

立法會
Legislative Council

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Tel : 2869 9205

Date : 15 October 2009

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 4 November 2009

**Proposed resolution under
the Disability Discrimination Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Labour and Welfare will move at the Council meeting of 4 November 2009 under the Disability Discrimination Ordinance. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both English and Chinese versions, which the Secretary will deliver when moving the proposed resolution is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

DISABILITY DISCRIMINATION ORDINANCE

RESOLUTION

(Under section 87(2) of the Disability Discrimination Ordinance (Cap. 487))

RESOLVED that the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2009, made by the Chief Executive in Council on 6 October 2009, be approved.

DISABILITY DISCRIMINATION ORDINANCE (AMENDMENT OF SCHEDULE 5) NOTICE 2009

(Made by the Chief Executive in Council under section 87(2) of the
Disability Discrimination Ordinance (Cap. 487) subject to the
approval of the Legislative Council)

1. Further exceptions to this Ordinance

Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) is amended by adding –

- “1. Parts IV and V MTR Corporation Limited providing fare concessions to persons –
- (a) who –
 - (i) receive assistance under the Comprehensive Social Security Assistance Scheme administered by the Director of Social Welfare; and
 - (ii) are medically certified under the Scheme to be 100% disabled for the purposes of the Scheme; or
 - (b) who receive an allowance described as Disability Allowance under the Social Security Allowance Scheme administered by the Director of Social Welfare.”.

Clerk to the Executive Council

COUNCIL CHAMBER

6 October 2009

Explanatory Note

This Notice amends Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) (“the Ordinance”). It provides that the provision of fare concessions to certain persons with a disability by MTR Corporation Limited is a further exception to Parts IV and V of the Ordinance, so that section 60 of the Ordinance applies and the discrimination is not rendered unlawful by those Parts.

**Speech by the Secretary for Labour and Welfare
(4 November 2009)**

**Disability Discrimination Ordinance (Amendment of Schedule 5)
Notice 2009 (Amendment Notice)**

Mr President,

I move the resolution standing in my name on the Agenda. The resolution is to the effect that the amendment of Schedule 5 to the Disability Discrimination Ordinance (DDO) made under section 87(2) of the DDO be approved by this Council, in order to include the provision of fare concessions to a particular group of persons with disabilities (PWDs) by MTR Corporation Limited (MTRCL) as a further exception under Schedule 5.

2. As announced in May this year, MTRCL has proposed to offer, by the end of this year, fare concessions of about half fare to PWDs who are either recipients of the Comprehensive Social Security Assistance Scheme aged between 12 and 64 with 100% disability or recipients of Disability Allowance in the same age group. The Administration welcomes MTRCL's proposal. We believe that the proposal would help encourage PWDs to participate more in activities away from home, thereby enhancing their contact with, and integration, into society. The aim of this proposal is in line with the Administration's rehabilitation policy objective of promoting full integration of PWDs into society.

3. In response to MTRCL's request for legal certainty to put beyond doubt that its fare concession scheme would not constitute a contravention of the DDO, there is a need to amend Schedule 5 to the DDO. Since the definition of "disability" under the DDO is very broad, MTRCL's provision of fare concessions only to a particular group of PWDs may give rise to arguments as to whether this may contravene the DDO. In this regard, the Equal Opportunities Commission (EOC) and the Department of Justice (DoJ) have examined the feasibility of relying on the exception provision in section 50 of the DDO as a defence. Both EOC and DoJ are of the view that while the fare concession scheme could arguably rely on the exception provision in section 50 of the DDO as a

defence, there is uncertainty over whether such a defence could be established as it would ultimately be for the court to decide. In order to minimise the risk of legal challenge and dispute against MTRCL's fare concession proposal, the Administration now proposes to make legislative amendments to Schedule 5 to the DDO having regard to the content of MTRCL's fare concession scheme.

4. Subject to Members' approval of this resolution today, the Amendment Notice concerned may take effect on 6 November 2009 at the earliest, upon its publication in the Gazette so as to facilitate MTRCL to dovetail with its schedule for implementation of the fare concession scheme by the end of this year. I hope that Members will support this resolution and enable the PWDs concerned to benefit from the fare concessions as early as possible.

5. Mr President, I beg to move.