

**立法會**  
**Legislative Council**

LC Paper No. CB(2)431/99-00  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/3/98

**Bills Committee on  
Human Reproductive Technology Bill**

**Minutes of the 14th meeting  
held on Friday, 7 May 1999 at 8:30 am  
in Conference Room B of the Legislative Council Building**

**Members Present** : Hon Cyd HO Sau-lan (Chairman)  
Hon Michael HO Mun-ka  
Dr Hon LEONG Che-hung, JP  
Hon YEUNG Yiu-chung

**Members Absent** : Hon CHAN Yuen-han  
Hon Ambrose LAU Hon-chuen, JP  
Dr Hon TANG Siu-tong, JP  
Hon LAW Chi-kwong, JP

**Public Officers Attending** : Mr Gregory LEUNG Wing-lup, JP  
Deputy Secretary for Health and Welfare 1

Mr Eddie POON  
Principal Assistant Secretary for Health and Welfare (Medical) 3

Mr Clement LAU Chung-kin  
Assistant Secretary for Health and Welfare (Medical) 3

Dr Constance CHAN  
Assistant Director of Health  
(Health Administration and Planning)

Dr Thomas CHUNG Wai-hung  
Principal Medical and Health Officer (3)

Mr Geoffrey FOX  
Senior Assistant Law Draftsman

Miss Frances HUI  
Government Counsel

**Clerk in Attendance** : Ms Doris CHAN  
Chief Assistant Secretary (2) 4

**Staff in Attendance** : Mr LEE Yu-sung  
Senior Assistant Legal Adviser

Ms Joanne MAK  
Senior Assistant Secretary (2) 4

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Action

**I. Confirmation of minutes of meetings held on 3 and 19 March 1999**  
(LC Papers Nos. CB(2) 1782 and 1811/98-99)

The minutes were confirmed.

**II. Meeting with the Administration**

**(a) Checklist of outstanding issues**  
(LC Paper No. CB(2) 1875/98-99)

2. Members noted the above paper. Deputy Secretary for Health and Welfare (DSHW) confirmed that the follow-up actions to be undertaken by the Administration set out in the paper were correct.

*(Post-meeting note : The Administration informed the Clerk to Bills Committee in a letter dated 30 September 1999 drawing her attention to two discrepancies in the checklist of outstanding issues.)*

**(b) Clause-by-clause examination of the Bill**

3. Before proceeding to examine the Bill clause-by-clause, Senior Assistant Legal

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Adviser (SALA) proposed the following amendments to the wordings in clause 2 of the Chinese version of the Bill to improve their clarity -

Subclause (b) under the term "authorized person"

To replace "交託" with "交出" or "交予";

Under the term "payment"

To replace the "付款" in "有價事物付款" with "支付";

Under the term "reproductive technology procedure"

To delete "旨在" and to add "以人工方法" after "在其他情況下";

Subclause (c) under the term "relevant activity"

To replace "棄置" with "處置"; and

Subclause (b) under the term "code"

To replace "規格" with "說明".

The Government Counsel agreed to consider the above proposed amendments.

Members then proceeded to examine the Bill clause-by-clause.

Interpretation

*Clause 2(1)*

4. Mr Michael HO suggested that the wording "medical, surgical or obstetric procedure" used in defining "reproductive technology procedure" should be revised to cover every possible medical and scientific means, such as clinical and gynaecological procedures, for bringing about human reproduction not by natural means. DSHW undertook to review the wording.

*Clause 2(2)(b)*

5. Referring to clause 2(2)(b), the Chairman enquired why there was a need to specify a procedure not to be embryo research or a reproductive technology (RT) procedure. DSHW replied that this was to cater for the circumstances where public opinions considered it necessary to specify such in the legislation, an example being artificial insemination by husbands.

*Clause 2(3)*

6. In reply to the Chairman and Mr Michael HO, SALA said that the subsidiary legislation referred to in clause 2(3) was subject to negative vetting by the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

7. In reply to Dr LEONG Che-hung's enquiry about when a new RT procedure made by notice in the Gazette by the Secretary for Health and Welfare under clause 2(2)(a) of the Bill would come into operation, SALA said that in accordance with section 28(3) of Cap. 1, all subsidiary legislation would come into operation at the beginning of the day in which they were published; or if provision was made for them to commence on another day, at the beginning of that other day.

*Clause 2(4)*

8. Senior Assistant Law Draftsman (SALD) said that clause 2(4) was intentionally drafted to cover every possible permutations of surrogacy arrangement, so that it would be extremely difficult for people to come up with an arrangement which would fall outside the regulation of the legislation. SALD added that the surrogacy aspect of the Bill was modelled on the Surrogacy Arrangements Act 1985 of the United Kingdom (UK).

9. Dr LEONG Che-hung said that given the object of the Bill was to regulate RT procedures, the regulation of surrogacy arrangement should be limited to those arrangements involving RT procedures only. As such, Dr LEONG considered the provision of clause 2(4) not necessary. Mr Michael HO concurred with Dr LEONG.

10. SALD said that if surrogacy arrangement was narrowed down to those involving a RT procedure, subclause (4) would be redundant. He pointed out that in the UK, there were two different acts for RT and surrogacy arrangements, but in Hong Kong the policy decision was to combine the two in one and to include non-RT surrogacy arrangement.

11. SALA said that for the avoidance of legal arguments which might arise from the implementation of clause 15 concerning prohibition against surrogacy arrangements on commercial basis, it would be best to retain clause 2(4). SALD agreed with SALA's view to some extent, particularly in the case where a prosecutor attempted to bring a successful prosecution against a person involved in a surrogacy arrangement but in which a RT procedure relating to the arrangement had not yet occurred.

12. DSHW agreed to consider if clause 2(4) was related to (b)(i) and (ii) under the

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Adm

definition of the term "surrogate mother", and if so, to make corresponding amendments to clause 2(4).

Adm

13. SALA suggested to replace "共識" with "理解" in clause 2(4) of the Chinese version, so as to bring it more in line with the meaning of "understanding" in the English version. The Government Counsel agreed to consider the suggestion.

*Clause 2(5)*

Adm

14. SALA suggested to replace "製造胚胎" with "形成胚胎" in clause 2(5) of the Chinese version. The Government Counsel agreed to consider the suggestion.

Establishment of Council on Human Reproductive Technology

*Clause 3(2)(a) and (b)*

Adm

15. Dr LEONG Che-hung said that he saw no reason for prohibiting medical practitioners who were not involved in RT activities from being appointed Chairperson and deputy Chairperson of the Council on Human Reproductive Technology (the Council). DSHW said that the Administration would move a CSA to this effect.

*Clause 3(2)(g)*

Adm

16. Dr LEONG Che-hung said that definitions of psychiatrist and psychologist were provided in the Medical Registration Ordinance (Cap. 161). SALD undertook to consider whether it was necessary to re-draft clause 3(2)(g) to reflect such.

*Clause 3(2)(h)*

17. Mr Michael HO said that it would be useful to appoint a registered nurse who also possessed a registered midwife qualification. DSHW noted Mr HO's view.

*Clause 3(2)(f)*

18. Dr LEONG Che-hung said that given the different religious groups in Hong Kong and their diverse views on the use of RT procedures for human reproduction, the Chief Executive would be put in a difficult position to appoint the two persons under clause 3(2)(f). DSHW conceded that there might be practical difficulty, but pointed out that it might give rise to misunderstanding by the religious sector if this clause was now removed from the Bill.

*Clause 3(3)(b)*

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19. Dr LEONG Che-hung said that it would be useful for the person responsible under a licence or the licensee to be appointed to the Council, as they were the person directly involved in the operation of RT procedures. Dr LEONG further said that the concern about conflict of interests was negligible, given that the membership size of the Council was 26. DSHW responded that there was no need for the person responsible under a licence or the licensee to be appointed to the Council, as the Council could always invite their views on the operation of RT where necessary.

20. Members adjourned the clause-by-clause examination of the Bill at clause 3(3).

Clerk

21. At the request of the Chairman, the Clerk undertook to provide the Surrogacy Arrangements Act 1985 and the Human Fertilisation and Embryology Act 1990 of the United Kingdom for members' reference.

**III. Date of next meeting**

22. Members agreed that the Bills Committee would next meet on 11 May 1999 at 10:45 am.

23. The meeting ended at 10:30 am.

Legislative Council Secretariat

19 November 1999