

立法會
Legislative Council

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**Report of the Panel on Manpower
for submission to the Legislative Council**

Purpose

This report gives an account of the work of the Panel on Manpower during the 2006-2007 session of the Legislative Council. It will be tabled at the meeting of the Council on 11 July 2007 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

The Panel

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000 and 9 October 2002 for the purpose of monitoring and examining Government policies and issues of public concern relating to labour and manpower planning matters. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 14 members in the 2006-2007 session. Hon LAU Chin-shek and Hon KWONG Chi-kin were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major Work

Wage Protection Movement for employees in the cleansing and guarding services sectors

4. On 11 October 2006, the Chief Executive (CE) announced in his Policy Address the launching of a Wage Protection Movement (WPM) for employees in the cleansing and guarding services sectors. The subject matter had become a standing item for discussion at the Panel's regular meetings.

5. Some members commented that the launching of WPM was a tactic to delay the introduction of legislation on minimum wage as the Administration would only consider the need for legislation two years after implementation of WPM, pending the outcome of the review to be conducted by the Labour Advisory Board (LAB). In their view, WPM was ineffective to protect the interests of the low-income groups and legislation on minimum wage should be introduced. They urged the Administration to make preparation for the introduction of legislation in parallel with the implementation of WPM.

6. Some other members, however, considered that sufficient time should be allowed for WPM to prove that the purpose of providing wage protection for cleaning workers and security guards could be achieved without enactment of legislation.

7. The Administration responded that CE had already made it clear in his Policy Address that legislation to introduce a minimum wage for the cleansing and guarding services sectors would be planned in two years' time if WPM failed to deliver satisfactory results. Sufficient time should be given for WPM to be fully tested.

8. Members enquired about the measures to be adopted by the Administration to encourage employers to participate in WPM. Some members expressed concern as to how the Administration could ensure that employers would pay cleaning workers and security guard wages not lower than the average market rates of the relevant industries and occupations published in the Quarterly Report of Wages and Payroll Statistics by the Census and Statistics Department.

9. Regarding the effectiveness of WPM, members enquired about the performance indicators to be adopted for evaluating the scheme. Some members urged the Administration to set a time frame for completing the review.

10. The Administration responded that it would call on employers to fully support and actively participate in WPM in the spirit of corporate social responsibility. As at 30 April 2007, 916 enterprises/organisations had pledged their support for WPM. They were from a wide cross-section of the business community, including chambers of commerce, employer groups and trade groups. The Labour Department (LD) would continue to promote WPM through various means and secure the support of different sectors in the community. To tie in with WPM, LD's free employment service in respect of vacancies for cleaning workers and security guards would only be extended to those vacancies offering wages not lower than the average market rates as published in the Quarterly Report with effect from 27 October 2006. In addition, priority would be accorded to employers participating in WPM for all LD's employment programmes.

11. The Administration also explained that as employers who joined WPM were required to provide written employment contracts setting out the employment terms (including wages, hours of work and overtime pay rate) of their cleaning workers and security guards, LD would be able to take enforcement action in accordance with the Employment Ordinance (EO) (Cap. 57) if employers were found to have breached the terms in the employment contracts. As such, employees would be well protected.

12. The Administration advised that LAB would monitor the progress of WPM, and discuss the methodology, criteria and mechanism to be adopted for assessing the overall effectiveness of WPM. A mid-term review of WPM would be conducted in October 2007 (i.e. one year after implementation), and an overall review in October 2008 (i.e. two years after implementation). The Administration would report to the Panel the deliberations of LAB on the mid-term review in September/October 2007.

13. Pointing out the falling trend in the average market rates for cleaners as published in the Quarterly Report, some members expressed concern that employers might use the wage requirement in WPM as an excuse to reduce wages offered to cleaning workers and security guards when renewing employment contracts. They considered that the wages for these workers should not be lower than the monthly allowance under the Comprehensive Social Security Assistance (CSSA) Scheme.

14. At the meeting on 15 March 2007, the Panel passed a motion requesting the Government to use, among others, the number of workers benefited from WPM and whether the wages offered had met the requirement under WPM as the criteria for conducting the mid-term review of WPM. The Panel also passed another motion urging for early introduction of minimum wage legislation. Between April and June 2007, the Panel had received views from deputations and academics on the issue of statutory minimum wage for cleaning workers and security guards, and on whether special arrangements on minimum wage should be made for different categories of people, e.g. youth without working experience, people with disabilities and recipients of CSSA allowance.

15. The Administration informed members that it would take forward the preparatory work for introducing a statutory minimum wage for the cleansing and guarding services sectors. The Administration would study the issue further taking into account overseas experience, and planned to undertake a study visit to Australia in Autumn this year to study its experience in implementing statutory minimum wage, in particular the arrangement for people with disabilities.

Tackling wage offences

16. The Panel discussed the measures undertaken by the Administration to tackle wage offences. Some members expressed concern about the financial position of the 22 problematic restaurants which had been put under Operation COMBAT and were still in operation. These members considered that the Administration should closely monitor those restaurants identified as being at high risk of closure to prevent them from evading their wage liabilities. They also pointed out that it was difficult to control and monitor wage payments to construction workers, given the problem of multi-layered subcontracting continuing to prevail in the construction industry. They asked the Administration to adopt more effective measures to tackle wage offences.

17. The Administration responded that it took a very serious view on employers defaulting wage payment, and had been adopting proactive and pre-emptive strategy to combat the problem. The Administration advised that the 22 restaurants which were identified as having financial difficulties had been under LD's close observation and intensive monitoring, including site inspection for the purpose of understanding the financial position of the employers. To safeguard employees in the construction industry against wage default, the Environment, Transport and Works Bureau and the Housing Authority had incorporated monitoring measures into new public works contracts of the Government as well as Housing Department's building contracts since 1 May 2006. As part of its strategy to step up enforcement efforts against wage offences, LD had set up an early warning system in collaboration with trade unions in the catering industry and construction industry to gather intelligence on non-payment of wages, and had employed seven veteran former police officers to conduct proactive investigation into any suspected wage offences.

18. Some members were of the view that although the relevant provisions in EO were amended in March 2006 to increase the maximum penalty for wage offences to a fine of \$350,000 and imprisonment for three years, the penalty levels failed to have a deterrent effect on employers, as the average fine imposed on convicted summonses for wage offences only amounted to a few thousand dollars. These members suggested that section 64B of EO should be amended to the effect that a director who had no reasonable excuse would be liable for a wage offence committed by his limited company. In addition, a fixed penalty system should be established for employers defaulting wage payment to the effect that the fine to be imposed on convicted summonses should correspond with the outstanding amount of wages owed.

19. The Administration was of the view that the suggestion to amend section 64B of EO was complicated and had far-reaching implications; it was necessary to seek the advice from the Department of Justice (DoJ). The Administration would revert to the Panel once it was in a position to do so.

Regarding the suggestion to implement a fixed penalty system, the Administration informed members that as it was a brand new concept in the context of enforcement initiatives against wage offences, the advice of DoJ should first be sought.

20. The Administration also advised that to enhance the deterrent effect against wage offences, the maximum penalty had been substantially raised. In 2005 and 2006, two employers were heavily fined \$120,000 and \$114,000 respectively. In the same period, three company directors and three other employers were given custodial sentence, with the heaviest being three month's imprisonment. In the event that the penalty imposed by the court was low, LD might seek DoJ's advice on whether it would be appropriate to file a review.

21. Some members pointed out that many employees were reluctant to serve as prosecution witnesses as they were afraid of losing their jobs. These members questioned whether the legislation could be amended to authorise LD to initiate prosecution when there was sufficient evidence that an employer had defaulted payment, even if the affected employees refused to come forward as witnesses.

22. The Administration explained that a summons could not be issued without the name of an employee who was owed wages. In taking out prosecution against employers who had defaulted wage payments, LD had to take statements from the employees concerned. It would, therefore, be difficult for prosecution to be successfully brought without the consent of the employees to serve as prosecution witnesses.

Implementation of the Employees' Compensation Insurance Residual Scheme

23. The Panel was briefed on the progress of implementation of the Employees' Compensation Insurance Residual Scheme (the Scheme) by the insurance industry to address the concerns and problems faced by high-risk industries in taking out employees' compensation insurance (ECI).

24. Some members expressed concern that the premium benchmark rates of some of the 19 high-risk groups worked out by the independent actuary, e.g. demolition work, gondola worker/window cleaner, tunneling and steeplejacks, were too high with reference to payroll paid by employers. These members pointed out that workers might be forced to become self-employed if employers intended to evade the statutory responsibility to take out ECI because of high premium. As such, these workers would not have any ECI cover. They considered that the premium rates for different high-risk groups under the Scheme should meet the basic criteria of affordability.

25. Some members were in support of setting up a central ECI scheme, as all parties concerned would benefit from better protection under such a scheme.

To address the concern about the protection for self-employed persons, they suggested that the Administration should review the existing policy so as to ensure that these persons were covered by the Employees' Compensation Ordinance (ECO) (Cap. 282).

26. The Administration responded that the insurance industry planned to launch the Scheme in May 2007, and the Employees' Compensation Insurance Residual Scheme Bureau would conduct a mid-term review of the Scheme one year after its implementation and a comprehensive review two years after its implementation. The Administration would continue with its study on the feasibility of a central ECI scheme. The Administration explained that in situations where an employer was suspected of having forced his/her employees to become self-employed as a means to evade the responsibility of taking out ECI, the court would consider and decide whether an employer-employee relationship existed having regard to the facts of the case. These included who was in possession of production tools, who was responsible for the supply of production material, and whether uniform was required in carrying out the duties, etc. If the court ruled that it was a false self-employment, the employees concerned would be fully protected under ECO and compensation should be paid, as and where appropriate.

27. Regarding the benchmark premium rates, the Hong Kong Federation of Insurers explained that they were meant to provide a reference for calculating premiums. In developing the premium benchmark rates, the independent actuary would take into account risk type, current market rates and past claim experience. A premium discount and loading mechanism would be put in place to adjust the rates to be offered with regard to risk factors such as the safety performance of the preventive measures adopted by employers. In providing ECI cover, the relevant rates, calculated on actuarial basis, would be made transparent to the employers.

Combating illegal employment

28. Some members expressed concern about the effectiveness of the measures taken by LD to combat illegal employment. They pointed out that despite the increase in workplace inspections conducted by LD and joint operations with other enforcement authorities in the past four years, the problem of illegal employment continued to exist. This was evidenced by the fact that the number of illegal workers and their employers detected over the years remained at broadly the same level without significant improvement. They suggested that the Administration should analyse the distribution of illegal workers arrested, in terms of the types of jobs undertaken by them, so as to formulate more effective measures to combat illegal employment at source.

29. A member enquired why the sentences imposed on illegal workers were heavier than offending employers. The member was of the view that the court

should impose heavier penalties on employers of illegal workers in order to achieve the desired deterrent effect. Regarding the enforcement action against visitors engaged in unlawful employment after entry into Hong Kong, the member considered that they should be repatriated immediately to their country of origin upon conviction.

30. The Administration responded that it had endeavoured to tackle the problem at source. Since mid-2003, LD had adjusted its enforcement strategy by increasing emphasis on mounting targeted operations with the Police and the Immigration Department (ImmD) to raid workplaces with suspected illegal employment activities. During the joint operations, the police/immigration officers arrested the illegal workers and their employers on the spot. The outcomes of these operations were widely publicised by the media, and they had sent a clear message that the Government was determined to clamp down illegal employment. To tackle the problem at source, ImmD had, on another front, stepped up enforcement actions against illegal employment. ImmD continued to exercise stringent controls at various control points to intercept illegal immigrants and to identify dubious visitors so as to prevent people who might become illegal workers from entering Hong Kong. Apart from enforcement, LD had also targeted employers in its publicity against illegal employment. The Administration informed the Panel that the kinds of jobs taken up by illegal workers were mostly of unskilled nature, including renovation workers and workers in food establishments, retail shops and personal service trades.

31. Regarding sentencing, the Administration advised that for persons convicted of illegal stay in Hong Kong, the sentencing guideline was 15 months' imprisonment. For visitors taking up illegal employment in Hong Kong, there was no sentencing guideline and the sentence was usually two to three months' imprisonment. As for employers who were convicted of employing persons not lawfully employable, the sentencing guideline was three months' imprisonment. The courts had been imposing heavier sentences on illegal workers and their employers in recent years. In 2006, the longest term of imprisonment on employers and employees engaged in illegal employment activities were nine and 20 months respectively.

Training and employment programmes for youths offered by the Labour Department and the setting up of Youth Employment Resource Centres

32. The Panel was briefed on the progress of the Youth Pre-employment Training Programme (YPTP) and the Youth Work Experience and Training Scheme (YWETS) offered by LD, as well as the setting up of the Youth Employment Resource Centres (Resource Centres).

33. A member expressed reservations about setting up two Resources Centres, one in Kowloon and the other in the New Territories, to provide one-

stop advisory and support services to youths aged between 15 and 29, as the some 13 300 non-engaged youths were located in different districts. The member suggested that the service targets of the Resource Centres could be extended to cover other age groups so as to better utilise the resources.

34. The Administration responded that the setting up of two Resource Centres in popular gathering places for young people was a pilot scheme. The location of these two Centres would be easily accessible. Apart from aptitude assessment and job-search facilities, in-depth counseling and employment-related services would be provided to youth aged between 15 and 29. A mentorship scheme would also be launched with volunteer business entrepreneurs and professionals acting as mentors for young people who chose to start their own business. The Administration would keep an open mind on the member's suggestion, and would keep under review the operation of the Resource Centres.

35. Some members expressed concern about the overall effectiveness of the various training schemes for youths, especially for non-engaged youths falling within the age bracket of 15 to 19. As a number of them were "hidden" youths, they suggested that the Administration should tackle the problem at source and consider ways to attract them to participate in the schemes and retain them. Noting the youth training programmes under the Task Force on Continuing Development and Employment-related Training for Youth (The Task Force), training programmes operated by the Vocational Training Council (VTC) and similar programmes provided by other bureaux and departments, they considered that the Administration should coordinate the work in this regard in order to better utilise resources.

36. A member opined that YPTP and YWETS failed to provide youths with proper training for entering a trade. The member suggested that VTC should expand the training programmes and work in collaboration with the Resource Centres to provide youths with a progression ladder in respect of training for entering a trade.

37. The Administration responded that it would discuss with the various parties concerned, including the Task Force and VTC, to provide a platform to attract non-engaged youths. The Administration advised that there had been important reforms of YPTP and YWETS in recent years. Under the two programmes, tailor-made employment projects were organised to provide a one-stop training and employment service to trainees. For instance, a project for Tradesman Trainees offering 500 training places was well received by many major employers, and YPTP also organised a tailor-made course on aircraft maintenance for the Hong Kong Aircraft Engineering Company Limited. Some other trainees worked as project assistants at club houses of residential complexes. At present, about 300 training courses under YPTP could link up with professional examinations. Hence, the way forward would

be, among others, to upgrade the standards of training and to further strengthen cooperation with relevant trades.

Resource strategy for the Qualifications Framework

38. While supporting the funding proposals for the development and implementation of the Qualifications Framework (QF) in Hong Kong, some members expressed concern about the financial burden on the employees. These members pointed out that employees had to pay assessment fees, in addition to tuition fees for training courses, should they wish to undergo the Recognition of Prior Learning (RPL) assessment for the purpose of pursuing further training. They urged the Administration to consider increasing the rate of fee imbursement for these employees. Members also enquired whether employees would be eligible for the proposed reimbursement of RPL assessment fee if they did not have plans to enroll in QF-recognised training courses. They also enquired about the assessment fees to be charged.

39. The Administration responded that the prime objective of RPL was to help employees with low educational attainment to seek recognition of their skills, knowledge and experience, so that they could pursue continuing learning or skills upgrading without starting from scratch. The purpose of providing reimbursement of RPL assessment fee was to encourage more employees to pursue lifelong learning, which was also the primary objective of establishing QF. The Administration proposed to reimburse 50% of the RPL assessment fee, subject to a maximum of \$1,000 per person, incurred by an employee who had satisfactorily completed a QF-recognised training course after passing the RPL assessment. As the proposed financial assistance schemes were geared towards supporting lifelong learning, employees who did not pursue further learning or training could not benefit from the schemes. To extend the scheme to cover employees who did not pursue further training would remove the incentive and defeat the purpose of the schemes.

40. Regarding the RPL assessment fee, the Administration explained that the fee charged would aim to recover the administrative cost for conducting the assessment only. The fee in respect of qualifications at the lower QF levels was estimated to be around three hundred dollars. A member considered the fee too high and reckoned that such fee should be absorbed by the Government.

41. Noting that the proposed financial assistance schemes covered non-profit making training providers only, some members pointed out as the vast majority of labour unions were running training courses on a non-profit making basis, these schemes should be extended to cover training programmes offered by labour unions. However, some other members considered that if the Administration intended to recognise labour unions as training providers eligible for the proposed financial assistance schemes, similar consideration should also be given to trade associations.

42. The Administration pointed out that it had been an established principle and practice for the Government to provide subsidies to non-profit making organisation only. Training providers affiliated to labour unions might consider applying for non-profit making status from the Inland Revenue Department, in order to be eligible for the proposed financial assistance schemes.

43. Having considered members' views, the Administration agreed to increase the reimbursement rate of the RPL assessment fee to 100%, subject to a cap of 1,000 per employee upon completion of a QF-recognised training course. However, the Administration advised that it was unable to extend the eligibility criteria for the subsidies to cover organisations that were not classified as non-profit-making. If the Administration were to extend the eligibility criteria to labour unions, other organisations such as trade associations and professional bodies would likely have a claim for similar treatment. The Administration would have difficulty in holding the line or refuse subsidising profit-making organisations.

Other issues

44. The Panel had discussed other issues with the Administration. These included the review of temporary jobs in the public sector, Hong Kong's occupational safety performance in 2006, LD's overall performance in labour administration in 2006, review of Continuing Education Fund and review of occupational diseases in Hong Kong in 2006.

45. The Panel was also consulted on a funding proposal for the Pneumoconiosis Ex Gratia Scheme.

Meetings held

46. Between October 2006 and June 2007, the Panel held a total of nine meetings.

**Legislative Council
Panel on Manpower**

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to labour and manpower planning matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Legislative Council
Panel on Manpower**

Membership list for 2006-2007 session

Chairman	Hon LAU Chin-shek, JP
Deputy Chairman	Hon KWONG Chi-kin
Members	Hon LEE Cheuk-yan Hon CHAN Yuen-han, JP Hon LEUNG Yiu-chung Hon Jasper TSANG Yok-sing, GBS, JP Hon Andrew CHENG Kar-foo Hon LI Fung-ying, BBS, JP Hon Tommy CHEUNG Yu-yan, JP Hon Frederick FUNG Kin-kee, SBS, JP Hon WONG Kwok-hing, MH Hon Andrew LEUNG Kwan-yuen, SBS, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung

(Total : 14 Members)

Clerk Mrs Sharon TONG LEE Yin-ping

Legal adviser Miss Kitty CHENG

Date 12 October 2006