

**Subcommittee to Study the Transport Needs
and Provision of Concessionary Public Transport Fares for
Persons with Disabilities**

Information for Meeting on 16 February 2006

PURPOSE

At its meeting on 9 January 2006, the Subcommittee requested the Administration to provide information on (i) work done on the provision of concessionary public transport fares for people with disabilities (PWDs); (ii) legal advice on whether the non-provision of fare concession for PWDs requiring the company of a carer to use public transport services would constitute a contravention of the Disability Discrimination Ordinance (DDO); and (iii) possible schemes for provision of concessionary public transport fares for PWDs.

I. WORK DONE BY ADMINISTRATION

Estimating the Number of PWDs

2. The Secretary for Environment, Transport and Works (SETW) met with representatives of the disabled community, including representatives from the Hong Kong Blind Union, Rehabilitation Alliance Hong Kong and the Hong Kong Council of Social Service in September 2004. The Administration listened to their views on the provision of fare concession to PWDs, including the number of potential beneficiaries of any fare concessions.

3. The Secretary for Health, Welfare and Food (SHWF) met with the Disability Alliance on Concessionary Transport Fare (the Alliance) on 23 December 2004. To address the concerns of some public transport operators that there would be around 1.2 million of potential beneficiaries, as reported in Special Topics Report No. 28 (STR No. 28) on “Persons with disabilities and chronic diseases” published by Census and Statistics Department (C&SD) in 2001, SHWF agreed that a working group should be set up to more accurately assess the number of beneficiaries for further discussion with PT operators on concessionary transport fare.

4. Following SHWF’s meeting with the Alliance, HWFB had a series of meetings and discussions with parties concerned to take the matter forward, as follows –

- Cross-bureau/department meeting in January 2005; and

- Meetings with C&SD in January, April and September 2005.

5. After further analysis of the reported figures in STR No. 28 and discussion with C&SD, HWFB has worked out an estimated figure of about 220,000 potential beneficiaries for possible fare concession for PWDs. This figure does not include patients with chronic illness but without manifestation of disabilities, and those aged below 12 or over 65 who are already enjoying concessions provided by major public transport operators. The figure was reported to the Rehabilitation Advisory Committee (RAC) in June 2005, and to the Legislative Council Panel on Transport in July 2005. SHWF and SETW had full knowledge of the work done in reaching this figure of PWDs.

Identification of ‘Possible Schemes’ for Fare Concession

6. HWFB has continued with its effort in identifying various ‘possible schemes’ of fare concession to PWDs having regard to the DDO. Advice from both the Equal Opportunities Commission (EOC) and the Department of Justice (DoJ) was sought for each of the ‘schemes’ considered. List of ‘schemes’ considered include –

Proposal for	Advice sought in
● Selected groups of PWDs with greater mobility difficulties, i.e. the visually impaired, the physically handicapped and the mental handicapped	January 2005
● PWDs with mobility problems requiring the company of a carer when travelling on public transport or accompanying carers	March 2005
● Recipients of Disability Allowance	June 2005
● Recipients of Comprehensive Social Security Assistance with 100% loss of earning capacity	December 2005

7. When arriving at each and every of the above proposals, SHWF was fully briefed on them and the legal advice received. SHWF gave specific direction that HWFB should continue with its search for workable schemes.

8. As regards communication with EOC, HWFB held a number of meetings with EOC –

- Meeting with Legal Advisor of EOC in January 2005;
- Meeting between RAC Chairman and EOC representatives in February 2005;
- Meeting with the EOC Chairman in February 2005; and
- Meeting between SHWF and EOC Chairman in January 2006.

Consultation with the Rehabilitation Advisory Committee

9. The subject matter was raised for discussion at almost all of the recent meetings of RAC and its Subcommittee on Access. Details of meetings are as follows –

- Discussion at RAC Meetings in January, June and December 2005; and
- Discussion at RAC Subcommittee on Access Meetings in August and December 2004.

Liaison with Public Transport Operators

10. ETWB and the Transport Department (TD) have been persistently encouraging public transport operators to provide fare concessions to PWDs through various channels. Since 2002, ETWB and TD have repeatedly requested major public transport operators and encouraged them to provide fare concessions to PWDs. In response, four ferry operators have since 2002 been providing fare concessions to PWDs, and an additional ferry operator agreed to do so with effect from April 2006. Meetings with franchised bus operators were held in July and August 2002 to encourage them to provide fare concessions for passengers, including PWDs. During the discussion with three bus companies on the grant of new franchises in 2005, ETWB and TD also raised fare concessions to PWDs. At their trade conference in 2004, TD appealed to Green Minibus operators to provide fare concession to PWDs. In view of the concern on possible financial implications, ETWB requested PT operators in 2005 to consider other forms of fare concessions alternative to half fare concessions, aiming to secure their agreement to implement other form of concessions for PWDs.

11. The Administration also provides incentives for PT operators to provide fare concession through incorporating relevant evaluation criteria in various transport operators' selection exercises. The bus operator selection

exercise for packages to and from Hong Kong Disneyland conducted in 2004 included provision of concessionary fares for PWDs as one of the evaluation criteria. Such criteria were also included in the tender assessment for three licensed ferry services in 2005.

12. In 2004, HWFB revised the design of the registration cards (RC) issued by its Central Registry for Rehabilitation to enhance their credibility. Disability status of PWDs is updated according to certification by medical practitioners or paramedical personnel. New RC bear photograph of the registrants, and are printed on security paper. TD wrote to public transport operators to inform them of the new design and encouraged them to consider the applicability of the RC in offering fare concession to PWDs.

Research on Overseas Practice

13. In order to gain a better understanding of the provision of fare concession for PWDs in overseas countries, ETWB and HWFB gathered information on fare concessions provided in other countries. Work done in this area includes –

- Internet research on the provision of concessionary fares to PWDs in overseas countries since February 2005;
- Information collected from overseas Economic and Trade Offices and Consulates in Hong Kong (with assistance from TD) in the 3rd and 4th quarters of 2005;
- At the request of the LegCo Transport Panel, HWFB provided an information paper in November 2005 setting out research findings on overseas practices and related legal provisions was provided to upon request.

II. LEGAL ADVICE ON INDIRECT DISCRIMINATION

14. At the Subcommittee meeting of 9 December 2005, the Hon Leung Yiu Chung stated that it was his understanding from EOC that the non-provision of concessionary public transport fares to PWDs who need to be accompanied by a carer to use public transport services, and to such carer, might constitute a contravention of the DDO. Subsequent to the Subcommittee meeting, the Administration sought clarification from EOC on this point.

15. EOC clarified that the statement was given in response to a general question raised at a meeting with Hon Members and PWD groups. As the nature of the meeting was not appropriate for in-depth legal discussion, it dealt with the general question in terms of broad principles, without elaborating on the

intricate legal points involved, but with a rider that the application of these broad principles was subject to the facts of the particular case. EOC further confirmed that up to the present moment, **there is no complaint** or evidence before it indicating that there is **any specific case of indirect discrimination**.

16. DoJ was consulted for advice, with its having full knowledge of EOC's written clarification. In gist, DoJ is of the view that non-provision of concessionary public transport fare to a PWD who needs to be accompanied by a carer to use public transport facilities **is unlikely** to constitute direct or indirect disability discrimination against the PWD, and **is unlikely** to contravene the DDO, as the PWD is required to pay the prescribed fares for the use of public transport facilities just as another passenger without a disability.

17. In certain circumstances, the provision of concessionary fares to a carer may not be adequate to remove the inconvenience suffered by the PWD because it works on the premises that a carer is always available to assist the PWD whenever he/she wishes to use the public transport facilities. It may be possible that the provision of direct assistance (e.g. by a member of staff of the operator when a PWD uses the public transport facilities) would be more appropriate to remove such inconvenience suffered by the PWD. Whether non-provision of fare concession to a carer would constitute indirect disability discrimination would, to a large extent, depend on the facts and circumstances of the particular case. It is a question of fact to be proved by concrete evidence and is ultimately to be determined by the court.

III. POSSIBLE SCHEMES FOR FARE CONCESSIONS

18. The Administration has explored various options for the offer of concessionary fares to PWDs. Both DoJ and EOC have commented on each and every of these options to ascertain their legality, in particular, whether they would contravene the DDO.

19. Among the schemes explored, two of them are considered to be least likely to contravene the DDO, according to advice by DoJ and EOC, as follows-

- Scheme No. (1) – fare concession for ALL PWDs falling within the definition of disability under DDO; and
- Scheme No. (2) – fare concession for PWDs requiring company of carer for traveling on public transport.

Details of the two schemes are set out at **Annex A**. Regarding Scheme No. (1), given the broad definition of PWD under DDO, this will amount to a general fare reduction for almost everyone. EOC's interpretation of DDO is that "it sees everyone as having a disability of one sort or another, at some point in time,

whether past, present or future, and protects everyone from discrimination because of their disability”. This is not a scheme that the Administration intends to launch and that the PWDs are demanding for. Furthermore, it is not a scheme considered as reasonable and acceptable by the community at large.

20. For Scheme No. (2), DoJ has advised that this may have the effect of removing the disadvantage experienced by PWDs in using public transport facilities, and thus is unlikely to contravene the DDO. EOC has also commented that this scheme is perhaps the least vulnerable to a complaint under the DDO, yet without becoming a general fare reduction for everyone. It is, however, important to devise an appropriate way to assess the need for carer assistance.

21. As to the estimated number of PWDs requiring the company of a carer to use public transport, according to STR No. 28, it is within the range of 20,000 and 25,000. The estimate does not include the number of persons who are mentally handicapped and require assistance of carers, as such information is not available in the STR No.28. Making reference to the above number which is based on data collected in 2000, the rough estimate of fare revenue foregone by major public transport operators if half-fare concession is provided to this group of PWDs (25,000 persons) is in the region of \$47 million per year.

22. Apart from the above two schemes, HWFB has explored several other options covering different PWD groups, as listed in **Annex B-**

- (a) PWD groups with mobility difficulties, i.e. the visually impaired, the physically handicapped and the mentally handicapped;
- (b) PWDs as set out in the Census and Statistics Department Special Topics Report No 28;
- (c) Recipients of Disability Allowance;
- (d) PWD recipients of Comprehensive Social Security Allowance with 100% loss of earning capacity; and
- (e) Registrants under the Central Registry for Rehabilitation maintained by HWFB;

Members may wish to note (from Annex B) reservations expressed by EOC and DoJ on their possible contravention to DDO.

Health, Welfare and Food Bureau
Environment, Transport and Works Bureau
February 2006

Possible Schemes for Concessionary Fare Provision for People with Disabilities

Possible schemes	PWD Definition/ Eligibility	Reasons	Estimated No. of Potential Beneficiaries (aged 12-64)	Legal Advice	
				DoJ	EOC
1. All PWDs falling within the definition of disability under Disability Discrimination Ordinance (DDO)	S2 of DDO (Cap. 487) [Annex B of CB(1)645/05-06(01)]	Not in contravention with DDO provision	No estimate available. Could be enormous (broad and general definition)	This Scheme does not constitute direct or indirect disability discrimination against a PWD under the DDO.	Everyone with a disability within the meaning of the DDO is covered; therefore disability discrimination is unlikely to occur. But this scheme amounts to a general fare reduction for everyone, thus probably deviates from the original concept of fare concession.

Possible schemes	PWD Definition/ Eligibility	Reasons	Estimated No. of Potential Beneficiaries (aged 12-64)	Legal Advice	
				DoJ	EOC
2. PWDs requiring company of carer for travelling on public transport	PWDs (all disability types) requiring carer assistance in transportation			This Scheme may have the effect of removing the disadvantage experienced by PWDs in using public transport facilities. This Scheme does not contravene the DDO.	Eligibility is not limited by types of disability. Of all the suggested concessionary fare schemes, this is perhaps the least vulnerable to a complaint under the DDO, without becoming a general fare reduction for everyone. But it is important to devise an appropriate way to assess the need for carer assistance.

Possible schemes	PWD Definition/ Eligibility	Reasons	Estimated No. of Potential Beneficiaries (aged 12-64)	Legal Advice	
				DoJ	EOC
(a) Fare concession for PWDs	Eligible for fare concession only when traveling in company of carer	Double fare is paid (PWD+ carer)	20,000-25,000 <i>[Source: rough indication from C&SD Report which covers PWDs (excluding the mentally handicapped) but including patients with chronic illness with no manifestation of disability]</i>		
(b) Fare concession for the carer	Eligible for fare concession only when traveling with PWDs	Double fare is paid (PWD+ carer)	20,000-25,000 <i>(Source: same as above)</i>		

Schemes for Concessionary Fare Provision that Might Contravene with DDO for People with Disabilities

Schemes	PWD Definition/ Eligibility	Reasons	Estimated No. of Potential Beneficiaries (aged 12-64)	Legal Advice	
				DoJ	EOC
1. Selected Disability Groups, i.e. the Visually Impaired, the Physically Handicapped and the Mentally handicapped	According to C&SD Special Topics Report no. 28) (“C&SD Report”) [Annex H of CB(1)645/05-06 (01)]	Groups have greater mobility difficulties. (Draw reference from similar fare concession overseas)	141,000 <i>(Source: C&SD Report)</i>	This Scheme may have excluded some PWDs who have mobility difficulties. It is necessary to ensure that the Scheme falls within the exception provisions in section 50 of the DDO. Furthermore, the Scheme should be consistent with the principle of non-discrimination guaranteed by Article 22 of the Hong Kong Bill of Rights and Article 25 of the Basic Law.	Eligibility is by reference to types of disability. Target difficulties are mobility difficulties. There is a risk of complaint by excluded PwDs who suffer from the same or similar mobility difficulties. But, arguably, the special measure defence (DDO s.50) may be established if empirical evidence can be produced showing that the selected PwDs on the whole suffer more adversely than other people from mobility difficulties.

Schemes	PWD Definition/ Eligibility	Reasons	Estimated No. of Potential Beneficiaries (aged 12-64)	Legal Advice	
2. Number of PWDs based on C&SD Report (Persons with chronic illness but without manifestation of disabilities not counted as PWDs)	Definition draws reference from <ul style="list-style-type: none"> - Consultation with Government and NGOs - Similar surveys overseas - RPP [Annex H of CB(1)645/05-06 (01)]	Broadly covers all PWDs defined under Rehabilitation Programme Plan (RPP)	220,000* <i>(Source: rough indication from C&SD Report)</i>	This Scheme may have excluded some PWDs who have mobility difficulties. It is necessary to ensure that the Scheme falls within the exception provisions in section 50 of the DDO. Furthermore, the Scheme should be consistent with the principle of non-discrimination guaranteed by Article 22 of the Hong Kong Bill of Rights and Article 25 of the Basic Law.	Eligibility is by reference to types of disability. It is not clear what are the target difficulties. There is a risk of complaint by excluded PWDs who suffer the same or similar difficulties as the selected PWDs. But, arguably, the special measure defence (DDO s.50) may be established if empirical evidence can be produced showing that the selected PWDs on the whole suffer more adversely than other people from the target difficulties.
3. Recipients of Disability Allowance	Certified to be severely disabled according to Schedule 1 of Employees' Compensation	Severely disabled	55,000 <i>(Source: Social Welfare Department)</i>	This Scheme may have excluded some PWDs who have mobility difficulties. It is necessary to ensure that the Scheme falls within the exception provisions	Eligibility is by reference to types of disability. It is not clear what are the target difficulties. There is a risk of complaint by excluded PWDs who suffer the same or similar difficulties as the

* This figure includes 74,500 mentally handicapped persons of all ages and double counting for people with multiple disabilities, as set out in Annex I of LC Paper No. CB(1) 645/05-06(01) for the Subcommittee meeting on 9 January 2006.

Schemes	PWD Definition/ Eligibility	Reasons	Estimated No. of Potential Beneficiaries (aged 12-64)	Legal Advice	
	Ordinance (Cap. 282)[Non-means tested] [Annex A of CB(1)645/05-06 (01)]			in section 50 of the DDO. Furthermore, the Scheme should be consistent with the principle of non-discrimination guaranteed by Article 22 of the Hong Kong Bill of Rights and Article 25 of the Basic Law.	selected PwDs. But, arguably, the special measure defence (DDO s.50) may be established if empirical evidence can be produced showing that the selected PwDs on the whole suffer more adversely than other people from the target difficulties.
4.Comprehensive Social Security Assistance (CSSA) Recipients with 100% loss of earning capacity	Certified to be severely disabled according to Schedule 1 of Employees' Compensation Ordinance (Cap. 282) AND subject to Income assessment for CSSA [Means tested]	Severely disabled and cannot support themselves financially	40,000 <i>(Source: Social Welfare Department)</i>	This Scheme may have excluded some PwDs with low income and have mobility difficulties. It is necessary to ensure that the Scheme falls within the exception provisions in section 50 of the DDO. Furthermore, the Scheme should be consistent with the principle of non-discrimination guaranteed by Article 22 of the Hong Kong Bill of Rights and Article 25 of	Eligibility is by reference to types of disability. It is not clear what are the target difficulties, though one of them may be low income, as reflected by the requirement of a means test. There is a risk of complaint by excluded PwDs who suffer the same or similar difficulties as the selected PwDs. But, arguably, the special measure defence (DDO s.50) may be established if empirical evidence can be produced showing that the selected PwDs on the whole suffer

Schemes	PWD Definition/ Eligibility	Reasons	Estimated No. of Potential Beneficiaries (aged 12-64)	Legal Advice	
				the Basic Law.	more adversely than other people from the target difficulties.
5. Central Registry for Rehabilitation Registrants	Reference to the definition of the Hong Kong Rehabilitation Programme Plan (1998/99-2002/03) [Annex E of CB(1)645/05-06 (01)]	Ready system for card issue and with database to certify disability	81,000 registrants 34,000 cards issued	This Scheme may have excluded some PWDs who have mobility difficulties. It is necessary to ensure that the Scheme falls within the exception provisions in section 50 of the DDO. Furthermore, the Scheme should be consistent with the principle of non-discrimination guaranteed by Article 22 of the Hong Kong Bill of Rights and Article 25 of the Basic Law.	Eligibility is by reference to types of disability. It is not clear what are the target difficulties. There is a risk of complaint by excluded PwDs who suffer the same or similar difficulties as the selected PwDs. But, arguably, the special measure defence (DDO s.50) may be established if empirical evidence can be produced showing that the selected PwDs on the whole suffer more adversely than other people from the target difficulties.