

**Bills Committee on
Employees Compensation Assistance (Amendment) Bill 2002**

**The Administration's Response –
Issues Raised by the Assistant Legal Adviser**

Introduction

This paper sets out the Administration's response to the issues raised by the Assistant Legal Adviser in her letter dated 17 May 2002.

Questions and Response

Question 1 : Will the Administration re-consider the list of “eligible persons” under the Employees Compensation Assistance (Amendment) Bill 2002 given that some of the eligible persons are not regarded as dependants under the Fatal Accidents Ordinance and will not be awarded any damages by the court ?

Response

Definition of “Eligible Person” under the Amendment Bill

2. Under the Employees Compensation Assistance (Amendment) Bill 2002 (the Amendment Bill), the “eligible person” for relief payment in respect of fatal injury is defined as a person who has any of the following relationship in respect of the deceased employee, whether by blood or an adoption made before the date of accident:

- (a) a spouse or cohabitee;
- (b) a child;
- (c) a parent or grandparent; or
- (d) a grandson, granddaughter, stepfather, stepmother, stepson, stepdaughter, son-in-law, daughter-in-law, brother, sister, half-brother, half-sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, and child of a brother or sister of the whole blood.

This definition is identical to the definition of “family members” under the Employees’ Compensation Ordinance, to whom the compensation for death is payable.

Definition of “Dependants” under the Fatal Accidents Ordinance

3. Under the Fatal Accidents Ordinance (FAO) (Cap. 22), “dependants” is defined in relation to the deceased person as follows:

- (a) the wife, husband, former wife or former husband of the deceased and any person whose marriage to the deceased has been annulled or declared void;
- (b) a concubine lawfully taken by the deceased before 7 October 1971;
- (c) any person who was living with the deceased in the same household immediately before the date of his death; and had been living with the deceased in the same household for at least 2 years before that date as the husband or wife of the deceased;
- (d) any parent or other ascendant of the deceased;
- (e) any person (not being a parent of the deceased) who, during any marriage to which that person was a party, treated the deceased as a son or daughter of the family in relation to that marriage;
- (f) any child or other descendant of the deceased;
- (g) any person (not being a child of the deceased) who, during any marriage to which the deceased was at any time a party, was treated by the deceased as a son or daughter of the family in relation to that marriage;
- (h) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased;
- (i) any person who is, or is the issue of, a brother or sister of a grandparent of the deceased;
- (j) any godchild or godparent of the deceased according to the Chinese custom.

4. Section 2(2)(b) of the FAO provides that in deducing any relationship for the purposes of the Ordinance, any relationship by affinity shall be treated as relationship by consanguinity and any relationship of the half-blood as a relationship of the whole blood. Under these two principles, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law as well as half-brother or half-sister in relation to the deceased employee shall also be regarded as dependants as defined under the FAO.

5. As a matter of fact, we have come across court orders which had awarded damages to parents-in-law and son-in-law of the deceased persons.

Meaning of “Half-brother” and “Half-sister”

6. The Employees Compensation Assistance Ordinance has not further defined “half-brother” and “half-sister”. Such terms will be construed according to the ordinary dictionary meaning which would cover the man / boy / woman / girl whose mother or father is the same as the one of the deceased.

Question 2 : Payment of damages and related interests from the Employees Compensation Assistance Fund in the past five years

Response

7. The number of common law cases assisted by the Board in the past five years with the amount of damages and related interests assisted are set out in the Appendix.

Labour Department

May 2002

Common Law Cases Assisted by the Board
and the Amount of Payment
(1997/98 – 2001/02)

Year	No. of Cases Assisted	Total Amount of Damages assisted	Total amount of interest assisted	Average amount assisted per case
1997/98	12	\$32M <i>{\$13.8M}¹</i>	\$4.07M	\$3.01M
1998/99	8	\$10.03M	\$2.78M	\$1.6M
1999/00	20	\$18.89M	\$4.23M	\$1.16
2000/01	14	\$13.24M	\$2.04M	\$1.09M
2001/02	12	\$16.02M	\$3M	\$1.59M
Total	65²	\$90.18M	\$16.12M	\$1.64M

Notes :

1. Figures in { } denote the amount paid for a major common law case with awarded damages exceeding \$10 million. The amount excludes interest and legal costs.
2. There is one case where the payment was made at two different points of time, with partial payment made in 1999-00 and the balance paid in 2000-01. Therefore, the total number of cases is equal to the sum of the number of cases in each year minus one.