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Secretary for Justice
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Legal Policy (General) Section
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BY FAX

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(Attn : Mr Michael Scott
Senior Assistant Solicitor General)

Dear Mr Scott,

Statute Law (Miscellaneous Provisions) Bill 2001

To follow up on the discussion at the first Bills Committee meeting on 8 March 2002, I write to seek your clarification in relation to your reply dated 7 March :

Part III Compensation Order

1. On comparing the proposed section 73(3) to (5) of the Criminal Procedure Ordinance (Cap. 221) with the repealed section 72, it is noted that :

- (a) the proposed section 73(3) extends the order to money taken from a person so convicted on his arrest, being taken into custody or his surrender to custody;
- (b) section 73(5) excludes the application of subsection (3) to any money that is a first charge for the benefit of the Director of Legal Aid within the meaning of section 18A(1) of the Legal Aid Ordinance (Cap. 91).

Paragraph 5 of the LegCo Brief states that amendment is required to clarify the mechanism for enforcing compensation orders. Please explain the policy for the above differences between the proposed mechanism and that provided in the repealed section 72.

2. There is no explanation why 17 February 1997 is selected as the

commencement date for section 7. The Costs in Criminal Cases Ordinance (Cap. 492) commenced on 17 January 1997.

Part V **Marital rape and related sexual offences**

3. It would be helpful if the Administration could explain why no amendment to sections 123, 125, 118A and 122 is necessary, in particular, why section 122(3) need not be amended in manner similar to the proposed amendments to sections 124 and 146.

Part VII **Power of Court to order repayment of deposit**

4. The proposed section 12(1A) of the Conveyancing and Property Ordinance (Cap. 219) specifies that the court may, if it thinks fit, order the repayment of any deposit where it refuses to grant specific performance of a contract or in any action for the return of a deposit. Would a specific provision override a general provision so that section 12(1) cannot be relied on for the court to award interest or to declare and enforce a lien on the property?

5. When rejecting the suggestion for a transitional provision, the Administration should explain in more detail why the court will have the power to order the return of deposit in applications made prior to the commencement of the amendment. Does the Administration consider that such power of the court a procedural rule?

Part IX **The Hong Kong Examinations Authority**

6. If the change of name of the Hong Kong Examinations Authority would not affect its subsisting rights and obligations, would the same principle apply to change of name of the Secretary?

Part X **Non-immunity clauses**

7. Please explain in greater detail why section 2 of Schedule 1 to the Occupational Deafness (Compensation) Ordinance (Cap. 469) need not be amended at this stage. Has review of that Ordinance commenced and when would it be completed?

8. Since the amendments in Part X do not have retrospective effect, please clarify whether the word "Crown" would be construed according to section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1) on and after 1 July 1997.

Part XIV **Legal Practitioners**

9. If the policy intent is to allow flexibility in the choice of the Tribunal Convenor, would the Administration explain why the flexibility is not extended to the choice of members of the Tribunal? Has the Administration considered the alternative whereby the choice of the Tribunal Convenor is restricted to the solicitors on the Solicitors Disciplinary Tribunal Panel but the appointment of members of the Tribunal is not?

I would appreciate it if you could let me have your reply in bilingual version for circulation to the Bills Committee.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

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