

立法會
Legislative Council

LC Paper No. CB(1)853/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/09

Bills Committee on Road Traffic (Amendment) Bill 2010

Minutes of the sixth meeting
held on Thursday, 11 November 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building

Members present : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Andrew CHENG Kar-foo
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHAN Kin-por, JP
Hon WONG Sing-chi

Members absent : Hon CHEUNG Hok-ming, GBS, JP
Hon IP Wai-ming, MH

Public officers attending : Agenda Item I

Mr Alan CHU
Deputy Secretary for Transport and Housing
(Transport) 3

Ms Irene HO
Assistant Secretary for Transport and Housing
(Transport) 2C

Mr Eamonn MORAN
Law Draftsman
Department of Justice

Miss Elaine NG
Government Counsel
Department of Justice

Mr David LEUNG
Senior Assistant Director of Public Prosecutions
(ODPP)
Department of Justice

Mr Steve VERRALLS
Chief Superintendent (Traffic)
Hong Kong Police Force

Ms Angela NG
Senior Superintendent (Administration) (Traffic
Branch Headquarters)
Hong Kong Police Force

Mrs Margaret CHAN
Principal Executive Officer/VALID and Licensing
Transport Department

Mr Harry CHAN
Chief Engineer/Road Safety and Standards
Transport Department

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Kelvin LEE
Assistant Legal Advisor 1

Mr Joey LO
Council Secretary (1)3

Action

- I. Meeting with the Administration**
(LC Paper No. CB(1)399/10-11(01) -- List of follow-up actions
arising from the discussion at
the meeting on 4 November
2010

- LC Paper Nos. CB(1)399/10-11(02) and (03) -- Administration's response to issues raised at the meeting on 4 November 2010
- LC Paper No. CB(1)399/10-11(04) -- Marked-up copy of the Bill provided by the Administration
- LC Paper No. CB(1)399/10-11(05) -- Draft Committee Stage amendments proposed by the Administration
- LC Paper No. CB(3)648/09-10 -- The Bill
- LC Paper No. CB(1)2081/09-10(01) -- Marked-up copy of the Bill prepared by the Legal Service Division
- File Ref: THB(T)CR 3/14/3231/00 -- Legislative Council Brief on Road Traffic (Amendment) Bill 2010 issued by the Transport and Housing Bureau)

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

2. The Administration undertook to consider the following:-

- (a) whether an objective indicator, such as the level of permanent incapacity or the percentage of loss of earning capacity of the victim should be adopted as the yardstick for determining what would constitute the offence of causing grievous bodily harm by dangerous driving (DDCGBH), and to consider addressing the issue in the speech to be delivered by the Secretary for Transport and Housing during the resumption of Second Reading debate on the Bill; and
- (b) in consultation with the Assistant Legal Advisor (ALA), to refine the Chinese renditions of the phrases "to be served" and "have been served" under the proposed section 69A(3A) and (3C) respectively.

(*Post-meeting note:* The note from the legal adviser to the Bills Committee regarding the discussion with the law draftsman on the Chinese text of the proposed section 69A(3A) and (3C) in clause 18 of the Bill was circulated vide LC Paper No. CB(1)534/10-11 on 24 November 2010.)

Scrutiny of the Bill

- ALA 3. The Bills Committee completed scrutiny of the Bill. The Chairman requested the Legal Service Division of the Secretariat to vet the finalized Chinese and English versions of the Administration's proposed Committee Stage amendments (CSAs) to ensure consistency of the Chinese and English versions of the proposed amendments.

Legislative timetable

4. The Chairman added that subject to the CSAs being in order, the Bills Committee would submit a written report to the House Committee on 26 November 2010 supporting resumption of the Second Reading debate on the Bill at the Council meeting on 8 December 2010. She also reminded members that the deadline for giving notice to move CSAs would be 29 November 2010.

II. Any other business

5. There being no other business, the meeting ended at 3:50 pm.

Council Business Division 1
Legislative Council Secretariat
17 December 2010

**Proceedings of the sixth meeting of
Bills Committee on Road Traffic (Amendment) Bill 2010
on Thursday, 11 November 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000251	Chairman	Opening remarks by the Chairman	
000252 – 001534	Chairman Administration Mr CHAN Kin-por Assistant Legal Adviser (ALA)	<p>Briefing by the Administration (LC Paper No. CB(1)399/10-11(02)) on its response to concerns raised by members at the meeting held on 4 November 2010.</p> <p>Discussion on imprisonment term under summary conviction for dangerous driving causing grievous bodily harm (DDCGBH) and dangerous driving causing death (DDCD).</p> <p>The Chairman enquired whether grievous bodily harm included whiplash injury suffered or purportedly suffered by victims involved in traffic accidents. She reflected that the transport trade was worried about the rising number of false personal injury claims and insurance claims involving whiplash injury purportedly sustained as a result of traffic accidents, and the difficulty of verifying whiplash injury on the medical front.</p> <p>The Administration advised that the focus of the offence should be on whether the driver concerned had committed dangerous driving (DD) in the first place, which had been clearly defined in law. In determining whether grievous bodily harm had been sustained, reference could be drawn from the findings of the medical report of the injured.</p> <p>In response to the Chairman's enquiry about what constituted DDCGBH, the Administration advised that DDCGBH was a new offence in Hong Kong. However, grievous bodily harm is an established concept in wounding cases. In determining the criminal liability, the most important factors to consider would be the driver's driving manner, the traffic condition and the consequences of the accident.</p>	
001535 – 004400	Chairman Mr Andrew CHENG Administration	<p>Discussion on the definition of grievous bodily harm.</p> <p>Mr Andrew CHENG suggested that an objective indicator, such as the level of permanent incapacity or the percentage of loss of earning capacity of the victim, should be adopted as the yardstick for determining what would constitute the offence of DDCGBH.</p>	The Administration to follow up as stated in paragraph 2(a) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that if the level of permanent incapacity was adopted as a yardstick in determining DDCGBH, it would be inconsistent with the definition of grievous bodily harm adopted in wounding cases. As in all criminal cases, the burden of proof rested with the prosecution which must prove beyond reasonable doubt that defendants were guilty. It should best be left to the court to decide whether grievous bodily harm had been sustained by the injured in traffic accident cases. The proposal to use the percentage of permanent incapacity as the yardstick was not desirable in cases where the victim's face was deformed in a traffic accident. The person who was seriously injured in such cases might not be permanently disabled.</p> <p>The Chairman enquired about the yardsticks in determining DDCGBH and whether whiplash injury would constitute DDCGBH in overseas jurisdictions.</p> <p>The Administration advised that a common sense approach was adopted in most Commonwealth jurisdictions. There was no hard and fast rule on whether whiplash injury constituted DDCGBH. In New South Wales, grievous bodily harm was defined as a really serious injury including any permanent or serious disfiguring of the person.</p> <p>The Chairman reminded the Administration to take extra care in handling traffic cases involving whiplash injuries.</p>	
004401 – 004937	Chairman Mr Ronny TONG Administration	<p>Mr Ronny TONG's enquiry about the circumstances under which the driver would be charged with the offence of DDCGBH.</p> <p>The Administration advised that as DDCGBH was a new offence, the Police would be guided by the existing criminal case law in respect of grievous bodily harm, and would seek advice from the D of J as to how to apply the charges.</p> <p>Briefing by the Administration (LC Paper No. CB(1)399/10-11(03)) on its response to concerns raised by members at the meeting held on 4 November 2010.</p>	
004938– 005106	Chairman Administration	<p>In response to the Chairman's enquiry, the Administration advised that no plea bargaining was involved in the 23 cases charged with careless driving from January to June 2010.</p>	

Time marker	Speaker	Subject(s)	Action required
005107 – 005925	Chairman Administration ALA	<p>Briefing by the Administration on the proposed draft CSAs (clauses 4, 6, 7, 8, 9, 14, 18 and 21A) (LC Paper Nos. CB(1)399/10-11(04) and (05)).</p> <p>Discussion on the drafting aspects of the Chinese version of Clause 4 in respect of application of Ordinance to village vehicles.</p>	
005926 – 011707	Chairman Administration ALA Mr Ronny TONG Mr Andrew CHENG	<p><u>Clause 18 - Section 69A added - Start of disqualification period</u></p> <p>Discussion on section 69A(1)(c) and (2).</p> <p>Discussion on the Chinese version of the term "served" ("經受") in section 69A(3A) and (3C).</p> <p>Some members of the Bills Committee considered that the term "服" was better than "經受" as the latter was difficult for the layman to understand and could cause controversy as a result, and that the phrase "have been served" in subsection (3C) should better be refined as "已服滿". The Administration advised that it might not be appropriate to adopt "服" in relation to a "period" ("期間") in the Chinese language but would discuss with ALA the Chinese text for the relevant subsections.</p>	The Administration to follow up as stated in paragraph 2(b) of the minutes.
011631 – 012200	Chairman Administration Mr Andrew CHENG	<p>Legislative timetable</p> <p>Mr Andrew CHENG indicated his intention to move a CSA to include a code of practice on the drug impairment test in respect of drug driving.</p> <p>The Administration was of the view that the matter should be dealt with by the Administration to contemplate in a more comprehensive manner in the upcoming Bill on combating drug driving to be submitted in the second half of the current legislative session.</p> <p>The Chairman opined that combating drug driving was a matter of concern for all members of the Bills Committee. However, it might be impractical at this stage to move a CSA to introduce a code of practice on the impairment test when the necessary support was not readily in place.</p>	