

Human Organ Transplant (Amendment) Bill

Bill No. 47/2007.

Read the first time on 12th November 2007.

A BILL

intituled

An Act to amend the Human Organ Transplant Act (Chapter 131A of the 2005 Revised Edition) and to make a related amendment to the Private Hospitals and Medical Clinics Act (Chapter 248 of the 1999 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Human Organ Transplant (Amendment) Act 2007 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 5

2. Section 5(2) of the Human Organ Transplant Act (referred to in this Act as the principal Act) is amended —

- (a) by inserting, at the end of paragraph (d), the word “or”;
- 10 (b) by deleting the word “; or” at the end of paragraph (e) and substituting a full-stop; and
- (c) by deleting paragraph (f).

Amendment of section 12

3. Section 12 of the principal Act is amended —

- 15 (a) by deleting the words “Subject to subsection (2), in” in subsection (1) and substituting the word “In”; and
- (b) by deleting subsection (2).

New Part IVB

4. The principal Act is amended by inserting, immediately after section 15D, the following Part:

20 “PART IVB

ENFORCEMENT

Interpretation of this Part

15E. In this Part, “record” includes the medical record of any person.

25 Appointment of inspectors

15F.—(1) The Director may appoint one or more persons as inspectors to investigate the commission of any offence under this Act.

(2) Every inspector —

(a) shall be furnished with such identification card as the Director may direct to be carried by inspectors; and

5 (b) shall, when exercising any powers under this Part, on demand, declare his office and produce such identification card to the person affected by the exercise of those powers.

(3) Every inspector appointed under subsection (1) shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224).

10 **Power of entry, inspection, search, seizure, etc.**

15G.—(1) For the purposes of investigating any offence under this Act, an inspector may —

15 (a) require any person to furnish any information that is within that person's knowledge and that the inspector reasonably believes may be required as evidence for the purposes of any proceedings in respect of an offence under this Act;

20 (b) by order in writing require any person to produce any document, record or thing that the inspector reasonably believes may be required as evidence for the purposes of any proceedings in respect of an offence under this Act;

(c) without warrant, enter, inspect and search any premises that the inspector has reason to suspect are being used for or in connection with any offence under this Act;

25 (d) inspect and make copies of or take extracts from, or require the person having the management or control of the premises being inspected to provide copies of or extracts from, any document or record that the inspector reasonably believes may be required as evidence for the purposes of any proceedings in respect of an offence under this Act;

30 (e) take such photographs or video recording as the inspector thinks necessary of the premises being inspected or any part thereof, including any person, document, record or thing found on the premises;

5 (f) search or cause to be searched any person found on the premises being inspected whom the inspector reasonably believes has possession or control of any document, record or thing that the inspector reasonably believes may be required as evidence for the purposes of any proceedings in respect of an offence under this Act;

10 (g) seize and remove from the premises being inspected any document, record or thing that the inspector reasonably believes may be required as evidence for the purposes of any proceedings in respect of an offence under this Act; and

(h) require any person found on the premises being inspected to render all reasonable and necessary assistance and co-operation to the inspector as are necessary to facilitate the inspector's exercise of his powers under this section.

15 (2) Any person who is required by an inspector under subsection (1)(a) or (b) to furnish any information or produce any document, record or thing shall be deemed to have complied with the requisition if he causes the information to be furnished or causes the document, record or thing to be produced instead of attending personally to
20 furnish or to produce the same.

(3) If entry to any premises cannot be obtained under subsection (1)(c), an inspector may —

(a) break open any outer or inner door or window leading to the premises;

25 (b) forcibly enter such premises and every part thereof; or

(c) remove by force any obstruction to such entry.

(4) No woman or girl may be searched under subsection (1)(f) except by a woman.

Power to examine and secure attendance

30 **15H.**—(1) An inspector may —

(a) examine orally any person supposed to be acquainted with the facts and circumstances concerning an offence under this Act; and

(b) by order in writing require the attendance before him of any person, being within the limits of Singapore, who, from information given or otherwise, appears to be acquainted with the facts and circumstances concerning an offence under this Act and the person shall attend as so required.

(2) The person referred to in subsection (1)(a) shall be bound to state truly the facts and circumstances with which he is acquainted concerning an offence under this Act, except that he may decline to make with regard to any fact or circumstance, a statement which would have a tendency to expose him to a criminal charge, penalty or forfeiture.

(3) A statement made by any person under subsection (1)(a) —

(a) shall be reduced to writing and read over to him; and

(b) shall, after correction, be signed by him.

(4) If any person fails to attend as required by an order under subsection (1)(b), the inspector may report such failure to a Magistrate who may thereupon issue a warrant to secure the attendance of that person as required by the order.

Powers of arrest

15I.—(1) An inspector authorised by the Director in that behalf may —

(a) arrest without warrant any person whom he reasonably suspects of committing or having committed an offence under this Act; and

(b) search the person arrested and seize anything which the inspector reasonably believes may be required as evidence for the purposes of proceedings in respect of an offence under this Act.

(2) Where the inspector makes an arrest under subsection (1)(a), he shall, without unnecessary delay, produce the person before a Magistrate.

(3) The inspector shall not detain in custody a person arrested under subsection (1)(a) for a longer period than is reasonable under the circumstances of the case.

(4) The period that a person arrested under subsection (1)(a) may be detained in custody shall not exceed 48 hours, excluding the time for any necessary journey to the Magistrate's Court.

5 (5) No woman or girl may be searched under subsection (1)(b) except by a woman.

10 (6) When a person is arrested under subsection (1)(a) or appears or is brought before a court and is prepared at any time while in the custody of the inspector or at any stage of the proceedings before the court to give bail, that person shall be released on bail by any inspector in such cases as are specified in orders issued by the Director or by that court.

15 (7) The inspector or the court, if he or it thinks fit, may, instead of taking bail from that person under subsection (6), discharge him on his executing a bond without sureties as may be sufficient to secure his appearance.

Protection of informers

15J.—(1) Except as provided in subsection (3) —

20 (a) no information for an offence under this Act shall be admitted in evidence in any civil or criminal proceedings; and

(b) no witness in any civil or criminal proceedings shall be obliged —

25 (i) to disclose the name and address of any informer who has given information with respect to an offence under this Act; or

(ii) to answer any question if the answer thereto would lead, or would tend to lead, to the discovery of the name or address of the informer.

30 (2) If any document, record or thing which is in evidence or liable to inspection in any civil or criminal proceedings contains any entry in which any informer is named or described or which may lead to his discovery, the court shall cause those entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery.

(3) If —

- (a) in any proceedings before a court for an offence under this Act, the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which he knew or believed to be false or did not believe to be true; or
- (b) in any other proceedings, the court is of the opinion that justice cannot be fully done between the parties thereto without the disclosure of the name of an informer,

the court may permit inquiry and require full disclosure concerning the informer.

Obstruction of inspectors, etc.

15K. Any person who —

- (a) refuses or fails to comply with any requirement of an inspector under section 15G(1)(a) or (b);
- (b) refuses to answer any question put to him by an inspector under section 15H(1)(a) or gives a false answer to such question; or
- (c) wilfully obstructs an inspector in the exercise of his authority under this Part,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.”.

Amendment of section 18

5. Section 18 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Subsection (1) shall not apply to or in relation to any information disclosed —

- (a) for the purpose of administering and enforcing this Act;
- (b) for the purpose of referring any complaint or information concerning any registered medical practitioner under section 39(1) of the Medical Registration Act (Cap. 174);
- (c) in pursuance of an order of a Court or when otherwise required by law;

- (d) for the purposes of hospital administration or bona fide medical research;
- (e) with the consent of the person to whom the information relates; or
- 5 (f) when the circumstances in which the disclosure is made are such that the disclosure is or would be privileged.”.

New section 18A

6. The principal Act is amended by inserting, immediately after section 18, the following section:

10 **“Offences by bodies corporate, etc.**

18A.—(1) Where an offence under this Act committed by a body corporate is proved —

- (a) to have been committed with the consent or connivance of an officer; or
- 15 (b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

20

(3) Where an offence under this Act committed by a partnership is proved —

- (a) to have been committed with the consent or connivance of a partner; or
- 25 (b) to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved —

30

(a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

(b) to be attributable to any neglect on the part of such officer or member,

the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“body corporate” includes a limited liability partnership which has the same meaning as in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“officer” —

(a) in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner.

(6) The Minister may, by regulations, provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.”.

Related amendment to Private Hospitals and Medical Clinics Act

7. Section 13(2) of the Private Hospitals and Medical Clinics Act (Cap. 248) is amended —

- (a) by deleting the word “or” at the end of paragraph (a)(ii);
- (b) by inserting, at the end of paragraph (a)(iii), the word “or”; and
- (c) by inserting, immediately after sub-paragraph (iii) of paragraph (a), the following sub-paragraph:

5 “(iv) the Human Organ Transplant Act (Cap. 131A);”.

Saving and transitional provision

8.—(1) Notwithstanding section 12(2)(c) of the principal Act in force immediately before the appointed day, any person who is a Muslim and has made a gift of any organ from his body under the Medical (Therapy, Education and Research) Act (Cap. 175) after the expiry of the prescribed period shall, in the selection of a proposed recipient of any organ removed pursuant to section 5 of the principal Act as amended by this Act, have the same priority under section 12(1)(a) of the principal Act as a person who has not registered any objection with the Director under section 9(1) of the principal Act in respect of that organ.

(2) In this section —

“appointed day” means the date of commencement of this Act;

“prescribed period” means the period prescribed in section 12(2)(a)(i), (ii) or (iii) of the principal Act in force immediately before the appointed day.

EXPLANATORY STATEMENT

This Bill seeks to amend the Human Organ Transplant Act (Cap. 131A) with the following changes:

- (a) to include citizens and permanent residents of Singapore who are Muslims under the presumed consent framework for organ transplantation, unless they opt out; and
- (b) to include powers to conduct investigations into offences under the Act.

The Bill also makes a related amendment to the Private Hospitals and Medical Clinics Act (Cap. 248).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 5(2) to allow a designated officer of a hospital to remove any organ specified in the First Schedule from the body of a person who is a Muslim and who has died in the hospital for the purpose of transplanting the organ to the body of a living person, unless the person who has died —

- (a) had registered an objection to such removal during his lifetime;
- (b) was neither a citizen nor a permanent resident of Singapore;
- (c) was below 21 years of age;
- (d) was above 60 years of age; or
- (e) was not of sound mind.

Clause 3 amends section 12 so that, in the selection of a proposed recipient of an organ removed under section 5 for transplantation, a person who is a Muslim will not need to make a gift of an organ under the Medical (Therapy, Education and Research) Act (Cap. 175) within a particular timeframe in order to have priority over a person who has registered an objection under section 9(1) to organ removal.

In effect —

- (a) if a Muslim person has not registered an objection under section 9(1) to organ removal, he will have priority over a person who has registered such an objection; and
- (b) if a Muslim person has registered an objection under section 9(1) to organ removal but has subsequently withdrawn the objection under section 11(1), he will have the same priority as a person who has not registered any such objection, over a person whose objection in respect of that organ is still registered, at the expiration of 2 years from the date of receipt of the withdrawal by the Director of Medical Services (the Director), provided he has not registered again any such objection since that date.

Clause 4 inserts a new Part IVB (consisting of new sections 15E to 15K) which relates to the enforcement of the Act.

The new section 15E defines the word “record” as used in the new Part IVB.

The new section 15F provides for the appointment of inspectors for the enforcement of the Act and requires every such inspector to carry and, if required, produce an identification card when exercising his powers of investigation.

The new sections 15G, 15H and 15I set out the powers that may be exercised by an inspector when investigating into the commission of any offence under the Act. These include the powers to require the production of documents, to enter, inspect and search premises, to examine persons for the purpose of obtaining evidence and to arrest persons suspected of committing any offence under the Act.

The new section 15J confers protection on persons who give or provide information with respect to the commission of an offence under the Act.

The new section 15K makes it an offence for any person to obstruct, hinder or delay an inspector in the course of an investigation.

Clause 5 amends section 18(2) to permit disclosure of information that may identify an organ donor or recipient for the purpose of administering and enforcing the Act and for the purpose of referring any complaint or information concerning any registered medical practitioner under the Medical Registration Act (Cap. 174).

Clause 6 inserts a new section 18A which provides for the liability of the officers, members or partners of a body corporate, a partnership or an unincorporated association where an offence is committed by the body corporate, partnership or unincorporated association.

Clause 7 amends section 13(2) of the Private Hospitals and Medical Clinics Act (Cap. 248) to allow the Director or an authorised officer to disclose information which is contained in the medical record, or which relates to the condition, treatment or diagnosis, of any person if the disclosure is made for the purpose of administering and enforcing the Human Organ Transplant Act (Cap. 131A) (amongst certain other Acts).

Clause 8 makes a saving and transitional provision in relation to priority in the selection of proposed recipients for organs removed under section 5.

Under the repealed section 12(2)(c), a Muslim person who has made a gift of any organ from his body under the Medical (Therapy, Education and Research) Act (Cap. 175) after the period prescribed in the repealed section 12(2)(a)(i), (ii) or (iii) would, in the selection of a proposed recipient of an organ removed under section 5, have the same priority as a person who has not registered any objection with the Director under section 9(1) in respect of that organ, but only upon the expiration of 2 years from the date of such gift, and provided he has not revoked his gift since that date.

Under the clause, as from the date of commencement of the Human Organ Transplant (Amendment) Act 2007, such a person will have the same priority under section 12(1)(a) as a person (whether a Muslim or not) who has not registered any objection under section 9(1) to organ removal.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
