

Parliament to the people and back again: a discussion of the House Legal Committee's inquiry into human cloning and stem cell research

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Abstract

This paper considers the House of Representatives Legal and Constitutional Affairs Committee's inquiry into human cloning and stem cell research.¹ The inquiry bears examination for two reasons. First, because of the possibilities it reveals for working relationships between parliamentary committees and Executive Government, and between committees and Australians (whether individuals, or members of interest groups, or business). Second, because of ideas that may be drawn from the way the Committee examined evidence and promoted debate on a major social issue and arrived at recommendations that had an impact on the Executive. Both these elements may provide some background for those interested in the engagement of Australians in the work of Parliament and the work of government.

This paper does not purport to canvass the complexities of the issues facing the Committee, nor the legislative responses that ensued. Rather, it seeks to outline pragmatically the process: the way the Legal Committee managed the contributing witnesses, the evidence, the report, and its own performance. That is, the way it handled the 'basics'.²

¹ The Committee's report, *Human cloning: scientific, ethical and regulatory aspects of human cloning and stem cell research*, was presented by the Chair, Kevin Andrews MP, on 20 September 2001. The report is often referred to as the 'Andrews report'. In this paper it is referred to as the LACA report

² See Uhr, 2001, at p. 52 for a discussion of what is significant for parliamentary committee work

Receipt of the reference

The birth of Dolly the sheep, in the United Kingdom in 1996, prompted public concern and consultation about the possibility of cloning human beings. In Australia, on 14 January 1998 the Minister for Health and Family Services, Dr Michael Wooldridge (the Minister) acknowledged public concerns and sought advice on the need for legislation:

The Commonwealth does not have complete power to legislate on human cloning - it's a matter for the States and Territories and already Victoria, South Australia and Western Australia have enacted legislation banning human cloning.

I have asked the Australian Health Ethics Committee (AHEC) of the NHMRC [National Health and Medical Research Council] to provide me with advice on the potential and need for further pronouncement or possible legislation regarding human cloning.³

AHEC completed its inquiry in December 1998, essentially recommending a reaffirmation that practices contrary to human dignity not be permitted; that the Minister urge those States and Territories that had not already done so to limit research on human embryos; that the Minister urge States and Territories without relevant statutory authorities to regulate human embryo research, to establish them; and that the Minister promote informed discussion on the potential benefits and risks of cloning techniques.⁴

In August 1999 the Minister asked the House Legal Committee to review the AHEC report. The Legal Committee had established a reputation for constructive work on complex inquiries, including a greater number of legislative inquiries than is usual for House

³ Wooldridge, Dr M, 'Federal Government Against Human Cloning', *Media Release*, 14 January 1998, <http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-archive-mediarel-1998-mw298.htm>

⁴ LACA report, pp. 5-6. AHEC's report *Scientific, Ethical and Regulatory Considerations Relevant to Cloning of Human Beings*, (1998), is available at <http://www.nhmrc.health.gov.au/ethics/clone.pdf> (accessed 2 February 2008) but the NHMRC notes it was rescinded on 18 September 2003

committees.⁵ At the time it was chaired by Kevin Andrews MP, with Nicola Roxon MP, the Deputy Chair, and it comprised ten members.

Undertaking the inquiry

The Committee was supported by its usual secretariat, which was boosted by the secondment of a senior legal officer from the Attorney-General's Department and a scientific researcher. In fact, the scientific issues were so new and complex that the Committee sought the support of Professor John Hearn, who became its Scientific Adviser for the inquiry.

The Committee advertised the inquiry shortly after receiving the terms of reference and written submissions were sought in newspaper advertisements, on the Committee's website, and also by letters to departments, groups, and individuals considered likely to have an interest in the issues. The requests yielded 347 submissions. An additional 316 letters were received, simply urging a ban on human cloning. Most of the Committee's oral evidence was received at two public forums at which evidence was received from representatives of government, religious, scientific and other interest groups, as well as individuals who were simply interested in the inquiry.⁶

The Legal Committee had already pioneered the use of public forums during inquiries—still managed through the Committee Chair—in which witnesses had an opportunity to question and respond to each other, rather than be questioned, each in turn, by the Committee. For this inquiry the public forums were extended, both in terms of the number of witnesses, and in the

⁵ A history of the Legal Committee's work is available at its website <http://www.aph.gov.au/house/committee/laca/reports.htm>. This also reveals that at the same time as undertaking the lengthy human cloning inquiry, the Committee completed inquiries on copyright enforcement, the advisory reports on the Privacy Amendment (Private Sector) Bill 2000, the Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 1999 and the Copyright Amendment (Digital Agenda) Bill 1999. These obligations, as well as the complex and evolving cloning inquiry evidence, had an impact on the length of the cloning inquiry

⁶ A list of the submissions, and the text of some, is available at <http://www.aph.gov.au/house/committee/laca/humancloning/submiss.htm>. Public forums were held on 1 March 2000 in Melbourne (26 witnesses represented a range of organisations and interests, most of them focused on ethical issues) and 29 March 2000 (27 witnesses represented a range of interests, mostly focused on scientific and legal issues) in Canberra. Transcripts are available on the Committee's website: <http://www.aph.gov.au/house/committee/laca/humancloning/ph.htm>

format. The Committee, through the Chair, invited members of the public to question the Committee and witnesses. The result on each occasion was a long and lively public debate during which varying opinions were treated with equal respect by the Committee and other witnesses. Perusal of the transcripts reveals some passionate debate but no suggestion of intolerance or discourtesy between Committee members, between the Committee and its witnesses, or between the witnesses. Considering the nature of the issues, and the strongly held views of participants, this was a significant achievement.

Because the issue was such a topical one, the Committee had little need to promote the inquiry—other than to ensure that a range of views was received and heard. The original question, whether a whole human being might be cloned (and which had very little support), was overtaken to some extent as a result of scientific developments that raised more complex issues. ‘Cloning’ had come to include reference to processes involving the replication of cells (including embryonic and adult stem cells) and tissues, some of which are regarded as ‘therapeutic cloning’. The possible use and destruction of embryos to obtain stem cells caused grave concern to some people. The scientific and ethical issues caused both optimism and alarm in scientific, health, and religious sectors, and the legal issues were correspondingly new and complex.⁷

Preparing the report

The Committee was made up of six government and four non-government members. However, party allegiances did not appear to influence their views. The range of members’ views reflected the range held by the public. As the inquiry drew to a close, a principal question, particularly for the Chair, was how to accommodate those views and still provide recommendations that were workable.

⁷ See chapter 2 of the LACA for an introduction to the scientific issues, for example. During the inquiry the ABC Four Corners program, *The Clone Age*, featured the work of the Committee in its discussion of the possibilities being offered by developing science

The Committee and its secretariat produced a final report that was comprehensive, including a survey of the background issues (scientific, ethical, and regulatory) on national and international levels, before reviewing in detail the evidence it received on those issues, and the conclusions it formed from the evidence. The scientific evidence and even the background were highly technical and certainly not the usual content of a legal committee report, however, they were necessary to ensure the Committee's response to the debate was complete. Most significant, perhaps, is the way members acknowledged their individual views but combined to produce a unanimous report. Ethical viewpoints are essentially personal, subjective matters, but members spelled out their own views on the ethical issues surrounding research involving stem cells. This was done in the full knowledge that the report would have a wide readership, not just public servants and scientists, but also the electorate.⁸

The report concludes with a chapter on proposed regulation of human cloning. The Committee again acknowledged the differing views held by members on the use of stem cells, and whether procedures that involve the destruction of embryos should be permissible, but resolved the issue with a reasonable and pragmatic approach that would leave no doubt as to its views for action that government needed to take. The Committee as a whole proposed a model for the regulation of human cloning and related research:

All members recognise, however, that the final decision about cloning in Australia will be made by Commonwealth, State and Territory Parliaments. If Australian Governments and Parliaments decide to regulate human cloning involving stem cells derived from embryos surplus to assisted reproductive technology programs, all committee members agree upon the proposed system of regulation outlined in this chapter.⁹

The report is lengthy and detailed, in an attempt to do justice to the issues, to the contributors, and to those who would rely on the report for guidance. The Committee also catered for more casual readers by providing an unusually comprehensive Executive Summary and by

⁸ LACA report, pp. 117-25 contains discussion of the views held by members on the ethics of stem cell research, as well as the reasons for holding the views

⁹ LACA report, pp. 217-8

beginning chapters with comprehensive outlines of the contents that followed. The language of the report is plain but quite unambiguous.

Like the report itself, the report drafting and consideration processes were detailed and lengthy. For private and public meetings, the Committee's quorum requirement was three members.¹⁰ The Committee's report consideration process comprised 18 meetings (held between May and August 2001. At these meetings, attendance was never less than five members and at most meetings, comprised seven members.¹¹ This high level of attendance is one measure of the commitment of members: meetings were held in private sometimes at the end of long days and were occasionally quite lengthy.

There is sometimes cynicism about parliamentary committee reports and the statements that are made when they are presented to Parliament. On this occasion, at least, the statements were thoughtful. The Chair and Deputy Chair acknowledged the hopes and needs of those who had given evidence, and the way in which the Committee had sought to have regard to their views:

The subject of human cloning is a fundamental one and should not be left to any one sector of our community to determine. The committee hopes that this report will contribute to informed debate and consultation. ... The Legal and Constitutional Affairs Committee has a tradition of constructive debate and goodwill. I think all members for the respect they have shown for opinions they may not necessarily share.¹²

The Deputy Chair's statement was gracious, while still acknowledging her own views:

I would also like to specifically thank the chair of the committee. This has been a demanding inquiry, grappling with the science, the ethics, the current research and our personal beliefs. Managing our differing views, differing levels of understanding and differing temperaments over the two years was quite a task and one that he definitely managed with grace. ...

¹⁰ Standing Order 337(a), House of Representatives *Standing and Sessional Orders*

¹¹ The Committee's *Minutes of Proceedings*

¹² Kevin Andrews MP, 20 September 2001, *House of Representatives Hansard*, 31094

This was not an easy issue, and I commend the report to the House and urge the government, the interested media and the public to consider this report fully and carefully. By setting out in detail the current state of the science, the range of ethical arguments and much more, I believe we will save the need for repeated inquiries into this issue. However, the debate that must now follow will need to be thorough and respectful of a range of views. Calm and thoughtful debate can lead to a clear and sensible resolution as shown through the work of this committee.¹³

All members attended the customary post-presentation media conference, and all expressed their satisfaction with the report and the inquiry process.

The role of the report

If a measure of the impact of committee reports is the content and timeliness of the Government Response, then this inquiry's impact might have seemed limited. The Government Response stated simply: 'The response to the report has been overtaken by the Cloning Implementation Working Group report to COAG via Australian Health Ministers' Advisory Council'.¹⁴ In fact, the LACA Committee's report had been long-awaited, not just by scientists and the public, but also by governments, including COAG. COAG based its further deliberations on human cloning on the LACA report and subsequently agreed that Commonwealth, State and Territory governments should introduce nationally consistent legislation to ban human cloning and some related practices that were unacceptable; and to regulate research involving human embryos that had been created for assisted reproductive technology treatments but were surplus.¹⁵ This must have been heartening for Committee members, as would have been the legislative response.

In June 2002, the Prohibition of Human Cloning and Research Involving Human Embryos Bill was introduced to Parliament and was later divided into two bills that were passed in

¹³ Nicola Roxon MP, 20 September 2001, *House of Representatives Hansard*, 31094-5

¹⁴ Footnote 22 to *The Speaker's Schedule of outstanding Government Responses to Committee Reports*, presented 27 June 2002

¹⁵ See the COAG communiqué of 5 April 2002, accessed online on 4 February 2008 at <http://www.coag.gov.au/meetings/050402/index.htm#art>

December 2002: the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002*.¹⁶

During debate references were made by a range of members to the contribution to understanding and public debate that had been made by the LACA report.

What conclusions may be drawn from this inquiry process?

Uhr has stated what parliamentary staff know but prefer not to dwell on: ‘The dull truths of law and policy contained in reports of parliamentary committees are, although important, often virtually unreadable, let alone marketable’.¹⁷

Despite acknowledging the gloomy truth, Uhr offered tips for marketing parliamentary committees:

- ensure they deliver a message to Parliament and government
- ensure they deliver a message to government—loudly—and thus encourage people to come to the Parliament but
- remember that it is the people who own the democratic system when you promote one component of that system.¹⁸

The cloning inquiry was an unusual one in some ways. The topic automatically generated interest from the public, the media and government. That interest was advantageous in that it prompted a flood of evidence, and encouraged a responsive attitude from the Executive. However, this intense interest might have caused the Committee and its report to lose cohesion. By sticking to the basics the Committee engaged the people and the Executive, to such an extent that it was a fine marketing exercise. The Committee ensured first, a

¹⁶ In 2005, pursuant to their provisions, both Acts were reviewed independently by a Legislation Review Committee known as the Lockhart Committee. The Lockhart report is available online, accessed 2 February 2008, at <http://www.lockhartreview.com.au/>

¹⁷ Uhr, 2001, p. 46

¹⁸ Uhr, 2001, pp. 46-7. Some liberties have been taken with Uhr’s tips to enhance their marketability