

**立法會**  
**Legislative Council**

LC Paper No. CB(2) 152/00-01  
(These minutes have been seen by  
the Administration and cleared with  
the Chairman)

Ref : CB2/BC/25/98

**Bills Committee on  
Witness Protection Bill**

**Minutes of meeting  
held on Friday, 14 April 2000 at 4:00 pm  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon James TO Kun-sun (Chairman)  
Hon Mrs Sophie LEUNG LAU Yau-fun, JP  
Hon Gary CHENG Kai-nam, JP  
Hon Andrew WONG Wang-fat, JP

**Member absent** : Hon David CHU Yu-lin

**Public Officers attending** : Miss Eliza YAU  
Principal Assistant Secretary for Security E

Ms Jessie WONG  
Assistant Secretary for Security E

Mr CHAN Wai-ki  
Chief Superintendent of Police (Crime)  
Hong Kong Police Force

Miss Monica LAW  
Senior Assistant Law Draftsman

Ms Stella CHAN  
Government Counsel

Mr CHOY Tak-po  
Assistant Director of Immigration (Personal Documentation)

Mr WONG Sai-chiu  
Assistant Director of Operations  
Independent Commission Against Corruption (ICAC)

**Clerk in attendance** : Mrs Sharon TONG  
Chief Assistant Secretary (2)1

**Staff in attendance** : Mr Stephen LAM  
Assistant Legal Adviser 4

Mr Raymond LAM  
Senior Assistant Secretary (2)5

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**I. Meeting with the Administration**

(LC Paper Nos. CB(2)872/99-00(02) and (03), CB(2) 1291/99-00(01) and CB(2) 1682/99-00(01))

Existing memorandum of understanding (MOU) used by the Police and the Independent Commission Against Corruption (ICAC)  
(closed-door session)

***This part of the minutes is CONFIDENTIAL***

Administration's response to issues raised at the last meeting on 3 April 2000

12. At the Chairman's invitation, Principal Assistant Secretary for Security E (PAS(S)E) briefed members on the Administration's paper setting out its response to issues raised at the meeting held on 3 April 2000.

*Witness' existing social ties in the community*

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13. PAS(S)E said that a witness's existing social ties in the community was not a factor to be considered by the approving authority when deciding whether or not to include a witness in the WPP. The issue would be dealt with when the MOU was drawn up. Whether a witness was required to sever all his existing social ties in the community would be decided by the approving authority after taking account of the circumstances of each case and the detailed requirements would be set out in the MOU. She added that the approving authority would not assume that the witness could not be trusted to observe the terms and conditions of the MOU because of his existing social ties in the community. However, if the witness did not agree to the requirements in the MOU and refused to sign it, he would not be included in the WPP.

*Clause 4(3)(g) - nature of the witness' relationship to other witnesses*

14. In response to the Chairman, PAS(S)E said that the Administration had no strong views on replacing "other witnesses" in clause 4(3)(g) with "other persons" as it did not affect the meaning of the provision. However, it considered that retaining the term "other witnesses" would maintain consistency with other parts of the Bill, such as clauses 4(2) and 4(3). Thus, the Administration preferred retaining "other witnesses" in clause 4(3)(g). Assistant Legal Adviser 4 (ALA4) expressed agreement to the Administration's views. Assistant Secretary for Security E pointed out that "other witnesses" in clause 4(3)(g) was in the context of "other witnesses being assessed for inclusion in the witness protection programme". She explained that as the Bill provided that only witnesses would be considered for inclusion in the WPP and it was not established that "persons" and "witnesses" in the Bill were making the same reference, it was not appropriate to replace "other witnesses" with "other persons" in the clause.

15. Mr Andrew WONG suggested revising "the nature of the witness' relationship to other witnesses being assessed for inclusion in the witness protection programme" in clause 4(3)(g) to "the nature of the relationship of the witness being assessed for inclusion in the witness protection programme to other witnesses" to improve clarity of the clause. The Chairman requested the Administration to consider the suggestion.

Adm

*Clauses 4(3), 5 & 6 - medical, psychological or psychiatric tests/examinations*

16. PAS(S)E explained that the psychological, psychiatric or medical tests/examinations, if necessary, would usually be conducted before a witness was included in the WPP. However, as provided by clause 6(2)(d), a participant might be required to undergo such tests or examinations again if the approving authority found that it was necessary to do so. It could be in a situation where the approving authority found that the state of health of a participant had changed since his inclusion in the WPP. As such, the Administration considered that there was no need to revise clauses 4(3) and 6(2) in relation to medical, psychological or psychiatric tests or examinations. As regards clause 5(2), the Administration would revise the drafting to make it clear that the approving authority might require a witness to undergo medical tests or

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examinations and to make the results available to the approving authority before being included in the WPP.

*Clause 8(2) - establishment of a new identity for a witness*

17. PAS(S)E said that the Administration did not see the need to revise the present drafting of clause 8(2) which stipulated that subject to the recommendation of the Commissioner and the approval of the Chief Executive, the approving authority might establish a new identity for a participant. Since the term "participant" had already been defined in the Bill as a witness who had been included in the WPP, clause 8(2) was clear enough to show that a witness' identity could not be changed until he had signed the MOU and become a participant.

Adm

18. In response to the Chairman's question, PAS(S)E confirmed that in the event of a change of identity for a WPP participant, the participant, before the new identity was created, would have to sign a new MOU as required under clause 8(2). ALA 4 questioned whether provisions should be added to clause 8(2) to provide for the signing of the new MOU by a parent or guardian of a participant who was below the age of 18 or who lacked legal capacity. PAS(S)E agreed to consider this point.

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19. The Chairman requested the Administration to provide a brief description of the content of the new MOU signed under clause 8(2) for members' information. The Administration agreed.

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20. Mr CHENG Kai-nam considered that the Chinese text of "to establish" in all provisions in the Bill where the establishment of new identity was mentioned should be "設立" or "定立" rather than "另立". The Chairman requested the Administration to look into this.

Clause-by-clause examination of the Bill

*Clause 9(2) and (3) - rights and obligations of participant*

21. The Chairman considered that flexibility should be allowed for the approving authority in dealing with cases where a participant with a new identity avoided obligations or restrictions imposed on him before his new identity was established. He said that in dealing with such cases, the approving authority should take into account the fact that compliance with these obligations or restrictions might lead to disclosure of the participant's former identity and thus exposed him to danger. He pointed out that the present drafting of clause 9(2), in particular the phrase "shall give notice", allowed no flexibility for the approving authority in dealing with such cases. However, Mr Andrew WONG considered that the provision should not be drafted too loose as the obligations to be met might be referring to the participant's outstanding debts which he was obliged to repay. The Chairman requested the Administration to consider the matter and advise in writing.

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*Clause 10 - non-disclosure of former identity of participants*

- Adm 22. In response to members, PAS(S)E agreed to consider amending the term "former identity" in the Bill to "original identity", which not only more tallied with the Chinese text "原本身份" but also reflected more accurately the intended meaning.

**II. Date of next meeting**

23. Members agreed that the next meeting would be held at 10:45 am on 5 May 2000.

24. There being no other business, the meeting ended at 6:05 pm.

Legislative Council Secretariat

1 September 2000