

**Bills Committee on
Electronic Health Record Sharing System Bill**

**The Administration's Response to the issues arising from the
discussion at the meeting on 26 May 2015 and the letter from the
Assistant Legal Advisor dated 27 May 2015**

This paper sets out the Administration's response to the issues arising from the discussion of the Bills Committee on the Electronic Health Record Sharing System (eHRSS) Bill on 26 May 2015 and the enquiries raised by Assistant Legal Advisor (ALA) of the Bills Committee in her letter dated 27 May 2015 (vide LC paper CB(2) 1583/14-15(02)).

(a) Protection of public officers etc.

2. Clauses 58(1) and (3) of the bill provide that (a) a public officer or (b) a person appointed by the eHR Commissioner (eHRC) under Clause 48(3) is not civilly liable for an act done or omitted to be done by the person in good faith in (purportedly) performing a function / exercising a power under the eHRSS Ordinance. Clause 58(2) states clearly that the aforementioned does not affect the liability of the Government for the act or omission.

3. As explained in our written response following the meeting on 18 May 2015 (vide LC paper CB(2)1521/14-15(02)), provisions of such nature are indeed common in Hong Kong law. As regards whether there were provisions in Hong Kong law particularly similar to Clause 58(3)(b) (which confers the protection from civil liability under Clause 58 upon a person appointed by eHRC under Clause 48(3)), we would like to cite the following as examples:- Section 36 of the Gas Safety Ordinance (Cap. 51), Section 11A of the Personal Data (Privacy) Ordinance (Cap. 486) and Section 133 of the Competition Ordinance (Cap. 619)¹.

¹ In Cap. 51, the protection applies to a public officer as well as "a person assisting a public officer in the exercise of any function" under the ordinance. In Cap. 486, the protection applies to a "prescribed officer", which includes "technical and professional persons" "engaged other than by way of employment" by the Privacy Commissioner for Personal Data to "assist him in the performance of his functions and the exercise of his powers" under the ordinance. In Cap. 619, the protection applies to "any person who is performing any service for the Commission under a contract of services".

4. At the meeting on 26 May 2015, members also enquired about the criteria upon which the eHRC would adopt in deciding whether a person should be appointed under Clause 48(3) and conferred protection under Clause 58. The ALA subsequently raised in her letter dated 27 May 2015 a related enquiry on the implications regarding persons who have contractual relationship with the Government (independent contractors). She also asked whether the protection would apply to “legal persons” (such as a company) in addition to “natural persons”.

5. Clause 58 is drafted to confer protection upon a person (intended to be a natural person) who may assist eHRC in performing a function and exercising a power. As mentioned in earlier meetings, eHRC would need the expertise of the Hospital Authority to assist him in the maintenance and operation of the eHRSS. In view of the concerns of members, and upon further discussion with ALA, we are prepared to amend Clause 58 to make its application more specific. We have accordingly worked out a draft Committee Stage Amendment (CSA) to Clause 58(3)(b) to the effect of narrowing down the persons protected from “*a person appointed by the eHRC under section 48(3)*” to only “*an employee of the Hospital Authority, or an employee of a body corporate established by the Hospital Authority under Section 5(n) of the Hospital Authority Ordinance (Cap. 113), appointed by the eHRC under section 48(3)*”.

(b) Draft CSAs proposed by Dr Hon Leung Ka-lau

6. Dr Hon Leung Ka-lau earlier on submitted to this committee his draft proposed CSAs to Clauses 7, 12 and 16 (vide LC paper CB(2)1543/14-15(01)). We have explained in writing (vide LC paper CB(2)1552/14-15(01)) and verbally at the meeting on 26 May 2015 that we object to the CSAs as it will: (a) seriously undermine our policy objective to promote two-way sharing amongst public and private healthcare providers; (b) completely alter the fundamental design principles and consent arrangement previously agreed via due consultation process; and (c) render the already developed Stage 1 eHRSS not operable. As regards Hon Leung’s concern about certain special scenarios, we highlighted at the meeting that the new Clauses 16A

and 16B proposed by the Administration could already provide very flexible room to allow implementation of different methods of restrictions in future, including arrangements to address the different potential scenarios discussed.

7. Dr Hon Leung has expressed some doubt about interpretation of the new Clauses 16A and 16B at the last meeting. To further address his concern, we intend to add a new phrase “*Despite anything contained in sections 12 and 16*” at the beginning of Clause 16A(1). This will provide more clarity about effect of the new clauses notwithstanding existing Clauses 12 and 16.

Food and Health Bureau
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