

For discussion

3 April 2000

Bills Committee on Witness Protection Bill

**Administration's Response to Issues Raised at
the Bills Committee Meeting on 17 March 2000**

Clause 2 – definition of “witness”

Some members suggested that the Administration should examine whether the provision in paragraph (e) is covered by paragraph (d) and if the answer is positive, delete paragraph (e).

2. We have reservations about the proposal because paragraphs (a) to (e) are in fact designed to cover different categories of persons to be considered for inclusion in the witness protection programme (WPP). Paragraph (e) is to cover the family members or close friends of a person described in paragraphs (a) to (d) whereas paragraphs (a) to (d) cover the person himself. Paragraph (d) is designed to include persons not covered by paragraphs (a) to (c). For example, a person who has been assessed by the Police or ICAC as being able and willing to assist in investigation but for some reasons has not yet made a statement, say, an informant, will fall within the scope of paragraph (d).

Clause 4(3) – factors of consideration for inclusion in the WPP

3. Some members suggested revising clause 4(3) of the Bill to the effect that in deciding whether or not to include a witness in the WPP, the major consideration will be the perceived danger to the witness, and in addition, the approving authority shall have regard to the other factors as listed in clause 4(3).

4. Clause 4(3) lists down the major factors that the approving authority may take into account when deciding whether or not to include a witness in the WPP. As explained at the last meeting, there are practical difficulties in assigning weights to different factors. Instead, each case has to be examined on its own merits. To address members' concern and at the same time, to maintain the necessary flexibility for the approving authority, we suggest revising clause 4(3) as follows -

“In addition to the nature of the perceived danger to the witness, the approving authority shall, in deciding whether or not to include a witness in the witness protection programme, have regard to –

- (a) whether the witness has a criminal record, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the witness protection programme;

- (b) if a psychological or psychiatric examination or evaluation of the witness has been conducted to determine the witness' suitability for inclusion in the witness protection programme, that examination or evaluation;
- (c) the seriousness of the offence to which the relevant evidence or statement relates;
- (d) the nature and importance of that evidence or statement;
- (e) whether or not there are viable alternative methods of protecting the witness; and
- (f) the nature of the witness' relationship to other witnesses being assessed for inclusion in the witness protection programme,

and may have regard to such other matters as the approving authority considers relevant.”

Clause 5 – medical, psychological or psychiatric tests/examinations

5. Some members queried why medical tests or examinations are mentioned in clause 5(2) but not in clause 4(3) and whether the health, including his psychological and psychiatric condition, of a witness are factors for deciding whether or not to include him in the WPP. They also suggested the Administration examine the feasibility of providing

witnesses for application into the WPP with the reports of medical tests or examinations, and psychological or psychiatric examinations if such tests or examinations have been conducted under the Bill.

6. As explained in the Administration's response to questions raised by the Assistant Legal Adviser of the Legislative Council dated 20 January 2000, the approving authority may consider a witness' psychological or psychiatric situation when deciding whether or not to include a witness in the WPP because it may affect the witness' suitability for inclusion in the programme. However, the purpose for asking a witness to undergo medical tests or examinations is to allow for the appropriate measures to be taken to reduce the risk of death or medical complication whilst under protection only. The results of these tests are not for "screening" purpose. Hence, the existing drafting of clause 5(2), which stipulates that the approving authority may require a witness to undergo medical tests or examinations for the purpose of assessing whether or not the witness should be included in the WPP, is not in line with the policy intention and needs to be revised.

7. We have consulted the Hospital Authority and Police Clinical Psychologists about the feasibility of providing witnesses for application into the WPP with the reports of medical tests or examinations, and psychological or psychiatric examinations if such tests or examinations have been conducted under the Bill. It is confirmed that like an ordinary patient, a witness can request for a copy of such tests or examinations under the Personal Data (Privacy) Ordinance (Cap.486). However, such

requests may be refused if the relevant doctor/psychologist/psychiatrist forms the view that disclosure of the report/evaluation/test result will cause serious harm to the physical or mental health of the witness or others under section 59 of the Ordinance.

Clause 8(3) – change of identity

8. The Assistant Legal Adviser of the Legislative Council queried whether factors set out in clauses 4(3) and 5 would apply when establishing new identity for a participant under clause 8 sometime after he has been included in the WPP since clauses 4(3) and 5 refer to the considerations of including a witness in the WPP.

9. We have consulted the Department of Justice and are advised that clause 8 enables the Commissioner of Police and the Commissioner of ICAC to have a wide discretion as to what he should include in support of his recommendation for establishing a new identity for a participant already in the WPP. In exercising such discretion, he can make reference to factors set out in clauses 4(3) and 5 or other criteria that he considers relevant. Such discretion provides the Commissioners with the necessary flexibility in examining the need and the consequences to create a new identity for a participant.

Clause 8(4) – particulars of new identity

10. The Assistant Legal Adviser of the Legislative Council

expressed concerns about whether the provisions in clause 8(4) were sufficient to cover all the particulars in the issuing of new documents to a participant when creating a new identity for him such as the “specially created” particulars of his parents in his new birth certificate. The Administration was requested to confirm whether there was a need to create new identity for the parents of the participant in order to tie in with the information in the participant’s new birth certificate.

11. The Department of Justice has advised that clause 8(4)(a) enables the approving authority to provide all necessary particulars to the relevant public officer for creating a new identity for a participant. These particulars could include “specially created” names for the participant’s parents as shown in his new birth certificate. In other words, the names of the participant’s parents as shown in his new birth certificate are “specially created” and exist on paper only. It does not mean that the identity of the participant’s biological parents has been changed. New identity will only be created for the participant’s parents if such need arises, e.g. the danger faced by them necessitates such change.

Outstanding debts of a witness

12. Some members queried whether the settlement of all outstanding debts by a witness was a factor in deciding whether or not to include him in the WPP.

13. The purpose of the WPP is to encourage more witnesses to stand and give evidence against suspects in serious crimes. Where a real threat is proven, a witness will be admitted into the WPP regardless of his financial situation. In other words, a person would not be barred from the WPP solely because of his inability to repay his debts.

14. Every effort will be made to ensure that a witness repays all his outstanding debts. The settlement of these debts will be considered on a case by case basis and if appropriate, a financial support scheme can be worked out on mutual agreement basis. Clause 6 stipulates that a memorandum of understanding in relation to a participant may contain, inter alia, a list of the outstanding obligations of the participant and an agreement as to how those obligations are to be met. In some cases, we may use public funds to repay a participant's debts in advance but arrangement will be made with the participant to recover the expense in future.

Annex C to the Legislative Council Brief

15. Some members requested the Administration to elaborate on the first point of item (e) of Annex C to the Legislative Council Brief issued in May 1999. It states that the witness must be required under the memorandum of understanding to sever all his existing social ties in the community, e.g. work, housing, schooling, banks, ownership of property etc.

16. The purpose of creating a new identity for a participant is to provide a degree of anonymity and enhance the safety of the participant. The participant could however jeopardize his safety and the confidentiality as well as the effectiveness of the WPP if he maintains his old ties, i.e. association with any event, institution or person directly linked to his old identity. Hence, a participant who has assumed a new identity is required to sever all his existing ties in the community to preserve his anonymity.

17. In practice, such requirement will not be absolute and will be a matter of degree judged on the particular circumstances of the case. The agreed arrangement will be set out in the memorandum of understanding signed by the participant under clause 8(3).

Security Bureau

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