

立法會
Legislative Council

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Paper for the House Committee meeting on 7 March 2008

**Report of the Bills Committee on
Pneumoconiosis (Compensation) (Amendment) Bill 2008**

Purpose

This paper reports on the deliberations of the Bills Committee on Pneumoconiosis (Compensation) (Amendment) Bill 2008.

The Bill

2. The Bill seeks to amend the Pneumoconiosis (Compensation) Ordinance (Cap. 360) (PCO) to provide that the benefits or compensation available to pneumoconiosis persons will apply to those persons (or their family members) suffering from malignant mesothelioma.

The Bills Committee

3. At the House Committee meeting on 15 February 2008, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

4. Under the chairmanship of Hon KWONG Chi-kin, the Bills Committee held a meeting with the Administration on 28 February 2008. The Bills Committee has considered a submission from the Hong Kong Workers' Health Centre.

Deliberations of the Bills Committee

Need for the Bill

5. On the need for the Bill, the Administration has explained that malignant mesothelioma is a rare cancerous form of tumour which has a strong association with

occupational exposure to asbestos. The latent period between exposure to asbestos and development of malignant mesothelioma ranges from 30 to 40 years or even longer. It is a serious disease that is difficult to diagnose and poorly responsive to therapy. Once diagnosed, cases of malignant mesothelioma often rapidly turn fatal. The median survival of patients of malignant mesothelioma was nine and a half months upon diagnosis.

6. At present, malignant mesothelioma is not a prescribed occupational disease under the Employees' Compensation Ordinance (Cap. 282). Under PCO which provides for compensation to pneumoconiosis patients or their family members in respect of incapacity or death resulting from the disease, pneumoconiosis is defined as fibrosis of the lungs due to exposure to asbestos or silica dust. Notwithstanding that malignant mesothelioma is also caused by inhalation of asbestos dust, patients are not entitled to compensation under PCO unless they suffer from fibrosis of the lung at the same time. As malignant mesothelioma and pneumoconiosis share a common cause and some common characteristics, and to safeguard the rights of patients of malignant mesothelioma, it is necessary to amend PCO to make malignant mesothelioma compensable under PCO.

Definition of mesothelioma

7. Under clause 4(6) (Interpretation clause) of the Bill, mesothelioma means malignant mesothelioma which is a primary malignant neoplasm of the mesothelial tissue due to dust of asbestos or dust containing asbestos, whether or not such disease is accompanied by tuberculosis of the lungs or by any other disease caused by exposure to such dust.

8. Members have expressed concern about the definition of mesothelioma and queried the reasons for using the term "malignant mesothelioma" in the Bill. Members have pointed out that mesothelioma is a form of cancer caused by exposure to asbestos, and all cases of mesothelioma are cancerous (i.e. "malignant" in medical sense). It is the medical practice that patients suffering from the disease will be diagnosed as suffering from "mesothelioma", but not "malignant mesothelioma". The use of the term "malignant mesothelioma" in the Bill may cause confusion in implementation, especially with respect to medical diagnosis that rarely makes distinction as to whether a mesothelioma case is a "malignant" or a "benign" case.

9. The Administration has explained that the purpose of the Bill is to extend the scope of PCO to cover malignant mesothelioma and to provide the same compensation and benefits to malignant mesothelioma patients as those for pneumoconiotics. The primary consideration in making malignant mesothelioma a compensable disease under PCO is the causal relationship between the disease and exposure to asbestos. As there is no medical evidence to support a causal relationship between benign and non-cancerous mesothelioma and exposure to asbestos, the Bill does not cover benign and non-cancerous mesothelioma. To avoid any grey area or misunderstanding that benign

and non-cancerous mesothelioma will be covered, the term "malignant mesothelioma" is proposed to be used in the Bill.

10. Some members have clarified that they have no strong views on the policy intent that benign and non-cancerous mesothelioma cases are not covered by the Bill. They are concerned that the term "malignant mesothelioma", if adopted, may give rise to difficulties of mesothelioma sufferers in seeking compensation under PCO or possible litigations when pursuing insurance claims. Members are of the view that reference to "malignant mesothelioma" in the Bill should be replaced by "mesothelioma".

11. To address members' concerns, the Administration will introduce Committee Stage amendments (CSAs) to amend the definition of mesothelioma and delete the word "malignant" wherever the term "malignant mesothelioma" appears in the Bill. The Administration has stated that the amendments do not alter the purpose of the Bill on providing compensation to persons suffering from mesothelioma which is of a cancerous nature and which is caused by exposure to asbestos, as the definition of mesothelioma will retain the reference to "primary malignant neoplasm of the mesothelial tissue due to dust of asbestos or dust containing asbestos".

Residence and occupational requirements

12. Under the Bill, mesothelioma patients will be subject to the same eligibility criteria as the pneumoconiotics under PCO for the purpose of application for compensation, i.e. to be eligible for compensation under PCO, a person diagnosed as suffering from mesothelioma should have to be resident in Hong Kong for five years or more; mesothelioma sufferers with less than five years' residence are also eligible if they contracted the disease in Hong Kong.

13. The Administration has advised the Bills Committee that it has not proposed to specify a minimum period of employment in any occupations involving the handling of asbestos because the long latent period between exposure to asbestos and development of mesothelioma makes it very difficult for patients to provide proof of their specific employment and occupational exposure to asbestos some decades ago. Given the long latent period of the disease, mesothelioma sufferers should have very little difficulty in fulfilling the requirement of five years' residence in Hong Kong. Since the enactment of PCO in 1981, no application for compensation by a pneumoconiotic has been rejected on the ground of failure to fulfil the eligibility requirement pertaining to residence or employment in Hong Kong.

Committee Stage amendments

14. As discussed in the above paragraphs, the Administration will introduce amendments to the Bill. A copy of the draft CSAs to be moved by the Administration is in **Appendix II**.

Resumption of Second Reading debate on the Bill

15. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 9 April 2008, subject to the CSAs to be moved by the Administration.

Advice Sought

16. Members are invited to note the deliberations of the Bills Committee and the date for resumption of the Second Reading debate on the Bill.

Council Business Division 2
Legislative Council Secretariat
6 March 2008

Bills Committee on Pneumoconiosis (Compensation) (Amendment) Bill 2008

Membership list

Chairman Hon KWONG Chi-kin

Members Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung

(Total : 12 Members)

Clerk Mrs Sharon TONG LEE Yin-ping

Legal Adviser Miss Kitty CHENG

Date 28 February 2008

PNEUMOCONIOSIS (COMPENSATION) (AMENDMENT) BILL 2008

COMMITTEE STAGE

Amendments to be moved by the Secretary for Labour and Welfare

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "malignant".
2	By deleting "malignant".
3	By deleting "Malignant".
4(1)	By deleting "Malignant".
4(6)	In the proposed definition of "mesothelioma", by deleting "malignant mesothelioma which is".
24	By deleting "Malignant".
29(2)	By deleting "Malignant".
31	By deleting " MALIGNANT ".
32	By deleting "Malignant".
33	By deleting " MALIGNANT ".

34 By deleting "Malignant".

35(1)(a) By deleting "P.M.M.C.A." and substituting "P.M.C.A.".

35(1)(b) By deleting "Malignant".

35(2)(a) By deleting "P.M.M.C.A." and substituting "P.M.C.A.".

35(2)(b) By deleting "Malignant".

36 By deleting "Malignant".

37 By deleting "Malignant".

38 By deleting "Malignant".

39 By deleting "Malignant".

40 By deleting "Malignant".

41 By deleting "Malignant".

42 By deleting "Malignant".

43 In the proposed paragraph 2(7)(a)(ii), by deleting "Malignant".

44(1) By deleting "Malignant".

44(2) By deleting "Malignant".

45 In the proposed section 36(2)(a), by deleting
"Malignant".

46 By deleting "Malignant".

47 By deleting "Malignant".

48 In the proposed paragraph 7(a)(ii), by deleting
"Malignant".

49 In the proposed paragraph 6(b)(ii), by deleting
"Malignant".

50(1) By deleting "Malignant".

50(2) By deleting "Malignant".

51(1) By deleting "Malignant".

51(2) By deleting "Malignant".

52 By deleting "Malignant".

53 By deleting "MALIGNANT".

54

By deleting "Malignant".