

立法會
Legislative Council

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**Bills Committee on
Human Reproductive Technology Bill**

**Minutes of the seventeenth meeting
held on Friday, 28 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
Hon Ambrose LAU Hon-chuen, JP
Dr Hon TANG Siu-tong, JP

Members Absent : Hon YEUNG Yiu-chung
Hon LAW Chi-kwong, JP

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

Mr Clement LAU Chung-kin
Assistant Secretary for Health and Welfare (Medical) 6

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

Mr Geoffrey FOX
Senior Assistant Law Draftsman

Miss Frances HUI
Government Counsel

Action

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

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

(Draft Committee Stage amendments (English version) to Part V (Access to Information) of the Human Reproductive Technology Bill tabled at the meeting)

Members continued the clause-by-clause scrutiny of the Human Reproductive Technology Bill (the Bill) from clause 30.

Register A

Clause 30(2)

2. Senior Assistant Law Draftsman (SALD) said that the proposed Committee Stage amendment (CSA) to clause 30(2) was meant to avoid all the complications of the existing clause in the Bill by making the intent of the clause, i.e. only information relating to reproductive technology (RT) procedures involving the use of donated gametes or embryos was required to be kept in Register A by the Council on Human Reproductive Technology (the Council), very simple to understand.

3. Senior Assistant Legal Adviser (SALA) pointed out that although the gist of what information was required to be contained in Register A was in the CSA, the new clause 30(2) did not stipulate that the identities of the persons concerned should also be kept in Register A. He expressed concern that the general public would not know precisely what information they could obtain on application to the Council.

4. SALD responded that it was implicit that the information proposed by the CSA to be contained in Register A would include the identities of the persons concerned. As such, he saw no need to state the obvious in the legislation. Principal Medical and Health Officer (3) (PMHO) supplemented that the direction of the new clause 30(2) was no different from the existing one. He explained that clause 30 was drafted in such a way that clause 30(2) dealt with data collection, whereas clauses 30(4) and (5)

Action

dealt with under what circumstances information in Register A would be released to the public on application to the Council.

5. SALD said that if members considered it more appropriate for clause 30(2) to clearly spell out the identities of the persons concerned must be contained in Register A, he would be prepared to re-draft the proposed CSA along the lines as follows -

"(2) Information falls within this subsection if it relates to -

(a) the provision of a reproductive technology procedure where a child born or intended to be born in consequence of the procedure would not be created from the gametes solely of the parties to a marriage who it is proposed will be the parents of the child; and

(b) the identity of the child, or the parents or the individual/individuals donating the gametes."

6. At the request of the Chairman, SALD undertook to re-draft the proposed CSA to clause 30(2) as suggested in paragraph 5 above.

Adm

7. Dr LEONG Che-hung was of the view that all information relating to RT procedures, irrespective of whether the procedures involved the use of donated gametes and embryos or otherwise, should be kept in Register A. SALD said that the policy decision was that Register A should only keep information relating to RT procedures involving the use of donated gametes or embryos, which was the most sensitive and would be subject to the strictest secrecy provision in the legislation.

8. In reply to Dr LEONG Che-hung's enquiry, SALD said that information related to a child who was given birth by a surrogate mother and whose gametes came from the parties to a marriage who commissioned the surrogacy arrangement would not be contained in Register A. Deputy Secretary for Health and Welfare (DSHW) added that it was the intention of the Administration to require the Council on Human Reproductive Technology (the Council) to keep the aforesaid information by way of subsidiary legislation later on.

Clause 30(5)

9. In reply to the Chairman and Mr Ambrose LAU's enquiries, SALD explained that clause 30(5) meant that any subsequent change in the law that the Council could disclose the donor's identity would not have retrospective effect on the donor whose gametes when donated were under the law that the Council could not disclose the donor's identity.

Action

Clause 30(6)

Adm 10. Noting that no information contained in Register A should be removed before the expiration of 50 years from the date on which the information was first entered into Register A, the Chairman enquired whether a 50-year time period was an appropriate length of time. DSHW agreed to consider extending the expiration date, having regard to the fact that people tended to marry late nowadays.

Secrecy

Clause 31(3)

11. SALD explained that the proposed new clause 31(3) in the draft CSA sought to stipulate that donor's identity could be disclosed with the consent of the donor in writing. As regards the proposed new clause 31(3)(b), this new clause sought to stipulate that the Council or any person to whom a licence applied could disclose the donor's identity unilaterally if the Council or any person to whom a licence was issued was satisfied on reasonable grounds that it was necessary to make the disclosure to save or significantly extend the life of an individual. SALD pointed out that he had not yet sought the views of the policy bureau on this new subclause.

12. Dr LEONG Che-hung expressed objection to the proposed new clause 31(3)(a) and (b), as they ran counter to the donors' wish for keeping their identity confidential. Dr LEONG was of the view that if the donors' wish was not honoured, this would deter people from coming forward to be donors. In the case where a donor's identity was requested to be disclosed in order to save the life of an individual, the donor would be put under very heavy moral pressure to accede to such request. Miss CHAN Yuen-han and Dr TANG Siu-tong concurred with Dr LEONG.

13. DSHW said that the welfare of the child born in consequence of a RT procedure must be taken into account in the legislation. He pointed out that it would be unfair to such a child if, in the event that he/she needed a organ transplant for survival, was deprived of the chance of finding his/her genetic parents.

14. Dr LEONG said that the welfare of the child born in consequence of a RT procedure was adequately safeguarded by the relevant provisions in the Parent and Child Ordinance (Cap. 429). In the case where a child needed a organ transplant for survival, he/she could appeal to the public for donation of the organ concerned.

15. DSHW said that even without the new clause 30(3)(a), if the licensee or the staff of the RT centre were sympathetic about, say the health condition of the child, it was not against the law if they were to approach the donor for seeking his/her consent

Action

to make the disclosure or merely conveying to the donor the precarious health situation of the child to whom he/she had donated the gametes. SALD added that it would not be an offence under the law for the licensee to approach the donor under clause 30(3)(a), having regard to the fact that the licensee held the information of the donor in the first place and was acting with good intention.

16. DSHW further conceded that the new clause 30(3)(b) might be too loose and could be tightened up. For example, consideration could be given to requiring the Council or the licensee to seek the court's approval before they could disclose the donor's identity in the absence of the donor's consent.

17. In response to members' concern, SALD proposed to re-draft the new clause 31(3) to the effect that the donor's consent would be sought at the time of donation as to whether he/she would allow an authorized officer of the Council to later approach him/her to disclose his/her identity for the purpose of saving or significantly extending the life of an individual. Members expressed support for the proposal. SALD undertook to re-draft clause 31(3) as proposed.

Adm

18. Members adjourned the scrutiny of the Bill at clause 31.

III. Date of Next Meeting

19. Members agreed that the Bills Committee would next meet on 21 June 1999 at 10:45 am.

(Post-meeting note: The next meeting of the Bills Committee originally scheduled for 21 June 1999 was subsequently postponed to 9 September 1999.)

20. The meeting ended at 10:30 am.

Legislative Council Secretariat

19 November 1999