

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

**Administration's Response to Issues Raised
at the Bills Committee Meeting Held on 28 July 2009**

Introduction

This paper provides information requested by Members of the Bills Committee at its meeting held on 28 July 2009 for examining the Occupational Deafness (Compensation) (Amendment) Bill 2009 (“the Bill”).

A. Training courses on sign language organized by Occupational Deafness Compensation Board

2. Since 2003, the Occupational Deafness Compensation Board (ODCB) has been entrusted with the responsibility of providing rehabilitation services to those persons with occupational deafness (OD persons). With the assistance of a partner organisation, ODCB has offered sign language course as one of the rehabilitation programmes. As in July 2009, a total of 13 such courses have been conducted. They included four elementary and nine intermediate courses and the total number of participants is 111. ODCB will continue to provide resources for conducting sign language courses to cater for the needs of OD persons as well as their family members.

3. In addition, in order to introduce sign language courses to the OD persons and arouse their interest in it, three issues of the newsletter published by ODCB carried articles on a basic introduction to the sign language. This quarterly newsletter is sent to all OD persons.

B. Proposed new section 48(3)(c) in the Bill

4. There is concern on the operation of the proposed new section 48(3)(c) added by clause 22(4) of the Bill. The major concern is on the onus of proof of the “evidence” as required by the new section 48(3)(c).

5. The purpose of clause 22 of the Bill is to provide for transitional arrangements under section 48 to include under the compensation scheme a person whose previous application was refused by the ODCB on the ground that he only suffered from sensorineural hearing loss of not less than 40 dB in only one ear, so that he may apply for compensation again if he fulfils the conditions specified by the proposed new section 48(3) of the Bill.

6. As pointed out in the documents previously provided to this Bills Committee, sensorineural hearing loss could be caused by a number of factors other than prolonged exposure to noise. Ageing, illness and medication are some other common factors that may cause sensorineural hearing loss. As the objective of the Occupational Deafness (Compensation) Ordinance (ODCO) is to provide compensation for those employees whose hearing loss arose from exposure to noise at work, it is necessary to exclude those cases where the claimants’ sensorineural hearing loss is clearly not due to noise at work. This principle has been accepted and embodied in the ODCO since its first enactment.

7. In general, the ODCB would rely on information obtained during the processing of the application for compensation to determine whether the claimant meets the requirement that the hearing loss is due to noise at work. The Medical Committee of the ODCB would make reference to the employment history, the pattern of the audiogram, the result of the medical examination conducted by the doctor at the hearing test as well as any other medical reports that would be made available to the Board. Unless there is concrete evidence, such as a medical report stating that the claimant has suffered from a disease that causes sensorineural hearing loss, the Medical

Committee would likely give the benefit of doubt to the claimant and treat the claimant as suffering the loss owing to noise.

8. In determining the applications made under the proposed new section 48(3), the ODCB would apply the same standard. The Board would refer to the hearing test results relating to the claimant in respect of his application previously refused by the Board, or any other information provided by the claimant at the time application was made. For those cases covered by the proposed transitional arrangements under section 48(3), the Board was in possession of the hearing test results previously conducted for the claimants. Given the time lapse, in practice it would be quite difficult to ascertain at the present point of time the cause of the claimants' hearing loss by referring to anything other than such hearing test results. Section 48(3)(c) is so drafted as to uphold the principle that the ODCO is to compensate the claimants for their hearing loss owing to noise in employment while giving the claimants the benefit of doubt where there is no evidence specifically proving their hearing loss was not due to noise. In gist, if the information available to the Board, whether held by the Board itself or provided by any person, does not contain any concrete evidence that indicates the claimant's hearing loss is not due to noise at work, the Board would, as it would in dealing with new applications, accept that he should be able to meet the requirement that the hearing loss of his worse ear is due to noise at work. The proposed section 48(3)(c) would not impose the onus of proof on the claimant in the light of the proposed arrangement.

C. Ceiling on reimbursement of hearing assistive devices

9. The benefit item of reimbursement of expenses in connection with hearing assistive devices (HADs) was introduced in 2003. Any person who has been awarded compensation under ODCO may apply to ODCB for reimbursement of any expenses reasonably incurred in the acquisition, fitting, repair or maintenance of a HAD. In the current ODCO, two levels of ceiling have been built for reimbursement of HADs,

namely, \$18,000 as the aggregate amount of expenses that may be reimbursed and \$9,000 as the amount of expenses that may be reimbursed for the first time. Any remaining sum can be used for the same purpose until the aggregate sum of \$18,000 has been exhausted.

10. The Bill proposes to increase the aggregate amount of expenses that may be reimbursed from the current level of \$18,000 to \$36,000 as more claimants would likely exhaust their total reimbursable amounts in the years to come. On the ceiling for first time purchase of HADs, the current \$9,000 was set to help ensure that the claimants would make a prudent choice in choosing the HADs in their first-time purchase while they still had little experience in the use of the HADs. In fact, it is not unusual for claimants to choose items like telephone amplifier which cost around \$1,500 in purchasing HAD for the first time. When it comes to hearing aids, the setting of the \$9,000 limit may still be appropriate as the expenses of HADs would normally range from \$6,000 to \$8,000.

D. The requirement for a continuous contract in any specified noisy occupations at any time within the 12 months before the application for compensation is made

11. There is a suggestion that the requirement for a claimant to have a continuous contract within the 12 months before his date of application for compensation under ODCO should be removed.

12. Deafness can be caused by various factors other than prolonged exposure to excessive noise during employment in noisy occupations. These factors included ageing, endocrine diseases such as diabetes, ototoxic medications, viral infection, meningitis, brain tumours, and noise exposure during pastimes. If a worker has quitted or reduced his working time in noisy occupation(s) for a long period of time, it would be difficult to reasonably presume that his hearing loss is caused by noise exposure at work. The purpose of requiring a continuous contract in noisy occupation(s) within the 12 months preceding the date of application of a

claimant is to enable a presumption of causation between occupational exposure and hearing loss.

13. While this compensation scheme is funded by employers' levy, there is a need to ensure, as far as possible, its dedicated objective of providing compensation for deafness caused by employment in noisy occupations is closely adhered to. We do not consider that the requirement on employment under a continuous contract stipulated under the Occupational Deafness (Compensation) Ordinance is too stringent. Removal of the requirement will render the time limit for application virtually non-existent and it will be difficult to reasonably presume that the hearing loss is employment-related.

Labour and Welfare Bureau
October 2009