

立法會
Legislative Council

LC Paper No. LS4/09-10

**Paper for the House Committee Meeting
on 23 October 2009**

**Legal Service Division Report on
Proposed Resolution under section 87(2) of
the Disability Discrimination Ordinance (Cap. 487)**

The Secretary for Labour and Welfare (the Secretary) has given notice to move a motion at the Legislative Council meeting of 4 November 2009. The motion seeks the Legislative Council's approval of the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2009 (Amendment Notice) made under section 87(2) of the Disability Discrimination Ordinance (Cap. 487) (the Ordinance) by the Chief Executive in Council on 6 October 2009.

2. The Amendment Notice amends Schedule 5 to the Ordinance to include as further exceptions to the Ordinance the provision of fare concessions by MTR Corporation Limited (MTRCL) to the following persons with disabilities (PWDs) (fare concession scheme) -

- (a) recipients of assistance under the Comprehensive Social Security Assistance Scheme (which is means-tested) with 100% disability; and
- (b) recipients of Disability Allowance under the Social Security Allowance Scheme (which is non-means-tested).

3. Section 60 of the Ordinance provides that no provision or Part of the Ordinance specified in column 1 of Schedule 5 shall render unlawful any discrimination specified opposite thereto in column 2 of that Schedule. Any discrimination so specified is described in Schedule 5 as "FURTHER EXCEPTIONS TO THIS ORDINANCE". At present, no discriminatory act is specified in Schedule 5. The Amendment Notice is to add the above fare concession scheme as the first item of that Schedule so that in accordance with section 60, the fare concession scheme will not be rendered unlawful by Parts IV (Discrimination and Harassment in other fields) and V (Other Unlawful Acts) of the Ordinance.

4. According to the Administration, the Amendment Notice is necessary, in the views of the Department of Justice and the Equal Opportunities Commission (EOC), to ensure that the fare concession scheme which is to be offered only to a particular group of PWDs would not constitute a contravention of the Ordinance. Members may refer to the LegCo Brief (File Ref: LWB 8/3939/99) dated 14 October 2009, issued by the Labour and Welfare Bureau and Transport and Housing Bureau for further information.

5. It is noted from the LegCo Brief that the above fare concession scheme is to be offered to those specified PWDs who are aged between 12 and 64 only. MTRCL are already offering fare concessions to children aged 11 or below and senior citizens aged 65 or above. Upon our query as to why no age limits are specified in the proposed amendment, the Transport and Housing Bureau explained that the present drafting of the Amendment Notice is to allow flexibility to MTRCL in administering the fare concession scheme for PWDs and to avoid the need to amend Schedule 5 if there is any change to the existing fare concessions offered by MTRCL. In our view, whether it is appropriate to allow such flexibility to MTRCL is a matter for members. The clear effect of the proposed resolution as drafted is to apply the proposed exceptions in respect of all the specified PWDs without any age limit.

6. The former Subcommittee to Study the Transport Needs of and Provision of Concessionary Public Transport Fares for Persons with Disabilities (Subcommittee) was formed under the House Committee in December 2005 and completed its discussions in June 2008. The Subcommittee discussed, among other things, the provision of fare concessions for PWDs by public transport operators. While the Subcommittee was of the view that concessionary public transport fare schemes should aim at covering all PWDs groups as far as practicable, the Subcommittee eventually agreed that the concessionary fares should be offered to recipients of the Disability Allowance or the Comprehensive Social Security Assistance with 100% loss of earning capacity in the first instance. The Administration undertook to introduce amendments to the Ordinance to put it beyond doubt that selective provision of concessionary fares to PWDs would not constitute a contravention of the Ordinance. In this connection, EOC expressed support for amending Schedule 5 to the Ordinance. Members may wish to refer to the report of the Subcommittee (LC Paper No. CB(1)1919/07-08) for details of its deliberations.

7. Neither the Panel on Welfare Services nor Panel on Transport has been consulted on the Amendment Notice.

8. The Amendment Notice, if approved, shall come into operation on the day on which it is published in the Gazette pursuant to section 28(3)(a) of the Interpretation and General Clauses Ordinance (Cap. 1). According to the draft Speech of the Secretary, the Amendment Notice, if approved, may take effect on 6 November 2009 at the earliest so as to facilitate MTRCL to dovetail with its schedule for implementation of the fare concession scheme by the end of this year.

9. No difficulties relating to the legal and drafting aspects of the Amendment Notice have been identified.

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