

立法會
Legislative Council

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**Bills Committee on
Human Reproductive Technology Bill**

**Minutes of the 15th meeting
held on Tuesday, 11 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
Hon CHAN Yuen-han
Dr Hon LEONG Che-hung, JP

Members Absent : Hon YEUNG Yiu-chung
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) 6

Dr Constance CHAN
Assistant Director of Health (Health Admin & Planning)

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

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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I. Meeting with the Administration to continue clause-by-clause examination of the Bill

Members continued to examine the Human Reproductive Technology Bill (the Bill) clause by clause commencing from clause 3. Their queries and concerns were set out below.

Establishment of Council on Human Reproductive Technology

Clause 3(2)(f)(i) and (ii)

2. Deputy Secretary for Health and Welfare (DSHW) said that after considering members' views expressed at the last meeting, the Administration maintained the view that deleting clause 3(2)(f)(i) and (ii) would give a wrong message to the religious groups in Hong Kong that they were being discriminated against.

Clause 3(3)(a)(ii)

3. Dr LEONG Che-hung reiterated his views expressed at the last meeting that it would be useful to have the person responsible under a licence or the licensee on the Council on Human Reproductive Technology (the Council), and hoped that the Administration would consider deleting clause 3(3)(a)(ii) which stipulated that the Chief Executive should not appoint the person responsible under a licence or the licensee to be a member of the Council.

4. DSHW said that the Administration maintained the view that there would be conflict of interest if the licensee or person responsible was to be appointed member of the Council. He pointed out that under this provision, a member of the Council would be required to resign from the Council if he/she became a licensee or person

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responsible during his/her term of office.

5. Dr LEONG said that he would move a Committee Stage amendment (CSA) to delete clause 3(3)(a)(ii).

Clause 3(2)(j), (k), (l) and (m)

6. In reply to Mr Michael HO's enquiry, DSHW said that a person nominated by the Secretary for Health and Welfare, the Director of Health, the Director of Home Affairs and the Director of Social Welfare respectively could be a civil servant or a person who was involved in the work of the policy area concerned.

Clause 5 of Schedule 1

7. DSHW explained that this provision was to provide a flexibility for the Council to make decisions on matters which were straightforward but urgent in nature in a manner other than at a meeting of the Council. DSHW pointed out that a quorum of not less than half the members of the Council would still be observed where decisions by the Council were made by circulation.

Functions and powers of Council

Clause 4

8. Dr LEONG Che-hung said that clause 4 failed to clearly spell out the functions and powers of the Council, and should be improved. The Chairman and Mr Michael HO echoed Dr LEONG's views.

9. DSHW said that the Administration would consider to review the drafting of clause 4 to improve its presentation.

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Clause 4(1)(c)(ii)

10. Senior Assistant Legal Adviser (SALA) said that prior to the meeting, he had proposed to the Administration that "正在" should be added before "獲提供生殖科技程序的人" of the Chinese version, so that the meaning could correctly align with that of "being" in the corresponding English version of the Bill.

11. The Government Counsel replied that if the clause was amended as SALA had suggested, persons who would be provided with the information concerned would be limited to those who were in the process of receiving a reproductive technology (RT) procedure. This would be at variance with the intention of the Bill that persons proposing to receive a RT procedure should also be provided with similar information. The Government Counsel said that she would discuss with the Senior Assistant Law Draftsman on improving the drafting aspect of the English version of this clause.

Code of practice

Clause 7

12. Mr Michael HO said that although he had no strong view about clause 7, he nevertheless was concerned about the wide latitude given to the Council in preparing the Code of Practice (COP).

13. DSHW said that it was very difficult to specify in the Bill the parameters within which the Council must work in preparing the COP, but was of the view that the wide representation of the community on the Council should provide adequate check and balance to avoid inequity and unreasonableness in the COP. Although the Council was not required to seek prior approval from the Administration on the COP, the Council would be required to publicize the COP and any subsequent amendments made to it by way of notices in the Gazette.

Clause 7(1)

14. Dr LEONG Che-hung enquired about the inclusion of "(including any surrogacy arrangement to which a relevant activity relates)" in clause 7(1), having regard to the fact that any relevant activity should have already covered surrogacy arrangement. DSHW undertook to find out the reason for such inclusion.

Adm

Clause 7(2)

15. Miss CHAN Yuen-han said that the welfare of the child should be accorded a very high priority in considering whether a RT procedure should continue to be provided to a woman whose marriage had ended or whose husband had died during the course of her trying to conceive a child by a RT procedure.

16. DSHW said that the Administration attached great importance to ensuring the welfare of the child born as a result of a RT procedure. He pointed out that under clause 13(5) of the Bill, a RT procedure would only be provided to persons who were parties to a marriage except in the circumstances to be specified in regulations made by the Council under clause 42(2)(e). DSHW further said that although the exceptional circumstances were yet to be specified, he believed that the Council would adopt a very stringent approach in deciding such. He further pointed out that regulations made by the Council under clause 42(2)(e) were subsidiary legislation subject to negative vetting by the Legislative Council.

17. SALA suggested to revise the drafting of the Chinese version of clause 7(2) to "守則所給予的指引，須包括向提供生殖科技程序的人就可能因該程序誕生的孩子的福利(包括孩子需要一名父親)和可能受該等誕生影響的其他孩子的福利所須

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考慮的事項作出指引。" to improve its clarity. Mr Michael HO questioned whether there was a need to have the phrase "(including a child's need for a father)" put in clause 7(2). The Government Counsel undertook to consider the suggestion/question raised.

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Issue of certificates to authorized persons

Clause 10

18. DSHW explained that it was necessary to provide an authorized person with a certificate as evidence that he was an authorized person, having regard to the fact that such person had to carry out enforcement duties as entering premises to conduct inspections and seizing things from the premises for investigation.

19. Dr LEONG Che-hung enquired whether the Bill had made any provision to protect members of the Council from legal liability in the course of carrying out their duties.

20. SALA replied that although the Bill did not have a provision protecting members of the Council against legal liability, clauses 34 and 35 of the Bill did set out the power of the Council to conduct inspections and investigation work SALA further said that if a member of the Council had performed his/her duties in good faith, this would constitute a good defence in the court.

21. DSHW supplemented that the Administration would bear all legal expenses, in the event that a member of Council was sued for carrying out his/her duties of the Council.

Prohibition against using donated gametes for purposes of surrogacy arrangement

Clause 12

22. Mr Michael HO said that clause 12 should be re-drafted to improve its clarity. Members concurred with Mr HO. DSHW undertook to consider whether re-drafting of the clause was needed.

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23. Members adjourned the clause-by-clause examination of the Bill at clause 13.

II. Date of Next Meeting

24. Members agreed that the Bills Committee would next meet on 27 May 1999 at 4:30 pm and 28 May 1999 at 8:30 am.

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25. The meeting ended at 10:30 am.

Legislative Council Secretariat

19 November 1999