

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2511/08-09  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/5/08

**Bills Committee on  
Occupational Deafness (Compensation) (Amendment) Bill 2009**

**Minutes of meeting  
held on Tuesday, 28 July 2009, at 4:30 pm  
in the Chamber of the Legislative Council Building**

- Members present** : Dr Hon PAN Pey-chyou (Chairman)  
Hon LEE Cheuk-yan  
Hon LEUNG Yiu-chung  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon LI Fung-ying, BBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon CHAN Kin-por, JP  
Hon IP Wai-ming, MH  
Hon IP Kwok-him, GBS, JP
- Member absent** : Hon WONG Sing-chi
- Public Officers attending** : Mrs Tonia LEUNG  
Assistant Commissioner for Labour
- Dr Eddy NG Kwok-po  
Occupational Health Consultant (Acting)
- Ms Melody LUK  
Senior Labour Officer
- Mr Alan CHONG Ka-ning  
Senior Government Counsel
- Ms Mandy NG Wing-man  
Government Counsel

**Attendance  
by invitation** : The Hong Kong Occupational Deafness Association

Mr WONG Tam-kwai  
Chairman

Miss TSUI Yuet-ha  
Organizer

Employers' Federation of Hong Kong

Mr Louis PONG  
Chief Executive Officer

Miss Jodi KOON  
Senior Director-operation

Hong Kong Shipbuilding, Machinery Manufacturing,  
Electrical and Steel Industries Employees General  
Union

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Mr LAI Wing-ming  
Vice-Chairman

Mr TSANG Chi-kong  
Secretary

Association for the Rights of Industrial Accident Victims

Mr CHAN Kam-hong  
Chief Executive

Mr CHU Man-lin  
Occupational Deafness Sufferer

Hong Kong Construction Industry Employees General Union

Mr CHOW Luen-kiu  
Chairman

Mr FUNG Kin-cho  
Secretary

The Staffs & Workers Union of Hong Kong Civil Airlines

Mr CHENG Tun-yan  
Vice Chairman

Hong Kong & Kowloon Spinning Weaving and Dyeing  
Workers General Union

Mr CHAN Wing-lok  
Committee Member

The Hong Kong Federation of Trade Unions - Occupational  
Safety & Health Committee

Mr MAK Pui-tung  
Deputy Director

Miss HUNG Yin-ping  
Secretary

Hong Kong Association of the Deaf

Mr Adam NG  
Executive Director

**Clerk in  
attendance** : Mr Raymond LAM  
Chief Council Secretary (2) 1

**Staff in  
attendance** : Mr Timothy TSO  
Assistant Legal Adviser 2

Miss Josephine SO  
Senior Council Secretary (2) 1

Miss Kiwi NG  
Legislative Assistant (2) 1

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The Bills Committee accepted the application for late membership by Mr Alan LEONG.

**I. Meeting with deputations and the Administration**

(LC Paper Nos. CB(2)2271/08-09(01) to (04), CB(2)2279/08-09(01) to (03), CB(2)2289/08-09(01) to (02) and CB(2)2305/08-09(01))

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. The Bills Committee received views from the following organizations on the Occupational Deafness (Compensation) (Amendment) Bill 2009 (the Bill) -

- (a) The Hong Kong Federation of Trade Unions - Occupational Safety & Health Committee;
- (b) The Hong Kong Occupational Deafness Association;
- (c) Employers' Federation of Hong Kong;
- (d) Hong Kong Shipbuilding, Machinery Manufacturing, Electrical and Steel Industries Employees General Union;
- (e) Association for the Rights of Industrial Accident Victims;
- (f) Hong Kong Construction Industry Employees General Union;
- (g) The Staffs & Workers Union of Hong Kong Civil Airlines;
- (h) Hong Kong & Kowloon Spinning Weaving and Dyeing Workers General Union; and
- (i) Hong Kong Association of the Deaf.

4. The Bills Committee noted that the following organizations had also provided written submissions on the Bill -

- (a) Hong Kong Construction Association; and
- (b) Hong Kong Construction and Decoration Workers Association.

5. The Bills Committee requested the Administration to provide a detailed response to all the submissions made by deputations, including their views and suggestions made at the meeting and in writing.

6. In response to members' requests, the Administration undertook to consider the recommendation put forth by members and deputations to provide flexibility in the transitional arrangement to net in workers with monaural hearing loss who had not filed any applications with the Occupational Deafness Compensation Board (ODCB) in the past. The Administration would consult relevant experts and clarify whether, from the medical and technical points of view, it was feasible to instil further flexibility to net in workers who possessed results of hearing tests carried out at private clinics or public hospitals showing their monaural hearing loss but had not filed any applications with ODCB in the past after knowing that their monaural hearing loss would not be compensable under the Occupational Deafness Compensation Ordinance (ODCO). The Administration advised that it would revert to the Bills Committee on the outcome of its study at the next meeting.

7. The Bills Committee requested the Administration -
- (a) to provide information on training courses on sign language organized by ODCB for persons with occupational deafness, including the total number of classes held and the number of participants involved over the years;
  - (b) to explain/advise in writing -
    - (i) the policy intent behind and the burden of proof of the proposed new section 48(3)(c) which specified that "there is no evidence proving that the sensorineural hearing loss was not due to noise";
    - (ii) why the proposed new section 48(3)(c) was drafted in such a way, if the Government meant to impose the evidential burden on ODCB, instead of the claimants; and
    - (iii) whether the proposed new section 48(3)(c) would be amended so as to clarify the onus of proof on ODCB and the types of evidence to be considered.
  - (c) to provide a written response detailing the rationale and justifications for setting the ceiling of reimbursement at \$9,000 for the initial purchase of hearing assistive devices (HADs), and to consider providing all persons entitled to compensation under ODCO with a lump sum equivalent to the maximum reimbursable amount of \$18,000 for expenses incurred in purchasing, repairing and replacing HADs with a view to giving them greater flexibility in the use of the compensation; and
  - (d) to explain the need for making "continuous contract" a requirement for compensation under ODCO, and provide the reason why a claimant had to fulfil the requirement of employment under a continuous contract in any specified noisy occupation at any time within the 12 months before he could make an application for compensation.

## **II. Date of next meeting**

8. The Bills Committee agreed that the next meeting would be held on Wednesday, 30 September 2009, at 10:45 am to continue discussion with the Administration.

9. The meeting ended at 6:40 pm.

Council Business Division 2  
Legislative Council Secretariat  
22 September 2009

**Proceedings of meeting of the  
Bills Committee on  
Occupational Deafness (Compensation) (Amendment) Bill 2009  
on Tuesday, 28 July 2009, at 4:30 pm  
in the Chamber of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000425	Chairman	Mr Alan LEONG's application for late membership	
000426 - 000915	Chairman	Welcoming remarks	
000916 - 001444	Chairman Representative of The Hong Kong Federation of Trade Unions - Occupational Safety & Health Committee	Presentation of views (LC Paper No. CB(2)2279/08-09(02))	
001445 - 002044	Chairman Representatives of The Hong Kong Occupational Deafness Association	Presentation of views (LC Paper No. CB(2)2279/08-09(01))	
002045 - 002514	Chairman Representative of Employers' Federation of Hong Kong (EFHK)	Presentation of views (LC Paper No. CB(2)2289/08-09(01))	
002515 - 002904	Chairman Representative of Hong Kong Shipbuilding, Machinery Manufacturing, Electrical and Steel Industries Employees General Union	Presentation of views (LC Paper No. CB(2)2271/08-09(01))	
002905 - 003406	Chairman Representatives of Association for the Rights of Industrial Accident Victims	Presentation of views (LC Paper No. CB(2)2271/08-09(02))	

Time marker	Speaker	Subject(s)	Action Required
003407 - 003734	Chairman Representative of Hong Kong Construction Industry Employees General Union	Presentation of views (LC Paper No. CB(2)2271/08-09(03))	
003735 - 004104	Chairman Representative of the Staffs & Workers Union of Hong Kong Civil Airlines	Presentation of views (LC Paper No. CB(2)2305/08-09(01))	
004105 - 004234	Chairman Representative of Hong Kong & Kowloon Spinning Weaving and Dyeing Workers General Union	Presentation of views	
004235 - 004522	Chairman Representative of Hong Kong Association of the Deaf	Presentation of views (LC Paper No. CB(2)2279/08-09(03))	
004523 - 005224	Chairman Hon LEUNG Yiu-chung Representative of EFHK	Suggested that the Administration should consider making reference to the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) (PMCO) to provide monthly payments of compensation, in addition to a one-off compensation for incapacity in the form of a lump sum payment, to persons with occupational deafness  Whether a person's hearing loss would continue to deteriorate, after he had left the noisy occupation	
005225 - 010306	Hon LEE Cheuk-yan Admin Chairman Representative of EFHK	Suggested that the Administration should shelve the proposal on reducing the overall rate of the Employees' Compensation Insurance Levy. In doing so, the Occupational Deafness Compensation Board (ODCB) could continue to accumulate reserves/surplus and hence, there would be room for providing monthly payments of	



Time marker	Speaker	Subject(s)	Action Required
		<p>compensation to persons with occupational deafness or intensifying the preventive work relating to occupational deafness</p> <p>Rationale for imposing the "continuous contract in any noisy occupation at any time within the 12 months preceding an application" requirement on persons applying for compensation under the Occupational Deafness Compensation Scheme (the ODC Scheme)</p> <p>Need to establish a causal relationship between workers' hearing loss and their occupations</p> <p>Meaning of "continuous contract" as defined under section 3 of and Schedule 1 to the Employment Ordinance (Cap. 57) (EO). The application of this concept on ODCO - only one continuous contract in the 12-month period before an applicant applied for compensation</p> <p>Risk of developing noise-induced hearing loss depended, among other things, on duration of exposure and intensity of noise. Prolonged exposure to excessive noise might cause noise-induced hearing loss which was covered by the ODC scheme. In case of instantaneous exposure to very loud noise causing hearing loss, the consequent loss of earning capacity was covered by the Employees' Compensation Ordinance (Cap. 282)</p> <p>Given that ODCB had accumulated a healthy reserve of \$511.7 million, EFHK supported using some of the surplus to fund promotional and educational programmes on prevention of occupational deafness</p>	
010307 - 011119	Hon LI Fung-ying Admin Chairman	Whether the Administration would consider incorporating in the transitional arrangement flexibility to net in workers	

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		<p>with monaural hearing loss who had not filed any applications with ODCB in the past after knowing that their monaural hearing loss would not be compensable under the Occupational Deafness Compensation Ordinance (Cap. 469) (ODCO) even though they might have met the occupational requirements under ODCO</p> <p>Current criteria for an applicant to be eligible for compensation under the ODC Scheme. The need to abide by similar criteria if flexibility arrangements were to be made. Technical issues to be sorted out</p> <p>Possibility of reimbursing persons entitled to compensation under the ODC Scheme the actual expenses incurred for the purpose of attending training on sign language</p> <p>Training courses on sign language organized by ODCB for persons with occupational deafness</p>	<p><b>Admin to provide the requested information (paragraph 7(a) of the minutes refers)</b></p>
011120 - 012139	Hon IP Wai-ming Admin	<p>Progress and outcome of the Administration's consideration on whether it would exercise flexibility to net in workers with monaural hearing loss who had not filed any applications with ODCB in the past, and timetable for reverting back to the Bills Committee</p> <p>Need for making "continuous contract" a requirement for compensation under ODCO; reason why a claimant had to fulfil the requirement of employment under a continuous contract in any specified noisy occupation at any time within the 12 months before he could make an application for compensation under the transitional arrangement</p> <p>Methods used in determining a claimant's earnings for calculation of</p>	<p><b>Admin to provide a response (paragraph 6 of the minutes refers)</b></p>

Time marker	Speaker	Subject(s)	Action Required
		compensation for claims made under ODCO	
012140 - 012344	Chairman Admin	<p>Reimbursable items in relation to hearing assistive devices (HADs) as defined under Schedule 6 to ODCO -</p> <p>(a) hearing aid;</p> <p>(b) telephone amplifier specially designed for use by persons with hearing difficulty;</p> <p>(c) desktop telephone with flashing light or other visual device to indicate ringing; and</p> <p>(d) any device the use of which by a person suffering from noise-induced deafness was determined by the ODCB, upon the advice of the Medical Committee, to be reasonably necessary in connection with such deafness</p>	
012345 - 013932	Hon Alan LEONG Admin Chairman	<p>The Administration's plan to consult relevant experts on the feasibility of incorporating in the transitional arrangement flexibility to net in workers with monaural hearing loss who had not filed any applications with ODCB in the past</p> <p>Clause 22(4) of the Bill which sought to amend section 48(3) of ODCO to provide for transitional arrangements; evidential burden on ODCB or the claimants regarding the condition under the proposed new section 48(3)(c) which specified that "there is no evidence proving that the sensorineural hearing loss was not due to noise"</p> <p>Conductive hearing loss versus sensorineural hearing loss; sensorineural hearing loss had many causes including medication, endocrine diseases such as</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>diabetes, hereditary diseases, noise exposure, aging and certain tumors</p> <p>The existing appeal mechanism provided under sections 22 and 23 of ODCO - a claimant whose application for compensation was refused might, upon receiving a notice of refusal from the Board, request the Board to review its decision by sending to the Board a request in writing stating his reasons within 14 days beginning on the date of the notice</p> <p>Hearing test and/or medical examination arranged by ODCB to verify whether a claimant fulfilled the criteria for compensation under the ODC Scheme</p> <p>The policy intent behind and the burden of proof of the proposed new section 48(3)(c) which specified that "there is no evidence proving that the sensorineural hearing loss was not due to noise"; reasons why the proposed new section 48(3)(c) was drafted in such a way, if the Government meant to impose the evidential burden on ODCB, instead of the claimants; whether the proposed new section 48(3)(c) would be amended so as to clarify the onus of proof on ODCB and the types of evidence to be considered</p>	<p><b>Admin to provide the requested information (paragraph 7(b) of the minutes refers)</b></p>
013933 - 014712	Hon LEE Cheuk-yan Admin Chairman	<p>The Administration's response towards the following suggestions of the deputations -</p> <p>(a) to further uplift the reimbursement ceilings for acquisition, fitting, repair or maintenance of HADs;</p> <p>(b) to lower the five-year threshold for re-assessing the degree of and providing further compensation for additional hearing loss sustained as a result of continued employment in noisy occupations; and</p>	

Time marker	Speaker	Subject(s)	Action Required
		(c) to provide monthly payments of compensation, in addition to a one-off compensation in the form of a lump sum payment, to persons with occupational deafness	
014713 - 015855	Hon LEUNG Yiu-chung Admin Chairman	<p>The existing ceiling for reimbursement of expenses in connection with the purchase, repair and replacement of HADs under ODCO; reasons why the Administration set the ceiling of reimbursement at \$9,000 for the initial purchase of HADs; whether the Administration would consider providing all persons entitled to compensation under ODCO with a lumpsum equivalent to the maximum reimbursable amount of \$18,000 for expenses incurred in purchasing, repairing and replacing HADs with a view to giving them greater flexibility in the use of the compensation; the advice of audiologists and experience of claimants in using hearing aids</p> <p>Rationale for fixing the percentage in cases of monaural hearing loss as half of the percentage shown in Schedule 4 to ODCO</p> <p>Membership composition of ODCB</p> <p>Views on providing monthly payments as compensation to persons with occupational deafness</p>	<b>Admin to provide the requested information (paragraph 7(c) of the minutes refers)</b>
015856 - 015915	Chairman	Extension of the meeting time	
015916 - 020720	Hon IP Wai-ming Admin	Need for making "continuous contract" a requirement for compensation under ODCO; reason why a claimant had to fulfil the requirement of employment under a continuous contract in any specified noisy occupation at any time within the 12 months before he could make an application for compensation	<b>Admin to provide the requested information (paragraph 7(d) of the minutes refers)</b>

Time marker	Speaker	Subject(s)	Action Required
		<p>under the transitional arrangement</p> <p>Comparison of bulk purchase of HADs by the Hospital Authority and the reimbursement scheme of ODCB</p> <p>Reason for not following the compensation/payment methods under PMCO to provide monthly payments of compensation to persons with occupational deafness</p> <p>Educational and publicity campaigns to engage employees in noisy occupations and to raise the public awareness about the importance of hearing preservation in the prevention of occupational deafness</p>	
020721 - 021003	Chairman Hon LEE Cheuk-yan Hon IP Wai-ming	Requested the Administration to provide a detailed response to all the submissions made by deputations, including their views and suggestions made at the meeting and in writing	<b>Admin to provide a response (paragraph 5 of the minutes refers)</b>
		Date of next meeting	