminal proceedings given to authorised persons acting under the Human Assisted Reproductive Technology Act 2004 to Customs officers acting for the purposes of the Act;
  - enable the Director-General of Health to receive information required to be kept under regulations;
  - include established procedures among the matters about which regulations may require information to be kept and given to the advisory committee and the Director-General of Health.
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