

4th September 2002

The Secretary
Senate Community Affairs Legislation Committee
Parliament House
Canberra ACT 2600

Re: Inquiry into the Research Involving Human Embryos and Prohibition of Cloning Bill 2002

The Council for the National Interest (WA) is concerned about one particular aspect of the Research Involving Embryos Bill 2002.

According to the Explanatory Memorandum (to the original Bill), Section 56 of this Bill operates so that the Act will override 'inconsistent' State laws.

This will apply in a particular way to Western Australia, South Australia and Victoria as the three States which have existing legislation regulating human reproductive technology.

In each of these States legislation was passed after extensive public consultation by select committees and thorough debate in the respective State parliaments. In Western Australia (and we believe, the other two States) the final legislation was passed on a bipartisan basis with a unanimous vote.

In each of these three States destructive research involving human embryos is prohibited.

We believe it is improper and undemocratic for the Federal Parliament to pass legislation which overrides these State laws. The present Bill does so by establishing a licensing scheme for destructive embryo research in such a way that possession of such a license effectively confers immunity from the prohibitions in the State laws.

The alleged justification for this provision in the Bill is the agreement between the Prime Minister and Premiers at the Council of Australian Governments (COAG) to pursue uniform national legislation regulating research involving embryos.

However, COAG does not have any constitutional status and is not directly empowered by the Australian people to make decisions of this kind. To achieve uniform national legislation - involving the repeal of significant aspects of reproductive technology legislation in three States - should involve the participation of the respective State parliaments. If the Premiers of Western Australia, South Australia and Victoria believe their State legislation requires amending then they should introduce bills to this effect in their State parliaments, not collude with the Prime Minister to have their State legislation overturned by the Federal Parliament.

The Senate, in particular as the States' house, should uphold States' rights and democratic principles.

Recommendation: We ask the Committee to recommend to the Senate that it support an amendment to Section 56 of the Research Involving Embryos Bill 2002 in the form proposed by Mr Christopher Pyne in the House of Representatives, as follows:

"56 Operation of State laws

Nothing in this Act is to be taken to affect the operation of any law of a state that prohibits absolutely the use of excess ART embryos, or that imposes additional conditions, whether consistent or inconsistent with this Act, on the use of such embryos."

Denis O'Sullivan

Chairman
WA Committee