Senate Standing Committee for the Scrutiny of Bills



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Members of the Committee

Senator J McLucas (Chair)
Senator B Mason (Deputy Chairman)
Senator G Barnett
Senator T Crossin
Senator D Johnston
Senator A Murray

Terms of Reference

Extract from Standing Order 24

- (1) (a) At the commencement of each parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
 - (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (b) The committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

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• The Committee has commented on these bills

This Digest is circulated to all Honourable Senators.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Research Involving Embryos Bill 2002

The Committee reported on the Research Involving Embryos and Prohibition of Human Cloning Bill 2002 in its *Alert Digest No. 7 of 2002*, advising that the Committee had no comments. Later, in *Alert Digest No. 9 of 2002*, the Committee noted that the House of Representatives had split that bill into the Research Involving Embryos Bill 2002 and the Prohibition of Human Cloning Bill 2002, but that the split did not raise any issues within the Committee's terms of reference.

Subsequently, Senator Collins wrote to the Committee requesting that it scrutinise all amendments which had been made, moved or circulated in relation to the two bills. Others have also suggested that the Committee look again at certain guidelines provided for in the Research Involving Embryos Bill 2002.

The Committee held a special meeting to discuss this matter, the results of which are set out below.

Scrutiny of amendments made, moved or circulated

The Committee decided to continue its practice of commenting only on amendments passed by either House and not to comment on amendments moved but not passed, or merely circulated.

The reasons for the Committee's decision are based on principle, precedent and practicality, with the practical considerations alone illustrating how difficult it would be to implement the proposal. In brief, it would not be feasible for the Committee to meet and respond to proposed amendments in a timely way, particularly given the often short time between circulation of amendments and action in the chamber. The practicalities of the proposal are that the Committee would be in almost constant session.

The Committee, however, endorsed its present practice of commenting upon amendments actually made by either House, noting that such amendments will then be considered by the other House, which may be assisted by the Committee's comments

Delegation of legislative powers Incorporation of material as in force from time to time Clause 8, definition of proper consent; Subclause 11(2)

In clause 8, the concept of **proper consent** is defined in terms of *Ethical Guidelines* issued by the NHMRC and other guidelines specified by the Chairperson of the NHMRC Licensing Committee in relation to proper consent to the use of an excess ART embryo. These guidelines appear to be legislative in nature and to significantly affect the operation of the bill. Furthermore, paragraph (b) of the definition allows for the issue of further guidelines from time to time. The guidelines do not appear to be subject to any parliamentary scrutiny, whether by tabling or disallowance.

Subclause 11(2) provides, in relation to an offence provision punishable by imprisonment for up to 5 years, for the Reproductive Technology Accreditation Committee of the Fertility Society of Australia to issue guidelines from time to time. This also appears to be not only a legislative power, but also one which is capable of continuing exercise without parliamentary scrutiny.

Subclause 11(2) also provides for the regulations to prescribe a code or document as in force from time to time. Any regulations made under this provision will be subject to disallowance, but the provision appears effectively to permit subdelegation of continuing legislative power to any person at all, without parliamentary scrutiny of that subdelegated power.

The Committee therefore **seeks the Minister's advice** on these aspects of the provisions.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle I(a)(v) of the Committee's terms of reference.