

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1276/10-11  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/4/09

**Bills Committee on Residential Care Homes (Persons with Disabilities) Bill**

**Minutes of the ninth meeting  
held on Friday, 11 February 2011, at 10:45 am  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon WONG Sing-chi (Chairman)  
Hon LEE Cheuk-yan  
Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon Cyd HO Sau-lan  
Hon CHEUNG Kwok-che  
Hon IP Wai-ming, MH  
Hon Alan LEONG Kah-kit, SC

**Members absent** : Hon LEUNG Yiu-chung  
Hon TAM Yiu-chung, GBS, JP  
Hon Ronny TONG Ka-wah, SC  
Dr Hon PAN Pey-chyou  
Hon LEUNG Kwok-hung

**Public Officers attending** : Item II

Mr Roy TANG Yun-kwong, JP  
Deputy Secretary for Labour and Welfare (Welfare) 1

Mr Stephen SUI Wai-keung  
Commissioner for Rehabilitation  
Labour and Welfare Bureau

Mrs Cecilia YUEN  
Assistant Director of Social Welfare  
(Rehabilitation & Medical Social Services)

Mrs Helen KWOK  
Chief Social Work Officer  
(Rehabilitation & Medical Social Services) 2

Ms Lonnie NG Wah-chi  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Miss Betty MA  
Chief Council Secretary (2) 4

**Staff in attendance** : Mr YICK Wing-kin  
Assistant Legal Adviser 8

Ms Yvonne YU  
Senior Council Secretary (2) 5

Miss Maggie CHIU  
Legislative Assistant (2) 4

Action

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**I. Confirmation of minutes**  
[LC Paper No. CB(2)954/10-11]

The minutes of the meeting held on 17 December 2010 were confirmed.

**II. Meeting with the Administration**  
[The Bill, LC Paper Nos. CB(2)2002/09-10(01),  
CB(2)2274/09-10(01), CB(2)2289/09-10(01) and CB(2)951/10-11  
(01)]

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

Action

3. Members noted that the Administration had provided responses to issues raised at the meeting on 4 January 2011 (LC Paper No. CB(2)951/10-11(01)).

Clause 2

4. Members noted that to put it beyond doubts, the Administration proposed to delete "the presence in the body of organisms causing disease or illness" from the definition of "person with disabilities" ("PWD") under clause 2 of the Bill. Members considered the proposed amendment acceptable.

Admin

5. Ms Cyd HO expressed concern whether the Chinese rendition of "malformation" ("畸形") in the definition of "PWD" was discriminatory. The Administration was requested to consider the need to refine the Chinese rendition of "malformation" in the definition of "PWD" under clause 2 and seek the views of the Equal Opportunities Commission if deemed necessary.

Clause 7

6. Members were advised that it was the Administration's intention that bodies corporate and partnerships could apply for licences or certificates of exemption ("COEs") under clause 7 or 11. Members were concerned about the liability of the directors and management of residential care homes for PWDs. The Administration's advice that clause 22(1) provided for offences in relation to licences and COEs committed by a person who operated, kept, managed or had control of RCHDs; due diligence defence was provided under clause 22(2) of the Bill. The liability of a director or other officer concerned in the management of the company was spelt out under section 101E of the Criminal Procedure Ordinance (Cap. 221) which applies to other legislation.

Admin

7. Mr Alan LEONG, however, expressed concern that under the present drafting of clause 22, it would be difficult for the enforcement agency to take action against directors of limited companies for committing an offence for the purpose of the Bill. Mr LEONG said that the Administration might wish to make reference to the Employment (Amendment) Ordinance 2009 and improve the drafting of the Bill with a view to spelling out explicitly that directors of bodies corporate and partnerships were liable for the offences in relation to licences and COEs.

Action

Other follow-up action required of the Administration

Admin

8. The Administration was requested to provide information on -
  - (a) the statutory requirements and standards for provision of residential care services for children with disabilities who had not attained the age of six which was governed under the Child Care Services Ordinance (Cap. 243); and
  - (b) the performance pledge for various services of the Licensing Office of Residential Care Homes for the Elderly of the Social Welfare Department.

**III. Any other business**

9. The Chairman reminded members that the next meeting would be held on 24 February 2011 at 2:30 pm.
10. There being no other business, the meeting ended at 12:36 pm.

Council Business Division 2  
Legislative Council Secretariat  
14 March 2011

**Proceedings of the ninth meeting of the  
Bills Committee on Residential Care Homes (Persons with Disabilities) Bill  
on Friday, 11 February 2011, at 10:45 am  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Confirmation of minutes</i>			
000000 - 000133	Chairman	Confirmation of minutes of meeting on 17 December 2010 [LC Paper No. CB(2)954/10-11]	
<i>Agenda item II – Meeting with the Administration</i>			
000134 - 000508	Chairman Administration	The Administration's response to issues raised at the meeting held on 4 January 2011 [LC Paper No. CB(2)951/10-11(01)]	
000509 - 000750	Chairman	Outstanding issues raised at the previous meetings	
000751 - 001000	Chairman Administration	Commencement of the clause-by-clause examination of the Bill  Clause 1 – Short title and commencement  Members raised no question on clause 1	
001001 - 001816	Administration ALA8 Chairman	Clause 2 – Interpretation  Examination of the definition of "person with disabilities" ("PWD") under clause 2 and the Administration's proposal to delete "the presence in the body of organisms causing disease or illness" from the definition of PWD	<b>Admin to move a CSA</b>
001817 - 002250	Ms Cyd HO Administration Chairman Dr Joseph LEE	Ms Cyd HO's view that the Chinese rendition of "malformation" ("畸形") in the definition of PWD in clause 2 was discriminatory.  Dr Joseph LEE's view that he personally considered the term "畸形" was neutrally couched. However, if doubts arose, the views of the Equal Opportunities Commission should be sought as to whether the use of the term constituted discrimination  The Administration's explanation that the drafting of the definition of "PWD" in the Bill was modelled on the definition of "disability" under the Disability Discrimination Ordinance (Cap. 487). It would consider members' views and consider the need to refine the Chinese rendition of the term "malformation" ("畸形") in the	<b>Admin</b>

Time marker	Speaker(s)	Subject(s)	Action required
		definition of "PWD"	
002251 - 002840	Chairman Administration Dr Joseph LEE Mr CHEUNG Kwok-che Mr IP Wai-man	Further discussion on the Administration's amendment to the definition of "PWD" under clause 2	
002841 - 003853	Administration Mr CHEUNG Kwok-che Chairman Dr Joseph LEE ALA8	Mr CHEUNG Kwok-che's concern about the provision of residential care services for children with disabilities below the age of six  The Administration's explanation that residential care services for children with disabilities under the age of six was governed under the Child Care Services Ordinance (Cap. 243). The Administration was requested to provide information on the statutory standards and requirements for provision of such residential care services	<b>Admin</b>
003854 - 004501	Administration Chairman Mr CHEUNG Kwok-che Dr Joseph LEE	Clause 3 - Application  Dr Joseph LEE's enquiry about the need to state clearly in clause 3(1) that the Bill did not apply to residential care homes for children with disabilities aged below six  The Administration's advice that residential care homes for children with disabilities aged below six would be excluded under the definition of "residential care home for PWDs". Residential care homes for PWDs ("RCHDs") for the purpose of the Bill referred to those provided residential accommodation with the provision of care to PWDs who had attained the age of six	
004502 - 005255	Ms Cyd HO Administration Chairman	Ms Cyd HO's concern about the application of clause 3(2) of the Bill. Ms HO's view that the Administration should set a timetable for RCHDs to fully comply with the licensing requirements	
005256 - 005458	Administration Chairman	Clause 4 - Offence of operating residential care homes for PWDs without licence  Clause 5 – Certain existing homes excepted from application of section 4  Clause 6 – Certain residential care homes for elderly persons excepted from application of section 4  Members raised no questions on clauses 4 to 6	
005459 - 010240	Administration	Clause 7 – Application for and issue of licence	

Time marker	Speaker(s)	Subject(s)	Action required
	<p>ALA8 Chairman Mr CHEUNG Kwok-che</p>	<p>ALA's enquiry as to whether bodies corporate or partnerships were within the meaning of applicants for licences and certificates of exemption ("COEs") for the purpose of clause 7</p> <p>The Administration's advice that bodies corporate and partnerships could also apply for licences or COEs under clause 7 or 11. The construction of a "person" (i.e. an individual, a corporate or a partnership) was based on section 3 of the Interpretation and General Clause Ordinance (Cap. 1)</p> <p>Mr CHEUNG Kwok-che's concern about the liability of a director or the management of the RCHD</p> <p>The Administration's advice that clause 22(1) provided for offences in relation to licences and COEs committed by a person who operated, kept, managed or had control of RCHDs; due diligence defence was provided under clause 22(2) of the Bill. The liability of a director or other officer concerned in the management of the company was spelt out under section 101E of the Criminal Procedure Ordinance (Cap. 221)</p>	
010241 - 010723	<p>Mr CHEUNG Kwok-che Administration Chairman</p>	<p>Mr CHEUNG Kwok-che's concern about the implementation of one licence for one residential care home</p>	
011550 - 013148	<p>Mr Alan LEONG Administration Chairman Mr CHEUNG Kwok-che</p>	<p>Mr Alan LEONG's concern that under the present drafting of clause 22, it would be difficult for the enforcement agency to take action against directors of limited companies for committing an offence for the purpose of the Bill. Mr LEONG's view that the Administration should make reference to the Employment (Amendment) Ordinance 2009 and improve the drafting of the Bill with a view to spelling out explicitly that directors of bodies corporate and partnerships were liable for the offences in relation to licences and COEs</p>	<p><b>Admin</b></p>
013149 - 013533	<p>Ms Cyd HO Administration</p>	<p>The Administration's elaboration on the meaning of "offence" referred to in clauses 4 and 22</p>	
013534 - 015103	<p>Administration Ms Cyd HO Chairman ALA8</p>	<p>Clause 8 – Renewal of licence</p> <p>Responding to Ms Cyd HO, the Administration advised that the Director of Social Welfare would make a decision on the application for renewal of licence before the expiry of the licence. As an administrative arrangement, the licensing office</p>	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
		would issue letters to RCHD operators reminding them of the renewal of licences four months before the expiry  The Administration was requested to provide the performance pledge for different services of the Licensing Office of Residential Care Homes for the Elderly of the Social Welfare Department	<b>Admin</b>
015104 - 015212	Chairman Ms Cyd HO Mr CHEUNG Kwok-che	Date of the next meeting	

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