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SUBMISSION TO THE

COMMONWEALTH INQUIRY INTO

SCIENTIFIC, ETHICAL AND REGULATORY

ASPECTS OF HUMAN CLONING

CONDUCTED BY THE

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

31 DECEMBER 1999

Executive Summary

The advent of “Dolly the Sheep” opened up the possibility that in the future human beings may be deliberately cloned in reproductive technology programmes. The *social* applications of such technology would include: enabling people who are not able or willing to have children by conventional means or by other reproductive technologies to have children who are genetic ‘copies’ of themselves; allowing new kinds of ‘family’ formation not founded upon actual or de facto marriage; and producing genetically ‘identical’ human beings with certain desired characteristics. While such proposals are almost universally deplored, they are legal in some parts of Australia.

The most significant *medical* applications of cloning and related technologies would seem to be the generation of human embryos by cloning for the purpose of obtaining human embryonic stem cells from which it would be hoped to derive cells, cell-lines and tissues for tissue repair by transplant; this may in turn open the way for future biochemical therapies to stimulate tissues to repair themselves. Whether human cloning is a necessary step to achieving these hoped-for benefits is debatable—there may well be other ways—but it might be something of a shortcut. It does, however, require the production of human embryos with a view to their destruction and exploitation by others: a practice which is gravely unethical; similar proposals have been the subject of extended criticism by, among others, a Senate Committee of the Commonwealth Parliament. However, this remains legal in some parts of Australia.

Advocacy for human cloning now commonly adopts the misleading distinction between “therapeutic cloning”, which includes cloning human embryos and dismembering them to obtain stem cells, and “reproductive cloning”, which includes cloning human embryos and permitting their development beyond the embryonic stage. Many people would be surprised to learn that so-called ‘therapeutic’ cloning, despite its seductive label, is far from being therapeutic for the cloned human being concerned: it actually involves its destruction. Sound policy requires absolute frankness on this point: in both ‘therapeutic’ and ‘reproductive’ cloning what occurs is the generation of a human embryo by cloning: the only difference is in how long that embryo is allowed to develop. In the former case it is for hours, days or weeks until it is used for deriving cells or other materials and destroyed; in the latter it is allowed to develop to term. There is no difference in the kind of cloning, only in what the scientist later does to the cloned human being.

Various reports on these matters have been published by UN, national and state governmental bodies, by scientific associations, and by diverse experts. One such report occasioned the present Inquiry: the Report of the Australian Health Ethics Committee (AHEC) of the National Health and Medical Research Council (NHMRC) to the Minister for Health and Aged Care entitled *Scientific, Ethical and Regulatory Considerations Relevant to Cloning of Human Beings* (16 December 1998).

The Catholic Archdiocese of Melbourne has engaged in research and consultation both within the Church and in the wider community in the formulation of its response to these challenges. In common with people of all religions and none it is attracted by some of the potential therapeutic applications of this science but concerned that the research, development and application of these technologies not involve offences to human dignity or the compromise of fundamental ethical norms. The particular moral and spiritual wisdom of the Catholic tradition complements and confirms some of the concerns of this 'common' or philosophical morality.

The Archdiocese of Melbourne urges the Committee to consider ways in which the Government can help shape the direction of this proposed research and these prospective technologies. In conjunction with the States, other government organizations, the churches, universities, professional and other groups, the Government must guide the enthusiasm of our scientists toward endeavours that represent not only technical but also ethical excellence, especially the pursuit of the highest ideals of respect for the inherent dignity and inviolability of every human being. In particular we would hope that there will be a nationwide ban on human cloning and the careful regulation of any associated activity. We believe that within the constitutional structure of the Commonwealth there exist numerous ways in which the Commonwealth Parliament can give such leadership.

The need for Commonwealth regulation of this area is the more obvious the more one understands:

- ◆ the gravity of the ethical and jurisprudential issues occasioned by the possibility that human beings might one day be cloned;
- ◆ the imminence of proposals to start cloning human beings for various purposes; and
- ◆ the inadequacy of present regulatory regimes here in Australia.

There is currently no legislative regulation of human cloning in most Australian States and attempts by some States to regulate this area are well-meaning but probably inadequate. The reliance by the Commonwealth upon National Health and Medical Research Council guidelines and judgments by individual Institutional Ethics Committees is also unsatisfactory for various reasons outlined in this submission.

The Archdiocese of Melbourne submits that the Commonwealth Parliament must act when significant segments of the scientific community are openly endorsing the production of human beings for the sole purpose of treating them as a source of spare parts—a proposal involving a grave offence to human dignity, very serious potential harm to our community, and a potential breach of international obligations. We exhort the Committee to recommend to the Parliament that, in keeping with sound ethics and jurisprudence, Australia should adopt a nationwide ban on human cloning and careful regulation of all related activity. Respect for human life in its origins, for human procreation, and for the future of our nation requires no less.

1. Introduction

1.1 Dolly the sheep and all that

When Professor Ian Wilmut reported in 1997 having cloned a mammal, “Dolly the sheep”, a new era potentially began in human reproduction and in medical research. It was a most unexpected development as it had been hitherto thought to be impossible to clone a mammal. Immediately the question arose whether it would be possible to apply that technology to humans—the possibility of producing a human embryo from an ordinary body cell, an embryo that would be produced asexually, would have only one genetic progenitor and neither father nor mother in the ordinary sense. And there was quickly speculation about various possible ‘therapeutic applications’ of such technology.

This raised ethical issues concerning individuality and identity of a child or an adult who is thus a genetic copy of someone else and the likely impact that would have on expectations for their performance, even though genetics are only one factor in the development of an individual. Individuals also are affected by the environment in which they develop, their education, family and social relationships and of perhaps greatest significance, the free choices they make in the formation of his or her own character and life choices.

Of even greater concern have been issues of respect for the dignity and rights of human life in its origins, respect for human procreation, and respect for the common good of the community—and it is these concerns which will be given particular attention in the following submission.

The Commonwealth Parliament is to be commended for referring to House of Representatives Standing Committee on Legal and Constitutional Affairs (‘the Committee’) the present Inquiry into Scientific, Ethical and Regulatory Aspects of Human Cloning (‘the Inquiry’). The present submission to that Inquiry focuses more on the ethical and social issues raised by the possibility of human cloning than on the scientific and regulatory issues, and it is hoped that it will assist the Committee in its very important deliberations.

1.2 Concerns of the Catholic Archdiocese of Melbourne

The advent of “Dolly the Sheep” opened up the possibility that in the future human beings may be deliberately cloned in reproductive technology programmes. The *social* applications of such technology would include: enabling people who are not able or willing to have children by conventional means or by other reproductive technologies to have children who are genetic ‘copies’ of themselves; allowing new kinds of ‘family’ formation not founded upon actual or de facto marriage; and producing genetically ‘identical’ human beings with certain desired characteristics. (Strictly speaking cloned human beings, like identical twins, are not genetically identical but only very close to genetically identical.) While such proposals are almost universally deplored, they are legal in some parts of Australia.

The most significant medical applications of cloning and related technologies would seem to be the generation of human embryos by cloning for the purpose of obtaining human embryonic stem (‘ES’) cells. These cells would be removed from the inner cell mass of an embryo at the blastocyst stage, thereby dismembering that embryo. ES cells are thought to be ‘totipotent’, i.e. to be able to develop (after certain manipulations) into any specific cell types (blood, nerves/brain, skin, muscle...) and, if taken from a clone of the recipient, would present no problems of immuno-

rejection were they transplanted. It is hoped that from these cells it will be possible to derive cells, cell-lines and tissues for tissue repair by transplant; this may in turn open the way for future biochemical therapies to stimulate tissues to repair themselves. Whether human cloning is a necessary step to achieving these hoped-for benefits is debatable—there may well be other ways (see 4.3 below)—but it might be something of a shortcut. It does, however, require the production of human embryos with a view to their destruction and exploitation by others, a practice which is gravely unethical; similar proposals have been the subject of extended criticism by, among others, the 1986 Senate Select Committee on the Human Embryo Experimentation Bill. However, this remains legal in some parts of Australia.

Aware as we are of the lead rôle of geneticists and reproductive technologists here in Melbourne, the Catholic Archdiocese has taken a keen interest in the human cloning debate. Our concern is to encourage ethical, social, legal and professional standards in medical research that:

- respect the dignity of every human being at all stages of development and all levels of capacity without distinction;
- respect the dignity of human procreation and family formation; and
- have an eye to the interests of any future children, to the common good of all members of the community, and to the future of our community, and not merely to narrow research or bio-medical commercial interests.

We would hope that most medical research scientists in fact share these goals. Sadly this cannot be presumed of all. In such a situation Government has a particular responsibility to protect those who are most vulnerable and most at risk of being exploited. The Church for its part has a responsibility to educate, lobby and otherwise seek to promote the highest ethical and spiritual standards in our community.

1.3 Activities of the Catholic Archdiocese of Melbourne

The Archdiocese of Melbourne has given expression to these concerns through a number of activities, including public education through the statements of its official spokespeople, through classes in the Australian Catholic University and the Catholic School system, and through discussions in parishes and elsewhere.

Two meetings have been conducted by the Archdiocese which may be of particular interest to the Committee. Both of these meetings addressed to the same publication which occasioned the present Parliamentary Inquiry—the Report of the Australian Health Ethics Committee (AHEC) of the National Health and Medical Research Council (NHMRC) to the Minister for Health and Aged Care entitled *Scientific, Ethical and Regulatory Considerations Relevant to Cloning of Human Beings* 16 December 1998 ('the AHEC Report'). (Fuller accounts of these meetings could be provided to the Committee on request.)

1.4 April 1999 meeting of experts

In April 1999 thirty-six people took part in a meeting of representatives of the Catholic Archdiocese of Melbourne, scientists, representatives of government regulatory bodies for reproductive technology, moral philosophers and theologians from various institutions, lawyers and parliamentarians. The goal was to allow a free exchange of ideas amongst the participants and to better inform the Catholic Church's position on cloning here in Australia.

Materials were pre-circulated and formal presentations kept to a minimum in order to allow maximum time for open discussion. On the day participants were able to bounce ideas and an atmosphere developed of focused discussion which sustained interest throughout long discussions (up to three hours each) on the scientific, ethical and regulatory issues.

The meeting served to provide a strong information base for examining these issues. The scientific session was addressed by leaders in the field and highlighted the speed and fluidity of developments and the strong desire, both scientific and commercial, to pursue human cloning in a variety of forms.

During the ethical session the topics dealt with included:

- ◆ defining the human embryo
- ◆ the status of human embryonic stem cells and appropriate respect
- ◆ the status of human embryoids / embryoid bodies and appropriate respect
- ◆ cloning as asexual reproduction and the dignity of procreation
- ◆ cloning cells, tissues and whole human beings
- ◆ combination of human and animal genetic material in an embryo
- ◆ internationalisation of science, cross-border regulation, border-hopping to less restrictive jurisdictions, import and export of science and the products of science.

It became clear that some existing definitions of the human embryo, because they depend upon formation through fertilization of an ovum by a sperm, are not applicable to an embryo formed by other means such as cloning; it also became clear that there are various methods of cloning or asexual reproduction of human beings possible and that any new *definition needs to be broad enough to cover these human beings while excluding processes such as cell and tissue growth and regeneration.*

Whatever the method of formation, *a human embryo is any organism that has the organized capacity for human development.* But this in turn raises complex questions about the nature and identification of the embryo, appropriate respect for embryos and other organisms related to embryos, the nature of human embryonic stem (ES) cells and 'human embryoid bodies', and appropriate respect for the dignity of procreation. Considerable unease was expressed about the potential for further manipulation, domination and exploitation of human beings in their origins if they are the product of human cloning. There was also some discussion about the possibilities in the area of human-animal hybridization and the morality of such activities.

1.5 November 1999 public meeting

In addition to the April meeting of experts the Archdiocese of Melbourne conducted a public meeting in November 1999 on these issues. The objective of this meeting was to inform members of the public about the issues and to encourage well-informed submissions to the Inquiry.

The format of the meeting was a moderated discussion by a panel of experts. These were: Very Reverend Dr Anthony Fisher OP EV (moral theologian and lawyer), Dr Renate Klein (professor of women's studies), Dr Grant McArthur (molecular biologist), Ms Marcia Riordan (medical researcher), and Mr Nicholas Tonti-Filippini (consultant ethicist). The discussion was moderated by Dr Hayden Ramsay, an academic philosopher and member of the staff of Archbishop George Pell. The meeting was well-attended (by approximately 120 people) and broad-ranging. Many of those who attended hold senior positions in the professions of medicine and law and the discussion from the floor was mostly of a relatively sophisticated level.

The discussion format was chosen over formal presentations on the basis that it was more likely to engage the audience and given them an opportunity to take parton. Dr Ramsay himself contributed to the conversation by asking clear, probing questions, seeking clarifications when terminology became too technical or points too complicated, and summarizing the discussion so far before moving the panel on to new areas.

In addition to the two hours of input and discussion at the meeting a printed brochure on the major issues was distributed (a copy of which is appended hereto). In all the meeting was very successful, with many of those who attended expressing their appreciation of the format and content. After the meeting it took a long time to clear the hall as people stood about in groups and with the speakers. The topic excited a high level of interest and debate.

1.6 October 1999 meeting of the Australian Academy of Science and subsequent report

The Archdiocese was also represented at the Australian Academy of Science forum on “Therapeutic Cloning” in October 1999 about which the Committee will have been thoroughly briefed. We have read with interest and some considerable alarm the subsequent AAS Report of that forum which we believe significantly misrepresents the tenor of that meeting. (Letters in this regard have been sent to the Academy by representatives of the Church and copies could be provided to the Committee on request.)

1.7 The present inquiry

Following the meetings noted above, the publication of a number of Church documents on cloning and related technologies (copies of which can be provided on request), and further research by the Episcopal Vicar for Health Care in the Archdiocese of Melbourne and his staff (a copy of one such paper is appended hereto), the Archdiocese has decided to make the following submission to the Inquiry. In doing so it is aware that the Research Department of the Australian Catholic Bishops Conference will also be making a submission and the Archdiocese commends that submission to the Inquiry for careful consideration.

2. The Role of the Church in the Cloning Debate

2.1 Should the Catholic Church speak publicly on such issues?

Much of what is argued in subsequent sections of this submission is based upon both an acceptance of the pluralism of Australian society and of those fundamental norms which transcend cultural, ethnic, religious and personal differences. That is to say, we recognize that Australians approach ethical issues from a variety of perspectives but that some basic ‘common morality’ is a necessary unperpinning of our community life and the flourishing of each individual within our community. It is on such a basis that we are, for instance, able to form and maintain a democracy and have certain agreed laws and customs. One such principle is respect for the inherent dignity of every member of the human family from which their equal and inalienable rights are derived. Another is respect for the institution of the family and the dignity of procreation within it.

We believe that the religious perspective with which the Church approaches these issues complements and confirms—rather than contradicts or undermines—the philosophical or ‘natural law’ reasoning which forms the basis of the common morality and jurisprudence referred to above.

Furthermore, we believe we speak for a sizeable proportion of the Australian community when we reassert that common morality and add our particular ‘spiritual’ perspective.

Finally, in recognition of having a place in, and being a part of Australian society, it is important that when a major new issue of policy such as cloning arises, potentially affecting many Australian lives, the Church should add its voice to the process of our community discerning an appropriate response.

2.2 Does the Church have anything different to bring to this debate?

In intervening in this debate the Church hopes to draw the community’s attention to the people and values at stake in the debate over cloning. We believe that this is one of the particular vocations of the Church and one of the special rôles of religions in a civil society: to be a voice for the vulnerable and to draw attention to higher values which might be forgotten amidst the hype of science, media, politics and commerce.

Having noted that much of what the Church has to say on issues such as cloning it says in common with others of many religions and none, and it says in the language of ‘common morality’, we are nonetheless happy to note the distinctive perspective through which the Church arrives at and views those basic norms.

The sanctity of human life in our tradition is grounded upon the view that all human beings, in whatever state of life and howsoever conceived, are an image of God; they are created and redeemed for friendship and happiness with each other and with God in this life and in eternity; and they are therefore entitled to the highest care and respect, indeed reverence and love. The Church seeks to (re-)establish the sense that every human being is to be respected as a person from conception (when the first cell of the new being is formed) until death, and that we are called to be stewards of God’s creation and to share in Christ’s healing mission. All human beings, and especially the young and vulnerable, are given into our care as a sacred trust. Our representatives in Parliament have a special rôle to ensure that that trust is fulfilled.

The *sanctity of the family* in our tradition is grounded upon the view that the family, founded upon marriage and that love which a married couple have for each other and for God, is in turn an image of the Holy Trinity and of the Holy Family; it is destined to be the locus for the creation and redemption by God of new human beings, for their nurture and education by their parents, and for the future development of the human community of which the family is the fundamental unit. The Church seeks to (re-)establish the sense that parenting is a trust received rather than a project chosen, that people are more than their genes, and that reproduction should take place within the context of marital love-making. The Church seeks to ensure that responsible legislation and social mores are in place that are truly reflective of the needs (above all) of children, as well as of their parents and the wider community.

Reverence for the sacredness of human life and of the family counsel both *inventiveness* and *caution* in interventions involving human beings and especially in experimentation upon them. In particular, concerning human cloning, respect must be shown for *the integrity of the person* is his or her fundamental nature and unique identity, for the *shared nature and diversity of the human family*, for *human life in its origins*, and for *human fertility and parenthood*.

Other principles such as justice in the allocation of resources and in the use of political and technological power, and respect for the identity, privacy and other inherent rights of the person, must also be respected.

The civil law should serve the common good of the community, especially by protecting the rights of the most vulnerable members. On the Catholic view any State or law which undermines respect for or fails to protect the most vulnerable is illegitimate.

These basic principles yield both positive and negative implications.

On the positive side, *research* which is aimed at increasing our knowledge of human genetics, fertility, health and healthcare, and which is conducted in ethical ways, is to be encouraged. *Therapeutic* interventions aimed at correcting diseases or disabilities, or preventing their onset, and which are conducted in ethical ways, are to be encouraged. Interventions that are aimed at *assisting the marital act in coming to fruition* in childbearing are also in principle good uses of such technology. The community, including its government, should encourage such positive activities.

On the negative side, the *laboratory creation, freezing, non-therapeutic experimentation* upon and direct *destruction of human embryos* are immoral. The *procurement of genetic material, tissues or organs from live embryos or fetuses*, in ways which are harmful to those persons, is immoral. Similar interventions upon *organisms which might be human embryos* are also unethical. The deliberate *cloning* of one human being from another for whatever purposes and the *hybridising* of human beings with each other or with animals are likewise immoral. The community, including its government, should discourage such negative activities. The civil law should also ensure that human embryos, howsoever created, are *protected from abuse*.

2.3 Some distortions in the present debate over human cloning

Some examples of the specific contribution which the Church can make to the current debate over human cloning follow from its particular sensitivity to some common distortions, such as:

- ◆ *genetic reductionism and determinism* (the belief that a human being is essentially his or her genetic identity and controlled by it): the reality is that environment, nurture and education are also vitally important, and that individuals are free to decide what kind of character they shall be and what life choices they shall make...

- ◆ *reproductive libertarianism* (the belief that individuals are free to make any kind of reproductive choice they please): we must also consider the consequences for future and existing children, for the family unit and the community at large; couples have a responsibility only to form a family only in circumstances in which they can offer mutual love, exclusiveness, permanence and nurture to each other and their children...
- ◆ *pragmatism and utilitarianism* (the belief that all that matters are results and so if babies or therapies can be achieved, any process can be used to get them): the reality is that there are important intrinsic values at stake which should not be compromised (such as respect for innocent human life, basic human rights, and responsible parenthood)...
- ◆ *research laissez faire* (the belief that scientific research objectives should take priority over all else and should therefore not be subject to interference from law or society): the reality is that individual human dignity and inalienable rights have moral priority over research goals, and that the wider interests of the community in the pursuit of the common good and the protection of the vulnerable are incompatible with a simplistic call for research laissez faire in genetics as elsewhere...
- ◆ *commodification of children* (the belief that children are for the benefit of adults and can rightly be created, used, disposed of, and even sold according to the desires of adults): the reality is that children have inherent rights from conception until death and are not properly the subject of slavery or other exploitation, including mindsets which would happily destroy them in order to produce 'therapies' for others or mistreat them in order to satisfy the desires of would-be parents...
- ◆ *reduction of procreation to a manufacturing process* (the belief that human procreation is merely a technical process, satisfactorily achieved in laboratory manufacture and even open to commercial transaction): children are entitled to equal rights to their parents and should never be treated merely as products subject to quality control and manipulation; nor should parents be treated as mere gamete or gene providers; the appropriate context for the generation of children is the loving marital embrace of their parents...
- ◆ *technological imperative* (the belief that whatever can be done will be done, and the associated rhetoric of inevitability and catch-up): the reality is that human cloning, like any other scientific development, is far from inevitable; it all depends upon whether scientists and the broader community regard this as a development worthy of pursuing...

3. Recommendations of the Catholic Archdiocese of Melbourne with respect to Human Cloning

3.1 The need for a ban on cloning

The AHEC Report makes the following main recommendation:

The Commonwealth Government, through the Minister for Health and Aged Care, should reaffirm its support for the UNESCO *Declaration on the Human Genome and Human Rights*, in particular Article 11, which states that:

Practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted. States and competent international organizations are invited to co-operate in identifying such practices and in determining nationally or internationally, appropriate measures to be taken to ensure that the principles set out in this Declaration are respected.

Subject to the provisos noted below, the Catholic Archdiocese of Melbourne endorses this recommendation and asks the Committee to consider the implications of this recommendation for Australia: in particular, what national measures could and should be adopted to ensure that practices such as cloning are not permitted in Australia?

To some extent the other recommendations made in the AHEC Report and the two resolutions of AHEC seek to address this question. However, an immediate problem in the AHEC Report is the inconsistency between Recommendation One (which would seem to suggest all creation of human embryos by cloning should be banned) and the two resolutions (which would seem to allow such activity for certain ‘non-reproductive’ but ‘therapeutic’ purposes).

The AHEC Report and subsequent lobbying by groups such as the Australian Academy of Science adopts the misleading distinction between “therapeutic cloning” (which includes cloning human embryos and dismembering them to obtain stem cells), and “reproductive cloning” (which includes cloning human embryos and permitting their development beyond the embryonic stage). Many people would be surprised to learn that so-called ‘therapeutic’ cloning, despite its seductive label, is far from being therapeutic for the cloned human being concerned: it actually involves its destruction. Sound policy requires absolute frankness on this point: in both ‘therapeutic’ and ‘reproductive’ cloning what occurs is the generation of a human embryo by cloning: the only difference is in how long that embryo is allowed to develop. In the former case it is for hours, days or weeks until it is used for deriving cells or other materials and destroyed; in the latter it is allowed to develop to term. There is no difference in the kind of cloning, only in what the scientist later does to the cloned human being.

In implementing the UNESCO *Declaration* and Recommendation One of the AHEC Report there is a need to clarify how the Australian Government interprets the UNESCO *Declaration*.

The *Dolly* case has now demonstrated beyond doubt that cloning can produce not merely an ordinary cell capable of life only as a part of a being, but a new member of the species; applied to the human this means the cloned embryo is no mere field for harvest or machine for plundering parts, but a new human being beginning his or her journey of life. Therapeutic goals never justify the development, use or destruction of a human being solely in order to benefit others.

For the reasons already comprehensively outlined above, the production of human embryos with a view to their destruction and exploitation by others is gravely unethical and is inimical to the principles and laws of our democracy. Similar projects have already been the subject of extended criticism by, among others, the 1986 Senate Select Committee on Human Embryo Experimentation.

The Catholic Archdiocese of Melbourne therefore submits that the Committee should find *that the generation of human embryos by cloning not merely for the purpose of bringing cloned babies to term but also for the purpose of dismembering them to obtain human embryonic stem cells or other products is unethical and inimical to the principles of our democracy and law.*

We further ask that the Committee recommend to the Parliament that it *take such measures, either alone and/or in concert with the States and other organizations, as are necessary to enact a nationwide ban on human cloning, a prohibition of the import of ES cells, and the careful regulation of any associated activity (such as the commercialization of by-products).* For these purposes cloning might usefully be regarded as any method of *asexual* human reproduction of a being with the capacity of a human embryo for human development; *sexual* reproduction would be understood as the generation of such a being through the union of a genetically unaltered ovum with a genetically unaltered sperm.

We trust that the Commonwealth Government, in conjunction with the States, other government organizations, the churches, universities, professional and other groups will seek to guide the enthusiasm of our scientists toward endeavours that represent not only technical but also ethical excellence, especially the pursuit of the highest ideals of respect for the inherent dignity and inviolability of every human being.

3.2 The inadequacy of the present régime of regulation

In relation to the national means to be used to ensure that the principles in the UNESCO *Declaration* are respected, failing legislation being developed in all the States and Territories, the Report suggests that IECs regulate the issue (Resolution One) with some guidance from an expert advisory committee established by the NHMRC (Resolution Two). The Archdiocese of Melbourne regards this as a wholly inadequate response to the Australian Government's moral and legal obligations.

At present only three of the States (Victoria, South Australia and Western Australia) regulate cloning by law or license and each attempts to ban the practice. However even in those States it is unclear whether all methods of cloning or all goals of cloning would be covered by the prohibition. In the other States there is not even this level of regulation. Instead all that is in place are the NHMRC guidelines and the IECs. The latter are an inadequate response because:

- ◆ Only Commonwealth Government (NHMRC) funded research need be approved by an IEC: there is no requirement for research which is privately funded to obtain ethical approval from an IEC. (Only 25% of medical research in Australia is funded by the Commonwealth through the NHMRC; and, given its commercial implications, pharmaceutical companies may well be willing to 'go it alone' with respect to human cloning without NHMRC grants.)
- ◆ IECs are honorary bodies that lack the capacity to monitor research to ensure compliance with ethical standards; the only sanction is a refusal of future research project approval to a researcher whose past bad practice has already been exposed.
- ◆ IECs are a form of internal self-regulation by research institutions. They are appointed by the institutions themselves, and usually have a majority of members from within the institution itself. They are in no sense independent; nor are they representative of the broader community.

- ◆ The proceedings of IECs are usually held in secret and no report is made which would allow public scrutiny of the decisions that they make. They are not accountable to the broader community.

Clearly a more comprehensive and effective mechanism must be found for regulating this area of scientific endeavour given the seriousness of the values at stake and the apparent imminence of research in this area by some enthusiastic scientists.

3.3 The constitutionality of Commonwealth legislation in this area

The Archdiocese of Melbourne does not claim any special expertise in Australian constitutional law. However the following two options for achieving the goals proposed above seem most obvious to us:

- a uniform legislative ban by the Commonwealth, States and Territories along the lines suggested above; or, failing this,
- Commonwealth legislation to fill the lacuna in those States and Territories where no legislation has so far been enacted or where the present legislation is inadequate or ineffective.

The Archdiocese of Melbourne would not support uniform legislation if this amounted to a 'lowest common denominator' style of regulation and took the place of existing regulations in the State of Victoria under the Infertility Treatment Act; any uniform legislation should strengthen the ban upon human cloning not weaken it.

With respect to the latter option, one might note various existing forms of regulation by the Commonwealth in parallel circumstances. The heads of power under which these (and therefore a cloning ban) might be grounded would include:

- Family Law Power (the—admittedly limited—powers of the Commonwealth in this area might ground a legislative ban on so perilous an experiment in child and family making)
- Corporations and Finance Power (since many of the research institutes which may consider undertaking human cloning would be corporations in receipt of government funds, regulation of those bodies with respect to such activities would be justified)
- External Affairs Power (Australia's obligations under the *Universal Declaration on the Human Genome and Human Rights*, the *Universal Declaration on Human Rights*, the *UN Convention on the Rights of the Child* and the *International Covenant on Civil and Political Rights* might ground a ban on human cloning)
- Customs, Excise and Patenting Powers (the Commonwealth could use its powers in this area to introduce some restrictions on or disincentives to human cloning).

4. Related areas

4.1 Need for a ban on human embryo experimentation

We will not here rehearse the arguments made by the Church and others regarding human embryo experimentation which were made before the 1985 Senate Inquiry into that matter. Suffice it to say that the arguments made at that time for a legislative ban on non-therapeutic human embryo experimentation continue to be as forceful if not more so than they were a decade and a half ago. The Archdiocese of Melbourne continues to support the findings of that Inquiry that *there should be a nationwide ban on destructive human embryo experimentation.*

4.2 Need for a ban on the creation of transpecies somatogenetic embryoids

Researchers overseas have produced embryos by fusing a human body cell, such as a skin cell, with a cow egg from which the nucleus had been removed. The result is something like a human embryo and it has proven possible to harvest human embryonic stem cells from those “embryoids”.

This raises the issue of when a human embryoid is a human embryo and whether the repugnance which most people feel about creating a human-animal hybrid is well-grounded. The Archdiocese of Melbourne regards any attempt to produce a being formed by combining human and animal genetic material or using a combination of human DNA and animal germ cells as an affront to human dignity. It also believes that the benefit of the doubt should be given to any being which might reasonably be considered a human being even if its status is uncertain. The Archdiocese of Melbourne supports *a nationwide ban on the creation of transpecies somatogenetic embryoids.*

4.3 Need for somatic cell research and other positive alternatives to cloning

Some scientists have chosen to avoid the ethically contentious issues of cloning human embryos and using human ES cells and instead are working with ordinary body cells like skin, blood, nerve, muscle and bone cells to try to isolate ‘pluripotent’ adult stem cells—i.e. cells which are not very differentiated and may be manipulated to form cells of a different type. Another potential line of research in this area is into the de-differentiation of somatic cells to the point that they are pluripotent and can be re-differentiated into cells of the desired type. Various lines of research are continuing in the area of cell and tissue regeneration which do not require ES cells.

Were any of these lines of research to prove successful, human cloning and derivation of ES cells from cloned human beings may be a convenient shortcut but would be unnecessary: adult stem cells or de-differentiated somatic cells would have all the therapeutic advantages of ES cells but not require the generation and dismembering of cloned human embryos.

The Archdiocese of Melbourne strongly supports work of this kind as long as there is appropriate information giving, consent, and impartial and competent review to ensure the safety of human research subjects and respect for human dignity. The Committee might usefully *commend this and other positive directions in genetic science which would avoid the cloning and/or destruction of human embryos and all the attendant ethical, social, legal and professional problems but provide the same potential benefits.*

5. Conclusion

The Catholic Archdiocese of Melbourne commends the Commonwealth Parliament for establishing the present Inquiry into Scientific, Ethical and Regulatory Aspects of Human Cloning.

Human Cloning is a proposal which has captured the scientific imagination but which is fraught with difficulties of a scientific, ethical and regulatory kind.

Nonetheless we are convinced that the Commonwealth Parliament and the Australian people as a whole cannot afford to be inactive when significant segments of the scientific community are openly endorsing the production of human beings for the sole purpose of treating them as a source of spare parts—a proposal involving a grave offence to human dignity, very serious potential harm to our community, and a potential breach of international obligations.

The Archdiocese of Melbourne exhorts the Committee to recommend to the Parliament that, in keeping with sound ethics and jurisprudence, Australia should adopt a nationwide ban on human cloning and careful regulation of all related activity. Respect for human life in its origins, for human procreation, and for the future of our nation requires no less.