

## **INTER-GOVERNMENTAL AGREEMENT**

### **RESEARCH INVOLVING HUMAN EMBRYOS AND PROHIBITION OF HUMAN CLONING**

**AN AGREEMENT** made on the Thirty First day of March, Two Thousand and Four, between –

The COMMONWEALTH OF AUSTRALIA ("the Commonwealth") and

The STATE OF NEW SOUTH WALES;

The STATE OF VICTORIA;

The STATE OF QUEENSLAND;

The STATE OF WESTERN AUSTRALIA;

The STATE OF SOUTH AUSTRALIA;

The STATE OF TASMANIA;

The NORTHERN TERRITORY OF AUSTRALIA; and

The AUSTRALIAN CAPITAL TERRITORY

collectively called "the States and Territories".

#### **RECITALS**

Noting the agreement made by the Council of Australian Governments ("COAG") on 5 April 2002 that the Commonwealth and the States and Territories would introduce nationally-consistent legislation to:

- A. ban human cloning and other practices regarded as unacceptable by COAG; and
- B. establish a national regulatory regime in relation to the use of excess Assisted Reproductive Technology (ART) embryos to be administered by the National Health and Medical Research Council (NHMRC) as the national regulatory and licensing body,

the Commonwealth and the States and Territories agree that the purpose of this Agreement is to facilitate:

- C. the implementation of the nationally-consistent legislative scheme for the regulation of the use of excess ART embryos (including a review of the scheme within three years) and the prohibition of human cloning and other practices regarded as unacceptable by COAG; and
- D. the maintenance over time of a nationally-consistent approach.

## THE PARTIES AGREE AS FOLLOWS–

### PART I – PRELIMINARY

1. This Agreement may be cited as the Research Involving Human Embryos and Prohibition of Human Cloning Inter-Governmental Agreement.
2. This Agreement commences upon signature of this Agreement by the Commonwealth and one other Party.
3. The purpose of this Agreement is to facilitate the implementation, and maintenance over time, of a nationally-consistent scheme for the regulation of the use of excess ART embryos and the prohibition of human cloning and other practices regarded as unacceptable by the Parties.
4. This Agreement is not justiciable and is not intended to create any legal or equitable right, duty or obligation whatsoever which is binding upon any of the Parties, either as between them or as between a Party and any other person. All disputes arising between the Parties which relate to this Agreement or associated matters will be resolved in accordance with this Agreement.
5. In this Agreement, unless the context otherwise requires:

‘excess ART embryo’ has the meaning ascribed to that term in the *Prohibition of Human Cloning Act 2002* (Cth);

‘Legislation’ includes regulations and other subordinate instruments;

‘NHMRC Licensing Committee’ means the committee established by the *Research Involving Human Embryos Act 2002* (Cth);

‘Party’ means a party to this Agreement;

‘Scheme’ means the totality of the Legislation to be enacted, or made by the Parties to give effect to this Agreement; and

‘State or Territory Bill’ means a State or Territory Bill referred to in Clause 6 and ‘State or Territory Act’ has a corresponding meaning.

### PART II – NATIONAL LEGISLATIVE SCHEME

6. For the purpose of ensuring that the Scheme applies throughout Australia, each State and Territory which is a Party to this agreement will use its best endeavours to submit to its Parliament, within 12 months of 19 December 2002, a Bill or Bills that would have the effect of achieving national consistency with the Commonwealth *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002*.
7. The responsible Commonwealth Minister will, as soon as practicable after receiving notification from a State or Territory that it has enacted a law it considers corresponds to the *Research Involving Human Embryos Act 2002* (Cth), consider whether the State or Territory law should be declared to be a corresponding State law for the purposes of the *Research Involving*

*Human Embryos Act 2002 (Cth)*. If the Commonwealth Minister considers that the State or Territory law should be so declared, the Commonwealth Minister will arrange for a notice to be published in the *Commonwealth of Australia Gazette* declaring the State or Territory law to be a corresponding State or Territory law for the purposes of the *Research Involving Human Embryos Act 2002 (Cth)*.

### **PART III – ROLES OF THE PARTIES IN THE ADMINISTRATION AND ENFORCEMENT OF THE SCHEME**

8. The Parties will exchange between themselves information of a kind and at intervals to facilitate the effective and efficient operation of the Scheme.
9. In relation to monitoring compliance with the Scheme, the Parties agree that:
  - (a) in the case of monitoring powers being conferred by or under a corresponding State or Territory law on inspectors appointed by the Chairperson of the NHMRC Licensing Committee, the Parties will make best endeavours to ensure that the inspectors exercise monitoring powers in a nationally-consistent manner;
  - (b) the Commonwealth will negotiate with each State and Territory on a bilateral basis regarding appropriate arrangements to facilitate monitoring of, and compliance with, the Scheme; and
  - (c) responsibility for monitoring routine ART clinical practice (to the extent that it is not part of the Scheme) continues to rest with individual States and Territories.
10. In the event of an alleged breach of the Legislation, the relevant parties will confer regarding the appropriate jurisdiction to pursue any prosecution.

### **PART IV – MAINTENANCE OF A NATIONALLY-CONSISTENT SCHEME OVER TIME AND AMENDMENT OF THE SCHEME**

11. The Parties agree to use their best endeavours to ensure that the Legislation forming part of the Scheme will remain nationally consistent.
12. Any Party that proposes to amend its Legislation or introduce new Legislation so as to affect the operation of the Scheme will submit the proposed amendments or new Legislation to the Australian Health Ministers Conference (AHMC) or COAG for consideration. The AHMC may resolve to refer the matter to COAG for consideration. Each Party agrees that it will not table in Parliament such an amendment or such new Legislation unless the AHMC or COAG, as the case may be, has considered the proposed amendment or new Legislation.
13. Where COAG or AHMC approves new Legislation, or an amendment to Legislation, with the intent that in either case the Legislation form part of the Scheme, all Parties will (unless otherwise agreed by COAG) introduce into their respective Parliaments appropriate changes to their Legislation with a view to ensuring that the Scheme remains nationally consistent.

14. If a State or Territory enacts the new Legislation or the amendment, and COAG or AHMC has not considered the new Legislation or the amendment or, having done so, considers that the new Legislation or the amendment should not form part of the Scheme, the Commonwealth Minister may, if he or she is of the opinion that the new Legislation or the amendment adversely affects the nationally consistent operation of the Scheme, arrange for a notice to be published in the Commonwealth of Australia Gazette revoking any previous declaration that a law of the State or Territory is a corresponding State law for the purposes of the Commonwealth *Research Involving Human Embryos Act 2002* (Cth).

#### **PART V - REVIEW AND VARIATION OF AGREEMENT**

15. The Parties agree that this Agreement will be reviewed following the concurrent reviews of the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002* which will occur within three years of 19 December 2002.

16. Where a Party considers that a variation to this Agreement would be desirable, it may request consultations with the other Parties.

17. Any variation to this Agreement agreed upon by all Parties will be contained in a notice signed by and given to all Parties, and the notice will include the date on which the variation will come into force.

#### **PART VI - DISPUTE RESOLUTION, WITHDRAWAL AND TERMINATION**

18. Where a dispute arises under this Agreement, the Parties will work together to try to resolve the dispute.

19. Any Party that intends to withdraw from this Agreement must give notice in writing to each of the other Parties and such notice must state the date on which the withdrawal will be effective.

20. This Agreement will continue in force according to its terms notwithstanding the withdrawal of one or more Parties from this Agreement.

EXECUTED as at the day and year first written above.

SIGNED by

The Honourable John Winston Howard MP )

Prime Minister of Australia )

The Honourable Robert John Carr MP )

Premier of the State of New South Wales )

The Honourable Steve Bracks MP )

Premier of Victoria )

The Honourable Peter Beattie MP )

Premier of Queensland )

The Honourable Dr Geoff Gallop MLA )

Premier of the State of Western Australia )

The Honourable Michael David Rann MP)

Premier of the State of South Australia )

The Honourable James Alexander Bacon MHA )

Premier of the State of Tasmania )

The Honourable Clare Martin MLA )

Chief Minister of the Northern Territory of Australia )

Jonathon Donald Stanhope MLA )

Chief Minister of the Australian Capital Territory )