

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

Information Paper for Meeting on 4 April 2006

PURPOSE

At its meeting on 16 February 2006, the Subcommittee considered that concessionary fares should be offered to recipients of Disability Allowance (DA) and Comprehensive Social Security Assistance (CSSA) with 100% loss of earning capacity in the first instance, to be followed by other groups of persons with disability (PWDs). The Administration is requested to (i) consult relevant parties on the proposed approach, and (ii) explore if legislative amendments to the Disability Discrimination Ordinance (Cap. 487) (DDO) should be introduced to put it beyond doubt that selective provision of concessionary fares to PWDs in phases would not constitute a contravention of the DDO.

CONSULTATION WITH RELEVANT PARTIES

Disability Alliance on Concessionary Transport Fare (the Alliance)

2. Health, Welfare and Food Bureau (HWFB) met with representatives of the Alliance on 27 February 2006 to brief them on development of the issue, and sought their views on the Subcommittee's proposal to offer concessionary fare recipients of DA and CSSA with 100% loss of earning capacity in the first instance. The Alliance welcomed the Subcommittee's proposal on the condition that the fare concession would not affect the DA and CSSA in receipt by PWDs.

3. The Alliance also held the view that fare concession should in due course be extended to other PWDs, and specifically to all holders of PWD Registration Cards issued by HWFB.

Rehabilitation Advisory Committee (RAC) Meeting

4. At the recent RAC meeting held on 2 March 2006, the issue of concessionary fare for PWDs was discussed in details. RAC members were of the view that the Administration should ensure that the offer of fare concession to PWDs would not run the risk of being challenged legally. The RAC noted the previous advice by EOC and DoJ on the offer of concessionary fare provision to PWDs receiving DA and recipients of CSSA with 100% loss in earning capacity, which might run the risk of legal challenge by excluded PWDs.

Legislative amendments would be necessary as a safeguard against such challenge.

5. The RAC noted that the provision of concession to either PWDs requiring company of carer for travelling on public transport or carers accompanying PWDs is the only option that is least likely to contravene the DDO and will not require legislative amendments before implementation. Hence it stands a better chance of acceptance by public transport operators. On this understanding, the RAC recommended that concessionary public transport fare should be offered to this group of PWDs as a start, to be followed by other PWDs groups after introduction of the necessary legislative amendments.

Public Transport Operators

6. The Environment, Transport and Works Bureau (ETWB), HWFB, Social Welfare Department and Transport Department met with representatives of the two railway corporations, five franchised bus companies and Hong Kong Tramways Limited on 22 March 2006. At the meeting, we explained to the operators the Subcommittee's proposal to offer concessionary fare to recipients of DA and CSSA with 100% loss of earning capacity. Apart from legal implications, the operators expressed concern over the possible financial implications of providing the fare concessions. They were also concerned that the number of beneficiaries of the fare concession was not capped and might increase in time as more PWDs might become eligible for DA and CSSA. The operators noted PWDs' wish of extending the eligibility of fare concession to cover all PWDs in the future, which would have a significant impact on their financial condition.

7. Some of the operators also maintained that from the perspective of corporate social responsibility, their main focus was to improve accessibility of their services to PWDs rather than to provide direct financial assistance. They considered the latter to be a welfare issue beyond the duty of commercially run public transport operators.

8. Despite the above, the Administration urged the operators to carefully consider the proposal having regard to their operating condition as well as the request of the disabled community and the Legislative Council. Responses from operators, including their estimates of financial implications of the proposal, are being awaited.

LEGISLATIVE AMENDMENTS

9. At the Subcommittee Meeting on 16 February 2006, Honourable

Members offered views and advice on legal issues, especially that on invoking the exception provision in section 50 of the DDO as a defence for the offer of fare concession to recipients of DA and CSSA with 100% loss of earning capacity in the first instance.

10. DoJ was requested to reconsider the need for legislative amendments, taking into account interpretation of the DDO by Honourable Members at the meeting of 16 February 2006. After careful consideration, DoJ advised that it would ultimately be for the court to decide whether there had been a breach of the DDO. Accordingly, there is uncertainty at this stage over whether the defence of 'special measures' under section 50 of the DDO can be established. In order to minimize the risk of legal challenge under the DDO against the proposal to provide concessionary fares to a particular group of PWDs, the Administration may consider the need for legislative amendment. Such legislative amendment should have the effect of clarifying that the proposed scheme for providing concessionary public transport fares to a particular group of PWDs only is not unlawful.

11. DoJ further advised that it might be possible to effect the legislative amendments by amending the DDO itself and to provide for an exception provision for such a scheme.

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