Bills Committee on Human Organ Transplant (Amendment) Bill 2001

Administration's Response

To consider whether further amendment should be included in this Bill so that homosexual marriages/domestic partnerships registered overseas and having subsisted for not less than three years would be treated on an equal footing with the marital relationship referred to in the proposed section 5A(1)(a)(ii).

Section 2A of the Human Organ Transplant Regulations provides that the fact of a marriage is to be established by documents issued under the Marriage Ordinance or the Marriage Reform Ordinance (Cap 178) or equivalent documents showing show that the two persons are the parties to a marriage celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage was In some countries, two persons of the same sex are performed. permitted by law to get married. Therefore, two persons of the same sex who are married may be able to establish the fact of their relationship as married persons for the purposes of the Human Organ Transplant Ordinance without the need for further amendment of the Bill, if their marriage was celebrated or contracted in accordance with the laws of the place in which they were married, despite the fact that same sex marriages are not permitted by the laws of Hong Kong. The fact of a marital relationship between the donor and the recipient is one of the conditions set out in the proposed section 5A(1) of the Bill that the registered medical practitioner must satisfy himself/herself before he/she may carry out a restricted organ removal or a restricted organ transplant. If the registered medical practitioner is not satisfied that all of the conditions have been met, then the donor and recipient would have to apply for the prior written approval of the Board under the proposed section 5C of the Bill.

On the contrary, persons in domestic partnerships, whether homosexual or heterosexual, who are not married would not be treated on an equal footing with the marital relationship referred to in the proposed section 5A(1)(a)(ii). The requirement of a marital relationship supported by documents issued under the Marriage Ordinance or the Marriage Reform

Ordinance, or by equivalent documents for marriages celebrated outside Hong Kong, is to enable the registered medical practitioner to make a decision with a greater level of certainty on whether the requirements set out in the Human Organ Transplant Ordinance have been met. The establishment of a marital relationship is likely to be a relevant factor to be taken into consideration by the registered medical practitioner in deciding whether some of the requirements in the proposed section 5D are complied with. For example, it is more likely than not that in such a close relationship, the donor has given his consent voluntarily and that no payment prohibited by the Human Organ Transplant Ordinance has been or is intended to be made.

Where the donor and recipient are unable to establish the marital relationship (e.g. either they are unable to produce the documents prescribed in section 2A of the Human Organ Transplant Regulation or that the registered medical practitioner is supplied with legal documents issued by an overseas country certifying the relationship but the registered medical practitioner is doubtful over the legal meaning and effect of such documents), then the registered medical practitioner would not have sufficient evidence of the close relationship between the donor and the recipient. In such cases, the Administration considers that the Human Organ Transplant Board would be better placed than the registered medical practitioner in determining whether the conditions in section 5D have been met. This is because the Board can draw on the legal and other professional knowledge and expertise of its members to consider questions involving complicated and/or legal issues, including those that may arise from cases relating to homosexual domestic partnerships registered overseas. Furthermore, the Board is able to obtain more information than the registered medical practitioner as it has statutory powers to require production of information relating to the proposed organ transplant pursuant to the proposed section 5C(4)(c)(iii), section 6 of the Human Organ Transplant Ordinance and section 3 of the Human Organ Transplant Regulation.

Health, Welfare and Food Bureau June 2004