Agreement in Principle

Ms REBA MEAGHER (Cabramatta—Minister for Health) [10.01 a.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to bring before the House the Assisted Reproductive Technology Bill 2007. Extensive consultation has been undertaken regarding the practice of assisted reproductive technology, or ART, in New South Wales. This process commenced with the release of a discussion paper by the Department of Health in 1997. Prior to finalising its recommendations to government following this extensive consultation process, the department convened a reference group to provide expert advice on the medical, scientific, social and ethical issues involved. Public consultation has continued, with an exposure draft bill and accompanying information guide that were tabled in Parliament in December 2003.

Stakeholders responded very positively to the draft bill. More than 60 submissions were received. All the issues raised were carefully considered, and where appropriate they have been incorporated into this bill. I express the Government's appreciation to the many people and organisations that contributed to the development of this important legislation. The extent and quality of the submissions made during the development of this legislation reflect the degree of community interest in the regulation of reproductive technology. The legislation has benefited greatly from the valuable contributions made by organisations, members of the community and health professionals.

The bill aims to address a range of issues relating to the social and ethical aspects of assisted reproductive technology that were identified during the consultation process as warranting a legislative response. It provides a broad framework for the practice and conduct of assisted reproductive technology services. The development of this legislation has been guided by three important principles. The first is to recognise obligations already imposed on assisted reproductive technology providers by the existing laws, such as the Medical Practice Act 1992. The second is to recognise the rights of individuals to have control over the use of their genetic material. The final principle is the best interests of the child and recognition of the paramount importance of this principle.

The bill does not duplicate the existing regulatory framework that applies to the clinical aspects of assisted reproductive technology practice. Rather, it complements and enhances the current system to clarify and protect the rights and obligations of people involved in assisted reproductive technology treatment; it must be recognised that this includes the rights of children born as a result of that treatment. I wish to clarify that the definition of "embryo" in the bill is different to the definition of "human embryo" in the Human Cloning for Reproduction and Other Prohibited Practices Act. The reason for that difference is that the bill is designed to regulate the social aspects relating to the provision of assisted reproductive technology treatment, while the Human Cloning for Reproduction and Other Prohibited Practices Act is designed to prohibit certain ethically unacceptable practices and to regulate a further range of ethically contentious practices.

Given the focus of the bill on regulating the social aspects of assisted reproductive technologies and on protecting the interests of the people involved in the relevant procedures, it is vital that the provisions of the bill dealing with embryos apply as soon as the gametes are joined to form an embryo. The legislation is consistent with and complements the National Health and Medical Research Council's Ethical Guidelines on the use of Assisted Reproductive Technology in Clinical Practice and Research. The definition of "embryo" in the bill is entirely consistent with the use of that term in the guidelines. Part 2 of the bill regulates providers of assisted reproductive technology. It establishes a system of registration and a public register of assisted reproductive technology providers and permits only registered providers to provide assisted reproductive technology services in New South Wales.

Assisted reproductive technology services are any medical treatment or procedure that procures or attempts to procure pregnancy other than by sexual intercourse and includes artificial insemination, in-vitro fertilisation and gamete intrafallopian transfer. The collection and storage of gametes is also an assisted reproductive technology service for the purpose of the bill. The bill sets minimum standards about the provision of assisted reproductive technology services, including that all treatment is to be provided by registered medical practitioners; providers must make counselling available to individuals, spouses and donors involved in such treatment; and providers must comply with any infection control standards prescribed by regulation. The second underlying principle in the bill is recognition of the rights of individuals involved in assisted reproductive technology treatment either directly or as donors to have control over the use of their genetic material.

The bill requires providers to use gametes in accordance with the consent provided by the person from whom they were obtained. Donors will be able to withdraw or modify their consent to the use of their gametes at any time before the gamete is implanted in a woman or until an embryo is created using those gametes. In the case of an embryo created using sperm created by a woman's spouse, the spouse is to be able to withdraw his consent at any point up until the embryo is implanted. These provisions will ensure that a person's gametes can only be used in accordance with their own explicit instructions and consent. For example, if a person dies their gametes can only be used if that person consented to the posthumous use whilst they were alive.

Similarly, gametes may only be collected from a person who is in a persistent vegetative state or otherwise unable

to consent if that person gave consent to collection and use of their gametes before losing the ability to consent. Clause 17 of the bill allows a gamete donor to place conditions on their consent including a condition that directs that their gametes can only be used by a particular person or a particular classification of people. For example, people of a particular cultural or ethnic background may only consent to the use of their gametes by a person from a similar background. The ability for donors to place conditions on the use of their gametes is especially important because any child born as a result of that donation will be able to identify their genetic parents and may wish to contact or meet them.

It is believed to be in the best interests of the child for the genetic parent to have given consent to the circumstances surrounding the child's birth and upbringing. To put this in another way, it will not be in the child's best interests to discover later in life that their genetic parent has a fundamental objection to their existence or the social and cultural circumstances in which they were raised. Clause 27 of the bill recognises the interests of people involved in treatment by limiting the number of women who can be provided with gametes from the same donor to five. This allows families to have several genetically related children whilst reducing the risk of donor offspring unknowingly entering a relationship with a blood relative. Children are protected from exploitative or inappropriate involvement in assisted reproductive technology procedures by clause 29 of the bill.

That clause provides that, with the exception of the collection and storage of gametes for the child's future use, no assisted reproductive technology treatment may be provided to a child. The only circumstances in which a child's gametes may be collected and stored are if a medical practitioner certifies that there is a reasonable risk of the child becoming infertile before becoming an adult. The gametes obtained cannot be used until the child becomes an adult and consents to their use. The third and most important underlying principle in the bill is the recognition of the rights of the children born as a result of assisted reproductive technology procedures and the importance of acting in their best interests. A fundamental aspect of this right is the availability of and access to information about their biological parents and siblings.

Part 3 of the bill constitutes the central assisted reproductive technology donor register so that children born from assisted reproductive technology procedures using donor gametes, or in some circumstances their parents or other persons with parental responsibility, may access identifying and non-identifying information about their biological parent. Providing information to the register will be mandatory and anonymous donations will be outlawed. Children born following the use of donated gametes will also be able to place information on the register to be accessed by the donor. Access to this information will only be allowed in accordance with the child's consent, and that consent can only be given once the child becomes an adult. The placing of information on the register will be entirely voluntary, although the bill provides for regulations to prescribe non-identifying information that can be released to the donor without consent.

I emphasise that the mandatory donor register will not operate retrospectively. While this is a matter of some concern to groups representing donor-conceived children, it is important that the guarantees of anonymity that many donors were given in the past are respected. However, I am pleased to advise that the bill will facilitate the creation of a voluntary retrospective register. This allows donor-conceived children born prior to the commencement of the legislation to access information about their biological parent and have contact with that parent if the donor agrees to provide information to the voluntary register. Similarly, donor-conceived children will be able to place information on the register and consent to that information being made available to the donor. The ability of donor-conceived children to obtain information about their genetic background is a matter of vital importance to those children, and in many cases their parents. The registers, both mandatory and voluntary, will help the children to fill what many consider a major gap in their lives.

Part 4 of the bill concerns surrogacy arrangements. This part of the bill prevents the commercialisation of human reproduction by unequivocally prohibiting commercial surrogacy. Consistent with existing law, it makes all surrogacy arrangements, whether commercial or altruistic, void and therefore unenforceable. This includes agreements made before the legislation commences. Part 5 provides powers for the inspection of premises where assisted reproductive technology services are provided, and enforcement of the Act, including the power to enter and inspect premises, request information and records, remove items for analysis or testing, and obtain and execute a search warrant.

Part 6 of the bill provides for powers of enforcement in respect of assisted reproductive technology providers. This includes the power to prevent an assisted reproductive technology provider who has contravened relevant legislation, including the Human Cloning for Reproduction and Other Prohibited Practices Act 2003 and the Research Involving Human Embryos (New South Wales) Act 2003, from providing services. Such a prohibition may be made for an unlimited time or for a specified period for breaching the requirements of the Act or regulations. Part 6 also recognises the existing regulatory role of the Fertility Society of Australia by providing that an assisted reproductive technology provider who has been refused accreditation, or had accreditation suspended by the society's reproductive technology accreditation committee, may be prohibited from providing assisted reproductive technology services.

It is proposed to commence the Act by proclamation. There will be a lengthy and detailed implementation period during which the Department of Health will consult extensively with stakeholders on regulations under the bill,

including regulations concerning the donor register and infection control standards. It is essential that stakeholders are involved in the development of the donor register, and that they are provided with clear information on their rights and obligations before the Act commences. Furthermore, it is my intention that the donor register be established and operational when the legislation commences.

Whilst a substantial amount of planning has already been undertaken, the practical steps involved in creating the registers cannot be undertaken until the details of the relevant regulations have been settled. The bill clarifies and protects the rights and obligations of people involved in assisted reproductive technology treatment. It provides a strong regulatory framework for the ethical and social issues raised by these technologies in a manner that is sensitive to, and achieves an appropriate balance between, the diverse needs of donor-conceived children, parents, donors and providers. Most importantly, the bill recognises the primacy of the best interests of the children conceived using the technology, whilst providing clear directions about the rights and obligations of donors, parents and providers. As such, the bill represents a major advancement in the appropriate regulation of medical technology that raises far-reaching and complex social and ethical issues. I commend the bill to the House.